NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

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Submitted via www.regulations.gov

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Re: *Procedures for Asylum and Withholding of Removal;* RIN 1125–AA93 / EOIR Docket No. 19–0010 / A.G. Order No. 4843–2020 ("Proposed Rule")

Dear Assistant Director Reid:

The National Immigrant Justice Center ("NIJC" or "we") works to advance the rights of all immigrants, including asylum seekers and torture survivors. With the above-referenced Proposed Rule, the Department of Justice's ("Department" or "DOJ") Executive Office of Immigration Review ("EOIR") eviscerates U.S. and international laws protecting individuals fleeing persecution and torture. NIJC therefore urges the Department to withdraw the Proposed Rule in its entirety.

Headquartered in Chicago, NIJC provides legal services to more than 10,000 individuals each year, including many asylum seekers, torture survivors, and unaccompanied children who have entered the United States by crossing the U.S.-Mexico border. NIJC also provides legal services to and advocates for noncitizens subject to the Migrant Protection Protocols ("MPP" or the "Remain in Mexico policy"). These individuals have overcome unimaginable persecution and torture in their home countries and journeyed to the United States in hopes of finding a better future. Under the Proposed Rule, the ability for many to access safety from persecution in their home countries will be effectively destroyed.

The Proposed Rule seeks to radically alter the U.S. asylum application process by imposing new filing restrictions that would arbitrarily foreclose relief to countless asylum seekers. The Proposed Rule also upends procedural norms and transforms immigration judges from

adjudicators into advocates. These proposed changes violate U.S. and international law and trample on the due process rights of noncitizens seeking asylum. For these reasons, NIJC calls for the immediate rescission of the Proposed Rule.

NIJC also strongly objects to the expedited 30-day period to respond to the Proposed Rule. Notably, the Department does not provide any rationale justifying its departure from the customary 60-day comment period.

The Proposed Rule would fundamentally alter the asylum application and adjudication process. Consideration of such drastic changes should not be rushed. This accelerated timeframe also impairs NIJC's ability to thoroughly comment on the Proposed Rule. Like other organizations throughout the country, NIJC's operations are constrained by the ongoing pandemic, which has claimed the lives of over 223,000 Americans. In light of these challenges, NIJC joined 85 other stakeholders urging the Department to extend the comment period to its customary 60 days[1]—a request the Department ignored.

Though NIJC objects to the Department's arbitrarily shortened comment period, we submit this Comment addressing the devastating effect the Proposed Rule would have on noncitizens and on the very integrity of the U.S. judicial system.

I. The Proposed Changes To I-589 Filing Requirements Will Unjustly Foreclose Relief To Countless Asylum Seekers And Torture Survivors

The Department proposes three significant changes to I-589 filing requirements in asylum-and withholding-only proceedings:[2]

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[1] Request for 60-Day Comment Period for the Executive Office for Immigration Review, Department of Justice, Notice of Proposed Rulemaking on Asylum and Withholding of Removal Procedures/EOIR Docket No. 19-0010, Oct. 8, 2020, https://cliniclegal.org/resources/federal-administrative-advocacy/nearly-90-organizations-join-urge-justice-department.

[2] Ostensibly these significant changes are limited to noncitizens in asylum-and-withholding-only proceedings, which were proposed a few months ago by the Department and the Department of Homeland Security ("DHS") and for which the final rule is pending. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 36264 (proposed June 15, 2020) [hereinafter June 2020 NPRM]. Because the June 2020 NPRM has not been implemented, we do not know how the proceedings will actually be enacted, including who and how many noncitizens will be placed into these proceedings. But—given that expedited removal proceedings have been expanded to include all noncitizens who have been in the U.S. for up to two years—we expect that a high percentage of removal proceedings will take place under this new asylum-and-withholding-only framework. NIJC renews its objections to this unlawful and ill-considered system as outlined in its July 15, 2020 comment to the June 2020 NPRM. Nat'l Immigrant Justice Ctr., Comment Letter on Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Credible Fear Review, 85 Fed. Reg. 36264.

- requiring noncitizens to file their applications ("I-589s") within just 15 days of their first hearing (which is when most noncitizens first receive the I-589) (8 C.F.R. § 1208.4(d));

- mandating that EOIR reject I-589s that are unsigned, include any unanswered questions, or lack any required supporting evidence, and then—if noncitizens do not correct the errors within 30 days—denying the applications altogether (8 C.F.R. § 1208.3(c)(3)); and

- requiring noncitizens to include a fee receipt when filing their I-589s as proof that they paid the required asylum application filing fee of $50 to USCIS (8 C.F.R. § 1208.3(c)(3)) (collectively, "Proposed Changes to I-589 Filing Requirements").

The Department couches these changes as minor procedural adjustments that would improve efficiency while bolstering meritorious claims. That narrative is false. Instead, the Proposed Changes to I-589 Filing Requirements would effectively foreclose relief to the vast majority of asylum seekers and torture survivors, including the most vulnerable populations such as unrepresented noncitizens and detained noncitizens.

A. Most noncitizens will be unable to comply with the 15-day deadline imposed by the Proposed Changes to I-589 Filing Requirements.

The Immigration and Nationality Act ("INA") provides adult noncitizens one year from their entry into the United States to file their asylum applications.[3] Unaccompanied children are exempt from this one-year filing deadline.[4] Noncitizens seeking withholding of removal or relief

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In addition, as described in Section VI of this Comment, the Department's decision to publish this Proposed Rule before the June 2020 NPRM has been finalized and published—much less implemented—prohibits stakeholders like NIJC from being able to provide comprehensive comments to rules that radically alter the asylum process. These procedural deficiencies also demonstrate the arbitrariness of the Proposed Rule. We do not know, for example, how noncitizens with both asylum claims and claims that cannot be adjudicated in asylum-and-withholding-only proceedings—such as cancellation of removal—will be classified in this new system (i.e. Will they be placed in Section 240 proceedings or in the newly designed asylum-and-withholding-only proceedings? If the latter, how, if at all, will they pursue cancellation of removal?). Nor do we know how, if at all, the Department will impose the new asylum-and-withholding-only proceedings on noncitizens who are already in removal proceedings (i.e. Will the Proposed Rule apply retroactively? If so, to whom?). Without clarity on these and other critical threshold issues regarding asylum-and-withholding-only proceedings—clarity which can only be provided after the implementation of a final rule—NIJC cannot fully comment on the Proposed Rule and the Department cannot fully consider reliance interests as required by the Administrative Procedure Act ("APA").

[3] Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(B).

[4] *Id.* § 1158(a)(2)(E).

under the Convention Against Torture can file applications for relief at any time.[5] The proposed 8 C.F.R. § 1208.4(d) seeks to rewrite I-589 filing requirements, creating a 15-day filing deadline that most noncitizens will be unable to meet.

As a threshold matter, requiring noncitizens to file their I-589s within 15 days of their first master calendar hearings means that most noncitizens must file their I-589s ***within 15 days of receiving notice of a need to file any application***.[6] Notices to Appear ("NTAs"), which commence removal proceedings, do not advise noncitizens of a need or even the right to file any application for relief. Only at the initial hearing—if the noncitizen admits to the charges, concedes removability, and asserts a defense to removal—does an immigration judge advise the noncitizen of the need and right to file an application for relief. While noncitizens who are represented by counsel may be aware of or have access to the I-589 prior to their first hearings, the vast majority of noncitizens are unrepresented at their initial hearings.[7] These *pro se* individuals will therefore first receive—and likely first learn of—the I-589 at their initial master calendar hearings.

The Department ignores the many barriers to filing a completed I-589 within 15 days of receiving the application at the noncitizen's first master calendar hearing:

- Language Barriers. The I-589 and its corresponding instructions are offered only in English, a language which the vast majority of noncitizens cannot understand. It also

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[5] 8 C.F.R. § 208.16 (2020).

[6] The Proposed Rule does not state whether the 15-day deadline refers to the date by which I-589s must be postmarked or the date by which the applications must be *received*. Presumably, the latter deadline applies, as immigration courts do not adhere to the so-called mailbox rule. *See* Immigration Court Practice Manual, Chapter 3.1(a)(iii) ("An application or document is not deemed 'filed' until it is received by the Immigration Court. . . . The Immigration Court does not observe the 'mailbox rule.' Accordingly, a document is not considered filed merely because it has been received by the U.S. Postal Service, commercial courier, detention facility, or other outside entity."). Accordingly, respondents will have *fewer* than 15 days to complete and effectuate delivery of their I-589s. Detained noncitizens are even more prejudiced by this absurd timeline, as they likely do not have access to overnight mail carrier services and must instead place their filing packages in the hands of Immigration and Customs Enforcement or private contractors several days before the 15-day deadline elapses with the faint hope that their applications will be delivered timely.

[7] *See, e.g.*, *Access to Counsel in Immigration Court*, AM. IMMIGR. COUNCIL (Sept. 28, 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf (based on data from 1.2 million deportation cases decided between 2007 and 2012, only 37% of respondents in removal proceedings secured counsel); *Access to Attorneys Difficult for Those Required to Remain in Mexico*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE ("TRAC") (July 29, 2019), https://trac.syr.edu/immigration/reports/568/ (based on data from the first half of 2019, only 23.6% of respondents pursuing relief in immigration courts around the country obtained representation within three months of their case beginning).

must be *completed* in English, meaning that noncitizens who cannot read and write in English must find an interpreter to help them complete the application. This is particularly challenging for detained noncitizens, who are unlikely to have access to bilingual support in custody. Indigenous noncitizens and others who speak languages that are not widely known will also be particularly challenged. It may take these individuals weeks or longer just to find an interpreter who can translate the I-589s and incorporate the noncitizens' responses.

Language barriers already present a major challenge to asylum seekers; for many, the proposed 15-day deadline will create an insurmountable hurdle.

- Completing the Application. Those who obtain an interpreter must devote extensive time to completing the application. The I-589 is not a simple form. At over 12 pages long with 14 pages of instructions and hundreds of questions (all of which must be completed or, under the Proposed Rule, the application will be rejected), it can be difficult and time-intensive for even seasoned practitioners to complete. *Pro se* noncitizens face a far greater challenge. These asylum seekers will almost certainly, for example, not know how to identify their status upon entry (A.I.18.c; A.II.17), what it means to "include[]" a child or spouse on an application (A.II), whether to seek relief under the Convention Against Torture, or what a "particular social group" is and whether they are members in one (B.1). They may also struggle to comprehend the I-589 instructions, even if they are translated into a language the noncitizen can understand. For example, the I-589 instructions require applicants who do not include corroborating evidence to explain why they failed to do so in the application's Supplement B.[8] This requirement, buried in the 14 pages of instructions, is easy to miss, even for experienced counsel.

  This difficulty is even more pronounced for children, who cannot complete the I-589 unassisted. Noncitizens with disabilities or limited education will be similarly prejudiced. For example, one of NIJC's clients, Almaz,[9] completed only four years of primary education in Central America. She struggles to read and write, and although she has a viable asylum claim, she would be unable to complete her I-589 without guidance.

  The application also takes many hours to complete. The DOJ and DHS acknowledged this in their proposed changes to the I-589 Form, suggesting that it would take applicants approximately 18 hours to complete the proposed I-589.[10] As NIJC explained in its

[8] Form I-589 Instructions, part 1.VII (Aug. 25, 2020).

[9] Name changed for client's privacy and safety.

[10] June 2020 NPRM at 36290.

August 14, 2020 comment responding to the proposed changes to the form,[11] that time could double after accounting for translation and interpretation, making the completion of the proposed I-589 take nearly as long as a full work week. Even the current version of the I-589 can take days to complete. Moreover, many noncitizens flee persecution and seek relief as families. These noncitizens must complete multiple I-589s, further increasing the time needed to complete the application and complicating the process of collecting the necessary documentation and corroborating evidence for all family members.[12]

Asylum seekers face these challenges under the current regulations, but the INA's one-year filing deadline affords them time to seek assistance. The 15-day deadline in the Proposed Rule will not.

- Accessing Required Documents and Corroborative Evidence. In addition to the time necessary to complete the I-589, noncitizens require time—more than 15 days in all but the rarest of cases—to collect information that must be submitted with their applications. For example, noncitizens who include their spouse or child on their applications must attach two copies of primary or secondary evidence of the relationship, such as a marriage certificate or birth certificate, for each family member included on the primary applicant's application.[13] Many noncitizens do not have these documents with them upon arrival at the U.S. border and must coordinate with family members or agencies in the country they fled to arrange for the documents to be mailed to them. This process often takes weeks or longer. Moreover, if these documents are not in English (and they almost never are), they must be translated and accompanied by a certificate of translation.[14] This, too, often takes weeks. Finally, noncitizens may not be able to include passport-style photographs with their asylum applications as required by the I-589 instructions.[15] Detained noncitizens, for example, will not have access to a service that can provide these photographs.

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[11] *See* Nat'l Immigrant Justice Ctr., Comment Letter on Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Credible Fear Review, 85 Fed. Reg. 36264.

[12] Though asylum applicants can seek derivative asylum for children and spouses they include on their I-589s, immigration practitioners typically encourage families to submit applications for each individual given the fluidity of the law as it relates to asylum eligibility.

[13] Form I-589 Instructions, part 1.VI (Aug. 25, 2020).

[14] *Id.*

[15] *Id.*

Similarly, asylum seekers must submit corroborative evidence showing conditions in the countries from which they fled and supporting the facts underlying their claims, including newspaper articles, expert or witness affidavits, medical or physiological records, and official documents.[16] This usually takes far more than 15 days to complete. For example, a noncitizen who was hospitalized due to past persecution needs to submit records corroborating her injuries when she files her I-589. If she does not have these documents with her when she presents at the U.S. border (and most noncitizens don't), she must contact the hospital in the country she fled, provide the hospital proof of her identity in order to secure the records, have those records sent to her in a foreign country, and then arrange to have the records translated by a certified translator. Similarly, if she filed a police report about the incident, she must also coordinate with the law enforcement agency in the country she fled to secure a copy of that document, have it sent to her in a foreign country, and then arrange to obtain a certified translation.

