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Office of Regulatory Affairs and Policy
U.S. Immigration and Customs Enforcement
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**Re: Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations,
Docket No. ICEB-2025-0034, Rin 1653-AA96, Dir. Order No. 01-2025, RIN 1125-AB36**

The Catholic Legal Immigration Network, Inc. (CLINIC)¹ submits these comments regarding the Interim Final Rule (“IFR”) on the Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations published in the Federal Register on June 27, 2025, under DHS Docket No. ICEB-2025-0034. 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 approximately 400 diocesan and community-based programs in 48 states and the District of Columbia. CLINIC is the largest nationwide network of nonprofit immigration legal services programs. Through its affiliates, CLINIC advocates for the just and humane treatment of noncitizens through representation in proceedings before immigration agencies.

The Executive Order titled “Protecting the American People Against Invasion” directs the Secretary of Department of Homeland Security (DHS) to take all appropriate actions to ensure the assessment and collection of fines and penalties from noncitizens present in the United States without authorization through

¹ Kerry McGuire, Senior Attorney, authored these comments with the support of Elnora Bassey, Policy Attorney, and Kristin De La Vega, Litigation Attorney.

the use of enforcement and lawful incentives.² This rule eliminates due process afforded to noncitizens in the assessment and collection of civil fines related to voluntary departure, orders of removal, and entering the United States without inspection. CLINIC opposes this rule because of the financial burden it will place on vulnerable noncitizens, some of whom have a lawful pathway to remain in the United States. The process imposed by this rule is cruel and unnecessarily adds on to the already disproportionately harsh consequences of certain immigration violations.

I. CLINIC Opposes the Restructuring of Civil Fines Collection Such that It Deprives Noncitizens of Due Process and Will Disproportionately Harm Vulnerable Groups.

The restructured civil fine process in this Interim Final Rule (IFR) raises serious concerns about due process afforded to noncitizens. The IFR creates a new, streamlined process for collecting Civil Fines related to Failure to Depart following an order of Voluntary Departure, Failure to Depart following an order of Removal, and unlawful entry into the United States.³ Prior to this IFR, a DHS employee issued a Notice of Intent to Fine by personal service or certified mail to a noncitizen who was alleged to have voluntarily remained in the country following a period of voluntary departure or an order of removal.⁴ The noncitizen then had 30 days to respond to the Notice of Intent to Fine.⁵ The response period could be extended beyond 30 days for good cause.⁶ Additionally, the noncitizen could request an interview in relation to the fine.⁷ Following the response, interview, or lapse of the 30-day period, an immigration officer prepared a report for review by another official who ultimately decided whether the fine would be issued.⁸ If fined, the noncitizen was afforded the opportunity to appeal the decision to the Board of Immigration Appeals (BIA).⁹ During that appeal, the DHS could reconsider the civil fine.¹⁰

The proposed process lacks any pretext of procedural fairness. The process is now delegated to an Enforcement and Removal Operations (ERO) officer, who initiates the civil fine process. Rather than issue a Notice of Intent to Fine, the ERO officer issues the fine itself. The fine is then served on the noncitizen by ordinary mail. The IFR requires a description of the reasons supporting the issuance of the fine, but it does not require that any supporting documentary evidence be included with the fine. The noncitizen is then given 15 days from the date of service of that decision to appeal the decision. Appeal may only be made in writing and without the benefit of reviewing detrimental evidence. There are no exceptions to the 15-day deadline. A supervisory DHS officer adjudicates the appeal. The supervisory officer's decision is final.

The civil fines are designed to punish noncitizens and to encourage them to self-deport.¹¹ Given the seriousness of the penalty, the government must carry the burden by "clear, unequivocal, and convincing

² Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 29, 2025), *see* <https://www.federalregister.gov/documents/2025/01/29/2025-02006/protecting-the-american-people-against-invasion>.

³ INA § 240B(d), 8 U.S.C. § 1229c(d); INA § 274D(a)(1); 8 U.S.C. § 1324(a); INA § 275(b), 8 U.S.C. § 1325(b).

⁴ 8 C.F.R. § 280.1; 8 C.F.R. § 280.11.

⁵ 8 C.F.R. § 280.12.

⁶ *Id.*

⁷ *Id.*

⁸ 8 C.F.R. § 280.13.

⁹ 8 C.F.R. § 280.1 8 C.F.R. § 1003.3(a)(2).

¹⁰ 8 C.F.R. § 1003.5(b).

