Center Global
DC's LGBT Asylum Network

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RE: RIN 1125–AA93; EOIR Docket No. 19–0010; A.G. Order No. 4843–2020: Public Comment Opposing Proposed Rules on Procedures for Asylum and Withholding of Removal

We write on behalf of Immigration Equality and Center Global, a program of the DC Center for the LGBTQ Community, in opposition to the Department of Justice's ("DOJ") Notice of Proposed Rulemaking on Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 59,692 (Sept. 23, 2020) (RIN 1125–AA93; EOIR Docket No. 19–0010; A.G. Order No. 4843–2020) ("Proposed Rule").[1]

I. Introduction

The Proposed Rule, in concert with other rulemaking, eviscerates critical procedural and due process protections afforded to asylum seekers, including the lesbian, gay, bisexual, queer ("LGBTQ") and HIV-positive (together with LGBTQ, "LGBTQ/H") immigrants we serve.[2] Through a host of arbitrary provisions, and without adequate justification, the Proposed Rule imposes barriers that will put asylum protection out of reach for many of the most vulnerable refugees. Namely, the Proposed Rule will: (1) require Immigration Judges to adjudicate asylum claims within 180 days, unless the applicant can demonstrate extraordinary circumstances; (2) require Immigration Judges to reject asylum applications for minor, technical errors, (3) require asylum seekers in asylum-only and withholding-only proceedings to submit applications

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[1] Where this comment includes hyperlinked material in footnotes, we request that the DOJ review the linked material in its entirety and consider it part of the record.

[2] This comment uses "asylum seekers" to collectively refer to applicants for asylum, withholding of removal, and protection under the Convention Against Torture, to the extent all three forms of relief are affected by the Proposed Rule.

within 15 days of their initial Master Calendar Hearing; and (4) severely limit Immigration Judges' ability to consider country conditions evidence submitted by asylum seekers while allowing Immigration Judges to compile and introduce their own evidence.

As a result of the Proposed Rule, many LGBTQ/H asylum seekers will not have sufficient time to secure counsel, properly prepare their applications, or gather evidence needed to pursue their cases. Further, Immigration Judges will be pressured into foregoing individualized consideration of asylum seekers' claims for the sake of meeting the unforgiving demands of the 180-day clock. In addition, the Proposed Rule weakens procedural due process protections by expanding the grounds for rejecting asylum applications, including the inability to pay the $50 asylum application filing fee, even for applicants in detention or those proceeding *pro se*. Finally, the Proposed Rule's conversion of Immigration Judges from neutral adjudicators to party participants raises serious due process concerns. The stakes are life and death for refugees who risk persecution, including assault, rape and murder if they are deported. The Proposed Rule will strip asylum seekers, including LGBTQ/H refugees, of critical due process protections and deny them their fair day in court without justification or even sufficient consideration of the irreparable harm caused by the Proposed Rule's provisions.

II. Organizations

Immigration Equality is a national organization that advocates for LGBTQ/H immigrants. For 25 years, we have worked to secure safe haven and equality for immigrants facing persecution based on their sexual orientation, gender identity, or HIV status. To this end, we provide free legal services and advocacy through our in-house attorneys and nationwide network of *pro bono* partners. Through this program, we currently represent approximately 650 LGBTQ/H individuals in affirmative and defensive proceedings for asylum, withholding of removal, relief under the Convention Against Torture ("CAT"), and related applications. Immigration Equality's asylum program has maintained a remarkable 97-99% success rate. Additionally, Immigration Equality helps thousands of LGBTQ/H asylum seekers every year through the provision of *pro se* advice and materials, and via our online inquiry system and telephone hotline.

In addition, Immigration Equality offers assistance, support, and training to other attorneys on LGBTQ/H immigration issues, publishes a comprehensive manual on the preparation of asylum claims related to sexual orientation and gender identity, and has provided training on the adjudication of LGBTQ/H asylum cases to Asylum Officers within the Department of Homeland Security ("DHS") and Immigration Judges in New York.

