



THE NJ CONSORTIUM FOR IMMIGRANT CHILDREN

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**RE: RIN 1125-AB01; EOIR Docket No. 18-0503; Dir. Order No. 01-2021,
Public Comment Opposing Proposed Rules on Motions to Reopen and
Reconsider; Effect of Departure; Stay of Removal**

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, with the sole exception of the provision allowing motions to reopen for notario fraud (proposed 8 C.F.R. § 1003.48(i)(2)). Most of the proposed rules would be extremely prejudicial to young immigrants, many of whom are eligible for relief from USCIS and who frequently use motions to reopen and dismiss their immigration cases after receiving immigration relief. Among the young immigrants who frequently use motions to reopen are those seeking Special Immigrant Juvenile Status (SIJS) and unaccompanied alien children (UACs) seeking asylum. The proposed rule would remove this safeguard for young immigrants, a group that Congress has repeatedly said deserves special protection, [\[1\]](#) and consequently would lead to the deportation of young people who are eligible for immigration relief.

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. Often, a child receives an *in absentia* removal order before an attorney takes their case, and the attorney and the child then apply to USCIS for SIJS. When USCIS grants SIJS, making the child eligible to adjust status, some of these children file motions to reopen before EOIR so that the court can vacate their removal orders. Losing the ability to reopen their cases will greatly hurt this group of children, who have already been determined worthy of immigration relief by the U.S. government.

The proposed rule contains numerous unacceptable provisions that would make it extremely difficult for all immigrants to exercise their statutory right to

move to reopen. Two provisions, however, stand out as particularly injurious to hundreds of our clients:

- **Proposed 8 C.F.R. § 1003.48(e)(1), (2)** would bar reopening and reconsideration for children and youth with pending applications for relief before USCIS. This regulation would harm a large number of our coalition members' clients, many of whom apply for and receive SIJS from USCIS. Our coalition members sometimes represent clients who gain SIJS after already receiving an *in absentia* removal order, and this situation has become more likely as USCIS case processing times reach 57 months or more.^[2] The effect of prohibiting motions to reopen for these youth – which this rule does in tandem with an earlier EOIR regulation – is that many young people will be deported despite receiving a grant of relief from USCIS.
- **Proposed 8 C.F.R. § 1003.48(k)** creates dramatic barriers to all immigrants, including children, obtaining a stay of removal. In our coalition members' experience, stays of removal are sometimes necessary to prevent UACs with approved USCIS applications from being deported to countries where they face torture and death. EOIR regulations should safeguard the ability of these particularly vulnerable groups to seek a stay of removal, not create additional barriers. The proposed regulation creates a number of unnecessary roadblocks for vulnerable youth seeking a stay, including requiring filing of the stay request with DHS, requiring a \$155 fee, and requiring that three days lapse before granting the stay unless DHS consents.

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.^[3] Not only this – EOIR has chosen to time the 30-day period so that it spans multiple holidays. EOIR announced the rule immediately after Thanksgiving and plans to close the comment period immediately 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 rewrite many aspects of long-established motions practice and seek to deter respondents from filing motions to reopen and reconsider by creating new barriers that Congress did not intend. As always, these new regulations will disproportionately harm the most vulnerable immigrants, including the clients of our coalition members. We therefore urge EOIR to rescind most of the changes proposed by this new rule, excepting proposed 8 C.F.R. § 1003.48(i)(2).

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

[2] USCIS processing delays are largely due to policy changes implemented under the current administration that have needlessly created inefficiencies. *See, e.g., AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow* (February 26, 2020), <https://www.congress.gov/116/meeting/house/110946/witnesses/HHRG-116-JU01-Wstate-Dalal-DheiniS-20200729-SD002.pdf>.

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