¹¹ *See* Presidential Proclamation, *Establishing Project Homecoming* (May 9, 2025) section 3 (including penalties for failing to depart include fines, garnishment of wages, and confiscation of savings and personal property, including homes and vehicles), <https://www.whitehouse.gov/presidential-actions/2025/05/establishing-project-homecoming/>; *see also* Hamed Aleaziz, *Trump's New Penalty for Undocumented Immigrants: Billions of Dollars in Fines*, N.Y.

evidence.”¹² The process proposed fails to provide any process that should be afforded in a quasi-criminal proceeding.¹³ The decision to fine and appeal of that decision lacks impartiality as required by the Supreme Court.¹⁴ This requirement is firmly rooted in the guarantee “that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law.”¹⁵ Moreover, due process requires notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”¹⁶ Based on these principles, U.S. federal law requires that sanctions must include a complete record available to the parties.¹⁷ The process proposed by the IFR places little burden on the government, lacks an impartial adjudicator, provides severely inadequate notice, and violates U.S. federal law. The IFR benefits only DHS by eliminating any obligation to provide notice or process.

a. The fixed 15-day appeal period will prevent noncitizens from contesting civil fines.

The IFR repeatedly justifies its new process as the sole method in which to “ensure that procedures can be applied efficiently and at scale.”¹⁸ Under the guise of efficiency, this IFR reduces the initial 30-day response period to a mere 15-day appeal period but fails to provide any meaningful explanation for how this new appeal period can increase efficiency. This appeal period is designed to make it nearly impossible for noncitizens to challenge any incorrectly assessed fine.

The IFR lacks any language accommodation for noncitizens. Of the 157,577 removal orders issued 2025 so far, only 3,580 were issued to English-speakers.¹⁹ Approximately 98% of removal orders were issued with the assistance of the interpreter. DHS does not provide data on languages spoken by individuals who would be targeted by civil fines. Based on information available from the courts, a significant number of individuals who remain in the United States will speak a language other than English, creating a barrier to responding to a civil fine.

Additionally, the IFR assumes that any noncitizen cited with a civil fine “will ordinarily possess the necessary information to quickly contest a decision,” and yet does not provide any support for this assertion.²⁰ The IFR provides examples of medical records, criminal records related to detention, and documentation of attempts to obtain travel documents. The IFR provides no basis for the contention that these documents are readily available. In fact, obtaining these documents can be onerous and time-consuming:

- *Medical Records:* While some medical records are available online, many health networks cite a 7-14 business day turnaround to provide medical records. Federal law requires medical records to be

Times (May 22, 2025) <https://www.nytimes.com/2025/05/22/us/politics/trump-administration-fine-undocument-immigrants.html>; Reuters, *4,500 migrants told to pay fines up to \$1.8 million*, NBC News (May 20, 2025), <https://www.nbcnews.com/news/latino/4500-migrants-told-pay-fines-ranging-18-million-rcna207958>.

¹² See *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 277 (1964) (providing “clear, unequivocal, and convincing evidence” as the standard of proof in deportation hearing in light of the seriousness of the penalty).

¹³ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

¹⁴ *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972); *Tumey v. Ohio*, 273 U.S. 510, 522 (1927).

¹⁵ *Marshall v. Jerico, Inc.*, 446 U.S. 238, 242 (1980).

¹⁶ *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

¹⁷ 5 U.S.C. § 556.

¹⁸ Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439-01 at 27444.

¹⁹ Table 2. Removal Orders and Representation for the Top 10 Spoken Languages in Immigration Court in FY 2025, available at <https://tracreports.org/reports/757/> (accessed July 10, 2025).

²⁰ Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439-01 at 27450.

processed in 30 days, exceeding the 15-day appeal window.²¹ Even if a noncitizen were to request medical records immediately, federal law does not guarantee that those records would be available within 15 days.

- *State and Local Records of incarceration:* There is no nationally standardized recordkeeping system for state, county, and local prisons and jails. It is unlikely that an individual released from prison or jail will be released with a record that would satisfy the appeal requirements of this rule. There is no federal or state law which guarantees that these records would be available to contest a civil fine. In fact, many jurisdictions are unable to accommodate requests for records within two weeks. For example, the Dallas Police Department, the L.A. Police Department, and the Chicago Police department will take approximately 4 months to respond to records requests.²² There is up to a sixty-day waiting period for traffic crash reports in certain cities like L.A. and Miami.²³
- *Court Records:* Federal court records are available online through the PACER system. However, this system requires online registration in English and will charge an individual depending on the size of the records.²⁴ State courts often process records requests on a slower timeline. The average turnaround time for a record request is 7 to 14 business days for non-archived records. Archived records can take two to six weeks. County and city courts have the slowest turnaround times. The average processing time for records request is approximately two to four weeks. Archived or sealed records can take up to six weeks.²⁵
- *Travel documents:* Obtaining travel documents is not a straightforward process. Many countries' embassies are limited to Washington D.C. This puts a greater burden on noncitizens who have not yet been able to travel across the country to attend a required in-person appointment.²⁶ Additionally, individuals whose citizenship is not recognized by a country may be unable to secure an appointment at an Embassy or consulate.