Center Global is a program of the DC Center for the LGBT Community established in 2012. Since then, Center Global has welcomed over 300 LGBTQ asylum seekers. Center Global assists LGBTQ asylum seekers through providing financial assistance, legal assessments and referrals, limited case management services, and hosting monthly community dinners.

Our work with LGBTQ asylum seekers has given us insight into the circumstances and sources of evidence supporting common types of claims they make, difficulties they face in securing *pro bono* or affordable counsel, and constraints on their time and resources.

III. Objection to the 30-Day Comment Period

We oppose the failure of the DOJ to allow for sufficient time for the public to comment on this Proposed Rule. The 30-day comment period does not serve its intended purpose under the Administrative Procedures Act:

> (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the [proposed] rule and thereby enhance the quality of judicial review.[3]

First, the Proposed Rule cannot be tested because its application depends on the DOJ's other rulemaking. DOJ and other agencies engaged in piecemeal rulemaking, such that the effect of one proposed rule may rely entirely on what the DOJ decides to do with another. For example, the form the following unpublished final rules take may operate together with provisions of this Proposed Rule in unknown ways:

> *Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure*, 85 Fed. Reg. 52,491 (Aug. 26, 2020).
>
> *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. 36,264 (June 15, 2020) (proposing changing substantive and procedural rules for adjudicators deciding asylum cases).
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> *Information Collection*, 85 Fed. Reg. 36,290 (June 15, 2020) (proposing to expand Form I-589 from 12 to 16 pages, including questions requiring legal analysis by applicants).
>
> *Fee Review*, 85 Fed. Reg. 11,866 (Feb. 28, 2020) (proposing fee for filing Form I-589, Application for Asylum and Withholding of Removal).

Second, because of the rapid pace of scattershot rulemaking, advocates for asylum seekers have had their resources stretched thin and do not have the bandwidth to fully address the Proposed Rule within the 30-day comment period. Without the

[3] *Capital Area Immigrants' Rights Coal. v. Trump*, No. 19-cv-2117, ECF No. 72, 24-25 (D.D.C. June 30, 2020) (internal citations omitted).

benefit of comprehensive and detailed comments, the interests of asylum seekers adversely affected by the Proposed Rule will not be fully considered by the DOJ or captured in the administrative record for purposes of litigation. This is unfair to asylum seekers and the organizations who serve them who have a reliance interest in the law as it has stood for decades and are negatively impacted by the radical changes in the Proposed Rule. Finally, during the novel coronavirus pandemic, it is unreasonable to expect stakeholders and the public to fully develop evidence to support their objections within the 30-day window. For all of these reasons and others, we strongly oppose this Proposed Rule and urge the DOJ to withdraw it.

IV. Opposition to Substantive Provisions

The Proposed Rule imposes arbitrary impediments to asylum relief that will result in the refoulment of *bona fide* LGBTQ/H refugees. The impact of the Proposed Rule is particularly harsh for individuals who are in detention or are proceeding *pro se* and will likely result in the majority of these cases being denied.

A. 8 C.F.R. §§ 1003.10(b), 1003.29, 1003.31, and 1240.6—The Proposed Rule's 180-Day Adjudication Deadline Will Severely Prejudice LGBTQ/H Asylum Seekers

Sections 1003.10(b), 1003.29, 1003.31, and 1240.6 of the Proposed Rule require Immigration Judges to adjudicate asylum cases within 180 days from the filing of an application, absent "exceptional circumstances." The DOJ defines "exceptional circumstances" as, "clearly out of the ordinary, uncommon, or rare," such as battery, extreme cruelty, the loss of loved ones, and grave illness, and distinguishes such circumstances from "good cause."[4] Very few applicants would be able to demonstrate such exceptional circumstances. However, many have good cause for seeking additional time, especially given the complexity of LGBTQ/H cases.

