



December 23, 2020

15 S. Washington Street, Suite 201  
Ypsilanti, MI 48197  
Phone: (734) 239-6863  
Fax: (734) 998-9125

1550 E. Beltline SE, Suite 375  
Grand Rapids, MI 49506  
Phone: (616) 827-4080  
Fax: (616) 202-7835

350 E. Michigan Ave., Suite 315  
Kalamazoo, MI 49007  
Phone: (269) 492-7196  
Fax: (269) 492-7198

Lauren Alder Reid  
Assistant Director, Office of Policy,  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2616,  
Falls Church, VA 22041

**RE: Opposing Proposed Rule on Good Cause for a Continuance in Immigration Proceedings (November 27, 2020)  
RIN 1125-AB03; EOIR Docket No. 19-0410**

Dear Ms. Reid,

The Michigan Immigrant Rights Center (MIRC) submits this comment vehemently opposing the above-referenced rule proposed by the Department of Justice<sup>1</sup> (“DOJ”) amending the Executive Office for Immigration Review (“EOIR”) regulations governing “good cause” for a continuance in immigration proceedings.

MIRC is a legal resource center for Michigan’s immigrant communities, employing nearly twenty attorneys and accredited representatives to represent individuals before EOIR and the United States Citizenship and Immigration Services (“USCIS”). We advise over 2,000 new clients per year, including hundreds with cases before EOIR and an increasing number of individuals in detention. Some of these cases are brief advice and service; others include full representation for non-detained and detained respondents. Our attorneys have decades of collective experience representing non-citizens in removal proceedings on the detained and non-detained docket, seeking relief in immigration courts, in appeals and motions to the Board of Immigration Appeals (“BIA”), and in petitions for review in the U.S. Court of Appeals for the Sixth Circuit.

This Proposed Rule is part of a broader pattern of changes that puts a premium on clearing dockets instead of what the EOIR is tasked with doing: administering justice. Despite the legal justifications offered to authorize such changes, the clear underlying logic is an antagonism toward immigrants and a desire to ensure that their rights are as maximally curtailed as the law allows. The DOJ disingenuously expresses concern about the backlog of cases in Immigration Court as the reason for this proposed change despite the proposal being both impractical to implement and highly unlikely to address this root problem. Although good cause continuances, which must meet well-established criteria to be granted, offer live-saving extensions for respondents to find counsel, for immigrants to be granted collateral relief, or for legal representatives to prepare applications on behalf of clients, the DOJ disregards all due process concerns to promote their quest toward efficiency (read: denials).

---

<sup>1</sup> 85 Fed. Reg. 75,925 (Nov. 27, 2020)

Apparently, to this administration, efficiency means the rapid production of removal orders. Nothing else is considered meritorious.

### **I. MIRC objects to EOIR's 30-day comment period to respond to this Notice of Proposed Rulemaking (NPRM).**

The DOJ has given the public a mere thirty days to submit comments, without providing any explanation for this deviation from the customary sixty-day comment period. The change is difficult to understand given the generally slow pace of the immigration court system and considerably slower pace dictated by the current public health crisis. Even presuming that these rule changes were necessary, which we do not concede, they are not particularly time-sensitive. It is hard to see a justification for cutting short the process of review and comment, especially given the significant risk that these changes will cause by accelerating the pace of the deportation machine and severely limiting which respondents qualify for a "good cause" continuance. Stakeholders should be given adequate time to comment on impactful revisions to court procedures that erode due process protections in the name of efficiency. This shortened comment period appears to be nothing more than a final attempt by this administration to push through its immigration agenda before leaving office.

