

Hon. Merrick Garland Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Hon. Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
(DHS)
3801 Nebraska Avenue, NW
Washington, DC 20016

David Neal, Director
Executive Office for Immigration Review
U.S. Department of Justice (DOJ)

Ur Jaddou, Director
U.S. Citizenship and Immigration Services
(USCIS)
DHS

Lauren Alder Reid, Assistant Director
Office of Policy
Executive Office for Immigration Review
DOJ

Daniel Delgado, Acting Director,
Border and Immigration Policy,
Office of Strategy, Policy, and Plans,
DHS

Richard Revesz, Administrator
Office of Information & Regulatory Affairs
(OIRA)
Office of Management and Budget (OMB)
Executive Office of the President

March 1, 2023

Re: Request to Provide a Minimum of 60 days for Public Comment in Response to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (the Departments) Joint Notice of Proposed Rulemaking (NPRM): [Circumvention of Lawful Pathways](#)

Dear Attorney General Garland, Secretary Mayorkas, Director Neal, Director Jaddou, Assistant Director Reid, Acting Director Delgado, and Mr. Revesz:

We, the undersigned 172 national, state, and local organizations, write to urge the Departments to allow at least 60 days for public comment on the above referenced NPRM. We make this request due to the length and complexity of the 153-page proposed rule and the critical interests it implicates. As explained below, the Departments have no basis for merely providing a

truncated comment period. A robust comment period is particularly important given the devastating impact of this NPRM.

As President Biden [recognized](#) upon taking office, [Executive Order 12866](#) governs the regulatory process and requires agencies to “afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of *not less than 60 days*.” [Executive Order 13563](#) likewise directs agencies to “...afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be *at least 60 days*.” 60 days is the minimum, with [some courts](#) referencing 90 days as the “usual” length period for comments. Nevertheless, the Departments proceed with a 30-day comment period, citing their plan to “move as expeditiously as possible” to implement this rule prior to the termination of Title 42 expulsions. Their haste also indicates their intent to predetermine the outcome of this notice-and-comment period, rather than afford a meaningful opportunity to impacted stakeholders.

There is no compelling reason to truncate the public comment period by half or two thirds, and thereby deprive stakeholders of a meaningful opportunity to weigh in on the vast changes proposed in this rule. Rather, the [highly technical](#), nuanced, legal and policy issues the NPRM addresses — and, above all, the severe human cost it is certain to inflict — illustrate why a minimum of 60 days must be allowed for the public to file comments in response to the rule. Despite this, the Departments have provided no plausible justification for providing only 30 days for public comment.

The Departments explain this expedited time frame by citing the expected termination date for Title 42 by May 11, when the COVID-19 public health emergency will expire. They cite the possibility of increased encounters of asylum seekers who have waited for processing and lament that DHS lacks the resources to prepare for this increase. They thus propose a rule that would result in the summary returns of many asylum seekers, rather than offer them the process they require under domestic and international law.

There is little merit to the Departments’ alarm regarding the impending end of Title 42; the Departments have known this policy had an expiration date since the moment President Biden took office. Indeed, the Biden administration has faced significant pressure to end the Trump-era Title 42 policy since its inauguration, fielding letters from scores of [epidemiologists and medical experts](#), [more than 100 members of Congress](#), as well as [civil, human, and refugee rights organizations](#) urging the program’s end. This pressure extended to [senior Biden administration officials](#), who proceeded to resign in protest of the Biden administration’s continued use of Title 42.

Importantly, the Departments are relying on the impending expiration date of the Title 42 policy

to truncate the comment period *even though the Biden administration itself formally sought to end the Title 42 policy nearly one full year ago*. In April 2022, the Centers for Disease Control and Prevention announced its plan to do away with this Trump-era policy which it deemed “no longer necessary.” DHS’ Customs and Border Protection (CBP), the highest funded federal law enforcement agency in the nation, began to [prepare](#) for the end of Title 42 since April 2022 and received \$14.8 billion in the December 2022 omnibus appropriations package — significantly more than the President’s budget request. In addition to its own preparations to end Title 42 months ago, the administration has faced the prospected end of Title 42 as it fought back litigation from asylum seeking families who have [challenged the legality](#) of Title 42 for years.