We agree that the exceptional circumstances, as defined in the Proposed Rule, warrant continuances, however, they are arbitrary, unduly narrow and will result in the denial of meritorious claims because applicants did not have enough time to assemble evidence. It can take many months to gather critical documents such as witness statements, medical records, and police reports, especially when gathering original documents from abroad. It can also take months to secure counsel in order to navigate the daunting labyrinth of U.S. immigration law.

This provision would have a grave impact on our clients. In addition to the types of documents mentioned above, in many countries, comprehensive LGBTQ or HIV country conditions are not readily available and so an expert must be secured to submit a report and testimony in order for applicants to fully present their claims. Given our limited resources, we generally must rely on volunteer experts and often wait months for a consultation. It often takes substantially more time, sometimes a month or more, for the expert to prepare their report that counsel must then incorporate into their briefing

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[4] Proposed Rule at 59,697.

and evidentiary submission. Similarly, it can take three to four months to set up a psychological evaluation for a client with a non-profit, several more for the appointment to actually occur, and then additional time for the report to be drafted. These evaluations are critically important to substantiate claims where there is limited evidence (often due to rampant homophobia and abuse in the country of origin that makes gathering evidence while fleeing persecution impossible), or where our clients have experienced severe trauma and have difficulty recounting severe abuse. These reports are also important to establish exceptions to the one-year filing deadline, among other reasons.

Similarly, there is often evidence that is simply not available to applicants on the prescribed timeline. Deadline exceptions are particularly important to LGBTQ/H asylum seekers, many of whom struggle to accept their identity for years after arriving in the U.S. Many are terrified of coming out, or have fled violence because they were outed. Many others live with severe psychological trauma manifesting as post-traumatic stress disorder, anxiety, or severe depression. An applicant who enters the U.S. identifying as cisgender may begin to transition, and then develop a well-founded fear of persecution on the basis of their transgender identity. The process of transitioning can take years. The same is true for refugees who discover they are HIV-positive after being in the U.S. It would be fundamentally unfair for these refugees to be denied their day in court because of the arbitrary deadline and denial of continuances even where there is good cause shown. It is unclear how the 180-day deadline would work for LGBTQ/H applicants whose cases are complicated by the coming out process and other psychological barriers like those described above.

For example, Immigration Equality client Alejandro initially identified as a gay man.[5] Alejandro suffered from horrific past persecution and torture in their country of origin. Later, after coming to the U.S., Alejandro came out as a transgender woman. However, under the deadline imposed by the Proposed Rule, Alejandro would not have been able to submit evidence of their gender identity as a basis for asylum, including critical country conditions evidence detailing the brutal mistreatment of transgender people in Guatemala. Under the Proposed Rule, they may have been arbitrarily denied relief despite their strong case.

Moreover, an asylum seeker's chance of success often hinges on the ability to secure counsel. LGBTQ/H claims are nearly always based on membership in a particular social group ("PSG"). Given the complexity of ever-evolving PSG jurisprudence, LGBTQ/H applicants often must submit detailed briefing and supporting documents to develop the law and facts surrounding their claims of persecution—an insurmountable task for many asylum seekers without an attorney. Recent developments in the law and regulations promulgated by the current administration have made these claims even more complicated, increasing the work necessary to successfully present cases. For example, the DOJ's June 15, 2020 Notice of Proposed Rulemaking ("NPRM"), if promulgated in its current form, would radically change the forms of evidence that could be presented to support a PSG claim, could prevent

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[5] Pseudonyms have been used throughout to protect client confidentiality.

LGBTQ/H asylum seekers from basing claims on private actor harm, and could be misinterpreted to preclude claims based on gender identity.[6]

It is against this backdrop that asylum seekers face increasing difficulties securing *pro bono* counsel, particularly given the COVID-19 crisis. For instance, given the high demand for services, LGBTQ/H asylum seekers sometimes wait several months before Immigration Equality can perform an intake interview to determine eligibility for its *pro bono* program. Once accepted, clients often wait a month or more before a volunteer attorney accepts their case and concludes a conflicts check. Immigration Equality clients win their cases 97-99% of the time. However, under the Proposed Rule, many of Immigration Equality's clients would likely be unable to prepare their cases within the 180-day deadline, and while they could establish good case for a continuance, they would likely not meet the exacting "extraordinary circumstances" standard.