The shortened comment period is all the more egregious given that the U.S. remains in the midst of the COVID-19 pandemic with, nationally, over 200,000 new positive cases and 2,000 deaths, daily.<sup>2</sup> All MIRC staff continue to work from home to the greatest extent possible, often while caring for children and/or for sick family members. None of the MIRC staff members (and we suspect, attorneys across the country) are able to work at their pre-pandemic capacity. Many of our clients are facing even greater difficulties, as they experience layoffs, lost income, evictions, food insecurity, and of course, infection with COVID-19. As low-income immigrants and, in many cases, as people of color, our clients have felt the disparities of COVID-19 and have suffered disproportionately from infections and complications. The work of providing our clients with effective representation has therefore become exponentially harder. We also must expend additional energy to keep up with EOIR's and the Department of Homeland Security's ("DHS") daily operational changes during the pandemic.

Thirty days to comment on such a transformative proposal, under these conditions, is not a fair opportunity. Although we object to DOJ's unreasonable thirty-day timeframe, we submit this comment nonetheless, because we feel compelled to object to the proposed regulations. We are unable to address every item in the Proposed Rule due to the aforementioned constraints, and due the barrage of proposed regulations that have been issued in the twilight of this administration. However, if we did not manage to address a certain aspect of the Proposed Rule, that in no way indicates our acceptance or approval; indeed, we oppose the Proposed Rule in its entirety.

---

<sup>2</sup> CDC COVID Data Tracker, Centers for Disease Control and Prevention, available at [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (accessed on December 22, 2020)

## **II. MIRC disagrees that “good cause” lacked legal precedent and opposes the arbitrary and capricious decision to make such standards harsher thereby infringing upon due process.**

The fundamental premise of this proposed rule is to offer a clearer definition of the “good cause” standard and to resolve ambiguities through codification in a single regulation. Most concisely, the undergirding logic is, supposedly, to “address continuances in a more comprehensive and systematic manner.” To substantiate this assertion, the DOJ highlights the absence of any specific statutory or regulatory citation that spells out the exact parameters of “good cause” when making a determination about continuances, postponements, or adjournments. According to the DOJ, this lack of statutory or regulatory clarity forces Immigration Judges (“IJs”) and federal courts to make case-by-case interpretations that lead to “inconsistent practices.”

This argument is specious. Extensive case law—as acknowledged by the DOJ in the Background section of this Proposed Rule<sup>3</sup>--crafted a precedent that governed the understanding, applicability, and implementation of “good cause” when assessing continuances within the Immigration Court. Almost 40 years ago, the BIA articulated a series of factors that ought to be considered when granting a motion for continuance in exclusion proceedings.<sup>4</sup> Subsequent BIA decisions evaluated the “good cause” standard with a clearly evolving framework to govern when a continuance may be granted, especially to accommodate a collateral matter.<sup>5</sup> Through such case decisions by the BIA and Attorney General, IJs possessed a firm mandate about how they ought to assess motions for continuances and what factors needed to be weighed in their final determination.

In this Proposed Rule, the DOJ decided to concoct a nonexistent issue—an apparently muddled hodgepodge definition of “good cause” that leads to the overuse of continuances—as a culprit for the very real problem that the Immigration Courts currently contain a massive backlog of pending cases. With the “cause” identified, the DOJ then, in the name of efficiency and “the expeditious enforcement of the immigration laws,” ascribed a uniform standard that intentionally selected the harshest elements of existing case law to create an ever harsher standard than previously existed.<sup>6</sup> A continuance justified by a collateral matter is one such example that illuminates this broader pattern, which we shall discuss in further detail later in this Comment. Ramifications from this newly offered narrow definition are apparent, and they fall entirely upon respondents, who will now possess even fewer avenues to relief while less likely to gain legal counsel; respondents’ representatives, who will be unable to advocate for merited relief for their clients due to unfairly stringent standards; and IJs, who will need to stuff more cases into a completely full docket while unable to utilize tools, such as administrative closure, to alleviate the case burden.