In sum, the Biden administration has faced pressure to end Title 42 from the day it took office, sought to end it nearly a year ago, has prepared for its end and received boosted funding from Congress while facing years of litigation challenging the legality of this expulsion policy, and now anticipates its predictable demise once the public health emergency lapses on May 11, 2023. To claim, as the Departments do, that they now face an “urgent and extreme situation” appears hyperbolic at best — and disingenuous at worst. This cannot justify truncating the comment period and rushing towards the finalization of a rule of this magnitude.

This rule has vast implications on all stages of asylum processing, imposing new and complex requirements on asylum seekers before they reach the border, during their initial fear screening, as well as during immigration court review. The rule implicates substantive areas in domestic asylum law as well as U.S. obligations under the 1967 Protocol Relating to the Status of Refugees and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).

Recycling prior Trump bans, this rule would foreclose asylum access to people via unprecedented new requirements during their fear screenings, while in CBP detention, without access to counsel, and with limited linguistic and legal access to understand the complex rules they must navigate. The proposed rule further codifies the usage of a CBP app that has proven to be chaotic, nearly [inaccessible](#) for Black asylum seekers, and altogether disastrous for its own purported goal of orderly processing at ports of entry.

The Departments engineered this rule to adversely impact large numbers of asylum seekers and “decrease the number of asylum grants,” resulting in a five-year bar for people returned to harm. In other words, the implications of this proposed rule are potentially deadly for countless asylum seekers, including children. The human cost is beyond measure and demands the most careful research, analysis, and public consultation. It is highly inappropriate to afford the public a mere 30 days to comment on a proposal that violates domestic laws and international obligations on its face.

To honor the public's right to a meaningful and fair opportunity to respond to the NPRM, consistent with the Executive Orders cited above and the spirit and intent of the Administrative Procedure Act, a comment period of *a minimum* of 60 days must be provided.

Please contact Azadeh Erfani at aerfani@heartlandalliance.org with any questions or concerns, and we look forward to your prompt response.

Sincerely,

National

The Advocates for Human Rights

African Communities Together (ACT)

African Human Rights Coalition

Alianza Americas

America's Voice

American Immigration Lawyers Association

Americans for Immigrant Justice

Amnesty International USA

Asian Americans Advancing Justice | AAJC

Asian Pacific Institute on Gender-Based Violence

ASISTA Immigration Assistance

Asylum Seeker Advocacy Project (ASAP)

The Black Alliance for Just Immigration (BAJI)

Border Kindness

Boston University School of Law, Immigrants' Rights and Human Trafficking Program

Bridges Faith Initiative

Capital Area Immigrants' Rights (CAIR) Coalition

CASA

Catholic Legal Immigration Network, Inc.

Center for Gender & Refugee Studies

Center for Law and Social Policy

Center for Popular Democracy

Center for Victims of Torture

Children's HealthWatch

The Children's Partnership

Church World Service

Civil Rights Education and Enforcement Center

Communities United for Status & Protection (CUSP)

Community Change Action

Comunidad Maya Pixan Ixim
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Cooperative Baptist Fellowship
Disciples Immigration Legal Counsel
Electronic Privacy Information Center (EPIC)
Esperanza United
Fight for the Future
FIRM Action
First Focus on Children
Franciscan Action Network
Freedom Network USA
Friends Committee on National Legislation
Futures Without Violence
Government Information Watch
Haitian Bridge Alliance
Harvard Immigration and Refugee Clinical Program
HIAS
Hope Border Institute
Human Rights First
Immigration Center for Women and Children
Immigration Equality
The Immigration Hub
Immigration Law & Justice Network
Immigrant Legal Resource Center
Innovation Law Lab
Institute for Justice and Democracy in Haiti
International Refugee Assistance Project (IRAP)
Japanese American Citizens League
Justice Action Center
Justice for Migrant Women
Justice in Motion
Kids in Need of Defense
Kino Border Initiative
Latin America Working Group (LAWG)
Lawyers for Good Government
MPower Change
Maryknoll Office for Global Concerns
Mennonite Central Committee U.S.
MomsRising/MamásConPoder
Muslim Advocates