As a practical matter, it is unclear whether the Proposed Rule would be applied prospectively or retroactively. Both approaches would wreak havoc on the immigration court system. Given the current back log of well over a million cases, it would be impossible for the courts to apply this Rule to all of those matters, many of which have been pending for years. It would also overwhelm immigration practitioners, like the undersigned organizations, who would not be able to simultaneously support their entire dockets of pending cases.

On the other hand, applying the Proposed Rule prospectively would greatly prejudice our clients, many of whom have been waiting years for their cases to be heard. Essentially, this would create a "last in first out" system that would use the Executive Office of Immigration Review's ("EOIR") limited resources to adjudicate new claims, exacerbating the situation for LGBTQ/H asylum seekers whose cases have been pending for years and who live in constant fear of being returned to a country where they face persecution.

In short, these provisions would deny asylum seekers a full and fair opportunity to present their claims and would violate due process resulting in *bona fide* refugees being returned to countries where they face grave harm.

B. 8 C.F.R. § 1208.3(c)(3)—The Proposed Rule Requires Immigration Judges to Adopt a Version of the Disastrous Blank Space Policy Used by U.S. Citizenship and Immigration Services.

The Proposed Rule appears to require EOIR to reject asylum applications if an applicant fails to fill out every single question on the application form, regardless of whether the question is applicable to a particular asylum seeker or has anything to do

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[6] *See Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. 36,264 (June 15, 2020) (§§ 208.1(c), 208.1(g), 208.1(f)(1)(i)–(viii), 1208.1(c), 1208(g)).

with the applicant's substantive claim. U.S. Citizenship and Immigration Services ("USCIS") implemented a similar policy in 2019 that has resulted in the rejection of hundreds of applications—if not more—on purely ministerial grounds. As the American Immigration Lawyers Association reported:

> In the asylum context, since October 2019 hundreds of applications have been rejected by USCIS for blank spaces. At times, rejections were because fields contained "None," "Not Applicable," or "-", instead of "N/A", despite the fact that the form instructions allow you to write "none," "not applicable," or "unknown." Asylum applications have even been rejected for having the applicant's name and A# being written in pen instead of pencil on the back of passport photos. Even more egregious, applications have been rejected because the applicant's signature was not in cursive writing, or for failing to fill in their name in their native alphabet when the client's native alphabet is the same one used in English.[7]

Immigration Equality has witnessed the effects of the misguided USCIS policy firsthand. Through its *pro bono* program, attorneys from some of the most well-regarded law firms in the country volunteer their time to represent Immigration Equality clients in their asylum matters. Over the last year, Immigration Equality has seen a surge of rejected filings for purely ministerial and often non-sensical reasons. For example, Winston is a gay man living with HIV from Jamaica who suffered from horrible past persecution on account of his sexual orientation and HIV status. Winston had *pro bono* attorneys who helped him submit his I-589 more than a month before Winston's one-year filing deadline. Counsel completed Winston's application, painstakingly detailing his grounds for asylum and past persecution. However, USCIS rejected the I-589 more than two months after it was submitted. In its rejection, USCIS acknowledged that a photo had been submitted with the application, but the sole reason for the rejection was that Winston's full name was not written on the back of the photograph. Accordingly, Winston missed his deadline. In another similar incident, counsel for an LGBTQ asylum seeker drafted a detailed and comprehensive application. However, counsel failed to check the box on the signature page asking whether the applicant had been provided a "list of persons who may be able to assist you, at little to no cost, with your asylum claim." Despite the fact that the client was represented and his form was otherwise complete, USCIS rejected the application. Other applications were rejected for a client's failure to supply their middle name when they have none or a client's failure to supply their name in their native alphabet when the client's native alphabet is the same one used in English. These rejections are the very definition of arbitrary.