---

<sup>3</sup> 85 Fed. Reg. 75,925, at 75,926-75,928 (Nov. 27, 2020)

<sup>4</sup> *Matter of Sibrun*, 18 I&N Dec. 354, 355-58 (BIA 1983)

<sup>5</sup> See, e.g. *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009); *Matter of Rajah*, 24 I&N Dec. 127 (BIA 2009); *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012)

<sup>6</sup> 85 Fed. Reg. 75,925, at 75,929 (Nov. 27, 2020)

Indeed, it is curious that while DOJ justifies this Proposed Rule as necessary to reduce the backlog of 1.2 million cases currently pending with EOIR, this very same administration has consistently taken steps to increase the backlog. It has done so through actions such as limiting the authority of IJ's to terminate or administratively close cases<sup>7</sup> and increasing the issuance of Notices to Appear (NTAs) for individuals who were denied collateral humanitarian benefits.<sup>8</sup> Beyond these official policies instituted by DHS and DOJ, MIRC's attorneys have personally witnessed unnecessary contributions to the backlog through actions such as the issuance of NTAs for Lawful Permanent Residents with no criminal records who were denied naturalization on technical grounds, ICE counsel refusing to join motions or stipulate as a blanket policy, and the apprehension and issuance of NTAs for individuals who have pending affirmative asylum applications and no criminal record. It appears that this administration will propose rules for the purposes of reducing the backlog only insofar as they lead to the production of removal orders, and will happily add cases to the backlog so long as they also contribute to that goal.

Additionally, we are perplexed by the sheer impracticability of the mandated timelines contained within the Proposed Rule.<sup>9</sup> These proposed timelines are, quite frankly, laughable in light of the reality of EOIR's current caseload and scheduling practices. As one example, DOJ proposes to reiterate the statutory 180-day asylum adjudication timeline within the good cause regulatory standard<sup>10</sup>, a timeline that was put in place in 1996 when the asylum landscape differed considerably from today's reality. In current practice, the statutory 180-day asylum adjudication deadline is routinely disregarded by Immigration Judges through no fault of respondents. MIRC's attorneys routinely have asylum merits hearings scheduled for years in the future based on the IJ's docket and no other factor. It is incomprehensible why DOJ, instead of recognizing that the 180-day asylum adjudication deadline is simply impracticable, is doubling down on it.

Additionally, the Proposed Rule establishes several scenarios where only a 14-day continuance may be granted. This proposed timeline similarly appears to have no grounding in reality. MIRC's attorneys have witnessed much longer than 14-day continuances for even detained respondents based solely on the exigencies of the IJ's docket. This rule, if implemented, will simply sow chaos by imposing unattainable deadlines upon IJs while limiting their authority to manage their own dockets. Further, instead of reducing the backlog, these deadlines will simply push cases around—new cases that fall under these

---

<sup>7</sup> 85 Fed. Reg. 52,491 (Aug. 26, 2020)

<sup>8</sup> Policy Memorandum, "Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens," PM-602-0050.1, U.S. Citizenship and Immigration Services, dated June 28, 2018, available at <https://www.uscis.gov/sites/default/files/document/memos/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>

<sup>9</sup> For context, the Detroit Immigration Court has, as of November 2020, over 7,000 open cases split among four courtrooms (with five Immigration Judges). Arguing that each respondent were given a four-hour merits hearing (which is unusual as many require full-day trials), that would mean, at a minimum, 175 weeks of continuous hearings (two per day) in each courtroom to work through this backlog! This calculation does not take into account master calendar hearings, longer trials, or new cases filed. Thus, it would seem that the "problem" is not a matter of continuances, but rather, departmental resources (read: courtrooms and judges).

<sup>10</sup> Proposed 8 C.F.R. § 1003.29(a)

proposed timelines will be prioritized, and the 1.2 million cases that are currently on the docket will apparently remain in the backlog in perpetuity.

Viewed in light of its impact and its impracticability, this Proposed Rule certainly infringes upon respondents' due process. These changes are arbitrary and capricious, constituting a violation of respondents' rights to fair legal treatment, for they make it much more arduous for individuals to defend themselves against a technical, bureaucratic, complex system of laws. They will not resolve the stress on "one of EOIR's scarcest resources—docket time" due to the practical realities of IJs dockets. These changes will, however, further the Administration's agenda to expedite deportations and discourage overall immigration. Undergirding the logic of this proposed rule is the cruel belief that the only 'acceptable' way to address a bloated case docket is to incentivize removal orders.

