

***SENT VIA ELECTRONIC MAIL***

William P. Barr, Attorney General  
United States Department of Justice

James McHenry, Director  
Executive Office for Immigration Review  
United States Department of Justice

Lauren Alder Reid, Assistant Director  
Office of Policy  
Executive Office for Immigration Review  
United States Department of Justice

Chad Wolf, Acting Secretary  
United States Department of Homeland  
Security

Chad R. Mizelle, Senior Official Performing the  
Duties of the General Counsel, United States  
Department of Homeland Security

Kenneth Cuccinelli, Senior Official Performing  
the Duties of the Director, Citizenship and  
Immigration Services  
United States Department of Homeland Security

Andrew Davidson, Asylum Division Chief,  
Refugee, Asylum and International Affairs  
Directorate, Citizenship and Immigration  
Services United States Department of Homeland  
Security

Paul Ray, Administrator  
Office of Information & Regulatory Affairs  
Office of Management and Budget  
Executive Office of the President

July 24, 2020

**RE: Request to Provide a Minimum of 60 days for Public Comment in Response to the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (the Departments) Joint Notice of Proposed Rulemaking (NPRM): [Security Bars and Processing; RIN 1615-AC57/ Docket No. USCIS 2020-0013](#)**

Dear Attorney General Barr, Director McHenry, Assistant Director Reid, Acting Secretary Wolf, Senior Official Mizelle, Senior Official Cuccinelli, Division Chief Davidson, and Administrator Ray:

We, the undersigned organizations, write to urge the Departments to extend the current comment period and allow at least 60 days for public comment on the above referenced NPRM. We make this request due to the complexity of the rule, the critical interests it implicates, and the inherent challenges of meaningfully engaging in the public comment process during an unprecedented global pandemic.

On July 9, the Departments published the proposed rule, *Security Bars and Processing*, to make a number of fundamental changes to asylum processing and the immigration system in light of the COVID-19 pandemic and potentially other communicable diseases. In addition to barring [virtually every potential applicant for asylum](#) from relief based on the COVID-19 outbreak (as well as other communicable diseases), the rule would fundamentally alter the processing for applicants for withholding of removal and protection under the Convention Against Torture.

[Executive Order 12866](#) requires agencies to "...afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of *not less than 60 days*." [Executive Order 13563](#) likewise directs agencies to "...afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally

be *at least 60 days*.” There is no compelling reason to except the NPRM from the Executive Orders’ general rule of providing a minimum of 60 days for public comment. Rather, the highly technical, nuanced, legal and policy issues the NPRM addresses—and, above all, the severe human cost it is certain to inflict—illustrate why a minimum of 60 days must be allowed for the public to file comments in response to the rule. Despite this, the Departments have provided no justification for providing only 30 days for public comment.

The Departments do note that the NPRM would make “fundamental” changes to the immigration system and cite a “critical need to reduce the risk of further spread” of disease into the United States as justifications for the NPRM. However, the rule’s extensive proposed changes to the asylum process process are hardly needed at a time when [the border is closed to asylum seekers](#) indefinitely. Although the undersigned organizations have outstanding questions over consistency and appropriateness of current measures, Customs and Border Protection (CBP) has itself [said](#) it is able to “implement effective containment and mitigation strategies to fight COVID-19” that have allowed the agency to “dramatically reduce[] human contact, the risk of spread, and the strain on U.S. healthcare facilities.” Moreover, the NPRM claims that most traffic at the borders with Canada and Mexico has been limited since March 20, 2020. Given CBP’s purportedly “effective” response to the pandemic and the virtual elimination of asylum protections at the northern and southern U.S. borders - restrictions which were recently [extended](#) until at least August 20, 2020 -- there is no compelling reason for the Departments’ decision not to provide the public the standard length of time to comment on the NPRM.

Earlier this year, in light of the COVID-19 crisis, the [National Governors Association and state, local, and county organizations](#), as well as [twenty-two Senators](#) and [fourteen House Committee Chairs](#) urged the Office of Management and Budget (OMB) to immediately direct federal agencies to extend or postpone public comment periods to preserve the public’s right to fully engage in the administrative process as contemplated by our laws. [In response](#), the OMB Office of Information and Regulatory Affairs (OIRA) acknowledged that COVID-19 has disrupted the lives of those potentially responding to NPRMs. OIRA further advised that work must continue on regulations that “respond to the COVID-19 outbreak...support measures to secure the prosperity of American workers and small businesses, ... [and respond] to urgent needs.” Agencies could extend comment periods for certain NPRMs if, in consultation with OIRA, it determines that “the need to allow more time...*outweighs any need for urgency in the rulemaking*” (emphasis added) and OIRA staff are prepared to coordinate with agency staff “to evaluate these competing priorities.” Given the effective elimination of asylum protections at U.S. borders and the ongoing disruption caused by the pandemic, there is no reasonable justification for refusing to provide the public with sufficient time to engage in careful review and analysis of the rule contemplated by the Administrative Procedure Act (APA).

We respectfully request that the Departments extend the comment period to *a minimum* of 60 days and notify the public of such extension. To do otherwise violates the spirit and intent of the APA. Thank you in advance for your time and consideration of this request. Please contact Ursela Ojeda at Women’s Refugee Commission at [urselao@wrcommission.org](mailto:urselao@wrcommission.org) with any questions or concerns, and we look forward to your prompt response.

Sincerely,

National Organizations:

Amnesty International USA  
Asylum Seeker Advocacy Project (ASAP)  
AsylumWorks  
Catholic Legal Immigration Network, Inc.  
Center for Gender & Refugee Studies

Church World Service  
Freedom for Immigrants  
Harvard Immigration and Refugee Clinical Program  
Human Rights First  
Immigration Equality  
International Refugee Assistance Project  
International Rescue Committee  
Kids in Need of Defense  
Latin America Working Group (LAWG)  
National Immigrant Justice Center  
Oxfam America  
Refugees International  
Tahirih Justice Center  
The Advocates for Human Rights  
U.S. Committee for Refugees and Immigrants  
Women's Refugee Commission

State Organizations:

Capital Area Immigrants' Rights (CAIR) Coalition  
Center Global, a program of the DC Center for the LGBT Community  
Northern Illinois Justice for Our Neighbors  
The Florence Immigrant & Refugee Rights Project

Local Organizations:

Human Rights Initiative of North Texas  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Safe Horizon  
Sueños Sin Fronteras de Tejas  
University of the District of Columbia Law Immigration and Human Rights Clinic