Beyond accessing documents and corroborative evidence, noncitizens must also obtain information to answer questions in the I-589s. Respondents swear to the truthfulness of their applications, and the I-589 is a vital component of proving credibility. Accordingly, noncitizens will likely need to verify information requested in their I-589s to ensure that it is accurate. For example, the I-589 requires:

- name, address, and dates of attendance of every school attended (A.III.3);
- name, address, and dates of employment of all employers in the last five years (A.III.4);
- birth place and current locations of parents and all siblings (A.III.5);
- names of all organizations that any family member has ever been associated with, as well as the length of the association with the organization and the type of positions held within it (B.3.A);
- information about whether the noncitizen or any of her family members ever sought or received any lawful status in any country other than the one the noncitizen fled and, if so, the name of the country and length of stay, the person's status while there, the reasons for leaving, whether the person is entitled to return for lawful residence

[16] *Id.* at part 1.VII. Although the Proposed Rule does not prohibit respondents from amending their applications to supplement corroborative evidence, immigration judges may deny them the opportunity to do so. *See* 8 C.F.R. § 1208.4(c).

purposes, and whether the person applied for asylum while there and, if not, why (C.3).

Typically, the documents and/or family members needed to respond to these detailed questions are in the country from which the noncitizen fled and cannot be quickly accessed. This problem is even more pronounced for detained noncitizens who have limited access, if any, to those outside of the detention facility. For example, detention facilities often restrict detainees' access to phones or impose fees that prohibit indigent detainees from making the calls necessary to complete their asylum applications.[17]

Even represented noncitizens may be unable to collect the information and documents needed to file an I-589 during the compressed 15-day window. Beyond the typical challenges associated with locating and sending documents internationally, the ongoing COVID-19 pandemic has further complicated these logistics. The U.S. postal service and other mail carriers are experiencing extensive delays; businesses and government agencies, both in the U.S. and abroad, are periodically closed or operating with reduced hours; and government-ordered shutdowns and travel restrictions have left many displaced. In NIJC's experience, collecting corroborating evidence from the countries noncitizens fled can take weeks or months—even before the delays caused by the global pandemic.

- Impact of Trauma. Asylum seekers and torture survivors flee unspeakable violence in search of safety. As a result, many experience Post Traumatic Stress Disorder ("PTSD") and other mental health challenges that make it difficult for them to recount their experiences. Some, especially children, may not even understand that their mistreatment amounted to persecution. It is very common for these noncitizens to struggle to articulate their persecution, particularly at the early stages of their cases. This presents another barrier to complying with the Proposed Rule's 15-day deadline.

  For example, NIJC represents a client named Sophie,[18] who was the victim of rape, torture, and other cruel punishment by authoritarian figures in Central Africa. She fled her country with her husband and became ill en route to the United States due to both physical and mental injuries related to her persecution. Upon arriving at the border, the

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[17] *See, e.g.*, Leticia Miranda, *Dialing with Dollars: How County Jails Profit from Immigrant Detainees*, THE NATION (May 15, 2014), https://www.thenation.com/article/archive/dialing-dollars-how-county-jails-profit-immigrant-detainees/; Julia Harumi Mass & Carl Takei, *Forget About Calling a Lawyer or Anyone At All if You're in an Immigration Detention Facility*, ACLU (June 15, 2016), https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/forget-about-calling-lawyer-or-anyone-all-if.

[18] Name changed for client's privacy and safety.

U.S. government separated Sophie from her husband and detained her. Though she passed an initial fear screening, Sophie was still recovering from the traumatic abuses that led her to flee when she attended her first hearing. Sophie was unrepresented at the time, and still struggled to discuss the reasons she fled with anyone—let alone an authoritarian figure who reminded her of the perpetrators. Sophie was also distrustful of any governmental agents or judges, as she had been abused and targeted by officials working in these capacities in her home country. Further, due to her PTSD, Sophie was not able to articulate or share her reasons for seeking asylum; in fact, she could not even fully remember or make sense of her trauma. Only after extensive interviews with her NIJC attorneys did Sophie begin to process her experiences and trust us enough to share them. This process took far longer than 15 days. If Sophie had not obtained representation—or if we had such limited time to gain her trust—she would not have been capable of articulating her persecution in her I-589 within 15 days. The Proposed Rule would effectively penalize Sophie and those like her for the very trauma that led them to seek asylum.

- Access to Counsel. Given the complexities of the I-589—particularly when a single missed question would result in the application being rejected—access to counsel is crucial. The 15-day deadline ensures that most noncitizens won't have it.

  Obtaining counsel is a lengthy process. The vast majority of noncitizens cannot afford an attorney, and there is a shortage of *pro bono* legal providers. Detained noncitizens are especially unlikely to find counsel.[19] Moreover, even when noncitizens are able to secure counsel, it typically takes many months to do so. For example, according to data collected by Syracuse University's nonprofit data research center "TRAC," only 6.9% of respondents in immigration proceedings obtained counsel within one month of being issued an NTA.[20] Four months later, 70% remained unrepresented.[21] This data further demonstrates that most noncitizens in asylum-and-withholding-only proceedings will be unrepresented at their initial master calendar hearings. These noncitizens will first receive their I-589s at their master calendar hearings and will likely be unable to obtain counsel by the Proposed Rule's 15-day filing deadline. They will then be forced to file

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[19] Karen Berberich & Nina Siulc, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, VERA INSTITUTE OF JUSTICE (Nov. 2018), https://www.vera.org/downloads/publications/why-does-representation-matter.pdf ("In recent years, representation rates for people in detention have hovered around 30 percent, leaving the remaining 70 percent without the benefit of counsel.").

[20] *Access to Attorneys Difficult for Those Required to Remain in Mexico*, TRAC (July 29, 2019), https://trac.syr.edu/immigration/reports/568/.

[21] *Id.*

their applications *pro se*, which, as discussed above, most cannot do within the Proposed Rule's 15-day deadline.

These barriers created by the Proposed Rule's 15-day deadline will prevent countless asylum seekers and torture survivors from being able to seek asylum relief.

Consider, for example, the impact of the Proposed Rule on a typical asylum applicant, Rosa.[22] Rosa, a nineteen year-old Venezuelan mother, fled her home country with her daughter after being kidnapped and beaten by President Maduro's forces due to her pro-democracy activism. Rosa was also abducted by cartel members in Mexico before she was able to present at the U.S. border; after sexually assaulting Rosa, the cartel released her. Rosa and her daughter then presented at the Laredo port of entry seeking asylum. Under the Proposed Rule, if Rosa expresses a credible fear of returning to Venezuela, she will likely be placed in asylum-and-withholding-only proceedings. Rosa must then complete the following within 15 days in order to file her and her daughter's I-589s so that their meritorious claims can be adjudicated:

- Find an interpreter to translate the two 12-page I-589s and their 14 pages of instructions from English into Spanish. If Rosa is detained, she may not have access to any such interpreter;

- Meet with that interpreter for hours to answer every question in English on each I-589. In doing so, Rosa will need to relay traumatic details of her past persecution to her interpreter—likely a total stranger—including the sexual assault that she is still unable to discuss;

- Contact family in Venezuela to help her answer the questions on the I-589 that she does not know, and then relay those responses to her interpreter to include them in the applications in English. This, too, may be impossible if Rosa is detained. In addition to having limited access to an interpreter, if Rosa is detained, her access to a phone may be restricted or she may be unable to pay the fees required to contact family abroad;

- Determine the meaning behind the legalese on her and her daughter's I-589s. She may not know, for example, what the "Convention Against Torture" is and whether she should apply for withholding under it, or what it means to seek relief as a member in a particular social group;

[22] Rosa is a fictional applicant who is representative of a typical asylum seeker. Her story is based on NIJC and its counsel's experience representing hundreds of asylum seekers and interviewing and providing legal services to thousands more.

- Write "not applicable," "none," or "unknown" on every single blank on both I-589s so that EOIR will not reject her and her daughter's applications (unfortunately for Rosa, the I-589 instructions do not explicitly state that not answering an inapplicable question will result in her application being rejected, so she may inadvertently leave such questions—like those asking about her infant daughter's employment history—blank);

- Make a copy of her passport. Rosa will not have access to a copy machine if she is detained;

- Once it is copied, find a translator to translate the copy of her passport into English and then provide her a valid certificate of translation so that she can attach these documents to her I-589. Again, if Rosa is detained, she almost certainly will not have access to the copy machine or certified translator necessary to complete this requirement;

- Contact her family in Venezuela and coordinate for one of them to mail her a copy of her daughter's birth certificate, along with an English translation and certificate of translation, so that she can attach this document to her and her daughter's applications. Rosa likely cannot complete this requirement within 15 days, particularly if she is detained. As discussed, Rosa will likely have limited access to a phone and the funds needed to make international calls. Moreover, Rosa must rely on officials at the detention facility to send and receive her mail on a timely basis. She may not have access to envelopes or stamps (even to purchase), nor is she likely able to use expedited carriers, which is critical given the tight timeline;

- Obtain evidence corroborating her claim. For example, if Rosa reported her kidnapping to the Venezuelan police, she will need to produce a police report corroborating this, along with a certified English translation. If Rosa sought medical care after she was beaten, she should include these medical records and their certified translations, too. These documents must be filed with her I-589 pursuant to the proposed changes to 8 C.F.R. § 1208.3(c)(3). To obtain this evidence, Rosa must contact the relevant police department and hospital in Venezuela, complete their processes for obtaining documents (which likely includes proving her identity, paying for copies, and arranging for a designated family member to collect the documents), and arrange to have these documents translated by a certified translator and sent to Rosa in the United States. If the attack left Rosa with scars, she should also photograph those injuries and submit the images as evidence along with her I-589. As described above, these steps are likely impossible if Rosa is detained;

- Pay the $50 asylum application fee for both her I-589 and her daughter's, await a receipt from EOIR proving payment of the fee, and affix proof of this payment to both

applications. If Rosa is detained, she may not have a way to pay this fee, even if she has the funds to do so;

- Determine the address for the U.S. immigration court that has jurisdiction over her case (again, if Rosa is detained, she will have limited access, if any, to the internet or the telephone, and may not be able to determine this address); and

- Mail both I-589s—with receipts showing payment of the application fees, copies of her passport and daughter's birth certificate, all corroborating evidence, along with the translations and certificates of translation for all Spanish documents—to the immigration court with jurisdiction over her case.

Rosa cannot possibly complete all of these tasks in 15 days.[23] As a result, she and her daughter—like the thousands of other asylum seekers and torture survivors who will be prejudiced by the Proposed Rule—will be unjustly prevented from pursuing their asylum claims before an immigration judge.

Moreover, even if Rosa successfully submits her asylum application, the Proposed Rule's requirement that EOIR reject so-called "incomplete" applications may result in the arbitrary denial of her claim.

B. The Proposed Rule's requirement that EOIR reject incomplete applications and deny those that are not re-filed within 30 days will result in the unjust denial of countless claims.

Like the 15-day requirement, the proposed change rejecting incomplete applications and denying those that are not re-filed within 30 days will result in the unjust denial of countless claims.

1. Deeming applications "incomplete" if they include a single blank field is arbitrary and unjust.

The Proposed Rule's definition of "incomplete" appears designed to arbitrarily reject applications. Under the proposed change to 8 C.F.R. § 1208.3(c)(3), EOIR must reject any asylum application which, among other things, "does not include a response to each of the required questions contained in the form." EOIR can reject such asylum applications at any time. This proposed requirement mirrors the enactment of a recent USCIS policy that rejects any

[23] Because the so-called "mailbox rule" likely does not apply, Rosa will actually have at most 14 days to complete these tasks, and even fewer if she is detained and does not have access to overnight mail carriers. *See supra* note 6.

U-Visas or asylum applications in which inapplicable fields are left blank instead of completed with "none" or "not applicable."[24]

- This policy may appear benign, but it is devastating in practice. For example, USCIS's policy of rejecting applications with any blank fields has resulted in the following:

- The rejection of an application where the applicant's son's middle name was left blank (notwithstanding the fact that he didn't have a middle name);

- The rejection of an eight-year-old child's application where the child stated "none" for employment history but left the dates of employment blank;

- The rejection of an application where the applicant with three siblings listed all three siblings' names but left the field for a fourth sibling blank.[25]

This is an absurd and unjust result. This policy should not have been adopted by USCIS and it should not be expanded to EOIR. Rejecting an application merely because an applicant left one of the inapplicable questions blank does not serve any valid adjudicative purpose. An immigration judge does not need to be affirmatively told that a question seeking employment dates for an eight-year-old who was never employed is "not applicable" in order to know that the question does not apply to the young applicant—much less to determine whether the child is eligible for asylum. Instead, this policy is clearly designed for the sole purpose of rejecting applications, regardless of merit, and reducing the number of asylum seekers and torture survivors who have access to the relief afforded to them by Congress. That is not the Department's job.

2. Deeming applications incomplete if they do not include a required fee receipt violates a federal court's injunction and is unjust.

As a threshold matter, on September 29, 2020, the United States District Court for the Northern District of California enjoined the final rule imposing a filing fee on asylum applications.[26] The

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[24] *Ombudsman Alert: Recent Updates to USCIS Form Instructions*, DEP'T OF HOMELAND SEC. (Jan. 23. 2020), https://www.dhs.gov/blog/2020/01/23/ombudsman-alert-recent-updates-uscis-form-instructions.

[25] Catherine Rampell, *This Latest Trick from the Trump Administration is One of the Most Despicable Yet*, WASH. POST, Feb. 13, 2020, https://www.washingtonpost.com/opinions/the-trump-administrations-kafkaesque-new-way-to-thwart-visa-applications/2020/02/13/190a3862-4ea3-11ea-bf44-f5043eb3918a_story.html.