### **III. The Proposed Rule unjustifiably eliminates access to collateral relief for individuals in removal proceedings, including survivors of violent crime and severe forms of human trafficking**

The Proposed Rule, while masquerading as a codification of existing precedent on the granting of continuances for respondents to pursue collateral relief, in fact imposes a much harsher standard that penalizes respondents for delays attributable to DHS. A legal framework for granting continuances to pursue collateral relief has already been laid out in precedent decisions such as *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) and *Matter of L-A-B-R*, I&N Dec. 405 (A.G. 2018). These decisions created and refined a legal test for IJs to apply when analyzing good cause for a continuance to pursue collateral relief. Notably, the BIA and the Attorney General in their decisions both declined to abrogate the IJ's authority to grant continuances on a case-by-case basis. DOJ now seeks to create harsh, bright-line rules that eliminate the IJ's authority to grant such continuances. DOJ's unexplained departure from the precedent reaffirmed only two years ago by its own agency head is clearly arbitrary and capricious.

The Proposed Rule indicates that good cause for a continuance to pursue an immigrant visa will not be established unless the respondent can show that their priority date would be within 6 months of the action date on the visa bulletin.<sup>11</sup> This is a curious requirement at a time when USCIS processing times for an I-130 Petition for Alien Relative are on average at least 7.5 months, and in some cases longer. It is unclear why a respondent would have to demonstrate a priority date that would give them access to a visa before their petition is even approved. Additionally, as DOJ *must* be aware, USCIS processing times and the DOS visa bulletin action dates regularly fluctuate.<sup>12</sup> In light of these fluctuations, it is obvious why existing legal precedent regarding continuances to pursue collateral relief allows for the IJ to decide the appropriateness and length of a continuance.

---

<sup>11</sup> Proposed 8 C.F.R. § 1003.29(b)(3)(i)(A)(2).

<sup>12</sup> While relief under the Violence Against Women Act through Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant filed with USCIS is not described as an immigrant visa, per se, our experience in seeking continuances in Immigration Court for a battered alien spouse underscores the importance of the continuance as a docket management tool, especially as USCIS adjudications are currently taking about 24 months.

The Proposed Rule similarly seeks to impose a requirement that those requesting a continuance to pursue a nonimmigrant visa demonstrate their visa will be approved within six months of the continuance request.<sup>13</sup> MIRC declines to feign ignorance as to what this provision clearly is intended to accomplish: to deport immigrant survivors of crime and human trafficking. We find it incredible that DOJ is unaware that this proposed provision will primarily affect respondents who are eligible for U or T nonimmigrant status, as few other forms of nonimmigrant status would provide a respondent relief from removal. It is completely abhorrent that the DOJ proposes to foreclose the option of obtaining a continuance for the vast majority of T and U visa applicants in removal proceedings. Based on current USCIS processing times, T visas can take over two years to be approved, while U visas unfortunately can take many more. Further, these processing times obviously fluctuate. DOJ seeks to balance the fate of immigrant survivors of serious crimes and severe human trafficking based on the ability of USCIS to do its job—and let us not forget that USCIS has seen alarming increases in processing times across the board despite a *decrease in applications* over the last several years. Essentially, DOJ will punish our country’s most vulnerable so as to allegedly resolve the inefficiencies of a fellow government agency.

This outcome is not only inhumane, but against the will of Congress. In creating the U visa program, Congress intended to protect victims whose “abusers are virtually immune from prosecution because their *victims can be deported* as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.”<sup>14</sup> MIRC’s attorneys represent survivors of violent crime and human trafficking, many of whom are eligible for U or T nonimmigrant status. For example, MIRC is currently representing a client in removal proceedings who came to the United States seeking asylum protection after being brutally attacked in her home country. Unfortunately, after entering the United States, she was assaulted by her partner and suffered a miscarriage. She assisted law enforcement in prosecuting her abuser and applied for U nonimmigrant status shortly thereafter. This client went through an enormous amount of trauma—including a third assault from an abusive partner in as many years--and was granted a continuance by an Immigration Judge based on the existing legal framework set out in *Matter of L-A-B-R* as well as *Matter of L-N-Y*, 27 I&N Dec. 755 (BIA 2020) so that she could actually testify instead of being paralyzed by the trauma.

