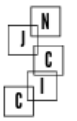

THE NJ CONSORTIUM FOR IMMIGRANT CHILDREN

Submitted via www.regulations.gov

December 23, 2020

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RE: RIN 1125-AB03, EOIR Docket No. 19-0410, Dir. Order No. 02-2021, Public Comment Opposing Proposed Executive Office for Immigration Review Rule Titled "Good Cause for a Continuance in Immigration Proceedings"

Our organization, the New Jersey Consortium for Immigrant Children, urges the Executive Office for Immigration Review (EOIR) to withdraw these proposed rules in their entirety. Though the proposed rules would work an unacceptable injury to the due process rights of all immigrants, they would be particularly prejudicial to the group our coalition members work most closely with: young immigrants, including those seeking Special Immigrant Juvenile Status (SIJS), asylum, and Deferred Action for Childhood Arrivals (DACA). The proposed rule would warp the statutory scheme for granting SIJS visas, leading to the removal of many SIJS-approved or -eligible youth whom Congress clearly intended to protect. It will also strip unaccompanied alien children (UACs) of their right to an asylum adjudication by USCIS and make it virtually impossible for youth in immigration proceedings to pursue DACA. The burden of the new rule will fall most squarely on a group, children, that Congress has repeatedly said deserves special protection. [1]

The NJ Consortium for Immigrant Children is a coalition of attorneys, young immigrants, and their families dedicated to achieving lawful immigration status for New Jersey's 110,000 undocumented immigrant youth. The Consortium's membership includes more than 50 attorneys from nearly 20 nonprofit legal service providers, advocacy organizations, law firms, and universities in New Jersey. They collectively provide direct representation to hundreds of immigrant children every year.

SIJS is one of the key forms of relief our members seek for their young clients. Every eligible applicant for SIJS has first obtained a state court order finding that reunification with one or both of the juvenile's parents is not viable because of abuse, neglect, abandonment or something similar; likewise, a state court has found in every case that it would not be in the best interest of the child to be returned to his or her country of origin. Having mandated these findings as a condition of SIJS-eligibility, Congress created a pathway to lawful permanent residency for SIJS beneficiaries by removing the most common barriers to adjustment of status. The idea was to keep these children in the United States

because, by definition, they cannot be safely repatriated. Due to visa backlogs, however, many immigrant children must wait years for a visa to become available so that they can adjust status. Continuances are the primary tool for keeping SIJS beneficiaries safely in the United States while they wait for visas.

Our members also work with hundreds of applicants for DACA every year. Like SIJS applicants, DACA applicants rely on the availability of continuances to secure deferred action that can help them avert a final order of removal. Finally, many of our members' clients are UACs who request continuances so that their applications can first be heard by USCIS, as is their statutory right.

The proposed rule contains numerous unacceptable provisions that would injure the Due Process rights of noncitizens in immigration court. Several provisions, however, stand out as particularly injurious to hundreds of our clients:

- **Proposed 8 CFR § 1003.29(b)(3)(i), (ii)** would bar Special Immigrant Juvenile Status applicants from receiving continuances. For SIJS applicants who are subject to the visa backlog, including those from El Salvador, Honduras, Guatemala, and Mexico, the rule would functionally prohibit them from securing a visa through SIJS *even though Congress created SIJS for the purpose of keeping eligible children safely in the United States.* Thousands of youth with approved SIJS, including clients of some of our members, could be deported from the United States as a result of this regulatory change. The proposed rule would subvert congressional intent and cruelly endanger the lives of our members' clients. It would also force our members to jump through numerous hurdles and waste resources to prevent the deportation of SIJS-eligible clients, including forcing them to file appeals of removal orders in these cases and then subsequent motions to reopen when the priority date becomes current.
- **Proposed 8 CFR § 1003.29(b)(3)(v)** would prejudice UACs filing asylum applications with USCIS by allowing IJs to deny continuances if they decide that the person has not shown *prima facie* eligibility for the benefit, if the person has any other relief pending before the IJ, or if pleadings have not yet been taken. This is despite the fact that UACs have a statutory right to first have their case heard by an asylum officer.[2] Again, the proposed regulation directly conflicts with the text of a congressional statute.
- **Proposed 8 CFR § 1003.29(b)(2)** would harm our DACA-eligible clients by explicitly indicating that a request to seek deferred action is not good cause for a continuance. This would allow IJs to enter removal orders against our DACA-eligible clients, again requiring our members to jump through repeated hurdles to ensure that these clients are not removed despite their eligibility for relief. Continuances are particularly necessary for this population given that the Trump administration previously eliminated other available tools, such as administrative closure, through *Matter of Castro-Tum* and final regulations, and discretionary termination in the absence of DHS joinder, through *Matter of S-O-G- & F-D-B-*.[3]
- Several components of the rule, including **proposed 8 CFR § 1003.29(b)(4)(iii)), proposed 8 CFR § 1003.29(b)(4)(iv)**, and **proposed 8 CFR § 1003.29(b)(4)(v)** would create extreme pressure on our members by denying them continuances due to workload, scheduling conflicts, and preparation time. These provisions would continue to stretch our overtaxed coalition members past their breaking point. These provisions are particularly inapposite in the context of a global pandemic that has forced many of our coalition members to shoulder additional work, childcare, and educational responsibilities in addition to continuing to represent clients as a full-time job. The denial of continuances for preparation time particularly

injures clients who work with youth, a vulnerable group that often requires special care and time to build confidence.

Though the proposed rule represents a dramatic change, and though there are numerous problems with the proposed regulation, as we discuss above, we are not able to give a thorough accounting of the problems with the proposed regulation. This is due to EOIR's decision to allow only 30 days for the public to submit comments to these proposed rules rather than the customary 60-day comment period.[4] Not only this – EOIR has chosen to time the 30-day period so that it spans multiple holidays. EOIR announced the rule over a holiday weekend (the Friday following Thanksgiving) and the comment period ends on the Monday after Christmas. The comment period also includes the entirety of Hanukkah, a Jewish holiday that began on December 10, 2020 and ended on December 18, 2020, and the first three days of Kwanzaa, which begins on December 26, 2020.

Compounding these difficulties, the United States has for the past ten months been in the grip of a major pandemic. Our staff and the vast majority of our member attorneys are currently working from home, most in households that were not set up to serve as offices for one or more full-time working adults. A significant number of our member attorneys are also responsible for supervising their children's remote schooling or providing other childcare during their workday. These added burdens and responsibilities have stretched our staff and members thin, making the 30-day comment period particularly inopportune. Though we are submitting a comment despite these challenges, we strongly object to both the 30-day deadline for this NPRM and the timing of its release.

These proposed rules would contravene Congress's direct commands to the Executive Branch, curtail relief for the most vulnerable immigrants, and once again ratchet up pressure on our already overstretched attorney members. The rule prioritizes administrative efficiency over fairness and disregards the grave harm that these rules would cause many thousands of individuals who are eligible for immigration protections but who would become ineligible for a continuance and swiftly ordered removed under the proposed rules. The proposed rules will further erode due process in immigration court. We urge EOIR to rescind the "Good Cause for a Continuance in Immigration Proceedings" proposed rule.

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[1] *See, e.g.*, Trafficking Victims Protection Reauthorization Act, Pub. L. 115-427, Jan. 9, 2019, 132 Stat. 5503.

[2] *See* INA § 208(b)(3)(C) ("An asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child . . . .")

[3] For full citations, see *supra* note 5.

[4] *See* Exec. Order No. 13563, Improving Regulation and Regulatory Review § 2(b) (Jan. 18, 2011).