



Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

October 25, 2019

Submitted via www.regulations.gov

Lauren Alder Reid, Assistant Director, Office of Policy
Executive Office of Immigration Review
5107 Leesburg Pike, Suite 2616
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Re: Department of Justice, Executive Office of Immigration Review, EOIR Docket No. 18-0502, RIN No. 1125-AA85, A.G. Order No. 4515-2019, 84 FR 44537, Organization of the Executive Office of Immigration Review – *Public Comment Opposing the Interim Rule*

Dear Ms. Alder Reid:

The City of Seattle Office of Immigrant and Refugee Affairs (“OIRA”) respectfully submits the following comment related to changes made by the interim rule published by Department of Justice, Executive Office of Immigration Review (EOIR) regarding the reorganization of certain offices within EOIR that would result in the elimination of the Office of Legal Access Programs (OLAP) and that would transfer its key functions, including its Recognition & Accreditation (R&A) programs, to the newly created Office of Policy, politicizing a program that has historically been administered by civil servants.

We strongly oppose this reorganization because it will place decisions about immigration law and legal access into partisan staffers and ultimately lead to reduced access to legal services for immigrants and refugees with low incomes.

In the city of Seattle, nearly one in five Seattle residents is foreign-born and 129 languages are spoken in our public schools. Washington is one of the country’s largest refugee-receiving states. And of King County’s total population that has grown by about a quarter million since 2010, almost half of that growth (49 percent) is from people who were born in another country. Additionally, according to a 2017 Pew Research Center report¹, the Seattle-Tacoma-Bellevue metropolitan area is among 20 U.S. regions with the largest populations of undocumented immigrants. Hence, in 2017, the City of Seattle (“the City”) created the Seattle Immigrant Legal Defense Network (LDN) to provide indigent immigrants with legal defense against removal from the United States.

The City also created OIRA in 2012 to improve the lives of Seattle’s immigrant and refugee families. The City, through OIRA, funds and coordinates two naturalization programs: the New Citizen Campaign (NCC) and the New Citizen Program (NCP). Both are joint efforts to help the estimated 75,000 Seattle-area legal permanent residents (LPRs) become U.S. citizens. Since its inception in 1997, NCP has served over 19,000 people, provided naturalization assistance to over 12,300 LPRs, successfully naturalized 9,500 LPRs, and provided over 90,000 hours of citizenship instruction. NCC

¹ <https://www.pewresearch.org/fact-tank/2019/03/11/us-metro-areas-unauthorized-immigrants/>

works with community partners to co-host events called citizenship clinics and workshops all over Seattle that have, to date, served almost 2,000 LPRs.

This comment is based on the expertise of OIRA staff, who administer programs and assist community-based nonprofit partners and individual staff in obtaining and maintaining DOJ recognition and accreditation. Our nonprofit partners have extensive knowledge and experience in administering naturalization services and assisting individual applicants to apply for U.S. citizenship, both in traditional case management and workshop settings. Several of our partners also defend immigrant families from indefinite separation due to detention and removal.

This interim rule will cause upheaval to the R&A programs currently housed in OLAP, and this instability will threaten the City's commitment to naturalization legal assistance. OIRA's naturalization programs currently fund 24 contracts with local community-based nonprofits. NCP is comprised of 12 local nonprofits, all Department of Justice (DOJ) recognized agencies that provide legal representation to low-income clients, including many who require fee waivers and Form N-648 disability waivers. Of the 12 nonprofits in NCC, eight are DOJ recognized, and they provide vital expertise and mentorship to the non-DOJ recognized agencies. Of the six LDN agencies, five are DOJ recognized. The DOJ accreditation process certifies the expertise of a non-attorney representative, and in the case of partial accreditation, restricts their ability to represent clients to matters before the Department of Homeland Security.

The politicization of these programs will destabilize and potentially damage the City's immigration legal assistance programs, which are heavily dependent on the experience and efforts of DOJ-recognized agencies. These agencies rely on the R&A program for the legal authorization to represent low-income immigrants and refugees in immigration related matters. While some agencies employ attorneys, many do not, and these agencies are not permitted to represent clients without agency recognition or individual staff member accreditation. Any change to weaken or undermine the R&A programs directly harms the City's legal assistance programs, the nonprofit agencies who provide the services, and the clients who depend on free or low-cost access to professional legal services.

I. The City of Seattle opposes the elimination of the Office of Legal Access Programs (OLAP) and the transfer of its functions to the Office of Policy.