Even though MIRC’s client applied promptly for a U visa and the delay in visa issuance is attributable exclusively to USCIS processing delays, under the Proposed Rule the IJ would have been utterly powerless to grant her a continuance. Additionally, though the DOJ is allegedly proposing these changes for the sake of “efficiency”, denial of a continuance in this case would have actually generated a massive amount of inefficiency. If our client were not granted a continuance for an appropriate amount of time to recover physically and emotionally from these trauma to be able to testify competently and so that the U nonimmigrant petition can be adjudicated, then the court and DHS’ time would have been taken for an unnecessary individual hearing; EOIR, DHS and possibly the federal court

---

<sup>13</sup> Proposed 8 C.F.R. § 1003.29(b)(3)(iii)

<sup>14</sup> Victims of Trafficking and Violence Prevention Act of 2000, PL 106-386, at Sec. 1502(a)(3), Oct. 28, 2000

system may have been forced to adjudicate unnecessary appeals; DHS may have incurred the expense of removing our client; and the Department of State would have had to expend resources to consular process our client back to the United States once her U visa is approved, as most inadmissibility grounds for U nonimmigrants are waivable. Thus, DOJ's belief that its Proposed Rule would create efficiency is simply myopic and in many cases, would generate an enormous waste of limited government resources. This is further exemplified through DOJ's proposed 8 C.F.R. 1003.29(b)(3)(iv), which provides that "the receipt of interim relief, prima facie determinations, parole, deferred action, bona fide determinations or any similar dispositions" would not form sufficient basis for a continuance, despite these all evidencing USCIS' determination that relief from removal is either immediately available through a grant of legal presence or highly likely in the near future through actual legal status. Again, a colossal waste of precious, judicial resources could be avoided with a continuance in those circumstances. Of course, alternatively, the IJ could have administratively closed or terminated our client's case considering she is clearly eligible for U nonimmigrant status, but DOJ has endeavored to eliminate that option<sup>15</sup>, again calling into question whether DOJ truly cares about efficiency versus the manufacture of removal orders.

Based on *current* legal precedent, respondents must demonstrate they are prima facie eligible for the collateral relief they are pursuing in order to be granted a continuance on that basis. Accordingly, DOJ is well aware that in imposing these additional restrictions, it is foreclosing humanitarian protections to individuals who have demonstrated they are bona fide victims of serious crimes or severe forms of human trafficking, and family unity to individuals who will eventually be eligible for family-based adjustment of status. Specifically, the DOJ's attempt to tear apart families and to deport immigrant survivors in the name of docket clearing is an embarrassment to our justice system. For these reasons, MIRC requests that this proposed rule be withdrawn in its entirety.

#### **IV. MIRC strongly opposes the reduction in allotted number of continuances and potential length of continuances**

Since the DOJ construes legal representation as a possible, if not likely, impediment to "orderly procedure" and "hindrance to fair and timely adjudications," DOJ offers callous guidelines to determine whether good cause exists to allow respondents to seek representation.<sup>16</sup> As evidence that counsel could slow down the rapid pursuit of justice, the DOJ cites EOIR's Current Representation Rates—namely, that 60% of all respondents in EOIR are represented, and 85% of individuals with pending asylum cases possess representation.<sup>17</sup>

---

<sup>15</sup> 85 Fed. Reg. 52,491 (Aug. 26, 2020)

<sup>16</sup> 85 Fed. Reg. 75,925, at 75,935 (Nov. 27, 2020)