[26] *Immigrant Legal Res. Ctr., et al. v. Wolf*, Case No. 20-cv-05882-JSW (N.D. Cal. Sept. 29, 2020) (enjoining USCIS Fee Schedule & Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46,788

Proposed Rule's requirement that EOIR reject applications filed without a fee receipt is therefore invalid.

Moreover, this requirement is unjust because many noncitizens cannot complete it within 15 days. Though this requirement unduly burdens all noncitizens, detained noncitizens and children are particularly prejudiced.

Applicants inside the United States must pay filing fees online with a credit card; by mail with a credit card, check, or money order; or in person at a field office.[27] By virtue of their detention, detained noncitizens do not have access to credit cards, checks, or money orders, they cannot travel to USCIS field offices, and they may not have internet access. They therefore cannot pay these fees. Instead, detained noncitizens will need to rely on friends, family, or counsel (if they found representation) to pay their application fee and affix the receipts to their applications. Detainees typically have very limited contact with those outside the facility, particularly during the ongoing pandemic, and almost certainly will not be able to submit fee receipts with their completed applications 15 days after receiving their I-589s. Children face similar barriers, as they, too, are unlikely to be able to submit the required fee on their own behalf. Instead, they will need to rely on adults to pay their filing fees and affix them to their asylum applications within 15 days of the child receiving their application at their first master calendar hearing. This will lead to the rejection of countless applications from detained noncitizens and children.

Moreover, noncitizens who determine how to pay the asylum application fee may not have the means to pay it—particularly within just 15 days. As explained in NIJC's comment to the notice of proposed rulemaking proposing the fee, the application fee will leave many noncitizens unable to pursue relief simply because they are indigent.[28] The Proposed Rule's 15-day deadline for filing applications with a fee receipt compounds this problem, as it drastically shortens the time noncitizens have to come up with these funds.

3. Some noncitizens will be unable to revise and return their rejected applications within the Proposed Rule's arbitrary 30-day deadline, leading to the unjust denial of claims.

The Department's proposed change to 8 C.F.R. § 1208.3(c)(3) eliminates EOIR's 30-day deadline to reject I-589s for incompleteness, instead providing EOIR unlimited time to review applications and reject those it deems incomplete. In contrast, the proposed change requires

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(Aug. 3, 2020)). NIJC also renews its objections to the asylum filing fee as outlined in NIJC's December 20, 2019 comment. *See* Nat'l Immigrant Justice Ctr., Comment Letter on Fee Review, 84 Fed. Reg. 67243.

[27] *Filing Fees*, U.S. CITIZENSHIP AND IMMIGR. SERV., https://www.uscis.gov/forms/filing-fees (Oct. 15, 2020).

[28] *See* Nat'l Immigrant Justice Ctr., Comment Letter on Fee Review, 84 Fed. Reg. 67243.

noncitizens to revise and return their rejected applications within 30 days or their application will be deemed abandoned and denied.

First, allowing EOIR to deem applications incomplete at any time could derail asylum proceedings and respondents' preparation for them. For example, under the Proposed Rule, EOIR is required to reject a noncitizen's I-589 it deems incomplete even on the cusp of a merits hearing. The noncitizen (and her counsel, if she has it) would be forced to shift suddenly from final case preparation to addressing the issues identified as the basis for the rejection. Moreover, if the application is rejected within 30 days of the noncitizen's merits hearing, EOIR would have to reset the hearing to afford the noncitizen time to submit a revised application.

And the 30-day "grace" period to revise rejected applications does not cure the fundamental problems caused by the Proposed Rule's 15-day deadline for noncitizens to file asylum applications. The same barriers noncitizens will face in filing their asylum applications within 15 days of their first hearing will likewise impair noncitizens from being able to meet this arbitrary 30-day deadline. For example, an indigent noncitizen whose I-589 was rejected because she filed it without a fee receipt may still not be able to pay the $50 application fee within 30 days of receiving her rejected application. And a noncitizen who filed her child's I-589 without a birth certificate may still be unable to access this document or have it copied and translated within 30 days. Moreover, the Proposed Rule's 30-day deadline to revise and re-file allegedly incomplete asylum applications further prejudices detained noncitizens. As discussed in Section I.A, detained noncitizens face significant challenges receiving and sending mail. NIJC is aware of numerous instances in which detention facilities have failed to provide noncitizens regular access to postage or mail carriers or have delayed sending or delivering noncitizens' mail upon receipt. This arbitrary 30-day deadline will therefore result in the unjust denial of claims, regardless of their merit.

In addition, this proposed change may wreak havoc on the employment authorization process. Under the current regulations, asylum seekers can apply for employment authorization 365 days after filing their I-589. But under the Proposed Rule, EOIR may reject a noncitizen's I-589 at any time during her proceedings, and the 365-day period would restart from zero once her revised application was submitted. For example, if a noncitizen filed her I-589 and EOIR waited 364 days to reject it, she would then be required to wait another 365 days after filing her revised application to seek employment authorization. This is a clearly arbitrary and unjust result.

II. The Proposed Rule Should Not Apply To Noncitizens Subject To MPP

In the Proposed Rule, EOIR puts forth substantial changes to asylum procedures that hinge on the definition of "asylum-and-withholding-only proceedings"—a definition that has yet to find its final form in the INA or the Code of Federal Regulations. Rather, the Proposed Rule builds

on another pending proposed rule, the June 2020 NPRM, jointly proposed by EOIR and DHS. As discussed prior, the APA does not contemplate such cross-pollination among proposed regulations given the inevitable confusion it causes interested stakeholders.[29] EOIR's reliance on another pending rule thus unleashes a chain of hypotheticals as to who exactly would be impacted by the proposed changes—a critical question that betrays the rushed character of this comment period. Most importantly, a question remains as to whether this proposed rule would apply to the tens of thousands of asylum seekers trapped in MPP.[30] While the current formulation of the rule suggests it may not, we urge the Department not to subject *any* asylum seeker to these proposed changes, including noncitizens in MPP.

Without question, the Proposed Rule is even more problematic in the MPP context. Noncitizens subject to MPP are overwhelmingly unrepresented, and the humanitarian crisis created by the Remain in Mexico policy has caused thousands to experience hunger, homelessness, and violence.[31] These factors make noncitizens subject to MPP among the most vulnerable asylum seekers; in turn, they are also the most likely to be prejudiced by the Proposed Rule. If the Department applies the Proposed Rule to noncitizens subject to MPP, countless asylum seekers will be unlawfully returned to the countries they fled where many will face further persecution and even death.

A. Numerous barriers will prevent noncitizens subject to the Remain in Mexico policy from filing their asylum applications within 15 days of their first master calendar hearing.

The vast majority of noncitizens subject to the Remain in Mexico policy are unrepresented at their first master calendar hearing.[32] The Proposed Rule's 15-day deadline would prevent many—if not all—of these noncitizens from filing their I-589s. In addition to the challenges

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[29] *See supra* note 2. The June 2020 NPRM received over 88,000 comments, which DHS and DOJ have yet to fully review and consider before finalizing their rule.

[30] The Ninth Circuit has determined that asylum seekers in MPP are likely mischaracterized under 8 U.S.C. § 1225(b)(2) and should in fact be processed under (b)(1), which is the same track that the June NPRM proposes to define as "asylum-and-withholding-only" proceedings. *See Innovation Law Lab v. Wolf*, 951 F.3d 1073 (9th Cir. 2020), *cert. granted*, *Wolf v. Innovation Law Lab*, — S. Ct. — (2020) (No. 19–1212).

[31] *See Migrant Protection Protocols: Implementation and Consequences for Asylum Seekers in Mexico*, UNIV. OF TEX. STRAUSS CTR. FOR INT'L SECURITY & LAW (May 2020), https://www.strausscenter.org/wp-content/uploads/PRP-218_-Migrant-Protection-Protocols.pdf.

[32] *Access to Attorneys Difficult for Those Required to Remain in Mexico*, TRAC (July 29, 2019), https://trac.syr.edu/immigration/reports/568/. TRAC released its MPP data in late July 2019, before MPP was in place across the border. This early data shows that while noncitizens in the United States struggle to find timely representation, those subject to MPP face far greater challenges. In fact, based on this preliminary data, fewer than 1% of asylum seekers subject to MPP obtained counsel within two months of receiving their NTA.

described in Section I, noncitizens subject to MPP may have a particularly difficult time finding bilingual interpreters and translators to help them understand and complete their I-589s. They may also face additional challenges obtaining the necessary supporting documents and evidence, as they must rely on the Mexican postal system, may live in regions of Mexico without access to international carriers, or may not have an address of their own. Mailing their applications to EOIR will also be very difficult. Even if they are able to find and afford an international carrier, noncitizens in MPP will likely struggle to determine where to send their applications. For example, noncitizens in MPP Laredo appear for their hearings in makeshift courts in Laredo; their judges appear by video-conference from San Antonio or Fort Worth. These noncitizens—even those with Fort Worth judges—must submit their I-589s to the San Antonio Immigration Court. It is very unlikely that they will know to do so.

B. Noncitizens subject to MPP will likely be unable to comply with the Proposed Rule's requirement that they submit a fee receipt with their I-589.

Many noncitizens in MPP will be unable to pay the requisite $50 application fee and will have their I-589s rejected as a result. Some noncitizens will be unable to afford the fee; others will not be able to determine how to pay it. As discussed, few noncitizens subject to the Remain in Mexico policy obtain attorneys within 15 days of their first master calendar hearing. They also have limited access, if any, to interpreters. As a result, these noncitizens will be unable to navigate the complicated process of submitting an asylum application fee. And those with counsel may not fare much better. USCIS apparently has not considered how noncitizens in MPP will pay their application fee. Its website directs applicants who "live outside the United States or its territories" to "[c]heck the appropriate International USCIS office webpage or contact the U.S. Embassy or Consulate for information on how to pay USCIS fees."[33] None of these sources include information on how noncitizens subject to MPP—all of whom live outside the United States by design—must pay their application fees.

C. Thousands of noncitizens subject to the Remain in Mexico policy will be unable to receive their rejected asylum applications, resulting in the unjust denial of countless claims.

The policy of arbitrarily rejecting applications is even more nefarious in the MPP context because noncitizens subject to MPP are far less likely to have counsel than those pursuing their claims within the United States. For example, of the 10,236 cases that have been decided in

[33] *Filing Fees*, U.S. CITIZENSHIP AND IMMIGR. SERV., https://www.uscis.gov/forms/filing-fees (Oct. 15, 2020).

Laredo's MPP court to date, only 277 of those respondents—2.7%—were represented by counsel.[34]

This is problematic for two reasons. First, unrepresented noncitizens are far more likely than their represented cohorts to make errors resulting in the rejection of their applications. Unrepresented noncitizens, for example, will not know that leaving a question that does not apply to them blank will result in their applications being rejected. The I-589 instructions do not state this, and even if they did, the vast majority of these noncitizens would be unable to read the instructions because they are only issued in English.

Second, if EOIR returns rejected I-589s to noncitizens in MPP, most unrepresented noncitizens will be unable to receive them. Noncitizens subject to the Remain in Mexico policy often do not have a stable or reliable address in Mexico. In fact, one in three asylum seekers in MPP experiences homelessness.[35] Many of these noncitizens live on the street or in makeshift refugee camps across the border from the U.S. ports of entry at which they must present for their hearings, and therefore do not have addresses to which rejected I-589s can be sent.[36] Others stay in homeless shelters; these noncitizens also do not have addresses at which they can receive mail, as shelters typically cannot distribute mail to their residents. For example, in the declaration attached as Tab A, Francisco Javier Calvillo—the CEO of the shelter Casa del Migrante in Juarez, Mexico—explains that Casa del Migrante has not been able to deliver *any* of the "hundreds of [] letters" it received from EOIR to their intended recipients.

As a result of the humanitarian crisis created by MPP, thousands of the most vulnerable asylum seekers and torture survivors will never even know that EOIR rejected their application. They will therefore be unable to fix any supposed deficiencies within the 30 days prescribed by the

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[34] *Details on MPP (Remain in Mexico) Deportation Proceedings*, TRAC, https://trac.syr.edu/phptools/immigration/mpp/ (last visited Oct. 9, 2020). NIJC is very familiar with the challenges noncitizens face in MPP; in fact, nearly a quarter of these 277 noncitizens in MPP Laredo with counsel were represented by NIJC or its counsel. And representation matters. Although only 2.7% of noncitizens whose cases have been decided in MPP Laredo were represented, 53% of those granted relief had counsel. *Id.*

[35] Tom K. Wong, *Seeking Asylum: Part 2*, U.S. IMMIGR. POLICY CTR. (Oct. 29, 2019), at 10, https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf.

[36] Arelis Hernandez & Kevin Sieff, *Trump's 'Remain In Mexico' Program Dwindles as More Immigrants are Flown to Guatemala or are Quickly Deported*, WASH. POST, Feb. 27, 2020, https://www.washingtonpost.com/immigration/remain-in-mexico-deportation-asylum-guatemala/2020/02/20/9c29f53e-4eb7-11ea-9b5c-eac5b16dafaa_story.html (describing tent encampment in Matamoros, Mexico across the border from Brownsville, Texas in which 2,500 noncitizens live awaiting their hearings in the U.S.).

Proposed Rule, resulting in their applications being deemed abandoned and denied. This is a grossly unjust result.

III. The Department's Justification For The Proposed Changes To I-589 Filing Requirements Lacks Merit

The Department justifies its Proposed Changes to I-589 Filing Requirements by asserting that it has "the prerogative to determine proper rules of procedure that best allow [it] to carry out [its] mission[]."[37] The Proposed Rule leaves us wondering exactly what the Department of Justice considers its mission to be. These changes prioritize expediency at the expense of due process, and would unjustly prevent countless asylum seekers and torture survivors from accessing the relief afforded to them by U.S. and international law.