OLAP has almost 20 years of experience in managing programs that promote and facilitate access to legal representation for immigrants and refugees. The R&A program predates OLAP by nearly 40 years, and currently provides recognition to 818 nonprofit agencies and more than 2,000 accredited representative staff members who represent clients before Department of Homeland Security, and in some cases, the Executive Office of Immigration Review.² The R&A program addresses the lack of "qualified legal representation for underserved persons in immigration cases" by allowing nonprofit organizations and their qualified staff—that demonstrate a charitable purpose and an expertise in immigration law—to be recognized and accredited by the Department of Justice.³

² EOIR, Recognition and Accreditation Roster, available at <https://www.justice.gov/eoir/page/file/942311/download> and <https://www.justice.gov/eoir/page/file/942301/download>. October 11, 2019.

³ EOIR, Recognition of Organizations and Accreditation on Non-Attorney Representatives, 80 Fed. Reg. 59514 (Oct. 1, 2015).

The R&A program was housed within the Board of Immigration Appeals until 2016, when it was transferred to OLAP, following an extended period of notice and comment which is required by the Administrative Procedure Act. This transfer was logical, as OLAP already provided other programs designed to enhance immigrants' access to legal services.⁴

a. The elimination of OLAP will politicize, and ultimately endanger, the autonomy of nonprofit agencies and staff who require recognition and accreditation to perform their work.

The elimination of OLAP and the transfer of its functions, including the R&A programs, to the Department of Justice's Office of Policy politicizes the work of legal nonprofits and the staff who require recognition and accreditation to legally perform their work. The Office of Policy, newly created in 2017, reports to the Attorney General, a political appointee of the President. It does not currently administer or manage any programs. By placing the R&A programs within the Office of Policy, the Department of Justice has assigned vital programming to a newly created office without the experience needed to competently run a nationwide program. This demonstrates, at best, a lack of respect and understanding for the vital functions currently performed by OLAP. At worst, it manifests the current administration's animosity towards immigrants and refugees, especially those who are lower-income, and creates yet another obstacle to obtaining legal status or pursuing U.S. citizenship.

In its brief existence, the Office of Policy has gained considerable attention for promoting policies handed down by the current President. For example, it recently announced the ban on individuals applying for asylum on the southern border, unless they can show that they have applied for asylum in every country they traveled through en route to the U.S.⁵ The Office of Policy is not committed to providing legal services to low-income immigrants. In fact, it has taken steps to prevent immigrants from pursuing their legal right to seek asylum in the U.S.

Obtaining or maintaining legal status and pursuing U.S. citizenship provide significant benefits for both the individual and our nation as a whole. Access to legal representation for immigration benefits, including naturalization, should be strengthened, not threatened, and the functions performed by the R&A program are vital to providing access to quality legal services for low-income individuals and other vulnerable immigrants, many of whom would otherwise lack access to legal representation. The politically tethered Office of Policy could reduce access to legal services in any number of ways: by reducing or restricting program budgets, diverting existing funding, creating rigid policies that make the provision of legal services more onerous, or slowing down the operations of the R&A program upon which so many organizations and accredited representatives rely.

b. Nonprofit agencies and their staff must be recognized and accredited in order to provide legal services and avoid the unauthorized practice of law.

⁴ 81 Fed. Reg. 92346 (Dec. 19, 2016).

⁵ Department of Homeland Security, Department of Justice, EOIR, U.S. Citizenship and Immigration Services, *Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33829 (July 16, 2019).

As part of the DOJ recognition process, the applying organization must be a “nonprofit religious, charitable, social service, or similar organization that provides immigration legal services primarily to low-income and indigent clients”⁶. In order to provide free or low-cost services, DOJ recognized organizations typically rely heavily on non-attorney legal staff, DOJ accredited representatives, to expand legal capacity and reduce personnel costs.

Without the accreditation provided through the R&A programs, many of these legal service providers are not authorized to represent clients, and the organizations that employ them lose or decrease their capacity to provide legal services to low-income clients who likely cannot afford a private attorney. Providing representation as a non-attorney, without DOJ accreditation, renders individuals in some jurisdictions subject to criminal prosecution for the unauthorized practice of law.

Everyone loses in this scenario. The experienced, highly specialized DOJ representative loses his or her livelihood, and without sufficient staffing, the agency loses its ability to provide free or low-cost legal services. Most of all, the most vulnerable immigrants and refugees lose access to quality legal services. For naturalization and other affirmative applications, this means clients are being pushed further into the margins, without access to a permanent foothold in the U.S. For those in removal proceedings, appearing in court without an attorney means a significantly lower rate of success.

If the R&A functions of OLAP are subsumed by the Office of Policy, advocates rightfully fear that the current administration will deprioritize, and ultimately, eliminate access to low-cost legal representation for immigrants and refugees. The current administration has used the administrative rule-making process to gradually strip away the rights of immigrants and refugees—making it harder to obtain and maintain legal immigration status.

c. The elimination of OLAP endangers its legal orientation programs (LOPs) and other efforts that assist particularly vulnerable immigrants.

