**\*\*\*TEMPLATE COMMENT IS INTENDED FOR MODIFICATION BY YOUR ORGANZATION. FINAL COMMENT SHOULD BE PLACED ON YOUR ORGANIZATION’S LETTERHEAD, SIGNED, AND SUBMITTED DIRECTLY BY THE COMMENTING ORGANIZATION TO THE GOVERNMENT\*\*\***

[Add current date here]

*Submitted via www.regulations.gov*

Lauren Alder Reid

Assistant Director, Office of Policy

Executive Office for Immigration Review

U.S. Department of Justice

5107 Leesburg Pike, Suite 2616

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**Re: RIN No. 1125-AA85 or EOIR Docket No. 18-0502, Comments in Response to the Interim Rule Reorganizing the Executive Office for Immigration Review**

Dear Assistant Director Alder Reid:

On behalf of [full name of your organization], we are writing in response to the Justice Department’s Interim Rule that became effective on August 26, 2019 and changes the organization of the Executive Office for Immigration Review (“Interim Rule”).

[INSERT brief paragraph about your organization, why this is particularly relevant to your organization.]

We are writing to express our strong opposition to the Justice Department’s establishment of the Office of Policy as an official component to the Executive Office for Immigration Review (EOIR), the transfer of the Office of Legal Access Programs (OLAP) to this Office of Policy, and the delegation of authority from the Attorney General to the Director of EOIR, allowing him or her to adjudicate certain Board of Immigration Appeals (BIA) cases. We respectfully request that these provisions of the Interim Rule be rescinded and for the Justice Department to reconsider its attempts to weaken the independence of the immigration courts and erode access to counsel.

**I. General Comments and Faith Perspectives**

As a [name of religion/denomination] organization providing legal and social services to immigrants, we object to the Interim Rule based on its lack of justification, legal deficiencies, and the moral implications involved.

Our identity as a faith-based organization and Catholic Social Teachings guide our work and our position that we as a nation must welcome immigrants, no matter their national origin or socioeconomic status, out of respect for the dignity of the human person. Our welcome must include immigrant’s access to legal representation as they navigate our complex and rapidly changing immigration system. Pope Francis has said, “Migrants trust that they will encounter acceptance, solidarity, and help, that they will meet people who will sympathize with the distress and tragedy experienced by others, recognize the values and resources the latter have to offer, and are open to sharing humanly and materially with the needy and disadvantaged.” Our non-profit organization is whole-heartedly committed to these principles, welcoming and serving our neighbors throughout their immigrant journey.

Moreover, the Catholic tradition teaches that human dignity can be protected and a healthy community can be achieved only if human rights are protected and responsibilities are met. In the Book of [Isaiah](http://www.usccb.org/bible/isaiah/1:16), we are taught to “seek justice, rescue the oppressed, defend the orphan, plead for the widow.”[[1]](#footnote-1) A just and fair immigration court system allows those seeking safety to have a full and fair opportunity to make their claim. Allowing political forces to intervene in life or death case adjudications, shaping precedent and the law undermines justice and is inconsistent with these teachings.

Furthermore, EOIR already serves a vital adjudicative role that leaves no room for a policy office, and having EOIR issue policy decisions inappropriately entangles adjudicative and policy functions. The Office of Policy should not be made permanent by regulations. EOIR houses the trial-level immigration judges and the Board of Immigration Appeals. As such, the purpose of EOIR is to provide case-by-case adjudication of noncitizens’ removal proceedings and claims for relief. There is no reason for an adjudicatory branch of an agency—an administrative court—to have a policy office. EOIR’s role is adjudicative, not policy-oriented. Establishing an Office of Policy within EOIR politicizes a branch of government that should be free from politics. We strongly oppose the establishment of an Office of Policy.

**II. Our Organization Strongly Opposes Moving the Office of Legal Access Programs under the EOIR Office of Policy.**

The Interim Rule’s transfer of OLAP’s responsibilities to a division in the Office of Policy and elimination of references to OLAP is of great concern to our organization. The Office of Policy is responsible for policy and regulations, not programmatic functions such as administering legal orientation programs. The Interim Rule claims that “this move ensures an appropriate chain of command and better management of OLAP’s programs.” However, the management of programs that involve administering Congressionally appropriated funds and managing federal grants is out of scope for a federal agency policy office.

Given the Office of Policy’s recent history and relationship with migrants,[[2]](#footnote-2) we are concerned that moving OLAP under the Office of Policy will be a first step towards reducing access to counsel rather than expanding it. OLAP’s mission includes “increasing access to information and raising the level of representation,”[[3]](#footnote-3) which clashes with the Justice Department’s previous efforts to restrict know your rights trainings for detained noncitizens.[[4]](#footnote-4) This tension will only be exacerbated by the reorganization plan as it currently stands.

Thus, the Office of Legal Access Programs should be restored to an independent and fully-resourced office under the EOIR Director.

**III. The R&A Program Tremendously Benefits Our Organization, Community, and Immigration System.**

The Department of Justice’s Recognition and Accreditation (R&A) Program “aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice.”[[5]](#footnote-5) Our organization embodies this mission and relies on the R&A program to meet the demands for vital immigration legal services in our community.

[INSERT paragraph describing your organization’s use of the R&A program.