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[7] Letter from American Imm. Lawyers Ass'n et al. to Kenneth T. Cuccinelli, Senior Official Performing the Duties of the Dir., U.S. Citizenship and Imm. Servs., AILA Doc. No. 20081362, 3 (Aug. 13, 2020), *available at* https://www.aila.org/advo-media/aila-correspondence/2020/letter-uscis-blank-spaces-form-rejection-policy.

The Proposed Rule will have the same effects in Immigration Court and the impact on detained and *pro se* applicants will be dire. Experienced attorneys have struggled to comply with this policy; *pro se* applicants without access to legal resources and counsel, especially those in detention, do not stand a chance.

The provision also calls for applications to be "complete." An application is deemed *incomplete* if it, among other requirements, "lacks required supporting evidence described on the form and form instructions."[8] To the extent the DOJ intends this provision to require that applicants also submit all the required evidence listed in the instructions within the 15-day deadline discussed below, this is an impossible feat for most applicants. It is often extremely difficult for represented applicants, much less individuals proceeding *pro se*, to gather all of the necessarily evidence for their claims such as statements from witnesses abroad, medical records, police reports, expert reports and psychological evaluations, and the like over a period of months. Applicants are often preparing evidence in a language the applicant does not speak or understand, with no access to translators, no legal help, or, in the case of detained people, without regular access to copy machines, mailing supplies, internet, or phones.

In addition, this provision makes failure to pay the asylum application fee grounds for rejection. Requiring asylum seekers to pay a fee is unlawful and wrong, and it will ensure that many LGBTQ/H asylum seekers with meritorious claims, including those in detention and proceeding *pro se*, will never have their claims heard in Immigration Court. Simply put, the Proposed Rule is a bald-faced attempt to preclude *bona fide* refugees from pursuing their claims.

This is another example of where the DOJ's staggered rulemaking makes fully informed comment on this provision of the Proposed Rule impossible. First, the DOJ has proposed changes to Form I-589 and imposing a fee for filing affirmative asylum applications, but has not published the final rule for either.[9] Without knowing the final form of Form I-589 and the filing fee for it, advocates are unable to provide the DOJ with feedback as to how much of an increased burden this provision of the Proposed Rule would have on their clients.

C. 8 C.F.R. § 1208.4—The Proposed Rule Would Create an Impossible Filing Deadline for LGBTQ/H Individuals

Under Section § 1208.4 of the Proposed Rule, applicants in asylum-only and withholding-only proceedings must file their asylum applications within 15 days of their first Master Calendar hearing, or their application will be deemed waived. While the Proposed Rule allows Immigration Judges to extend the deadline "for good cause," if asylum seekers miss that newly imposed deadline, further extension is not authorized. Instead, the Proposed Rule requires the Immigration Judge to deem the asylum application waived and instructs DHS to issue a removal order.

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[8] Proposed Rule at 59,694.

[9] *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. at 36,290; *Fee Review*, 85 Fed. Reg. 11,866 (Feb. 28, 2020).

Currently, the number of immigrants in asylum-only or withholding-only proceedings is relatively small. However, under the NPRM that number would increase exponentially to include virtually all asylum seekers who have gone through the credible fear process.[10] Under the Proposed Rule, all of these applicants would now be subject to the 15-day filing deadline. The NPRM would also allow an Immigration Judge, upon motion by DHS or *sua sponte*, to pretermit an asylum seeker's application for legal insufficiency.[11] Taken together with the NPRM, the 15-day filing deadline provision will likely result in waiver of thousands of meritorious asylum claims per year.

