DUE: 9/25/2020

How to submit a comment:

You may submit comments, identified by EOIR Docket No. 19-0022, by one of the following:


Mail: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 19-0022 on your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.

Regulation Information: Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure


Why submit a public comment? When the government proposes a new rule, it is required (by the Administrative Procedures Act) to give the public an opportunity to submit comment, which they must read and consider before producing a final, enforceable rule. The more comments received, the longer it will take to produce a final rule, the more likely the government is to withdraw its rule or amend it, and the substance of comments can be used in later litigation if the government disregards concerns.

Write comments in your own words. The template on the following pages is intended to help guide you and give you an example and ideas, but the comment you submit should be in your own words. The government does not have to consider duplicative comments, so it is important not to copy and paste.
Dear Assistant Director Lauren Alder Reid:

I write to oppose the proposed rule that would gut due process protections for migrants under the guise of administrative efficiency and clarity. Already, migrants face unconscionable restrictions on due process despite the serious life and liberty interests involved should one be removed from the United States. The new rule proposes to narrow those protections even further by restricting the ability to provide new evidence on appeal, imposing harsh deadlines, and improperly constraining the power of the BIA to manage cases.

I believe every person deserves to have their human rights protected. We must do that by protecting the right to a fair trial by an independent and impartial tribunal regardless of nationality. The United States is a party to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which—along with our Constitution—require us to guarantee fair and impartial trials without discrimination. The changes in this regulation violate those rights. The proposed changes eliminate access to full and fair trial by closing-off crucial appeals procedures, the ability to introduce new evidence, limiting the time for filing a brief, and eliminating the ability to request the Board to reopen their case due to exceptional circumstances. [Provide information about why you believe human rights to due process are important]

Not only do these changes violate due process rights, they will have exceedingly harsh impacts on survivors of persecution, torture or human trafficking. The United States is also a party to the Convention Against Torture, the Refugee Convention, and the Palermo Protocol on Trafficking in Persons. Congress has incorporated these treaties into federal law through legislation, which must be upheld. Each of these documents enshrines our collective agreement that survivors of human rights abuses require special protections in proceedings. These survivors have a right to seek protection in the United States; however, by introducing these restrictions on due process, the Department effectively seeks to eliminate those protections—violating our obligations under these treaties and shared values.
Because migrants are not guaranteed an attorney, and many are new to the U.S., don’t speak English fluently, and/or may be suffering from severe trauma or other harms, they often lack the resources to present a strong case without adequate protections. The appeals process, therefore, plays a crucial role in ensuring viable claims are heard. The proposed restrictions are a clear attempt to further this Administration’s attacks on asylum seekers and migrants by closing this crucial lifeline that has allowed bona fide claimants to introduce crucial evidence previously unavailable or unknown, request that a judge reopen their case in exceptional circumstances despite time limitations, administratively close cases where some other form of relief simply needs time to process, and have adequate time through necessary extensions to prepare the strongest case possible.

For these reasons, therefore, I call on the department to withdraw this proposed rule.

If you wish to comment on the rule’s details, a bulleted list of those changes is below, and the full text of the rule can be found here:

- Provides only one, 14-day extension for briefing will be allowed
- Allows BIA to issue voluntary departure decisions based on record, but NOT to remand for consideration of voluntary departure
- With limited exceptions, prohibits BIA from receiving new evidence on appeal, remanding a case for the immigration judge to consider new evidence in the course of adjudicating an appeal, or considering a motion to remand based on new evidence.
- Would allow IJs to certify BIA decisions reopening/remanding proceedings to the Director where IJ alleges BIA error
- Codifies in regulations the decision in Matter of Castro-Tum, which overruled Avetisyan and renounced 8 CFR 1003.1(d)(1)(ii) and 1003.10(b) allowing for administrative closure
- Would REMOVE sua sponte authority completely
  - But, allows motions to reopen notwithstanding time/number bars where
    - Change in law/fact rendering no longer removable and diligence
    - Only by 3-member panel
    - OR claim that the person is a USC
- Withdraws self-certification authority for the BIA to certify cases to itself