* Explain how your organization currently benefits from the R&A program
* What would the impact of any changes to the R&A program be on your organization?
* Consider including client stories that show how essential it is to have representation, and how your organization can provide representation through knowledgeable accredited representatives.
* Describe the types of applications or petitions that most of your clients file with the assistance of accredited representatives.]
* Describe why your organization does the type of work it does, including the faith-based reason for your work (if applicable)

Our sincere goal has been to help all those who need it, but we can only meet the demand for services through the R&A program. There simply are not enough immigration attorneys in the region where our office is located to provide necessary immigration services, so without our office’s accreditation, people will fall through the gaps. Our accreditation allows us to meet the needs of varied populations such as families seeking to reunify with loved ones abroad, people who need to extend their work permits, citizens sponsoring spouses, and green card holders wishing to naturalize. The need for affordable services is particularly acute for low-income and vulnerable populations such as survivors of violence. The R&A program allows us to provide those services and more.

We fear that if these programs are cut back, or even if the Office of Policy does not prioritize adjudicating R&A applications, many people will suffer. Every day immigration law becomes more complicated and no one should have to go through removal proceedings or file applications for immigration benefits without competent representation. Without a commitment to the R&A program, some people will be forced to proceed without any legal counsel, and others will fall victim to “notarios” and other unscrupulous providers who charge exorbitant fees and often do not have any training in or understanding of immigration law.

Our services benefit not only our clients, but also our immediate community and the larger immigration system. When members of our community have accurate information about their immigration options and status, they are less likely to seek “notarios” or to fall victim to scams. Additionally, employers benefit when their employees’ work permits are renewed on time, and higher educational institutions benefit when their students can register on time and access in-state tuition and financial aid. Finally, the larger immigration system benefits when applicants are not trying to navigate often complex and multi-step processes without representation. Our immigration filings conform to USCIS or EOIR requirements and are well organized, allowing these agencies to more efficiently review and process the filings.

Our agency could not do this work without our R&A credentials. Therefore, our clients and we have a vested interest in ensuring the R&A program is independent of political influence and is properly resourced to continue to carry out its mission.

**IV. The Director of EOIR Lacks the Expertise to Issue Precedential Adjudicative Decisions.**

We oppose changes to the regulations that will allow the EOIR Director to issue precedential decisions. Board of Immigration Appeals (BIA) members are career government employees with extensive knowledge of and experience in immigration law. Under current regulations, three BIA members must adjudicate a case in order to issue a precedential decision. This process, similar to the appellate process in federal circuit courts, allows for thoughtful deliberation before the BIA issues a precedential decision which will be binding on every immigration judge and Department of Homeland Security officer throughout the country.

The interim rule would enable the EOIR Director, acting alone, to similarly issue decisions that may be heavily influenced by the current political climate. This would directly affect our clients and our ability to provide direct services to our clients. The stakes are too high in immigration law to allow one person to have this much power. The lives and welfare of our clients depend upon binding decisions issued by a panel of experts, not the decisions of a single administrative director.

**V. EOIR’s Reorganization through Interim Rule Violates the Administrative Procedures Act.**

Unless there is an urgent need to publish regulations quickly, the Administrative Procedures Act requires regulations to go through a Notice of Public Rule-Making (NPRM) process, which allows the public to comment, and requires the agency to respond substantively to the comments. Here, EOIR claims that these regulations do not affect the general public and only affect the agency’s internal organization, so they do not require an NPRM process. As discussed above, this rule enacts major changes to the immigration adjudicatory system, and these changes will directly and irrevocably affect our organization and our clients. There was no reason for EOIR to fast-track this regulation and issue it through an interim final rule. The public should have had an opportunity to be heard before EOIR made these significant changes.

**VI. Conclusion**

For the above stated reasons, [YOUR ORGANIZATION NAME] strongly opposes [insert a phrase or two explaining what your organization most opposes. Examples include “moving OLAP to the Office of Policy” and “allowing the EOIR Director to adjudicate long pending BIA”] cases. These changes will not improve administrative efficiency. Instead, the proposed reorganization unnecessarily and impermissibly politicizes impartial adjudication and creates additional barriers for low-income immigrants seeking access to justice.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact [Insert contact’s name] should you have any questions about our comments or require further information.

Name

Title

[Insert contact information and add signature line if desired.]

1. *Isaiah* 1:17 (NRSV). [↑](#footnote-ref-1)
2. *See* Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019) (to be codified at 8 C.F.R. 208, 10003, 1208) (barring migrants at the southern border of the United States from eligibility for asylum if the migrants passed through a third country en route to the United States without applying for asylum in that third country and being denied). [↑](#footnote-ref-2)
3. *Office of Legal Access Programs*, Dep’t of Justice, https://www.justice.gov/eoir/office-of-legal-access-programs (last accessed Sep. 27, 2019). [↑](#footnote-ref-3)
4. Vanessa Romo, *Justice Department Will Pause A Legal Advice Program For Detained Immigrants*, NPR (Apr. 12, 2018, 6:33 PM), https://www.npr.org/sections/thetwo-way/2018/04/12/601642556/justice-department-will-pause-a-legal-advice-program-for-detained-immigrants. [↑](#footnote-ref-4)
5. *Recognition & Accreditation (R&A) Program*, Dep’t of Justice, https://www.justice.gov/eoir/recognition-and-accreditation-program (last accessed Sept. 27, 2019). [↑](#footnote-ref-5)