Since 2000, OLAP has been responsible for operating several other programs, in addition to the R&A program, that foster legal representation in immigration:

- The court mandated national qualified representative program, which provides funded counsel for mentally incompetent individuals in removal proceedings;
- The maintenance of the list of pro bono attorneys that must be provided by the immigration courts to persons in removal proceedings;
- The operation of a nationwide LOP for detainees, as well as an LOP for custodians of unaccompanied minors, both of which receive designated congressional funding; and
- The immigration help desk, which assists individuals who are representing themselves in immigration court.

These programs provide support to individuals facing removal, at the very least advising them of their basic legal rights and providing information about organizations that provide free and low-cost legal services.

⁶ 8 CFR §1292.11

OLAP-managed programs not only improve client outcomes, but increase court efficiency while reducing administrative and detention costs.⁷ When the Department of Justice attempted to dismantle the legal orientation programs housed in 38 immigration detention centers, immigration judges and advocates protested,⁸ and the plan was soon halted, pending an internal review of the program.⁹ Despite the backlash from the attempt to eliminate the LOP program, the elimination of OLAP is potentially a back-door means to defund or reduce the impact of these vital programs.

d. Publishing this change as an interim final rule violates the Administrative Procedure Act (APA).

This interim rule reflects the anti-immigrant agenda of the current administration and its desire to push changes through behind-the-scenes administrative channels, often without following proper procedures. In this case, as in many others, the EOIR has not adhered to the rules outlined in the APA.

This rule was published as an interim rule effective immediately, with the self-serving explanation that it merely addresses DOJ agency organization and is therefore not subject to the APA requirement that rules with an impact on the public must provide the public with prior notice and the opportunity to comment.¹⁰ As this rule makes major changes to the existing legal access programs managed by OLAP and facilitates their eventual elimination, this rule should have been formally proposed and examined under standard APA notice-and-comment procedure, not merely announced as a presumptively final policy.

II. The City of Seattle is opposed to giving the EOIR Director the authority to issue binding case decisions.

The City opposes this interim rule because it will allow the EOIR Director to issue precedential decisions in certain cases before the Board of Immigration Appeals (BIA). The EOIR Director is a political appointee, while BIA members are career government employees with extensive knowledge of and experience in immigration law. Under current regulations, three BIA members must adjudicate a case in order to issue a precedential decision. This process, similar to the appellate process in federal circuit courts, allows for thoughtful, balanced deliberation before the BIA issues a decision, which will be binding on every immigration judge and Department of Homeland Security officer throughout the country.

⁷ Legal Orientation Program Overview, American Immigration Council, available at <https://americanimmigrationcouncil.org/research/legal-orientation-program-overview>.

⁸ Immigration Judges Are Bewildered by the DOJ's Decision to Slash Legal Guidance for Detainees, Pacific Standard, available at <https://psmag.com/social-justice/immigration-judges-are-bewildered-by-the-doj-s-decision-to-slash-legal-guidance-for-detainees>. Judge Ashley Tabbador states, "The overwhelming majority of the judges that are presiding over cases in those detention facilities have told us that LOP has been a very effective tool in making sure the cases are handled in a fair manner and that there is due process for the immigrant."

⁹ DOJ Reverses Course on Legal Orientation Program, For Now. American Immigration Lawyers Association, <https://aila.org/advo-media/press-releases/2018/doj-reverses-course-on-legal-orientation-program>.

¹⁰ Administrative Procedures Act, 8 U.S.C. §553.

The interim rule would enable the EOIR Director, acting alone, to issue decisions that may be heavily influenced by the current political climate and the President's anti-immigrant agenda. This would directly affect our clients and our ability to provide direct services to our clients. The stakes are too high in immigration law to allow one person to have this much power. The lives and welfare of our clients depend upon binding decisions issued by a panel of experts, not the decisions of a single administrative director.

III. Conclusion

The interim rule to eliminate OLAP and transfer its functions, including its R&A programs, to the Office of Policy is a misguided, politically motivated move that will endanger the status of more than 800 nonprofit organizations and 2,000 credentialed staff members. More importantly, it will likely reduce access to quality legal services for low-income immigrants and refugees, and thousands of immigrant and refugees and their families will face yet another obstacle in their efforts to achieve competent legal representation. The EOIR violated the APA in announcing these changes as an interim rule without going through notice-and-comment procedures. The rule's assignment of judicial authority to the EOIR Director will undermine the authority of the established appellate process and potentially lead to legal precedent that is blatantly motivated by politics.

Thank you for your consideration of these comments. Please do not hesitate to contact Meghan Kelly-Stallings, Citizenship Program and Policy Specialist at (206) 386-1882 or meghan.kelly-stallings@seattle.gov, with any questions or concerns about this comment.

Sincerely,



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