Catholic Legal Immigration Network, Inc.
8455 Colesville Road, Ste. 960
Silver Spring MD 20910
(301) 565-4800

Submitted via Regulations.gov

May 10, 2025

Stephanie Gorman, Acting Assistant Director
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

Re: Reducing the Size of the Board of Immigration Appeals, EOIR Docket No. 25-AB34

Dear Ms. Gorman,

The Catholic Legal Immigration Network, Inc. (CLINIC)[1] submits these comments regarding the Interim Final Rule ("IFR") Reducing the Size of the Board of Immigration Appeals (BIA or Board) published in the Federal Register on April 14, 2025, under EOIR Docket No. 25-AB34. CLINIC strongly opposes this Interim Final Rule and urges the administration to rescind this rule immediately.

Embracing the Gospel value of welcoming the stranger, CLINIC has promoted the dignity and protected the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs since its founding in 1988. CLINIC's network, originally comprised of 17 programs, has now increased to 388 diocesan and community-based programs in 49 states and the District of Columbia. CLINIC is the largest nationwide network of nonprofit immigration programs. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year, thousands of them in removal proceedings.

CLINIC opposes the reduction of the size of the BIA, and we are particularly concerned about the increased politicization of EOIR, whose stated mission is to adjudicate immigration cases fairly. CLINIC has previously submitted comments concerning the politicization of the agency, opposing the creation of the Office of Policy within the Executive Office of Immigration Review (EOIR).[2] CLINIC opposes this rule because we believe it will create a greater strain on EOIR resources,

[1]Carolina Rivera Quintana, Federal Advocate and Liaison Attorney, Elizabeth Carlson, Supervising Senior Attorney, Rebecca Niblock, Supervisory Senior Attorney, and Karen Sullivan, Director of Advocacy, authored these comments.
[2] See CLINIC Submits Comment Opposing EOIR's Reorganization Interim Rule, Calls for Withdrawal, Oct. 18, 2019. https://www.cliniclegal.org/resources/federal-administrative-advocacy/clinic-submits-comment-opposing-eoirs-reorganization.

potentially increase the backlog of cases at the agency, and decrease the quality of the decisions issued.

I. Introduction and General Comments

The BIA has been down this road before, with disastrous consequences. In 2002 the Bush administration reduced the size of the BIA from 23 to 11 members, justifying the change by asserting that a larger size made it difficult for the BIA to reach a consensus on precedential decisions.[3] According to Paul Schmidt, who served as the BIA chairman from 1995 to 2001, the rationale of efficiency was a pretext to politicize the agency, by pushing out members appointed during the previous administration.[4]

When the BIA was reduced in the past, it created issues regarding case load, and the soundness of the agency's decisions suffered, setting off an uproar in the federal courts of appeals over the quality of the decisions issued, Schmidt said.[5]

CLINIC is concerned about this happening again. CLINIC is also worried about the politicization of this adjudicative body, and that appellate judges may modify their decision-making in an effort to protect their employment. Based on reporting, it appears that the size of the Board has *already* been reduced, with some members being reassigned to staff positions and others being let go entirely.[6] Reporting also suggests that every Board member appointed during the Biden administration is no longer employed in the appellate judge role. These include individuals with *decades* of experience in immigration law, including in both government roles and in direct representation of noncitizens in removal proceedings. It defies common-sense reasoning that an agency that is struggling with an enormous caseload would fire or reassign eminently qualified individuals—unless the goal of firing these individuals is not in fact to make matters more efficient but to bring the agency more in line with the ideological views of the current administration.

Reassigning Board members to staff positions or firing them entirely without clear reasoning creates distrust in the impartiality of the agency. CLINIC is worried about the cost this action will have for individuals with appeals pending, which currently can take up to five years to be adjudicated. This rule is not a genuine effort to improve efficiency—it is a politically motivated maneuver that undermines the BIA's independence, compromises decision quality, and fails to address the root causes of caseload delays. Rather than reducing the size of the BIA, the Department of Justice (DOJ) should have retained the existing appellate judges who were extremely qualified and should continue to invest in critical support staff to fulfill EOIR's mission of fair, expeditious, and uniform immigration adjudication.