The Department argues that the Proposed Changes to I-589 Filing Requirements would "streamline[]" asylum proceedings and would actually *help* noncitizens with meritorious claims by reducing delays. That rationale is deeply flawed. The Proposed Changes to I-589 Filing Requirements may reduce EOIR's future backlog, but only because the changes would make it functionally impossible for most asylum seekers and torture survivors—including those with meritorious claims—to apply for asylum. That isn't efficiency—it's a due process violation.

In fact, the Proposed Changes to I-589 Filing Requirements provide limited adjudicatory benefit, if any. After an asylum seeker files her application with EOIR, the application is likely not reviewed again until the noncitizen's merits hearing when the immigration judge reviews the I-589 and directs the noncitizen to swear to its truthfulness by signing Part G of the application. In many jurisdictions, asylum seekers may wait years between filing their I-589s and swearing to them at their merits hearings.[38] In other words, there is no reason to require noncitizens to submit their I-589s within 15 days of their first hearings, as immigration judges likely will not review the applications for months or even years.

Instead, the proposed 15-day deadline may make the application process *less efficient*. Asylum applications must be accurate when noncitizens swear to them at their merits hearings. By requiring noncitizens to file their applications earlier, the Department increases the chances that applications will need to be amended prior to or at their merits hearings. For example, noncitizens may change addresses, marital status, or employment; for some, the conditions in the

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[37] Proposed Rule at 59694.

[38] Although the Proposed Rule purports to require that all asylum-and-withholding-only proceedings will be completed within 180 days, as discussed in Section IV.C, this timeline is likely not possible.

country they fled may change. This will require more noncitizens to amend their I-589s at or prior to their merits hearings, potentially delaying or extending hearings in the process.

There is also no adjudicatory benefit to deeming applications incomplete and rejecting them if they include a single unanswered question, are unsigned, or do not include a fee receipt. Each of these issues can be cured at or before noncitizens' merits hearings, which could occur years after they file their applications. And, as described above, it is particularly absurd to reject as incomplete applications in which responses to inapplicable questions are left blank.

In short, the Department's rationale for the Proposed Changes to I-589 Filing Requirements fails. These changes are nothing more than a thinly veiled attempt to deny asylum seekers and torture survivors access to the relief afforded to them by Congress.

IV. The Proposed Changes To I-589 Procedural Requirements Defy Logic

In addition to rewriting the I-589 filing requirements, the Proposed Rule suggests the following changes to I-589 procedural requirements:

- heightening the evidentiary standard for admitting evidence from non-governmental sources (8 C.F.R. § 1208.12(a));

- allowing immigration judges to submit their own evidence into the record and consider that evidence in determining whether to grant respondents relief (8 C.F.R. § 1208.12(a)); and

- requiring immigration judges to adjudicate asylum claims within 180 days absent exceptional circumstances such as battery, extreme cruelty, serious illness, or death (8 C.F.R. § 1003.10(b)) (collectively, "Proposed Changes to I-589 Procedural Requirements").

These changes, too, serve no valid administrative purpose and are unduly prejudicial toward asylum seekers and torture survivors.

A. Heightening the evidentiary burden for non-governmental sources prejudices noncitizens, is unnecessary, and further politicizes EOIR proceedings.

The Department purports to "clarify the external materials upon which an immigration judge may rely,"[39] but instead, improperly heightens the evidentiary standards for non-governmental

[39] Proposed Rule at 59695.

materials to be admitted at merits hearings. The proposed changes to 8 C.F.R. § 1208.12(a) create a two-tiered system in which evidence by non-governmental sources can only be considered if it is deemed "credible and probative," whereas the immigration judge "may rely" on evidence authored by the Executive Branch agencies without such an analysis. This results in a system in which the Executive Branch not only prosecutes and adjudicates asylum cases, but also provides favored evidence even though it is not *per se* more reliable than non-governmental sources.

Courts have long cautioned against treating State Department reports as "Holy Writ,"[40] due, in part, to the "perennial concern" that the State Department has its own agenda.[41] This caution is particularly relevant given the current administration's politicization of agency decision-making. In a recent whistleblower report, a DHS employee accused senior DHS officials of politicizing intelligence reports by asking him to change "the information outlining high levels of corruption, violence, and poor economic conditions" in Guatemala, Honduras, and El Salvador because it would "undermine President Donald J. Trump's . . . policy objectives with respect to asylum."[42] Non-governmental organizations have similarly found that State Department country reports "have been overshadowed by an unprecedented and alarming level of politicized editing by the Trump administration" which "undermines the credibility of the reports."[43] For example, the

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[40] *Galina v. I.N.S.*, 213 F.3d 955, 959 (7th Cir. 2000) ("The country report is evidence and sometimes the only evidence available, but the Board should treat it with a healthy skepticism, rather than, as is its tendency, as Holy Writ.").

[41] *Gailius v. I.N.S.*, 147 F.3d 34, 46 (1st Cir. 1998) (finding State Department advice is not binding "both because it is the Attorney General, not the Secretary of State, whom Congress has entrusted with the authority to grant asylum and because 'there is perennial concern that the [State] Department softpedals human rights violations by countries that the United States wants to have good relations with.'") (citing *Gramatikov v. I.N.S.*, 128 F.3d 619, 620 (7th Cir. 1997)). *See also Chen v. U.S. I.N.S.*, 359 F.3d 121, 130 (2d Cir. 2004) ("[T]he immigration court cannot assume that a report produced by the State Department—an agency of the Executive Branch of Government that is necessarily bound to be concerned to avoid abrading relations with other countries, especially other major world powers—presents the most accurate picture of human rights in the country at issue. We note the widely held view that the State Department's reports are sometimes skewed toward the governing administration's foreign-policy goals and concerns.").

[42] Whistleblower Reprisal Complaint, *In the Matter of Brian Murphy*, U.S. Dep't of Homeland Sec., Off. of Inspector Gen. (Sept. 8, 2020), https://intelligence.house.gov/uploadedfiles/murphy_wb_dhs_oig_complaint9.8.20.pdf.

[43] Tarah Demant, *A Critique of the US Department of State 2017 Country Reports on Human Rights Practices*, AMNESTY INT'L USA (May 8, 2018), https://medium.com/@amnestyusa/a-critique-of-the-us-department-of-state-2017-country-reports-on-human-rights-practices-f313ec5fe8ca. *See also* Eliza Esptein & Amanda Klasing, *US Again Cuts Women from State Department's Human Rights Report*, HUMAN RIGHTS WATCH (Mar. 13, 2019), https://www.hrw.org/news/2019/03/13/us-again-cuts-women-state-departments-human-rights-reports# ("Once again, the Trump administration has cut most mentions of key human rights abuses that disproportionately impact women and girls around the world from the US State Department's annual human rights reports.").

Asylum Research Centre undertook a comparative analysis of the State Department's country reports in five countries from 2016 to 2019. It found that, under the Trump Administration, there were omissions related to issues faced by women, children, LGBTI, and persons living with disabilities, and that the reports suggested improvements that did not appear to exist.[44] The analysis concluded, "when taken together these changes can have the effect of suggesting improvements in the human rights situation which are not consistent with the situation on the ground as documented by other illustrative sources."[45] Thus, as State Department reports become more politicized in order to align with the Executive Branch's political goals, noncitizens' only option is to supplement the record with non-governmental materials. The Proposed Rule would require immigration judges to hold non-governmental materials—often noncitizens' sole evidence—to a higher evidentiary standard and determine whether it is "credible and probative," while allowing potentially biased State Department reports into the record without analysis.

Additionally, the statute is not, as the Department claims, unclear. The current rule does not state that immigration judges must allow non-governmental materials into evidence, but rather, that immigration judges "may rely" on such material.[46] There is no reason to increase the burden of proof for admission of non-governmental materials when the rule—as currently written—is explicit in providing guidance to the immigration judge. The current rules also allow immigration judges to use their discretion and decide how much weight should be given to a particular piece of evidence.[47] Thus, under the current rules, an immigration judge can evaluate non-governmental articles and determine their relevance. The proposed changes are unnecessary and only codify a heightened standard for an evidentiary decision that is plainly better left to the immigration judge's discretion.

B. Allowing immigration judges to enter evidence into the record improperly moves the immigration judge from adjudicator to advocate.

The Proposed Rule also seeks to expand 8 C.F.R. § 1208.12 by allowing an immigration judge to submit evidence into the record—a change that would fundamentally alter their role from one of an impartial adjudicator to one of advocate. The Department compares the Proposed Rule to the

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[44] *See* Liz Williams & Stephanie Huber, *Comparative Analysis: U.S. Department of State's Country Reports on Human Rights Practices (2016–2019)*, ASYLUM RESEARCH CENTRE (Oct. 2020).

[45] *Id.* at 14.

[46] 8 C.F.R. § 1208.12 (2020).

[47] *See Zheng v. Holder*, 333 F. App'x 655, 657 (2d Cir. 2009) ("[T]he weight afforded to evidence is a matter left largely to the discretion of the IJ.").

immigration judge's current duty "to develop the record."[48] However, developing the record requires the immigration judge to "probe into, inquire of, and explore all of the relevant facts,"[49] and explain to the respondent "the legal standards, and the types of affirmative evidence that the noncitizen may submit on his own behalf to 'establish his basis for relief.'"[50] All of this pertains to the immigration judge's responsibility to weigh the facts as an impartial adjudicator. Allowing the immigration judge to introduce her own evidence would only erode the rights of noncitizens in immigration proceedings.

Combined with the other proposed revision to 8 C.F.R. § 1208.12, an immigration judge could submit her own country conditions evidence that purports to counter claims of persecution while simultaneously disregarding evidence submitted by the noncitizen, thus jeopardizing the noncitizen's chance at a fair, individualized hearing. If the noncitizen did not provide her own evidence, then the immigration judge could rely on her own country conditions evidence to deny asylum. This scenario is particularly likely for *pro se* respondents. NJIC frequently sees cases where the respondent proceeds *pro se* and is unable to submit evidence. For example, NJIC represented Michel,[51] who appeared detained and unrepresented at his merits hearing. He failed to comprehend that it was his final hearing or understand the nature of the hearing, and thus presented no evidence. Although NIJC was able to represent Michel on appeal and achieve remand, this would be a near impossibility with the Proposed Rule. Under the guise of developing the record, biased immigration judges would be able to present boilerplate country conditions evidence countering claims of persecution; this, in turn, would thwart the purpose of individualized findings and permit the swift and unfair removal of noncitizens such as Michel.

Additionally, the Proposed Rule lacks sufficient procedural safeguards to ensure that noncitizens have sufficient time to read and understand evidence submitted by immigration judges. The Proposed Rule requires only that a copy of the evidence be provided to both parties "prior to the issuance of the immigration judge's decision."[52] Thus, an immigration judge could provide a copy of the evidence to the parties the day of the hearing. This would adversely affect all asylum applicants who would be forced to review, analyze, and formulate responses to materials provided just moments before their merits hearings. It would also be particularly detrimental to *pro se* respondents and unaccompanied children. For example, the Department fails to explain how a *pro se* respondent who does not speak English could understand documents in English or

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[48] Proposed Rule at 59695.

[49] *United States v. Vargas-Molina*, 392 F. Supp. 3d 809, 819 (E.D. Mich. 2019) (citing *Mendoza-Garcia v. Barr*, 918 F.3d 498, 503 (6th Cir. 2019)).

[50] *Id.* (citing *Agyeman v. I.N.S.*, 296 F.3d 871, 877, 884-85 (9th Cir. 2002)).

[51] Name changed for client's privacy and safety.

[52] Proposed Rule at 59700.

have sufficient time to fully read and comprehend potentially lengthy documents in the short amount of time allotted to a merits hearing. Similarly, the Department fails to explain how minors—who, in some cases, are not even old enough to read—could read and understand documents in a foreign language and articulate what those reports missed with respect to their individualized claims. The Proposed Rule only further erodes the rights of noncitizens, as it lacks safeguards to ensure that respondents would have sufficient time to review the materials, understand the role they play in an asylum proceeding, and formulate a response.

C. *Requiring immigration judges to adjudicate applications within 180 days absent exceptional circumstances such as battery, extreme cruelty, serious illness, or death misinterprets the INA and prioritizes expediency over fairness.*

Historical practice and the very wording of Section 208(d)(5)(A)(iii) of the INA indicate that the Department's interpretation of the provision is flawed. Average case processing timelines show that the Department has rarely—if ever—met a 180-day timeline. As measured from a case's first filing date to its closing date, immigration courts took an average of 184 days to complete a case in fiscal year 1998.[53] At the close of 2019, the average time from first filing to closing date stood at 533 days.[54] For that reason, the INA's 180-day timeline can only be read as an aspirational goal—or as the Department phrases it, a "strong expectation."[55]

To that end, Section 208(d)(5)(A)(iii) notes that the 180-day timeline is only to be pursued "in the absence of exceptional circumstances." But the Department fails to consider that the current conditions amount to precisely the sort of "exceptional circumstance" contemplated by the statute. In particular, any of the following, or a combination thereof, may amount to an "exceptional circumstance" justifying the Department's continued non-compliance with the 180-day goal: the magnitude of EOIR's backlog,[56] the complications created by MPP proceedings, and the COVID-19 pandemic.

The Department's interpretation of "exceptional circumstances" is based on that term's definition in Section 1229a of the INA where Congress defined the term in the context of a

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[53] *Immigration Court Processing Time by Outcome*, TRAC, https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php (select "Average Days" under "What to Tabulate"; "All" under "Outcome Type"; "Entire US" under "Fiscal Year 2020") (last visited Oct. 21, 2020).

[54] *Id.*

[55] Proposed Rule at 59696.