<sup>17</sup> We do not agree with these statistics. These figure belie our experience as a nonprofit legal service provider. They also appear to not be in accordance with publicly-released information available through Transactional Records Access Clearinghouse (TRAC) at Syracuse University, available at <https://trac.syr.edu/phptools/immigration/nta/>

Yet, these figures deceive meaningful variations in representation rates throughout the EOIR universe. Crucially, they evade the disproportionate discrepancy in representation rates between detained and non-detained respondents. 75% of detained individuals appear without the assistance of counsel. This drastic lack of representation is particularly notable due to the physical and technological restrictions placed upon detained persons, impeding their ability to acquire evidence to substantiate their legal claims. Since ICE files NTAs for detained cases with the EOIR at a much quicker rate than non-detained cases, and the median wait time between receipt of the NTA and the first hearing is ten times shorter, detained individuals are *prima facie* at a major disadvantage to find representation. Unsurprisingly, in FY 2019, a *pro se* detainee was almost five times more likely to receive a removal order and more than three times less likely to be granted relief than a detainee with representation.

Equally pertinent are critical geographic variations in representation rates. In truth, the probability of securing representation in EOIR massively depends on a respondent's location. For example, while the odds of representation in North Carolina are 46.3%, the likelihood of finding a lawyer to advocate for you if you live in Virginia, one state to the north, is 72.7%. Given that access to and availability of legal counsel fluctuates from state to state, the rigid measures to limit continuances based upon the assumption that most respondents possess counsel is problematic at best.

If enacted, this rule change would eliminate the guarantee of a good cause continuance due to the inability to secure representation if the first master calendar hearing ("MCH") occurs more than ten days after the service of an NTA. Secondly, it would prevent the IJ from granting more than one continuance to a respondent in removal proceedings. DOJ elaborates that individuals in removal proceedings possess "ample time" to secure representation "if they exercise diligence." The condescension and scorn towards immigrants contained within that line is appalling, but the data from hundreds of calls to MIRC's intake line from the four IGSA-contracted facilities testify to the inaccuracy of the DOJ's assertion. Despite the BIA's ruling that detainees deserve a fair opportunity to acquire counsel and in spite of National Detention Standards, MIRC consistently learns that detainees are provided with inaccurate information about how to contact our office, and no amount of due diligence can overcome misinformation or an inability to utilize the jail's phone system while quarantined. One egregious example was when MIRC discovered, via a Freedom of Information Act request, that detainees in 2019 were receiving EOIR *pro bono* lists from 2014.

Detainees often tell us that they learn about our hotline number through word of mouth from other detainees, at times only days before their first MCH. Procedurally, if MIRC cannot represent the individual in immigration court, in part due to its ethical obligation to not assume more cases than it can handle, we provide a referral list of private attorneys and other non-profit immigration legal service providers. The last nine months have been a testament to the inability of detained respondents to timely contact our office seeking legal assistance. If this rule were enacted, almost every detained respondent in Michigan would have been ineligible for a continuance these past nine months based on broken phone systems, quarantines, and inaccurate *pro bono* information.

Thus, many detainees in Michigan require at least one continuance to enjoy anything remotely resembling a reasonable chance to contact a representative, let alone secure representation. IJs at the Detroit Immigration Court recognize the limited options available for detained individuals and frequently give them multiple chances to try to get legal advice, if not representation. This proposal to prevent the issuance of a second continuance, if the detained respondent manages to receive an initial one, would undoubtedly force IJs to issue removal orders to individuals who might be eligible for relief under the law.

Given the particular obstacles faced by detained individuals in Michigan to acquire representation, the local IJs, not some monolithic federal standard, should be empowered with appropriate discretion to determine the number of good cause continuances a given respondent deserves. These IJs know intimately how clogged (or not) their dockets are, how overburdened (or not) local immigration practitioners are, how feasible (or not) it is to assume that a respondent can procure an attorney in the allotted time between the issuance of a NTA and the scheduling of an MCH. In fact, a case-by-case analysis of continuances makes far more sense if the aim of the Immigration Court is to dispense and enact justice. Instead, the DOJ offers an impractical, severe restriction of 30 days and no ability to grant a second continuance.