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[3] Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 FR 54878 (August 26, 2002).
[4] Britain Eakin, *Trump Admin to Nearly Halve Immigration Appeals Board,* Law360, Feb. 20, 2025 at 9:27pm EST https://www.law360.com/publicpolicy/articles/2300903/trump-admin-to-nearly-halve-immigration-appeals-board
[5] *Id.*
[6] *Id.*

II. Politicization of the BIA Underlies the Rule

CLINIC fears that the proposed reduction in the BIA's members from 28 to 15 is not simply a logistical adjustment but a reflection of the politicization of the agency which is already underway. The changes embodied in this IFR risk exacerbating longstanding concerns about political interference in EOIR's decision-making. Indeed, since January 20, 2025, the agency has taken a combative and hostile stance towards noncitizens and those who serve them. This stance has included issuing a series of memos intended to make practice more difficult for advocates in immigration courts and to make immigration courtrooms more hostile to noncitizens. It has also included cutting EOIR funding for vital work that legal services providers offer every day to vulnerable populations in immigration court. It has also included the issuance of politically motivated decisions from the BIA, including the precedential decision in *Matter of A-A-R*, 29 I&N Dec. 38 (BIA 2025) which conveniently finds notoriously horrific Salvadoran prisons to be a comfortable place for noncitizens at the exact moment when this administration is illegally removing people there. These actions, together with this IFR, seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration's aggressively anti-immigrant views.

EOIR has historically been subject to significant political influence, given its dual role as both a quasi-judicial body and an administrative entity under the Department of Justice (DOJ). Unlike Article III courts, which are constitutionally independent, the BIA remains subordinate to the Attorney General (AG), a political appointee. This subordination allows the AG to issue binding directives, override Board decisions, and appoint or remove Board members. Over the decades, various administrations have used these powers to align the BIA's operations with their broader immigration policy objectives. By concentrating decision-making authority in a smaller group of judges, the rule increases the potential for ideological uniformity and reduces the likelihood of dissenting opinions.

In February of 2025, 9 of the 28 members of the BIA were removed; these judges were appointed under the Biden administration. Targeting Board members appointed by prior administrations indicates that the reduction is not merely about improving efficiency but rather a calculated effort to reshape the Board's ideological composition. The politicization of the BIA harms vulnerable populations, including asylum seekers, who rely on the Board to provide a meaningful review of immigration judges' decisions. Additionally, the dismissal of nine Board members appointed by the previous administration also raises concerns about the stability and reliability of BIA precedents. Precedential decisions are foundational to the practice of immigration law, providing guidance to practitioners, judges, and policymakers. However, when the composition of the Board changes based on political considerations, the consistency and credibility of these precedents are jeopardized.

a. This Interim Final Rule Contradicts the Reasoning of DOJ's Rule Expanding the Number of BIA Members in 2018 and 2020

DOJ's position has dramatically shifted in recent years. In 2020, the Department issued an IFR expanding the Board from 21 to 23 members specifically because EOIR faced record caseloads.[7]

[7] Expanding the Size of the Board of Immigration Appeals, 85 FR 18105 (May 1, 2020)

The rule warned that a Board of just 21 members would be "overwhelmed" and needed expansion to handle future appeals. These expansions were premised on the same basis: more immigration judges and more filings require more appellate judges. The DOJ, now, justifies reducing the BIA by citing improved cohesiveness and efficiency, but this contradicts its 2020 rationale for expanding the Board to address growing caseloads.

By contrast, the 2025 IFR asserts that *increasing* the Board did not increase productivity, and that a large Board is inefficient. Thus, DOJ now claims the Board was "too unwieldy," harmed collegiality and uniformity, and that 15 members is now "appropriate." This is directly at odds with DOJ's own reasoning just a few years ago. Expanding from 21 to 28 members, then reversing course, highlights a lack of consistent, data-driven analysis. For example, DOJ's 2020 analysis found that doubling appeals (from 35,000 to 70,000) warranted more members[8] yet the 2025 IFR ignores that caseload is even higher (113,000 appeals in FY2023) and instead attributes inefficiency to Board size alone.[9] Without explanation, the rule rejects past logic and fails to explain why a larger Board would reduce "cohesion," yet a smaller size would solve backlog problems. The sudden shift raises concerns about the motivation behind the change. Reducing the BIA to a smaller, ideologically uniform group consolidates power and risks further politicizing the process, undermining the Board's independence and due process for noncitizens.

