

*Submitted via Federal eRulemaking Portal*

March 30, 2020

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

**Re: Agency EOIR, Docket No. 18-0101 Public Comment Opposing EOIR Fee Review. In the Federal Register at 85 F.R. 11866.**

Dear Ms. Alder Reid:

The Center for Victims of Torture (CVT) respectfully submits this comment to oppose the Fee Review issued by the Executive Office of Immigration Review (EOIR). More specifically, we are especially concerned by the proposed fee for individuals seeking asylum, EOIR Docket No. 18-0101, issued February 28, 2020.

The proposed rule will be extremely detrimental to survivors of torture, who comprise an extraordinarily high percentage of the refugee and asylum seeking populations. It is yet another step by the administration to block asylum seekers from seeking refuge in the United States. Torture survivors' ability to obtain legal relief through asylum is key to their mental health and wellbeing. This rule will obstruct both, and so hinder survivors' healing and further expose them to re-traumatization and re-victimization.

For the reasons detailed in the comments that follow, EOIR should immediately withdraw its current proposal and dedicate its efforts to advancing policies that safeguard individuals fleeing persecution, and even torture. Such a shift is additionally important now in light of the COVID-19 pandemic.

Thank you for the opportunity to submit comments on this proposed rule. Please do not hesitate to contact us with any questions or for further information.

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## **DETAILED COMMENTS in opposition to EOIR, Docket No. 18-0101 Public Comment on Proposed Rulemaking Executive Office for Immigration Review; Fee Review.**

The Center for Victims of Torture (CVT) welcomes the opportunity to comment on the Fee Review, particularly the proposed imposition of a fee for asylum, EOIR Docket No. 18-0101 (“the proposed rule,” or “the rule”).

Founded in 1985 as an independent non-governmental organization, CVT is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives and restores the hope of more than 25,000 primary and secondary survivors of torture, other gross human rights violations, and severe war-related trauma. The vast majority of CVT’s clients in the United States are asylum seekers and refugees.

CVT also conducts research, training and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. CVT organizes a network of torture treatment programs focused on rebuilding the lives of survivors of torture across the nation. These programs serve primarily asylum seekers, asylees, and refugees.

As experts in the provision of mental health and other rehabilitation services to survivors of torture and other trauma, we are intimately familiar with the profound effects that this proposed rule will have on our clients, including making the U.S. asylum process even more insurmountable.

### **I. Background**

On February 28, 2020 the Executive Office for Immigration Review (EOIR) published a Notice of Proposed Rulemaking increasing dramatically EOIR fees to file for applications for cancelation of removal or suspension of deportation, asylum, and motions to reopen or reconsider before the immigration courts or the Board of Immigration Appeals (BIA). It also increases the fees to file for appeal before the BIA. The greatest increase is nearly 800 percent, from \$110 to \$975, to appeal the decision of an immigration judge. Likewise, motions to reopen or reconsider before the BIA would rise to \$895 and asylum applications will have a cost, for the first time in the agency’s history, of \$50. Although there are fee waivers for most of these filings, there is no mention of a fee-waiver for asylum applications. Individuals unable to pay the \$50 fee could still apply for Withholding of Removal (Withholding) and protection under the Convention against Torture (CAT), two significantly lesser forms of relief.

## **II. Due Process Concerns**

The changes proposed are significant and yet the administration has provided only a 30-day comment period, rather than the traditional 60 days.<sup>1</sup> EOIR acknowledges that it has not conducted a fee study in 33 years. Since EOIR has not changed its fees in over three decades, it is imperative that the public be granted sufficient time to understand the reasons and methodology EOIR used to arrive at such substantial increases, and how EOIR plans to ensure that vulnerable, low-income noncitizens will be able to assert their rights in immigration court and before the BIA.

These filings are essential to upholding the principles of access to justice and the right to due process of asylum seekers. Those who cannot afford these fees may be unable to apply for relief or appeal erroneous decisions. The proposed fee levels are unreasonable and disproportionate to comparable fees in Federal courts and they undermine due process.

## **III. This rule is part of a larger scheme by the administration to punish asylum seekers who come to the United States, and to deter others from trying**

Through the establishment of policies, agreements, and dubious unilateral changes to well-settled asylum law, and now the Trump administration's reaction towards asylum seekers in the face of COVID-19, it is clear that the administration seeks to prevent individuals—especially, but not only, those arriving at our southern border—from accessing the U.S. asylum process at all, much less actually obtaining asylum. These actions form the backdrop to the proposed rule and include the following:

**Changing asylum immigration law:** The attorney general certified to himself several immigration court cases and decided them in a way that upends longstanding law. In overruling *Matter of A-B-* and *Matter of L-E-A-*, the attorney general made it significantly more difficult for individuals from Central America to win their asylum cases, since they largely rely on these two cases.