[56] *See Immigration Court Backlog Tool*, TRAC, https://trac.syr.edu/phptools/immigration/court_backlog/ (1,262,765 cases pending in the entire U.S.) (last visited Oct. 20, 2020).

respondent's ability to challenge an order for removal issued *in absentia*.[57] Unlike Section 208(d)(5)(A)(iii), the language in that provision makes explicit reference to the particularities of an individual case:

> Any alien against whom a final order of removal is entered in absentia under this subsection and who, at the time of the notice described in paragraph (1) or (2) of section 1229(a) of this title, was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (e)(1)) to attend a proceeding under this section, shall not be eligible for relief.[58]

Additionally, Section 1299a(b)(5)(C)(i) explicitly notes that it is the noncitizen's responsibility to "demonstrate[] that [his/her] failure to appear was because of exceptional circumstances."[59]

Section 208(d)(5)(A)(iii), however, is silent as to whose "exceptional circumstances" apply to the 180-day timeline. By transposing the definition of "exceptional circumstances" in the above context into its implementation of Section 208(d)(5)(A)(iii), the Department fails to appreciate the possibility that "exceptional circumstances" in the context of Section 208(d)(5)(A)(iii) can arise not only from the noncitizen's end but from the Department's as well. In fact, in Section 208(d)(5)(A)(iii), Congress refers to the Department's "administrative adjudication" of asylum applications. This indicates that the "exceptional circumstances" in Section 208(d)(5)(A)(iii) include the Department's administrative conditions writ large and/or its ability to adjudicate cases in the 180-day timeframe.

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[57] *See* 8 U.S.C. §§ 1229a(b)(5)(C)(i), 1229a(e)(1). The origin of the Proposed Rule's definition of "exceptional circumstances" also demonstrates the absurdity of its use here. Section 1229a(b)(5)(C)(i) addresses the circumstances under which a noncitizen may move to rescind a removal order after she was ordered removed *in absentia*. But those two scenarios—a noncitizen seeking to challenge a removal order after failing to appear for one or more hearings and being ordered removed *in absentia* vs. a noncitizen seeking more than 180 days to adjudicate an asylum claim—are wildly different. The former justifiably sets a very high bar. Respondents must appear for their hearings; when they don't and are ordered removed as a result, only exceptional circumstances such as injury, illness, or death can excuse their absence and allow them to challenge the removal order. But that high bar makes no sense in the context of the Proposed Rule, in which numerous factors outside the noncitizen's control could justify extending the case's adjudication beyond 180 days.

[58] 8 U.S.C. § 1229a(b)(7).

[59] 8 U.S.C. § 1229a(b)(5)(C)(i).

Indeed, Section 208(d)(5)(A) is generally addressed *to* the Department. Of the Section's provisions, four out of five prongs have no bearing on any particular responsibility placed on asylum applicants.[60] For example, Section 208(d)(5)(A)(ii)—which the Department inexplicably leaves unaddressed in its Proposed Rule despite its mirrored usage of exceptional circumstances—states that "in the absence of exceptional circumstances, [an] initial interview or hearing on [an] asylum application shall commence not later than 45 days after the date an application is filed."[61] That provision can only reasonably be read to require the Department to act in a 45-day timeframe absent its *own* exceptional circumstances because noncitizens have absolutely no control over when their "initial interview or hearing" is set. Further, Section 208(d)(5)(A)(iv) speaks of the protocol for administrative appeals universally, making the provision applicable to either party that would file "any administrative appeal." In contrast, Section 208(d)(5)(A)(v) specifically places an onus on asylum applicants to attend interviews and hearings by addressing the particular "case of an applicant for asylum who fails" to attend the same.

By exclusively focusing on the noncitizen's "exceptional circumstances" in implementing Section 208(d)(5)(A)(iii) and paying no mind to the Department's own, the Department lopsidedly interprets the INA so as to open the door for hasty removal orders. To be sure, the Department provides its narrow appreciation of "exceptional circumstances" to only include circumstances that are no "less compelling" than "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." That interpretation prioritizes expediency over fairness. Countless factors beyond a noncitizen's control could necessitate extending a case beyond 180 days, but could still fail to meet the proposed definition of "exceptional circumstances."

V. The Proposed Rule Violates Due Process

"Congress and the executive have created, at a minimum, a constitutionally protected right to petition our government for . . . asylum."[62] This right "invoke[s] the guarantee of due process."[63]

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[60] *See* 8 U.S.C. § 1158(d)(5)(A)(i-iv).

[61] 8 U.S.C. § 1158(d)(5)(A)(ii).

[62] *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1038 (5th Cir. 1982).

[63] *Id.* at 1039.

Namely, noncitizens have a due process right to present their case before an immigration judge in a hearing that is fundamentally fair.[64] The Proposed Rule violates that right.

First, the Proposed Changes to I-589 Filing Requirements would deny thousands of noncitizens their right to apply for asylum.[65] As discussed at length in Section I—through no fault of their own—countless noncitizens will be unable to meet the Proposed Rule's 15-day deadline. Others who meet the arbitrary 15-day deadline will then have their applications rejected because, for example, the noncitizen left a single inapplicable question blank or was unable to pay the $50 application fee in the requisite time.

Second, the Proposed Changes to I-589 Procedural Requirements violate noncitizens' due process rights by denying them a fair hearing.[66] The heightened standard for evidence from non-U.S. governmental sources prejudices noncitizens, as noncitizens often rely on this evidence; in fact, it may be the only evidence to which noncitizens have access. This proposed change also gives undue weight to U.S. State Department reports which have become increasingly politicized and unreliable. In addition, allowing immigration judges to enter their own evidence into the record during merits hearings will prejudice noncitizens. The vast majority of asylum seekers cannot read or understand English. Thus, though DHS may have "an opportunity to respond to or address" the evidence when provided a copy of it by the judge,[67] noncitizens almost certainly will not.

Finally, the Proposed Rule's requirement that immigration judges adjudicate asylum claims within 180 days absent exceptional circumstances such as battery, extreme cruelty, serious illness, or death prioritizes expediency over due process. As the prior section explains, immigration courts would be forced to conduct rushed proceedings that would inevitably result in truncated findings and removal orders. Asylum seekers would pay the price for the system's flaws, rather than receive the individualized review that they are entitled to under due process protections.

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[64] *Id.* (holding that an asylum seeker "may at least send his message and be assured of the ear of the recipient"); *Olabanji v. I.N.S.*, 973 F.2d 1232, 1234 (5th Cir. 1992) ("immigration judges must conduct deportation hearings in accord with due process standards of fundamental fairness").

[65] *See Haitian Refugee Ctr.*, 676 F.2d at 1039; *see also Gonzalez-Julio v. I.N.S.*, 34 F.3d 820 (9th Cir. 1994) (holding that regulations governing filing notice of appeal denied noncitizen due process where noncitizen only had ten days to appeal, could not use personal service due to cost constraints, and had no control over delivery of the mail), *abrogated on other grounds by Liu v. Waters*, 55 F.3d 421 (9th Cir. 1995).

[66] *See Olabanji*, 973 F.2d at 1234 ("[I]mmigration judges must conduct deportation hearings in accord with due process standards of fundamental fairness.").

[67] Proposed Rule at 59695.

VI. The Proposed Rule Is Arbitrary And Capricious

As described throughout this Comment, the Proposed Rule does not align with the Department's statutory obligations regarding the rights of noncitizens. As a result, the Proposed Rule is *per se* unlawful under the APA.[68] The conflict between the Proposed Rule and the APA does not end there, however, as there are two additional bases under which the Proposed Rule runs afoul of the APA. First, the Proposed Rule does not provide interested parties a reasonable opportunity to participate in the rulemaking process; second, the Department fails to consider settled reliance interests.

A. The rushed nature of the Proposed Rule denies stakeholders a reasonable opportunity to comment, a requirement under the APA.

The APA requires the Department to provide notice of its proposed rules and the proposed legal bases for those rules.[69] Notice must afford interested parties "a reasonable and meaningful opportunity to participate in the rulemaking process."[70] Though the Proposed Rule affects potentially millions of noncitizens seeking asylum in the United States, as well as thousands of organizations that support such asylum seekers, the Department has issued the Proposed Rule on an expedited timeframe, with no justification.

According to the eRulemaking Management Office, which provides access to and collects comments on proposed regulations, "Generally, agencies will allow 60 days for public comment. Sometimes they provide much longer periods."[71] Here, the Department has allowed only 30 days for comments for a significant rule change to long-standing regulations. The Department provided no rationale for this shortened comment period, nor has there been any recent change in circumstances that would require a hasty implementation of the Proposed Rule and a shortened comment period. Moreover, the Department's decision to issue this Proposed Rule before implementing or even finalizing the June 2020 NPRM further denies stakeholders like NIJC a reasonable opportunity to comment. The Proposed Rule builds upon the asylum-and-withholding-only framework created by the June 2020 NPRM. But because the June 2020 NPRM has not been implemented, significant ambiguity about these proceedings remains. We do not know, for example, how asylum-and-withholding-only proceedings will impact

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[68] *See* 5 U.S.C. § 706(2).

[69] *See* 5 U.S.C. § 553.

[70] *See McCulloch Gas Processing Corp. v. Dep't of Energy*, 650 F.2d 1216, 1221 (Temp. Emer. Ct. App. 1981); *Forester v. Consumer Prod. Safety Comm'n*, 559 F.2d 774, 787 (D.C. Cir. 1977).

[71] *Regulatory Timeline*, REGULATIONS.GOV, https://www.regulations.gov/docs/FactSheet_Regulatory_Timeline.pdf (last visited Oct. 15, 2020).

noncitizens who are already in removal proceedings; when and where the Department will place noncitizens into asylum-and-withholding-only proceedings; whether noncitizens in these proceedings will be detained; how noncitizens with both asylum claims and claims that cannot be adjudicated in asylum-and-withholding-only proceedings (like cancellation of removal) will be able to seek all forms of available relief; and how, if at all, the process for appealing decisions issued in asylum-and-withholding-only cases will differ from the appellate process for cases originating in MPP or in immigration courts around the country. The uncertainties around the Proposed Rule and the June 2020 NPRM are staggering and exist solely because of the rushed nature of the Proposed Rule. Without more clarity on the implementation of asylum-and-withholding-only proceedings—clarity that cannot exist until the new framework is implemented—NIJC and other practitioners cannot submit comprehensive comments on the Proposed Rule.

This inability to fully comment on the Proposed Rule will negatively impact NIJC and the clients and communities we serve. And this is just one of several proposed rules published during the past few months in which NIJC, and the many other stakeholders to this Proposed Rule, is an interested party. The overlapping nature of several of these proposed rules, where new notices of proposed rulemaking are issued that rely on other proposed rules that are not yet final, further complicates appropriately providing comments to the Proposed Rule. NIJC, and other similarly situated stakeholders, are put in the untenable position of attempting to carry on day-to-day advocacy for clients while also devoting sufficient time to responding to the many rushed proposed rules that directly threaten its clients. Overlay this with the global pandemic, with over eight million people in the United States having been infected with COVID-19, and 223,061 people in the United States having died as a result of it.[72] With reported cases continuing to rise throughout most of the United States, the country is about to hit a "third wave" of COVID-19 infections.[73] NJIC's entire staff, like the staff of many other stakeholders, currently is required to work remotely, disrupting typical work practices and, notably, attorney-client communication. The use of a truncated comment period to rush through major changes to asylum rules and regulations while the United States grapples with a historic crisis, as well as a presidential election, raises concerns regarding the Department's motivation to skirt appropriate scrutiny of the changes under the Proposed Rule.[74]

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[72] *See* COVID-19 Dashboard, JOHNS HOPKINS UNIV., https://coronavirus.jhu.edu/map.html (last visited Oct. 15, 2020).

[73] *See* Chris Wilson & Jeffrey Kluger, *Alarming Data Show a Third Wave of COVID-19 Is About to Hit the U.S.*, TIME, Sept. 28, 2020, https://time.com/5893916/covid-19-coronavirus-third-wave/.

[74] *See* Eric Lipton, *A Regulatory Push by Federal Agencies to Secure Trump's Legacy*, N.Y. TIMES, Oct. 16, 2020, https://www.nytimes.com/2020/10/16/us/politics/regulatory-rush-federal-agencies-trump.html (quoting Susan E. Dudley, top White House regulatory official during the George W. Bush administration: "Two main hallmarks of a

B. The Proposed Rule does not consider settled reliance interests.

The Proposed Rule fails to consider the reliance interests of NIJC and other stakeholders that would be disrupted by it. "When an agency changes course . . . it must 'be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.'" [75] Under the Proposed Rule, the Department seeks to change long-established norms regarding submission of the I-589, changes that could result in a large number of noncitizens being denied the opportunity to have their asylum claims fully litigated. As noted above, while the Department seems to assert that these changes are minor procedural adjustments, the Proposed Rule will fundamentally change the asylum application and adjudication process. This will seriously disrupt the course of conduct on which various stakeholders have come to rely.

As we describe in detail in Section I, it often takes noncitizens many months to obtain counsel in asylum proceedings. While organizations such as NIJC aim to identify, educate, and to the extent possible, represent, clients as early in the process as possible, the stakeholders have come to rely on a system under which there is a period of time at the beginning of the asylum process, including after the noncitizen's first hearing, for the noncitizen to find and engage counsel. The 15-day deadline for submission of the I-589 would significantly impact when in the process counsel would need to be engaged in order for the noncitizen to receive the full benefit of such representation. The I-589 is arguably the most important document in the asylum process, and if a noncitizen does not have counsel when filing it, it could lead to significant negative consequences in the noncitizen's case. The consequences are further exacerbated by the Proposed Rule's punitive procedure for dealing with "incomplete" I-589s.

In addition, NIJC staff and volunteers develop and implement trainings, *pro se* assistance, and workshop materials, all suited to help asylum seekers navigate asylum proceedings as currently situated. NIJC provides counsel to asylum seekers in the Midwest, has a program in San Diego designed to assist asylum seekers in expedited removal, and provides direct representation to asylum seekers and separated families at the border in Texas. Through years of litigation, NIJC has developed broad expertise and experience in assisting noncitizens and litigating asylum claims. NIJC also has hired and trained many attorneys, who in turn provide consistent support, subject-matter expertise, and training for thousands of *pro bono* counsel.