²¹ <https://www.hhs.gov/hipaa/for-professionals/faq/2050/how-timely-must-a-covered-entity-be/index.html>; See, e.g., <https://www.emoryhealthcare.org/patients-visitors/medical-records/medical-records-faq.html> (last accessed July 11, 2025).

²² See, e.g., <https://southsideweekly.com/cpd-routinely-denies-foia-requests-for-dubious-reasons/> (last accessed July 11, 2025), <https://www.aclusocal.org/en/know-your-rights/access-ca-police-records#:~:text=When%20should%20I%20expect%20a,they%20are%20claiming%20any%20exemptions.&text=An%20agency%20can%20ask%20for,the%20release%20of%20these%20documents.&text=How%20long%20the%20a gency%20can,the%20criminal%20case%20has%20ended.> (last accessed July 11, 2025).
<https://www.lapdonline.org/how-can-i-get-a-copy-of-a-police-report> (last accessed July 11, 2025).

²³ See, <https://www.citynmb.com/559/Request-a-Police-Record> (permitting access within 60 days of a crash to certain qualified individuals) (last accessed July 11, 2025), <https://www.avrek.com/blog/lapd-traffic-collision-report/> (last accessed July 11, 2025),
<https://www.houstonchronicle.com/news/houston-texas/crime/article/hpd-records-request-division-lawyer-backlog-20381815.php> (last accessed July 11, 2025).

²⁴ <https://pacer.uscourts.gov/register-account/pacer-case-search-only> (last accessed July 11, 2025).

²⁵ See, e.g., <https://www.occourts.org/divisions/criminal/copy-and-record-search-requests-criminal> (last accessed July 10, 2025), <https://www.open-dc.gov/freedom-information-act> (last accessed July 10, 2025), <https://www.browardclerk.org/GeneralInformation/RecordsRequest/> (last accessed July 10, 2025).

²⁶ See, e.g. <https://sudanembassy.org/passport-renewal/> (last accessed July 11, 2025) (requiring an applicant to appear in person in Washington, D.C.)

According to the US postal service, first class mail ordinarily takes 1-5 business days to reach its destination.²⁷ Assuming no delay beyond this average delivery time, a noncitizen may only have 10 days to appeal a civil fine by the time that it is received. If the fine is sent in advance of a weekend, the noncitizen may only be left with 8 days to appeal a civil fine. The IFR's 15-day appeal period does not take into account the time that is often required to obtain assistance to review a document in English, gather appropriate evidence, and seek representation. Because extensions are prohibited, this rule is clearly designed to prevent as many noncitizens from contesting the civil fines as possible.

b. *Civil Fine Forgiveness Is Not as Widely Available as the IFR Suggests.*

The Executive Order directs the DHS to create incentives for deportation. Here, the IFR suggests that forgiveness offered through the CBP Home app is an appropriate and available incentive.²⁸ This program is not available to all noncitizens.²⁹ As of July 2025, the app is only available to three categories of noncitizens: (1) those who entered at a port-of-entry, (2) those who arrived through a categorical parole program, and (3) those whose Temporary Protected Status (TPS) has been terminated.³⁰ This incentive is not available to all noncitizens who could be subject to a civil fine.

c. *By Eliminating BIA Review, Noncitizens Will Have no Meaningful Way to Challenge Arbitrary Decisions*

The IFR justifies the removal BIA review by citing to the BIA's backlog of cases and alleging that the BIA has "no experience adjudicating civil fines."³¹ The backlog is a problem of the U.S. Attorney General's own making. At the beginning of 2025, the Board consisted of 26 members.³² The Board completed a record number of decisions in 2024.³³ There are now 11 Board members.³⁴ The Attorney General has hampered the Board's ability to address both the backlog and future cases before it.