III. Impact on Due Process, Caseload and Efficiency

Reducing the size of the Board will almost certainly harm litigants and undermine due process. With fewer Board members, there will be fewer panels each year and likely a return to the more frequent use of summary decisions that affirm Immigration Judge decisions without opinions. For example, when the Board was reduced in 2002 to clear a backlog, the caseload did decrease. However, by 2004, the Government Accountability Office reported that while the eventually declined, the rate of asylum appeals favorable to immigrants plummeted[10]—a troubling tradeoff in the name of "efficiency."

CLINIC is concerned that cutting the Board nearly in half will lead to a dramatic increase in cases decided through affirmance without opinion (AWO). While this may be counted as a success in reducing the backlog, the reality is that most noncitizens will be unable to pursue a petition for review (PFR), and many can be removed while their appeal is still pending. These outcomes would not serve justice or due process.

CLINIC believes the answer to the overwhelming backlog is the hiring of more support staff and implementing better systems rather than reducing the Board's members. Appeals have continued to become more complex, with evolving humanitarian and asylum law, involving nuanced statutory interpretation. Such complexity demands specialized staff and stable, diverse Board panels, and not a smaller decision-making pool. This will have an adverse impact on noncitizens and practitioners. For noncitizens, lengthening wait times for adjudications will intensify

[8] *Id.*
[9] Reducing the Size of the Board of Immigration Appeals, 90 Fed. Reg. 70, Apr. 14, 2025 (to be codified at 8 C.F.R. Prt. 1003).
[10] GAO-08-940, *See chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.gao.gov/assets/gao-08-940.pdf*

uncertainty and mental stress. For practitioners, especially those who practice in the nonprofit sector—like CLINIC affiliates—this approach reduces predictability, inflating pro bono burdens and complicating case strategy.

IV. The Process by Which the Agency Promulgated the IFR is Troubling

CLINIC is concerned that the Department of Justice did not seek external stakeholder input prior to the effective date of the interim rule, April 14, 2025. Failure to seek stakeholder input indicates that the agency has devalued transparency. The regulation does not represent an administrative, even perfunctory, change. Instead, the interim rule minimizes the significance of restructuring that bakes political decision-making into the structure of EOIR.

Reducing the size of the Board is a consequential change far beyond the seemingly bureaucratic reasons given in the Interim Rule. CLINIC is troubled by the agency's decision to make such significant changes without seeking public input before the rule's effective date.

According to the legislative history of the Administrative Procedure Act, "[matters] of great importance, or those where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures."[11] Indeed, the Administrative Procedures Act creates only limited exceptions to the requirement that rules go through Notice and Comment.[12]

As explained above, EOIR's interim rule includes matters of great importance and affects the due process rights of the individuals who appear in proceedings before the agency. Public input on the impact of this change is essential to proper agency decision-making. Accordingly, EOIR's change should have gone through notice and comment rulemaking under the Administrative Procedure Act, rather than being treated as a rule of management or personnel.[13] Similarly, this rule should not be exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date, as it substantially impacts the individuals who appear before the agency.

V. Conclusion

CLINIC strongly opposes the IFR Reducing the Size of the Board of Immigration Appeals, as the reduction will not increase the Board's ability to "more quickly, effectively, and consistently issue precedent decisions."[14] Instead, the primary reason for reducing the number of Board members seems to be to increase the concentration of BIA members ideologically aligned with the administration's goals—prioritizing speed over due process and deportation over fair adjudication of cases.

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[11] Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, CONGRESSIONAL RESEARCH SERVICE (March 27, 2017), https://fas.org/sgp/crs/misc/R41546.pdf.
[12] *See* 5 U.S.C. § 553.
[13] *Id.*
[14] Reducing the Size of the Board of Immigration Appeals, 90 Fed. Reg. 70, Apr. 14, 2025 (to be codified at 8 C.F.R. Prt. 1003).

This is the same concern CLINIC had in 2020 when the administration expanded the Board on two occasions. These changes in numbers appear to merely be a tactic to align the agency with the administration's agenda, not allowing the Board to have an independent adjudicative stance.

We urge the administration to rescind this rule and instead focus on policies that promote fairness, inclusion, and efficiency, in line with the nation's core democratic values and commitment to justice for all. CLINIC also urges the agency to increase support staff who are hired through a fair, equitable, and nonpartisan process in order to ensure due process and fairness in adjudication.

Thank you for your consideration of these comments. Please do not hesitate to contact Karen Sullivan, Director of Advocacy, at ksullivan@cliniclegal.org, with any questions or concerns about our recommendations.

Sincerely,

Anna Gallagher
Executive Director