Noncitizens have come to rely on the assistance provided by NIJC and similarly situated providers. In order to benefit from that assistance, noncitizens must not lose the opportunity to

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good regulation is sound analysis to support the alternatives chosen and extensive public comment to get broader opinion. . . . It is a concern if you are bypassing both of those.")

[75] *See D.H.S. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) (quoting *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016)).

proceed with their claims before finding and engaging counsel, a distinct possibility under the Proposed Rule. Similarly, NIJC has a reliance interest in having a period of time to connect with noncitizens to offer and provide assistance. The Proposed Rule runs afoul of the APA because the Department did not appear to consider the reliance of noncitizens and service providers on the current timeframes in asylum proceedings.

VII. The Proposed Rule Violates The United States' Treaty Obligations

The Proposed Rule violates the United States' *non-refoulement* obligation under: (1) the 1967 Protocol Relating to the Status of Refugees (which binds adhering parties to the United Nations Convention Relating to the Status of Refugees—in respect of "refugees"),[76] (2) the Convention Against Torture ("CAT"),[77] and (3) the International Covenant on Civil and Political Rights ("ICCPR").[78]

In general terms, these treaties define the *non-refoulement* principle as an obligation to not expel a person to another State "in pursuance of a decision reached in accordance with law"[79] where: (1) that person's life or freedom would be threatened on account of her race, religion, nationality, membership of a particular social group or political opinion;[80] or (2) there are substantial grounds for believing that the person would be in danger of being subjected to torture.[81]

Despite the above, the Proposed Rule accords more weight to compliance with its procedural obstacles than it does to the risk of unlawfully returning noncitizens to their persecutors. Perhaps most saliently, the Proposed Rule violates the United States' *non-refoulement* obligation by *requiring* immigration judges to dismiss any claims submitted by noncitizens who lack the resources to pay the $50 asylum application fee purely on the basis of these noncitizens' inability to do so.[82] With no regard to noncitizens' circumstances, the Proposed Rule treats any asylum

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[76] Protocol Relating to the Status of Refugees art. 1, Oct. 4, 1967, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

[77] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 119 STAT. 2740, 1465 U.N.T.S. 85 [hereinafter CAT].

[78] Int'l Covenant on Civil and Political Rights, Dec. 16, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 1057 [hereinafter ICCPR].

[79] ICCPR, art. 13.

[80] Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

[81] CAT, art. 3.

[82] Ironically, the Proposed Rule seems to *expect* noncitizens to have the financial ability to pay a $50 fee upfront while providing no sort of employment authorization and further complicating their ability to obtain employment authorization upon being granted asylum.

application unaccompanied by a receipt of such payment to be deemed "incomplete" as a matter of law and subject to mandatory denial.

In a global community of over 190 nations—including those with economies much less developed than our own—only three nations require the payment of an asylum application fee: Australia, Fiji, and Iran.[83] Even then, all three of these nations allow for waivers or agree not to charge asylum application fees in certain circumstances. Illustratively, Australia imposes no charge when an asylum applicant is in "immigration detention and has not been immigration cleared."[84]

In turn, the Proposed Rule allows *no flexibility* in *any* circumstance, thus leaving the United States in a category all of its own. International comparison shows that, at minimum, the Proposed Rule should incorporate some waiver for detained noncitizens. This is especially true in light of the fact that there are documented instances of these noncitizens receiving meager wages in the range of $1/day, a fact the Department of Justice is well aware of and has previously defended in court.[85] Because the Proposed Rule would make a noncitizen's inability to pay an application fee within a certain timeline the sole basis for returning that noncitizen to the country she fled without putting in place any safeguards to ensure that such a return would not violate the *non-refoulement* principle, the proposed changes to 8 C.F.R. § 1208.3(c)(3) are fatally flawed.

Even further, a noncitizen's failure to include a signature or mark a checkbox on an asylum application has the same deleterious effect of rendering that noncitizen's asylum application to be deemed "incomplete" and thus subject to mandatory denial. Relatedly, the 15-day deadline for filing an asylum application would *require* an immigration judge to outright reject an otherwise complete application on day 16. The proposed modifications to 8 C.F.R. § 1208.4 allowing the extension of that deadline for "good cause" do little to nothing to cure the abovementioned challenges, as none can be resolved by a simple addition of a few days to the deadline.

To avoid contravening the United States' *non-refoulement* treaty obligation, the Proposed Rule's treatment of an "incomplete application" must be equipped with safeguards to prevent an

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[83] U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62280 at 62319 (Nov. 14, 2019).

[84] *Fees Charged for Asylum Applications by States Parties to the 1951 Refugee Convention*, LAW LIBRARY OF CONGRESS, GLOBAL RESEARCH CTR. (Dec. 2017), https://www.loc.gov/law/help/asylum-application-fees/asylum-application-fees.pdf.

[85] *See* Statement of Interest of the United States, *Washington v. GEO Group, Inc.*, No. 3:17-cv-05768-RJB (W.D. Wash.), ECF No. 290.

immigration judge from disposing of claims solely on the basis of arbitrary procedural lapses or a noncitizen's inability to pay the asylum application fee. It fails to do so. Instead, the Proposed Rule limits the discretion immigration judges need to consider asylum applications on a case-by-case basis and thus avoid violations of the United States' *non-refoulement* obligation. This will likely result in expelling noncitizens in violation to the *non-refoulement* principle established in the Refugee Protocol, CAT, and ICCPR.

VIII. Conclusion

NIJC urges the Department to withdraw the Proposed Rule in its entirety. Thank you for your consideration and please do not hesitate to contact Azadeh Erfani for further information.

/s/ Azadeh Erfani
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/s/ Micah M. Doak
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Pro Bono Counsel to National Immigrant Justice Center

TAB A

RICARDO ALONSO AGUIRRE PÉREZ
NOTARY PUBLIC 5
DISTRICT OF BRAVOS, CTY. JUAREZ, CHIH

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
UNITED MEXICAN STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

VOLUME ONE HUNDRED AND THIRTY-FOUR.----------

NUMBER FOUR THOUSAND THREE HUNDREED AND SIXTY-SIX.- 4,366. ----------

In the City of Juárez, District of Bravos, State of Chihuahua, on the tenth day of June of the year two thousand and twenty, I, the undersigned, **RICARDO ALONSO AGUIRRE PÉREZ**, Notary Public Number Five, in office for this District, hereby execute this instrument of RATIFICATION OF CONTENT AND SIGNATURES OF A DOCUMENT at the request of the association called **CASA DEL MIGRANTE EN JUÁREZ, ASOCIACIÓN CIVIL**, represented in this act by Mr. **FRANCISCO JAVIER CALVILLO SALAZAR**, in accordance with the following declaration and clause:----------

----------**DECLARATION.** ----------

SINGLE.- Mr. **FRANCISCO JAVIER CALVILLO SALAZAR**, as legal representative of the association called **CASA DEL MIGRANTE EN JUÁREZ, ASOCIACIÓN CIVIL**, hereby declares that he appears to ratify the signature and content of a statement letter, a copy of which, signed by the appearing party, is attached to the appendix of this instrument, marked with the number **1 (one)**.----------

---In light of the above, the following is hereby declared: ----------

----------**CLAUSE** ----------

SINGLE.- FRANCISCO JAVIER CALVILLO SALAZAR, as legal representative of **CASA DEL MIGRANTE EN JUÁREZ, ASOCIACIÓN CIVIL**, hereby ratifies the content of the document referred to in the single declaration of this instrument, which is attached to the respective appendix, and recognizes that the signatures that appear with his name at the bottom of such document are in his own, true and proper handwriting.

----------**LEGAL CAPACITY** ----------

For the purpose of accrediting the legal existence and capacity of **CASA DEL MIGRANTE EN JUÁREZ, ASOCIACIÓN CIVIL,** and the character and faculties with which he appears to the execution of this instrument, the appearing party hereby: **A).-** Exhibits the certification of documents issued aforehand by the undersigned Notary, which is attached to the appendix of this instrument, marked with the number **2 (two)**.----------

The appearing party states, under oath to tell the truth, that the representation and faculties he holds have not been revoked, limited or concluded in any manner.----------

----------**NOTARIAL ATTESTATION**----------

----------**I, THE UNDERSIGNED NOTARY, HEREBY ATTEST AND CERTIFY:** ----------

I.- That I fully identified myself as a Notary Public before the interested party to this instrument. ----------

II.- That I do not know personally the appearing party. ----------

III.- That the appearing party has identified himself before the undersigned Notary by exhibiting the original documents which I attest to have had in my sight and of which I issue a certified copy and attach to the appendix of this instrument, marked with the number **3 (three).** ----------

IV.- That the appearing party, in my opinion, has the legal capacity to execute this instrument, without any evidence to the contrary. ----------

V.- That the references and insertions made in this instrument faithfully match the original documents that I attest to have in my sight and which I refer to.----------

VI.- That the appearing party declared by his personal data to be: ----------

A).- Mr. **FRANCISCO JAVIER CALVILLO SALAZAR**, of Mexican nationality, born in this City of Juárez, Chihuahua, on the twenty-third of February of one thousand nine hundred and seventy, single, priest, residing at number one thousand one hundred and thirteen Privada Fco. I. Madero Street, Colonia Division del Norte, in this city, holding Sole Population Registration Code (*clave única de Registro de Población*) CASF700223HCHLLR03 (cee, a, ess, ef, seven, zero, zero, two, two, three, (h)aitch, cee, el, el, ar, zero, three) and Federal Taxpayer's Registration Number (*clave de Registro Federal de Contribuyentes*) CASF700223U51 (cee, a, ess, ef, seven, zero, zero, two, two, three, u, five, one).----------

[*signature*]
[*stamp:* VERIFIED]

VII.- That the undersigned Notary informed the appearing party that the personal data provided to the Notary Office in my custody shall be used for the purpose of rendering the requested service; that by providing such information he authorizes the undersigned Notary to administer his personal data and to transfer them to third parties when strictly necessary to render such services. I also informed the appearing party that he may exercise his rights of access, rectification, cancellation, opposition, disclosure and limitation of use by writing to the undersigned Notary, as the person responsible for the protection of his personal data, to the Notary Office address, where I also made available to the appearing party the corresponding privacy notice, he having expressed his agreement to the processing of his personal data under the terms of the laws applicable to the notarial instrument hereby executed.----------

VIII.- That I read the above to the appearing party, explaining to him the value and legal consequences of its content; the appearing party expressed his acceptance, ratified the above and signed in witness whereof. -I Attest.- **FRANCISCO JAVIER CALVILLO SALAZAR.-** Signature.- IN THE CITY OF JUÁREZ, DISTRICT OF BRAVOS, STATE OF CHIHUAHUA, ON THE TENTH DAY OF JUNE OF THE YEAR TWO THOUSAND AND TWENTY, I HEREBY AUTHORIZE PREEMPTIVELY THE INSTRUMENT ABOVE.- I ATTEST.- **RICARDO ALONSO AGUIRRE PÉREZ**.- Signature.- Authorization seal.- ----------

----------**AUTHORIZATION** ----------

IN THE CITY OF JUAREZ, DISTRICT OF BRAVOS, STATE OF CHIHUAHUA, ON THE TENTH DAY OF JUNE OF THE YEAR TWO THOUSAND AND TWENTY, I HEREBY AUTHORIZE DEFINITIVELY THE INSTRUMENT ABOVE FOR ALL LEGAL REQUIREMENTS HAVE BEEN MET.- I ATTEST.- **RICARDO ALONSO AGUIRRE PÉREZ**.- Signature.- Authorization signature. ----------

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VOLUME 134 **INSTRUMENT** 4366 **APPENDIX** 1

LIC. RICARDO ALONSO ALDERETE PÉREZ
VOLUMEN 134 ESCRITURA 4366 ANEXO 1
NOTARIO PÚBLICO 6
DISTRITO BRAVOS, CD. JUÁREZ, CHIH.

Declaración de Francisco Javier Calvillo	**Statement letter by Francisco Javier Calvillo**
Yo, Francisco Javier Calvillo en representación de CASA DEL MIGRANTE EN JUÁREZ, ASOCIACIÓN CIVIL, tras haber prestado debido juramento, afirmo y declaro lo siguiente:	**I, Francisco Javier Calvillo as legal representative of CASA DEL MIGRANTE EN JUAREZ, ASOCIACIÓN CIVIL, after taking due oath, hereby affirm and declare the following:**
1. Yo, Francisco Javier Calvillo Salazar, soy el director ejecutivo de CASA DEL MIGRANTE EN JUÁREZ, A.C. y del Centro de Derechos Humanos del Migrante, A.C., ambas ubicadas en Calle Neptuno #1855. Colonia Satélite, Ciudad Juárez, Chihuahua, C.P 32540, México.	1. I, Francisco Javier Calvillo Salazar, am the chief executive officer of CASA DEL MIGRANTE EN JUÁREZ, A.C. and of the Centro de Derechos Humanos del Migrante, A.C., both located at Calle Neptuno # 1855. Colonia Satélite, Ciudad Juárez, Chihuahua, Zip Code 32540, Mexico.
2. Hago esta declaración para instar a los juzgados de inmigración de Estados Unidos de América y al Departamento de Seguridad Nacional, que detenga la práctica de enviar notificaciones de audiencias a CASA DEL MIGRANTE EN JUÁREZ, A.C. Estas notificaciones no están llegando a las personas a quienes van dirigidas, y estoy muy preocupado de que estas personas pierdan sus casos de protección humanitaria en Estados Unidos de América debido a que no recibirán estas notificaciones.	2. I make this statement to urge the immigration courts of the United States of America and the Department of Homeland Security to stop sending notifications of hearings to CASA DEL MIGRANTE EN JUÁREZ, A.C. These notifications are not reaching the people to whom they are addressed, and I am very worried that these people will lose their cases of humanitarian protection in the United States because of not receiving these notifications.
3. CASA DEL MIGRANTE EN JUÁREZ, A.C., ha dado albergue temporal a migrantes desde 1982. He sido director ejecutivo desde 2010.	3. CASA DEL MIGRANTE EN JUÁREZ, A.C., has given temporary shelter to migrants since 1982. I have been chief executive officer since 2010.
4. CASA DEL MIGRANTE EN JUÁREZ, A.C., brinda albergue temporal, comida, vestido, servicios sociales, cuidado médico y asistencia y defensa jurídica en aquello que afecta sus derechos humanos como persona. Apoyamos entre 600 y 800 migrantes por semana.	4. CASA DEL MIGRANTE EN JUÁREZ, A.C., provides temporary shelter, food, clothing, social services, medical care and legal assistance and defense of human rights. We support between 600 and 800 migrants per week.
5. Como Mateo 25:40 nos dice, nuestra fe nos pide proveer estos servicios y mitigar el sufrimiento de aquellos que más lo necesitan, los "últimos de nuestros hermanos y hermanas".	5. As Matthew 25:40 tells us, our faith asks us to provide these services and mitigate the suffering of those who need it most, the "least of our brothers and sisters."