Two of the six guidelines instruct IJs to call into question the merits of requests by practitioners to receive more preparation time. The Administration largely presumes bad faith from immigration attorneys, insinuating that these petitions are presented to manipulate delays for ulterior reasons aside from the stated cause. In truth, many valid reasons exist for attorneys to need more time for cases.

For example, MIRC participates in the National Qualified Representative Program (NQRP), which guarantees representation to detained, unrepresented individuals deemed mentally incompetent by EOIR. One MIRC attorney asked for additional time to prepare for the individual hearing for a NQRP client because she had recently received the case. In this situation, the court granted only three weeks, which while inadequate in the first place would either no longer be possible under the Proposed Rule or would be cut by an additional week. Regardless, this policy questions the veracity of how to ensure “enhanced procedural protections” for these vulnerable respondents if attorneys will not be able to sufficiently familiarize themselves with their cases, prepare legal defenses, and draft the necessary documents.<sup>18</sup>

Additionally, MIRC works with clients across the entire state, including at one of the detention centers located in Chippewa County, Michigan—a more than five-hour drive from our closest office and from the Detroit Immigration Court. Just sheer logistics, whether mailing forms for signatures or in-person visits, over such a distance often requires multiple days, which has nothing to do with competence or diligence. MIRC attorneys in no way violate their ethical responsibilities when they accept cases of detained individuals at

---

<sup>18</sup> National Qualified Representative Program, Department of Justice, accessed Dec. 22, 2020, available at <https://www.justice.gov/eoir/national-qualified-representative-program-nqrp>

Chippewa County, and we take offense that the DOJ suggests that asking for more time to plead the charges listed in an NTA is untoward or nefarious.

The proposed rule subsequently demonizes respondents as chiefly responsible for why their legal representatives submit continuance requests. With unabashed judgment, the Proposed Rule states that “many instances of an alleged lack of preparation are actually due to the respondent's behavior, and the withholding of information by a respondent from his or her representative leading to that representative's lack of preparedness does not demonstrate good cause.”<sup>19</sup> This grotesque victim-blaming conveniently ignores how the administrative technicalities of immigration law can confuse legal experts, let alone recently arrived immigrants, about what information is pertinent to one's case. Moreover, our experience as practitioners indicates that this characterization of respondents purposefully withholding information until the last moment, thereby making us unprepared, is false.

By enacting a sweeping regulation based upon the relatively insidious belief that immigration attorneys exist to “contribute[] unnecessary delay” to adjudications, the DOJ implicitly states that it does not trust IJs to ascertain whether a representative and/or counsel is being diligent and forthright.<sup>20</sup> This mistrustful attitude towards IJs pervades the DOJ's circumscribed reasons for when an IJ can institute a continuance via their own motion. Indeed, under this new regulation, IJs would be largely precluded from such an action. In conjunction with the massive restrictions on administrative closure, this administration continues to manipulate the immigration case backlog statistics to ensure its political goals: under the guise of efficiency and swiftness, these regulations indicate time and again that the only acceptable means to this desired end is removal orders and deportations. For these reasons, we urge the Department to withdraw this rule in its entirety.

## **V. Conclusion**

EOIR is tasked with administering our nation's immigration laws with fairness, and the ability of IJs to grant continuances as appropriate to each case is critical to meeting this ideal. The absurd and inflexible standards set by this Proposed Rule will ensure that countless immigrants will be deported despite being eligible for relief simply because the IJ was powerless to grant a continuance. We are not aware of what ideal within the canon of our nation's values such an outcome aims to reach. For the reasons described in detail above, MIRC vehemently opposes the Proposed Regulation in its entirety. It must be withdrawn altogether.

Sincerely,

  
Ruby Robinson  
Managing Attorney

---

<sup>19</sup> 85 Fed. Reg. 75,925, at 75,937 (Nov. 27, 2020)

<sup>20</sup> Id.