NAKASEC
National Advocacy Center of the Sisters of the Good Shepherd
National Coalition Against Domestic Violence
The National Domestic Violence Hotline
National Education Association
National Immigrant Justice Center
National Immigration Law Center
The National Immigration Project (NIPNLG)
National Network for Immigrant and Refugee Rights
National Network to End Domestic Violence
National Partnership for New Americans
NETWORK Lobby for Catholic Social Justice
Never Again Action
Oxfam America
Refugees International
Sakhi For South Asian Women
Save the Children
Sisters of Mercy of the Americas Justice Team
South Asian Americans Leading Together (SAALT)
Southern Border Communities Coalition
Southern Poverty Law Center
Sunita Jain Anti-Trafficking Policy Initiative , Loyola Law School
Tahirih Justice Center
Taylor Levy Law
T'ruah
UndocuBlack Network
Unitarian Universalist Association
Unitarian Universalist Service Committee
USAHello
U.S. Committee for Refugees and Immigrants (USCRI)
VECINA
Washington Office on Latin America
We Are All America
#WelcomeWithDignity campaign for asylum rights
Welcoming America
Witness at the Border
Women's Refugee Commission
Young Center for Immigrant Children's Rights

State

Advocates for Basic Legal Equality
Alabama Coalition for Immigrant Justice
Aldea - The People's Justice Center
Al Otro Lado
Catholic Charities Community Services, Immigrant & Refugee Services, NY
Center for Safety & Change
Central Washington Justice For Our Neighbors
The Children's Partnership
Coalition for Humane Immigrant Rights (CHIRLA)
Colorado Children's Campaign
Daya Inc.
Fellowship Southwest
Florence Immigrant & Refugee Rights Project
Honest Law Group
Hope Border Institute
Immigrant ARC
Immigrant Legal Advocacy Project
Immigrant Legal Center
Iowa Migrant Movement for Justice
Just Neighbors
Legal Aid Justice Center
Make the Road Nevada
Make the Road New York
Mariposa Legal, Program of COMMON Foundation
Michigan Immigrant Rights Center
Mobilization for Justice, Inc.
New York Immigration Coalition
Oasis Legal Services
OneAmerica
Our Children Oregon
Rocky Mountain Immigrant Advocacy Network
Safe Passage Project
Sanctuary for Families
Surveillance Technology Oversight Project
Tennessee Justice for Our Neighbors
Texas Civil Rights Project
Wind of the Spirit Immigrant Resource Center

Local

American Gateways

Arizona Justice for Our Neighbors

Ayuda

Bhutanese Community Association of Pittsburgh (BCAP)

Central American Minors Working Group

Central American Legal Assistance

Central American Resource Center of Northern CA - CARECEN SF

Cleveland Jobs with Justice

DC Dorothy Day Catholic Worker House

Galveston-Houston Immigrant Representation Project (GHIRP)

The Healing Trust

Houston Immigration Legal Services Collaborative

Human Rights Initiative Of North Texas

Immigrant Defenders Law Center

Indivisible Brooklyn

Jewish Activists for Immigration Justice of Western MA

Jewish Family Service of San Diego

Justice for Our Neighbors El Paso

Justice For Our Neighbors North Central Texas

The Legal Aid Society (New York)

The Legal Project

New Sanctuary Movement of Philadelphia

New York Justice for Our Neighbors

Queens Defenders

Rockland Immigration Coalition

Student Clinic for Immigrant Justice

Westchester Jewish Coalition for Immigration

Womankind