COTEJADO

6. La naturaleza de los servicios que brindamos es la recepción de las personas en nuestro albergue, a veces por una noche, a veces por muchas noches. Nunca hemos tenido un sistema ni tenemos manera de localizar a nadie una vez que han dejado el albergue, ya que se respeta el perfil, su historia son confidenciales tanto para CASA DEL MIGRANTE EN JUÁREZ, A.C., como el Centro de Derechos Humanos, A.C., dentro del albergue.

7. Desde aproximadamente mayo de 2019, CASA DEL MIGRANTE EN JUÁREZ, A.C., comenzó a recibir en grandes cantidades, cartas con aspecto oficial de los juzgados de inmigración de Estados Unidos de América.

8. No es nuestro quehacer recibir el correo de las personas que albergamos; no están aquí el tiempo suficiente para que haya una manera fiable de comunicarnos a quienes damos servicio.

9. En los últimos seis meses, hemos recibido cientos de estos sobres de los juzgados de inmigración de Estados Unidos de América. Hasta donde sé, ninguna de estas notificaciones ha llegado al destinatario indicado.

10. La mayoría de las personas a quienes van dirigidos estos sobres no se han albergado en CASA DEL MIGRANTE EN JUÁREZ, A.C.

11. Recientemente hemos pedido a voluntarios que escriban "regresar a emisor" en los sobres y entregarlos al servicio postal en Estados Unidos de América.

12. Nuestra misión es ayudar migrantes que están sufriendo porque han tenido que huir de sus hogares y quienes están sufriendo por estar retenidos en Ciudad Juárez, Chihuahua, sin hogar permanente.

13. No deseamos formar parte de ninguna manera en el proceso de los juzgados de inmigración de Estados Unidos de América de ordenar la deportación y obstrucción de migrantes en los Estados Unidos.

6. The nature of the services we provide is the reception of people in our shelter, sometimes for one night, sometimes for many nights. We have never had a system or a way to locate anyone once they have left the shelter. Given our respect for each individuals personal record, their identity is confidential for both CASA DEL MIGRANTE EN JUÁREZ, A.C. and Centro de Derechos Humanos, A.C., inside the shelter.

7. Since approximately May 2019, CASA DEL MIGRANTE EN JUÁREZ, A.C., began receiving many official-appearing letters from the United States of America Immigration Courts.

8. It is not our task to receive the mail addressed to the people we shelter; they are not here long enough to provide a reliable way to communicate to whom we serve.

9. We have received hundreds of these letters from the United States of America immigration courts in the last six months. As far as I know, none of these notifications has reached the indicated recipient.

10. Most of the people to whom these letters are addressed, have not been sheltered in CASA DEL MIGRANTE EN JUÁREZ, A.C.

11. We have recently asked the volunteers to write "return to sender" on the envelopes and deliver them to the postal service in the United States.

12. Our mission is to help those migrants who are suffering because they had to leave their homes and those who are held in Ciudad Juárez, Chihuahua, without permanent home.

13. We do not want to be part in any way in the process of ordering the deportation and obstruction of migrants in the United States of America, of the immigration courts of the United States of America.

14. Solicitamos a los juzgados de inmigración de Estados Unidos de América que detengan el envío de estas notificaciones al domicilio de CASA DEL MIGRANTE EN JUÁREZ, A.C. Deseamos que con esta declaración los juzgados estén enterados que CASA DEL MIGRANTE EN JUÁREZ, A.C., no es un domicilio permanente para migrantes y que estas notificaciones no están llegando a quienes corresponden.	14. We request to the immigration courts of the United States of America to stop sending these notifications to the address of CASA DEL MIGRANTE EN JUÁREZ, A.C. We hope that with this statement letter the courts are aware that CASA DEL MIGRANTE EN JUÁREZ, A.C., is not a permanent address for migrants and that these notifications are not reaching those who correspond.
15. Solicitamos al gobierno de Estados Unidos de América que deje de enviar tales notificaciones a CASA DEL MIGRANTE EN JUÁREZ, A.C., y que muestre compasión a quienes han perdido sus fechas de audiencia porque las notificaciones nunca llegaron a ellos.	15. We request to the United States government to stop sending such notifications to CASA DEL MIGRANTE EN JUÁREZ, A.C., and to show compassion to those who have lost their hearing dates because the notifications never reached them.
16. Juro que la declaración antes expuesta es cierta según a mi leal saber y entender.	16. I swear to the best of my knowledge and belief that the above statement is true.

Francisco Javier Calvillo Salazar
Representante Legal de/ Legal representative of
CASA DEL MIGRANTE EN JUÁREZ, A.C.

COTEJADO

RICARDO ALONSO AGUIRRE PÉREZ
NOTARY PUBLIC 5
DISTRICT OF BRAVOS, CTY. JUAREZ, CHIH

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
UNITED MEXICAN STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

VOLUME 134 **INSTRUMENT** 4366 **APPENDIX** 2

THE UNDERSIGNED**,** **RICARDO ALONSO AGUIRRE PÉREZ**, NOTARY PUBLIC NUMBER FIVE, IN OFFICE FOR THE DISTRICT OF BRAVOS, STATE OF CHIHUAHUA, HEREBY CERTIFIES:----------

THAT THE LEGAL EXISTENCE AND CAPACITY OF "**CASA DEL MIGRANTE EN JUÁREZ**, **ASOCIACIÓN CIVIL**", AND THE CHARACTER AND FACULTIES OF MR. FRANCISCO JAVIER CALVILLO SALAZAR EMERGE FROM THE FOLLOWING DOCUMENT:----------

Notarial instrument number three thousand two-hundred and seventy-three, executed in this city on the fifth of July of two thousand eighteen before Rubén Aguirre Duarte, Notary Public Number Sixteen, in office for this District of Bravos.----------

Such document formalizes, ratifies and executes the agreements made in the special general meeting of associates of CASA DEL MIGRANTE EN JUÁREZ, ASOCIACIÓN CIVIL, resulting in the ratification, among others, of the composition of Board of Directors, consisting of FRANCISCO JAVIER CALVILLO SALAZAR, MARÍA DE LOURDES DOMINGUEZ ARVIZO AND GUILLERMO SIAS BURCIAGA IN THE CHARGES OF PRESIDENT, SECRETARY AND TREASURER, and in the reform of articles five, twenty-second, and forty-nine of the Bylaws. The pertinent parts of the document are transcribed as follows:----------

"ARTICLE FIVE. -The Association is a nonprofit organization with beneficiaries in each and all of the assistance activities that it carries out for individuals, sectors and regions of low resources, indigenous communities and vulnerable groups based on age, sex or disability problems, and its purpose is to carry out the following activities: 1. To promote, organize, foster, develop and carry out all kinds of charitable and philanthropic activities that benefit individuals, sectors and regions of low economic resources, indigenous communities and vulnerable groups based on age, sex or disability problems, in order to improve their social and livelihood conditions. 2. To establish, create and manage shelters or homes, owned by the Association, for individuals of low economic resources who are in a situation of mistreatment, abandonment, loss or orphanhood, granting them the essential basic elements that favor their good physical and social development for their integration into society. 3. To support the fulfillment of basic subsistence requirements in terms of nutrition, clothing or housing. 4. To provide medical assistance or rehabilitation or care in specialized establishments. 5. To provide social guidance, education or professional training. Social guidance is understood as the advising in matters such as family issues, education, nutrition, work and health. 6. To provide support in the defense and promotion of human rights. 7. To provide therapeutic and personal support to individuals of low economic resources who are victims of violence. 8. To promote actions to improve the popular economy. 9. To foster educational, cultural, artistic, scientific and technological matters. 10. To publish, edit, print and promote, without profit, all kinds of works related to the object and actions of the Association. 11. To organize permanent campaigns to disseminate the assistance activities carried out by the Association in order to publicize and educate society through media. 12. To promote the activities of the Association through courses, diplomas, workshops, seminars, aimed at individuals of low economic resources, vulnerable groups based on age, sex or disability problems and indigenous border communities. For the purpose of fulfilling the Social Object, the Association shall, including but not limited to: I- Acquire for any title, literary or artistic rights related to its object. II.- Obtain for any title, concessions, permits, authorizations or licenses, as well as enter into any type of contracts with the public administration, whether federal or local, in relation to the aforementioned object. III- Issue, endorse, accept and subscribe all types of credit instruments, provided it does not constitute a commercial speculation. IV.- Confer all types of powers. V- Acquire all kinds of personal and real property, real and personal rights, related to its object and to be used for fulfilling the latter. VI. Hire the personnel necessary for the fulfillment of the Social Object. VII.- Organize courses, seminars, discussion sessions or any similar event related to its social object. VIII.- Make society aware of the importance of investing time and effort to improve their quality of life through volunteering. IX.-Request and obtain all kinds of donations, including material or economic resources, from individuals, organizations, foundations, and public and private institutions to carry out projects of the Association aimed at fulfilling the Social Object. X.- Obtain technical and economic cooperation from individuals, non-governmental organizations or official and private, national or international, institutions for the fulfillment of the Social Object. XI.- The Association may open, operate and close bank accounts with any credit institution, make deposits, withdrawals or endorsements under all types of bank accounts, as well as execute remotely all types of banking operations, in accordance with the terms and conditions prescribed in Article 9 (nine) of the General Law of Credit Instruments and Operations (*Ley General de títulos y Operaciones de Crédito*) and Article 57 (fifty-seven) of the Credit Institutions Law (*Ley de Instituciones de Crédito*), for the purpose of making available the resources of the Association located in bank accounts, in any of its modalities, administered by authorized credit institutions. XII.- Enter into collaboration agreements with public and private, national and international, entities for the purpose of fulfilling it social object. The Civil Association is not for profit and its activities shall be carried out with the sole purpose of fulfilling its social object, therefore it shall not engage in political campaigns or propaganda activities aimed at influencing legislation; the publication of a non-proselytizing analysis or investigation, or technical assistance to a government body which requested so in writing, shall not be considered as to influence legislation. – The authorizing notary certified the legal existence and capacity of the association in the above-mentioned instrument as follows: I- Notarial instrument number nineteen thousand seven hundred and six recorded under volume nine hundred forty-six of the notary's protocol, executed on the twelve of March of one thousand nine hundred and ninety-eight before the Notary by means of which the above-mentioned Association was established, with prior permit number 43000783 (forty-three million seventy hundred and eighty-three), issued by the Secretary of Foreign Affairs under file number 9743000760 (nine thousand seven hundred forty-three million seventy hundred and sixty) on the seventeenth of November of one thousand nine hundred and ninety-seven with the following social object: To provide free assistance to immigrants arriving to this City, for transit purposes, who have been deported from the United States of America OR who have arrived from the South of the Country OR from the other countries of Central America and South America; To provide migrants with shelter and food on a temporary basis, as well as medical assistance and, where appropriate, guidance to foreign migrants on where to go to regularize their legal stay in the country, as well as necessary information about the City they arrived to, moral and spiritual support, psychological assistance and, where appropriate, warm hospitality in a temporal home in this City; To promote, stimulate, sponsor or directly manage and direct all types of necessary activities aimed at carrying