**Zero Tolerance leading to Family Separation:** The administration adopted a policy of pursuing criminal charges against every individual who crossed the border outside of a port of entry, then forcibly separated children from the parents who were subjected to criminal

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<sup>1</sup> *See, e.g.*, Executive Order 12866 (Sept. 30, 1993) (stating that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation”); *see also* Executive Order 13563 (January 18, 2011) (stating that “[t]o the extent feasible and permitted by law, each agency shall 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”).

proceedings. Family separation was a cruel practice that traumatized both children and parents. It will have long lasting consequences for asylum seekers and for the United States.<sup>2</sup>

**Asylum Ban 1.0:** In November 2018, the president issued a proclamation banning individuals who enter the United States between ports of entry from asylum.<sup>3</sup>

**Migrant Protection Protocols:** Established in January 2019, this policy forces asylum seekers to wait in dangerous Mexican border cities during the pendency of their cases. Besides placing asylum seekers in danger, it undermines their ability to obtain assistance of counsel, greatly diminishing their ability to win their case.<sup>4</sup>

**Asylum Ban 2.0:** In July 2019, the administration disqualified from asylum any individual who transited through a third country before arriving at the United States southern border. This disqualifies all but Mexican asylum seekers arriving at our southern border from asylum.<sup>5</sup>

**Agreements with other countries:** The Trump administration has bullied countries into agreeing to Asylum Cooperative Agreements to send asylum seekers to countries that are not safe—from which people are fleeing violence and persecution that these countries' governments cannot, or will not, effectively address—including El Salvador, Guatemala, and Honduras. These agreements essentially trap asylum seekers in the countries where they are being persecuted or are otherwise at significant risk of harm.

**Work Authorization Restrictions:** The administration is seeking to double the time an asylum seeker must wait before qualifying for a work permit (from 180 days to 365 days) and to impose additional restrictions on eligibility. A third proposed rule eliminates entirely the time limit previously imposed on USCIS to adjudicate work authorization applications, which implicitly authorizes the agency to delay any such adjudication indefinitely. The administration also proposed a rule that imposes a \$490 fee for the initial work permit, further restricting access to work authorizations.

**Fee for affirmative asylum applications:** Similar to this rule, the administration plans to impose a \$50 fee for asylum applications filed before the U.S. Citizenship and Immigration services, fee that would prevent many from being able to apply for asylum.

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<sup>2</sup> Center for Victims of Torture. Asylum Fact 4. Available at <https://www.cvt.org/AsylumFact4> (last accessed on 12/30/2019).

<sup>3</sup> <https://www.federalregister.gov/documents/2018/11/09/2018-24594/aliens-subject-to-a-bar-on-entry-under-certain-presidential-proclamations-procedures-for-protection>.

<sup>4</sup> Human Rights First. Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process. Available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (last accessed on 12/30/2019).

<sup>5</sup> <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>

**IV. The proposed rule will have profound health consequences for asylum-seeking torture and trauma survivors, and will effectively bar many of them from obtaining refuge.**

In proposing this rule, the administration will effectively set a price on asylum. The overwhelming majority of asylum seekers arrive to the United States having suffered traumatic experiences, whether in the country from which they fled or on the often-perilous journey in search of safe haven, with no more than the possessions they can carry. Many of the asylum seekers who present their asylum claim before EOIR are at the U.S. southern border. Currently, these individuals are living in conditions well below the poverty level. Only the lucky ones can get into a shelter and many cannot work because they are afraid of leaving shelters due to the dangerous conditions in the Mexican border cities where they are stranded through the Remain in Mexico policy. According to the Department of Health and Human Services, research “suggests that 44% of refugees, asylees, and asylum seekers living in the U.S. have experienced torture,” which means that this rule is likely to exacerbate an already significant level of trauma among these populations inside the U.S. and at the border.

EOIR expresses that this rule still protects the rights of refugees because even if individuals cannot afford the \$50 fee, they could still ask for relief under Withholding or CAT. These lesser forms of relief are in no way comparable to asylum because they do not offer a path to lawful permanent residence or citizenship and the threshold to obtain them is higher than for asylum—both require applicants to demonstrate they are more likely than not (51% or more) to suffer persecution (or in the case of CAT, torture), whereas for asylum the standard is 10%. Furthermore, a respondent who wins Withholding or CAT protection cannot include children or spouses in their applications, which might mean that even if a mother is granted relief, her children—not matter how young—will still have to show for themselves that they also qualify for relief. This will leave asylum seekers with an impossible choice: return to danger or permanently separate from their families. In addition, it means that a mother who comes alone to the U.S. is unable to petition for her family who might still be in danger in her home country.