As discussed above, it often takes months for asylum seekers to obtain counsel. Service providers are already overwhelmed by the demand for *pro bono* legal services, and applicants in remote detention facilities have particular difficulty securing representation where non-profits and volunteers are stretched thin. Moreover, the application form itself is complex and trained attorneys often make mistakes, especially with the imposition of the "no blank spaces" regulation discussed above. In addition, the NPRM also introduced a new, longer and even more complicated application form that includes questions requiring sophisticated legal analysis of the applicant's claims, in particular, claims based on the particular social group ground.[12] This further prejudices LGBTQ/H asylum seekers, especially vulnerable groups like those in detention, those without financial resources to secure counsel, and those with limited English language capacity.

In addition, applicants in detention facilities are often denied access to the resources necessary for preparing and filing their applications. For example, Immigration Equality client Camilo is a gay man from Cuba who suffered persecution at the hands of the Cuban government on account of his sexual orientation and political opinion. He was initially detained in a detention facility in Louisiana, from where he also had to virtually attend his initial Master Calendar Hearing. Camilo was not certain where to file documents because his hearings were to take place in a court in another state with an Immigration Judge sitting in a third state. Additionally, Camilo is a monolingual Spanish speaker who did not have access to a translator in detention and was sometimes prohibited from using the copy machines at the facility to prepare legal documents. Requiring asylum applicants like Camilo to file complete applications within 15 days of their first Master Calendar hearings while unable to access the most basic tools necessary to prepare materials and consult with counsel is unfair and violative of due process. It serves no legitimate interest.

In addition, while this requirement would raise serious due process concerns for all asylum applicants, it poses particular barriers to LGBTQ/H asylum seekers. LGBTQ/H asylum seekers often internalize feelings of shame and stigma about who they are. Thus, when they arrive in the U.S., some are still learning to embrace their

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[10] *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg. at 36,265.

[11] *Id*. at 36,302.

[12] *Information Collection*, 85 Fed. Reg. 36,290 (June 15, 2020).

identity and may not be able to express it to immigration officials. Many also fear confiding in authority figures about their deeply personal identities, especially if they experienced persecution at the hands of government actors in the past. In reality, many LGBTQ/H refugees cannot, or will not, disclose their sexual orientation, gender identity, or HIV status to adjudicators or immigration officials until they receive assurances from legal counsel that it is safe to do so. By forcing these vulnerable refugees to adhere to this arbitrary 15-day deadline and rush to file their claims without an opportunity to speak to an attorney, *bona fide* LGBTQ/H asylum seekers will likely fail to submit applications that identify their LGBTQ/H status as the grounds for their asylum claims. Moreover, amendments and supplementation of applications would be subject to an Immigration Judge's discretion. Even if an LGBTQ/H applicant later disclosed their LGBTQ/H identity or status, there is no guarantee that an amendment would be allowed by the Immigration Judge.

D. 8 C.F.R. § 1208.12—The Proposed Rule Would Severely Limit Immigration Judges' Ability to Consider Country Conditions Evidence Submitted by Asylum Seekers While Allowing Immigration Judges to Introduce Their Own Evidence, Turning Immigration Judges into Prosecutors Instead of Adjudicators

Section 1208.12 of the Proposed Rule allows an Immigration Judge to "rely" on evidence from U.S. government sources without challenging the veracity of such evidence. However, for non-governmental sources or foreign government sources, Immigration Judges would have to first conduct an analysis of whether that evidence is "credible and probative."[13]

The Proposed Rule does not establish why U.S. government sources should be viewed as inherently more reliable than other types of country conditions materials, including the detailed reporting conducted by world-renown human rights organizations such as Human Rights Watch and Amnesty International, among others. Moreover, it gives overburdened Immigration Judges an incentive to favor U.S. government sources even though they are rarely comprehensive and often overlook significant human rights abuses for LGBTQ/H asylum seekers. Furthermore, they are potentially biased and subject to politicization. For instance, a DHS whistleblower recently filed a report accusing senior DHS officials of asking him to change reports about "corruption, violence, and poor economic conditions" in Guatemala, Honduras, and El Salvador that would "undermine President Donald J. Trump's policy objectives with respect to asylum."[14] Non-governmental organizations—whose evidence the Immigration Judge could only consider after it has been found to be "credible and probative"—have

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[13] Proposed Rule § 1208.12.