[*signature*]
[*stamp:* VERIFIED]

out social service works OR projects, especially those mentioned below, for the purpose of providing indigent migrants and migrants of low economic resources with food and shelter on a temporary basis; To carry out any kind of activity aimed at obtaining financial resources, in order to be allocated for the aforementioned purposes, as well as to provide financial aid, any type of food, medical and clothing assistance that benefit migrants; To manage material, economic and any other resources, necessary for the fulfillment of its objectives through donations that were requested or received spontaneously and through activities that may allow the necessary resources to become available, such as raffles, which in no case shall be conducted for profit, but to assure the provision of social services that constitute the object of the Association; To promote cultural activities, conferences or courses and studies aimed at addressing the migration problem and its consequences, as well as to conduct campaigns, through any media, to inform the community about the migration reality; To receive all kinds of donations, from individuals or legal entities, as well as to acquire with own resources, by donation or by other legal means, personal and real property suitable and necessary for the fulfillment of its object; To execute all kinds of acts and agreements for the fulfillment of its object, it being able to subscribe, endorse, and negotiate all kinds of credit instruments and carry out all kinds of credit operations that are necessary for the effective management of its assets; the Association may acquire, possess or manage, by any legal title all kinds of personal or real property, necessary for the fulfillment of its object; The Association shall be established under the laws of Mexico, with an admission clause for foreigners; with registered office in this City; and with indefinite duration as from the date it was established. The assets of the Association shall be comprised of the donations that the Association receives and other income that it obtains by virtue of activities related directly or indirectly to its object and, in any case, with the fees that its members voluntarily contribute to the Association, on the understanding that the assets of the Association will be exclusively allocated for the fulfillment of its object. As recorded in the above-mentioned instrument, the supreme body of the Association shall be the General Assembly of Associates, and the administration and direction of the Association, and its legal representation, shall be conferred on a Board of Directors, to be composed of a number not less than three nor greater than seven regular members. Moreover, under Article Thirty-Nine of the Bylaws, the Board of Directors shall be the legal representative of the Association and shall have the authority to formulate, discuss, approve and amend the Association's internal regulations at all times; to freely appoint the officers and employees of the Association, conferring upon them faculties, obligations and remunerations, and approving the contracts that are entered into with them; to formulate, discuss and approve the Association's program of activities, confer upon members any necessary faculties, as well as a general power of attorney for litigation and collections, with all the general and special faculties requiring a special clause in accordance with the law, as established in articles two thousand five hundred and fifty-four and two thousand five hundred and eighty-seven of the Federal Civil Code, and articles two thousand four hundred and fifty-three and two thousand four hundred and eighty-six of the Civil Code for the State of Chihuahua and the equivalent articles of the Civil Codes of the other federal entities of the Mexican Republic where such power of attorney is exercised; a general power of attorney for acts of administration in accordance with the provisions of the second paragraph of Article two thousand five hundred and fifty-four of the Civil Code for the Federal District and the equivalent articles of the other Civil Codes of the Federal Entities of the Mexican Republic where this power is exercised; a special power of attorney for acts of administration, but as broad as may be required by law, in order to carry out, for and on behalf of the Association, all the procedures that the Association must conduct before any Government Unit, including decentralized organizations and companies with majority or minority state participation, as well as to subscribe any public or private document as required in order to settle the administrative matters that must be addressed before such Dependencies on behalf of the Association; a general power of attorney to subscribe, endorse, guarantee or transfer credit instruments, in accordance with the provisions of article nine of the General Law of Credit Instruments and Operations; a power of attorney to open and close bank accounts on behalf of the association and appoint the individuals who may draw against them; authority to substitute totally or partially the powers of attorney set forth in the preceding paragraphs, reserving the right to exercise such powers, including the authority contained in this paragraph, it being able to grant general or special powers of attorney within the scope of its faculties, as well as to revoke granted substitutions and powers. Under Article Forty of the Bylaws of the Association, the representation and seal of the latter shall be vested on the President of the Board of Directors, who will exercise the powers and obligations referred to in the above-mentioned Article Thirty-Nine. Moreover, under the first operative point of the Transitory Chapter of the above-mentioned document, the Association shall be managed by a Board of Directors comprised of seven members for which Hugo Armin Irigoyen Chumacero, Luis Héctor Benítez Vertiz, Fabiola Sandoval Diaz, Amalia Trevino Ramírez, Gerardo De La Torre Moran, Adelaida Ruiz Torres de Ramírez and Hilario Rangel Medina have been appointed as President, Vice-President, Secretary, Treasurer, First Member, Second Member and Third Member, respectively, and the Assembly has certified that the appointed officials accepted the positions conferred. I, the undersigned Notary, hereby state that, as evidenced in Volume nine hundred and forty-six of my protocol, the aforementioned instrument was registered under number 20 (twenty), folio 33 (thirty-three), book 33 (thirty-three), section Four of the Public Registry of Property and Commerce of this District of Bravos. II- The addition of subsections to Article Five of the Bylaws, as well as the amendments to articles Fifty, Fifty-First and Fifty-Second of the Bylaws, were approved, among other agreements, under the instrument thirty-one thousand two hundred and eighty-three, executed on the twenty-seventh of January of two thousand and three, in this City, before the faith of the undersigned, in which the Special General Meeting of the Association was recorded. I, the undersigned Notary, hereby state that, as evidenced in volume One thousand two hundred and forty of my protocol, the aforementioned instrument was registered under number 22 (TWENTY-TWO), folio 42 (FORTY-TWO), book 55 (FIFTY-FIVE), section Four of the public registry of property and commerce of this District of Bravos. III.- The amendments to articles Five, Six, Eleven, Twelve, Seventeen, Twenty-three, Forty-Nine, Fifty, Fifty-one and Fifty-Two of the Bylaws were approved, among other agreements, under the notarial instrument forty-two thousand two hundred and twenty-nine, executed on the Twentieth of

RICARDO ALONSO AGUIRRE PÉREZ
NOTARY PUBLIC 5
DISTRICT OF BRAVOS, CTY. JUAREZ, CHIH

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
UNITED MEXICAN STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

March of two thousand and six, in this City, before the faith of the undersigned, in which the Special General Meeting of the Association was recorded. I, the undersigned Notary, hereby state that, as evidenced in Volume One Thousand Two Hundred and Forty of my protocol, the aforementioned instrument was recorded under number 39 (thirty-nine), folio 96 (ninety-six), book 69 (sixty-nine), section Four of the Public Registry of Property and Commerce of this District of Bravos. IV.- The ratification of the Board of Directors, the revocation of powers and the amendment to articles Five, Six, Twenty-Second, Twenty-Six, Thirty-Nine subsection (i), Fifty, Fifty-One and Fifty-Two of the Bylaws were approved, among other agreements, under the notarial instrument number fifty-four thousand four hundred and seventy-three of Volume number one thousand nine hundred and fifty of my protocol, executed on the twenty-third of September of two thousand and eight, in this City, before the faith of the undersigned, in which the Association's Special General Meeting, held on the fifteenth of August of two thousand and eight, was recorded. As evidenced in volume of my protocol, the first transcript of the aforementioned instrument is registered under number FOUR, folio TWELVE, book EIGHTY-NINE, section Four of the Public Registry of Property and Commerce of this District of Bravos. V.- Upon request of the Association, the Bylaws were verified under the notarial instrument number fifty-four thousand four hundred and eighty-four of my protocol, executed on the twenty-fourth of September of two thousand and eight, in this City, before the faith of the undersigned. VI.- The amendments to articles Five, Six, Twenty-Second, Forty-Nine, Fifty and Fifty-One of the Association's Bylaws were approved, among other agreements, under the instrument fifty-four thousand eight hundred and ninety-nine, executed on the eleventh of November of two thousand and eight, before the faith of the undersigned, in which the Association's Special General Meeting was recorded, to be written in the following terms: … "… ARTICLE FIVE.- The object of the Association shall be as follows: To benefit individuals, sectors and regions of low economic resources, as well as refugees and migrants of low economic resources, indigenous communities and vulnerable groups based on age, sex or disability problems, through the following activities: a).- To provide shelter, food, as well as medical assistance and, where appropriate, social, psychological and legal guidance, in addition to a temporary home in this city. b).- To provide medical attention in specialized establishments, as well as treatment or rehabilitation, to disabled people and to provide medicine, prostheses, orthotics and sanitary supplies. c).- To administer material, economic and any other resources necessary for the fulfillment of its object, through donations that were requested or received spontaneously and through activities that may allow the necessary resources to become available, such as raffles, which in no case shall be conducted for profit. d).- To organize conferences, courses and studies to provide guidance and professional training for people of low economic resources aimed at solving their problem of poverty. e).- Receive all kinds of donations, from individuals or legal entities, including public incentives, as well as the acquisition with own resources, by donation or by other legal means, of personal and real property suitable and necessary for the fulfillment of its object. f).- To execute all kinds of acts and agreements for the fulfillment of its object; the Association may acquire, possess or manage, by any legal title, all kinds of personal or real property, necessary for the fulfillment of its object. g).- The Association shall make available to the general public information regarding the authorization to receive donations, the use and purpose that has been given to the received donations, as well as the fulfillment of its tax obligations in accordance to the general rules established by the Tax Administration Service (*Servicio de Administración Tributaria*). This provision is established in irrevocable character …". ARTICLE SIX.- The Association shall allocate all of its assets exclusively for the fulfillment of its social object, and it shall not grant benefits on the distributable surplus to any individuals OR members, whether individuals or legal entities, except in the case of a legal entity authorized to receive deductible donations under the terms of the Income Tax Law (*Ley del Impuesto sobre la Renta*) OR remuneration for services actually rendered. This provision is established in irrevocable character …". ARTICLE TWENTY-TWO.- The assets of the Association shall be comprised of: a). Regular OR special contributions from the Founding and Active Members, determined by the General Assembly of Associates; b).- Monetary or in-kind contributions, donations, bequests OR subsidies made by Benefactor Associates, third parties, whether individuals or legal entities, including State and foreign aid and incentives; c).- Personal and real property that the Association may acquire by any legal means for the better fulfillment of its social object. The assets of the Association, including State aid and incentives received, shall be used exclusively for the purposes of its social object, and it shall not grant benefits on the distributable surplus to any individual OR member, whether individuals or legal entities, except in the case of a legal entity authorized to receive deductible donations under the terms of the Income Tax Law OR remuneration for services actually rendered. This provision is established in irrevocable character. ARTICLE FORTY-NINE.- Upon liquidation of the Association, all of its assets, including State aid and incentives, shall be transferred to an Association or institution as determined by the General Assembly, which, in any case, shall be authorized by the Tax Administration Service to receive deductible donations under the terms of the Income Tax Law. The content of this subsection is established in irrevocable character." ARTICLE FIFTY.- In the event of dissolution of the Association, no associate shall have the right to a return of contributions, quota or any amount which was contributed for the fulfillment of the object of the Association. The remaining surplus after payment of current liabilities shall be transferred to other Mexican association(s) having the same object as this Association, provided it is a legal entity authorized to receive deductible donations under the terms of the Income Tax Law. This provision is established in irrevocable character. Upon liquidation, and for such purpose, the Association shall transfer all of its assets to legal entities authorized to receive deductible donations under the terms of the Income Tax Law. This provision is established in irrevocable character." … "ARTICLE FIFTY-ONE.-Upon dissolution of the Association, the Board of Directors shall become a Committee of Liquidators." I, the undersigned Notary, hereby state that, as evidenced by my protocol, the first transcript is duly registered under

[*signature*]
[*stamp:* VERIFIED]

number 1 (one), folio 1 (one), book 89 (eighty-nine), section Four of the Public Registry of Property and Commerce of this District of Bravos, Chihuahua".-
---THE QUOTES AND TRANSCRIPTS MADE HEREIN FAITHFULLY REPRODUCE THE ORIGINALS THEREOF, TO WHICH I REMIT.---------
---I HEREBY ISSUE THIS CERTIFICATION ON THE PERTINENT PARTS OF THE DOCUMENT TRANSCRIBED ABOVE, TO WHICH I REMIT, ON TWO PAGES OF NOTARIAL PAPER, IN THE CITY OF JUAREZ, DISTRICT OF BRAVOS, STATE OF CHIHUAHUA, ON THE TENTH DAY OF JUNE OF TWO THOUSAND AND TWENTY.- I ATTEST.----------

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
UNITED MEXICAN STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

[*Signature*]
NOTARY PUBLIC NUMBER FIVE.

RICARDO ALONSO AGUIRRE PEREZ.

RICARDO ALONSO AGUIRRE PÉREZ
NOTARY PUBLIC 5
DISTRICT OF BRAVOS, CTY. JUAREZ, CHIH

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
UNITED MEXICAN STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

VOLUME 134 **INSTRUMENT** 4366 **APPENDIX** 3

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
UNITED MEXICAN STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

[Logo] MEXICO FEDERAL ELECTORAL INSTITUTE
VOTER REGISTRATION CARD

[*Photo*]

NAME
CALVILLO
SALAZAR
FRANCISCO JAVIER

DATE OF BIRTH
02/23/1970

SEX M

ADDRESS
PRIV. FRANCISCO I MADERO 1113
COL. DIVISION DEL NORTE 32000
JUAREZ CHIH

[*Photo*]

ELECTOR'S KEY CLSLFR70022308H400

CURP CASF700223HCHLLR03 **REGISTRATION YEAR** 1991 02

STATE 08	**MUNICIPALITY** 037	**SECTION** 2179
TOWN 0001	**ISSUANCE** 2016	**EXPIRATION** 2026

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CALVILLO<SALAZAR<<FRANCISCO<JA

The undersigned RICARDO ALONSO AGUIRRE PÉREZ, Notary Public Number Five for the District of Bravos, State of Chihuahua.----------
----------**HEREBY CERTIFIES:**----------
That the foregoing copy faithfully reproduces the original document he has had before him. It is issued on **one** page of notarial paper, in the City of Juarez, on the tenth day of **June** of the year **two thousand and twenty**.- I attest.----------

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
MEXICAN UNITED STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

[*Signature*]
NOTARY PUBLIC NUMBER FIVE.

RICARDO ALONSO AGUIRRE PEREZ.

[*signature*]
[*stamp:* VERIFIED]

THIS CERTIFICATION CONSTITUTES THE FIRST TRANSCRIPT OF THE ORIGINAL DOCUMENT RECORDED IN MY PROTOCOL. IT IS HEREBY ISSUED TO **CASA DEL MIGRANTE EN JUAREZ, ASOCIACION CIVIL** ON **SIX** PAGES OF NOTARIAL PAPER DULY VERIFIED, SEALED AND SIGNED IN THE CITY OF JUAREZ, DISTRICT OF BRAVOS, STATE OF CHIHUAHUA ON THE **ELEVENTH** DAY OF **JUNE** OF THE YEAR **TWO THOUSAND AND TWENTY**. -I ATTEST.----------

[*seal:*
RICARDO ALONSO AGUIRRE PEREZ
NOTARY PUBLIC NUMBER FIVE
MEXICAN UNITED STATES
CITY OF JUÁREZ
DISTRICT OF BRAVOS, CHIHUAHUA]

[*Signature*]
NOTARY PUBLIC NUMBER FIVE.

RICARDO ALONSO AGUIRRE PEREZ.

CERTIFICATE OF TRANSLATION

I, Javier Ochoa, professional translator registered with the Sworn Translators' Association of the City of Buenos Aires, hereby certify that am competent to translate from Spanish into English, and that the translation of the attached certification is true, accurate, complete and faithful to the best of my abilities.----------

Signed on July 27, 2020

Javier Ochoa
Certified Legal Translator
Volume XXI, Folio 228, No. 8336
Sworn Translators' Association of the City of Buenos Aires
(C.T.P.C.B.A.)