Alison Beckman, M.S.W., L.I.C.S.W, CVT’s Senior Clinician for External Relations explains the profound impact this dynamic will have on survivors of torture:

For many of our clients, true healing does not start until they are reunited with their families. Allowing one family member to obtain relief and not others would be devastating to clients. Just like it would be devastating to any of us to be permanently separated from our loved ones.

This rule will also increase the number of children within family units who will have to demonstrate separately that they are persecuted, making a process that is already arduous and psychologically damaging for adults much worse for children.

According to Susan Jasko MSW, LICSW, a CVT therapist with over 20 years of clinical experience working with children and families:

As difficult as it is for adults to testify about traumatic experiences, it is even more overwhelming for children, especially those without supportive and knowledgeable family or legal representation. Children often blame themselves when bad things happen, especially if the harm included other family members. Being interrogated in court could lead to a powerful sense of guilt and shame for things that were not their fault. There may be aspects of the trauma they don't know or remember. Given the power differential in the courtroom, it is very unlikely that a child would ask for clarification of something they did not understand. Instead, they would likely try to please the court by giving some kind of approximate answer, rather than saying they don't know or remember. Questions about a traumatic event are difficult for a child to answer in a safe therapeutic setting. Talking about their experiences in court could be as traumatic as the harm they originally endured.

CVT clinicians engage with refugees and asylum seekers every day. They recognize that the fees imposed by the proposed rule will prevent many from even a *chance* at obtaining asylum.

The following clinicians offer additional views directly on the proposed rule:

*Andrea Northwood, Director of Client Services*

For torture survivors who have fled for their lives into exile, the period of time between arriving in a country of refuge and obtaining asylum is one of extreme psychological vulnerability and fragility. This is when survivors are most at risk, most distraught by recent trauma and losses, and least supported: they lack adequate food, clothing, shelter, health care, social support, employment authorization, legal support and legal assistance. They usually have medical and psychological wounds from their torture that have not received any treatment. This often puts their lives literally at risk: they can present at our doors with life-threatening physical conditions and life-threatening psychological symptoms, including suicidality and torture-related flashbacks that result in dangerous activities such as walking into traffic or leaving shelter at night in a semi-conscious state.

*Alison Beckman, M.S.W., L.I.C.S.W., Senior Clinician for External Relations*

Most of our clients have pro bono attorneys, most have no money. Our social workers brainstorm ways for clients to pay for \$3 prescription co-pays. They help clients figure out how to access food shelves and get donated winter clothing. \$50 is an enormous amount of money for someone who has none.

*Jennifer Scofield, MSW, LGSW and Amy Kamel, MA, MSW, LICSW*

One client was severely tortured in her home country in Africa, and several of her family members were tortured and/or killed. This client is currently living with a distant family member, with whom the client has a limited relationship. She is not allowed a key to the house, and she is expected to be at the house all the time. If she does leave she is often locked out. The client has very limited access to food, and she is forced to sleep on the floor. She cannot access food shelves because she is unable to leave the house. She does not have access to hygiene items, socks, or underwear; she has inappropriate shoes and clothing for winter. She has high blood pressure, and is not able to regularly access blood pressure medications both because of cost (\$3 copays are an insurmountable burden) and because she is unable to pick them up.

*Amanda McDonald, Social Worker & Targeted Case Management Supervisor*

Many clients are unable to provide for their own basic needs so many live couch to couch, on the floor of basements or in common rooms. Many only eat when they are offered meals resulting in minimal access to food. A lack of income means a lack of access to transportation so some are unable to take the bus to vocational services that will prepare them for work. CVT can bridge the gap by providing referrals to food shelves, and bus cards but unmet needs remain and many suffer in silence.

## **V. The administration's actions violate the 1951 Refugee Convention**

Refusing to grant asylum to applicants for their inability to pay is a violation of the United States treaty obligations and is fundamentally inconsistent with the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries that are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.<sup>6</sup> This fee may result in asylum seekers renouncing this protection altogether. The United States has long been a world leader in refugee protection. If the United States imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of

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<sup>6</sup> See Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (noting that the United States would be only the fourth country in the world to charge a fee for asylum).

refugees and displaced people are at historic highs, while admissions for the U.S. are at historic lows. The United States should adhere to its international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

### **Conclusion**

The administration must abstain from implementing the proposed rule, which will continue to harm the asylum system, asylum seekers generally, and survivors of torture specifically.

Sincerely,

Center for Victims of Torture