[14] *See* Dep't of Homeland Security, Office of the Inspector Gen., Matter of Brian Murphy, (Sep. 8, 2020), *available at* https://intelligence.house.gov/uploadedfiles/murphy_wb_dhs_oig_complaint9.8.20.pdf.

likewise found that Department of State (“DOS”) reports are subject to political pressure.[15]

Non-governmental sources are sometimes the only reports of persecution that can corroborate an LGBTQ/H asylum seeker’s claim. First, there is no guarantee that the DOS include information on conditions for members of the LGBTQ/H community. The statute mandating DOS’ Country Reports on Human Rights Practices specifies topics they must cover. No mention is made in the statute of LGBTQ/H rights.[16] In fact, while the Foreign Affairs Manual provides for input from the Office of the Special Envoy for the Human Rights of LGBTI Persons for country reports on human rights, the position has been vacant since 2017.[17] Second, while the DOS currently does include limited reporting on discrimination against LGBTQ/H persons in its Country Reports, there has been a disturbing trend of omitting, downplaying, or simply removing content about the treatment of LGBTQ/H persons.[18] This, despite the availability of publicly reported evidence to the contrary.[19] For example, in the 2018 and 2019 reports on Iraq, DOS omitted, “Violence and fear experienced by LGBTI organisations and activists [and] the societal discrimination affecting LGBTI persons.”[20] In 2019, the report left out violence perpetrated by state and non-state actors.[21]

The provision also authorizes Immigration Judges to introduce evidence into the record themselves.[22] This fundamentally alters the role of the Immigration Judge and strips procedural protections from the asylum seeker. Rather than weighing facts introduced by the parties, the Immigration Judge could develop their own country conditions evidence that they submit, deem credible, and rely upon. The Proposed Rule is silent on how a respondent could challenge such evidence. The Proposed Rule also fails to address how such evidence would be provided to applicants who do not speak English and provides no temporal limits on when the Immigration Judge would have to serve such evidence on the parties, except that it must be before the Judge issues their decision. In short, the Proposed Rule would transform Immigration Judges—who are supposed to be neutral arbiters of the law—into parties to the proceeding.

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15 *See* Amanda Klasing & Elisa Epstein, Human Rights Watch, *US Again Cuts Women from State Department’s Human Rights Report* (Mar. 13, 2019), www.hrw.org/news/2019/03/13/us-again-cuts-women-state-departments-human-rightsreports; Tarah Demant, Amnesty International, *A Critique of the US Department of State 2017 Country Reports on Human Rights Practices* (May 8, 2018), https://medium.com/@amnestyusa/a-critiqueof-the-us-department-of-state-2017-country-reports-on-human-rights-pr actices-f313ec5fe8ca.

16 *See* 22 U.S.C. § 2151n(d), (f)-(g) (2020).

17 1 FAM 513 (2020), *available at* https://fam.state.gov/FAM/01FAM/01FAM0510.html.

18 *Comparative Analysis: U.S. Department of State’s Country Reports on Human Rights Practices (2016-2019) Summary*, Asylum Research Ctr., 9-13 (Oct. 21, 2020), *available at* https://asylumresearchcentre.org/wp-content/uploads/2020/10/Executive-Summary_USDOS_ARC_21-October-2020.pdf.

19 *Id.* at 9.

20 *Id.*

21 *Id.*

22 Proposed Rule § 1208.12.

V. Conclusion

For the foregoing reasons, we strongly oppose the Proposed Rule and urge the DOJ to withdraw it in its entirety. If you require further information, please do not hesitate to contact Bridget Crawford, Legal Director at Immigration Equality, at bcrawford@immigrationequality.org or Geoffrey Louden, Chair of Center Global, at geoffreyl@thedccenter.org. Thank you for the opportunity to submit comments on the Proposed Rule.