It's wholly inaccurate to say that the Board does not have expertise to adjudicate civil fines. The DHS itself has admittedly even more limited experience adjudicating civil fines. In fact, the IFR must rely on published BIA precedent to determine how a civil fine should be assessed.³⁵ Furthermore, the BIA has a well-established process to adjudicate cases and publish cases that address emerging legal issues.³⁶ The DHS has limited experience with civil fines and has no established adjudication procedures. Furthermore, nothing in the IFR requires the DHS to make civil fine decisions public. The process proposed is opaque and will lead

²⁷ <https://www.usps.com/ship/mail-shipping-services.htm> (last accessed July 10, 2025).

²⁸ Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439-01 at 27442.

²⁹ <https://www.dhs.gov/cbphome> (last accessed July 10, 2025).

³⁰ <https://www.dhs.gov/cbphome> (last accessed July 10, 2025).

³¹ Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439-01 at 27445, 27453.

³² <https://web.archive.org/web/20250115102525/https://www.justice.gov/eoir/board-of-immigration-appeals>.

³³ <https://www.justice.gov/eoir/workload-and-adjudication-statistics>, (last accessed July 11, 2025).

³⁴ <https://www.justice.gov/eoir/board-of-immigration-appeals>, (last accessed July 11, 2025).

³⁵ Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439-01 at 27443 ("Given the straightforward and readily determinable nature of the failure-to-depart penalties, DHS anticipates that aliens will have limited grounds to contest them. For civil penalties under section 240B(d) of the INA, 8 U.S.C. 1229c(d), the BIA has held that an alien's ability to challenge his failure to depart is "limited to situations in which an alien, through no fault of his or her own, is unaware of the voluntary departure order or is physically unable to depart." *Matter of Zmijewska*, 24 I&N Dec. 87, 94 (BIA 2007)).

³⁶ 8 C.F.R. § 1003.1

to arbitrary application of law to the civil fines appeals process. By removing this layer of appeal, the IFR creates a fast track to civil fines.

II. CLINIC warns about the Disproportionate Effect on Vulnerable Populations

This Rule will place extreme financial hardship on vulnerable groups of noncitizens who are either lawfully present in the United States or seeking relief which will permit them to reside lawfully in the United States following an order of removal. Vulnerable populations, including survivors of domestic violence, those with limited English proficiency, victims of trafficking, and minors will likely be unable to meet the 15-day deadline and will not be able to seek an exception. For example, a VAWA petitioner who escapes an abusive partner may benefit from deferred action to remain in the United States. However, financial barriers can make it more difficult to leave an abusive partner. An abusive partner could prevent an individual from seeking representation for a civil fine. If imposed, a civil fine will create yet another barrier to escaping domestic violence. Traffickers often employ threats of immigration enforcement to maintain control over their victims. T nonimmigrant status permits a trafficking victim to remain in the United States, and it even cancels an expedited removal order.³⁷ However, a large civil fine can be an obstacle to escaping trafficker and may even coerce a victim to remain under the control of their trafficker. The IFR lacks any accommodation to vulnerable groups and its strict 15-day appeal period will necessarily harm vulnerable groups who are unable to meet this deadline.

III. The DHS's justifications for rule changes are self-contradictory.

The justifications for the IFR are self-contradictory and undermine the IFR in two ways. First, the DHS itself acknowledges that its records do not reliably indicate which noncitizens actually remain in the United States.³⁸ In creating this large-scale process, the DHS cannot verify whether these resources can or should be spent fining individuals who may or may not be present in the United States. The DHS plans to move as quickly as possible to send unpaid fines to collection through the Department of Treasury. If the DHS itself cannot verify the physical presence of individuals fined, forwarding any fines for collection to the Department of Treasury will be a waste of government time and resources.

Additionally, the DHS contends that personal service is too onerous of a requirement and that staff resources are wasted by use of certified mail. Yet, the DHS also states that individuals with orders of removal regularly attend check-ins with ICE. It's unclear why fines cannot be served at check-ins. Moreover, the IFR fails to explain how ordinary mail service saves money and staff time.

IV. Conclusion

CLINIC strongly opposes the IFR. It should be rescinded immediately. This Rule tramples any due process protection that was previously available in an effort to incentive noncitizens to self-deport, regardless of any pathway to lawful status they may have. Undoubtedly the streamlined process will prevent many noncitizens from effectively challenging the imposition of a fine and will harm vulnerable groups who have lawful pathways to remain in the United States. Accordingly, we are opposed.

³⁷ 8 C.F.R. § 214.204(o)(1).

³⁸ Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439-01 at 27443 (“DHS is often able to verify whether the alien received notice of the removal or voluntary departure order.”).

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,

A handwritten signature in blue ink that reads "Anna Gallagher". The signature is written in a cursive, flowing style.

Anna Gallagher
Executive Director