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July 13, 2020

Lauren Alder Reid, *Assistant Director*  
Office of Policy  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 1800  
Falls Church, VA 22041

**Re: U.S. 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): Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review; RIN 1615-AC42 / 1125-AA94 / EOIR Docket No. 18-0002/ A.G. Order No. 4714-2020 published in the Federal Register on June 15, 2020.**

Dear Assistant Director Reid:

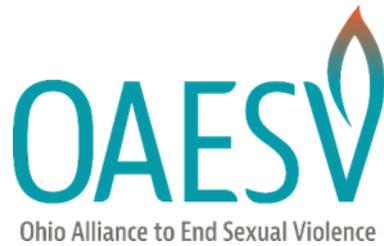
I submit the following comments on behalf of the Ohio Alliance to End Sexual Violence (OAESV) in response and opposition to the above-referenced Asylum NPRM.

OAESV is Ohio's statewide sexual assault coalition, based in Independence, Ohio. Our mission is to advocate for comprehensive responses and rape crisis services for survivors, and to empower communities to prevent sexual violence. Through statewide and community partnerships, OAESV provides public policy advocacy, training and technical assistance to rape crisis centers and allied organizations, and resources and information to professionals, survivors, and the general public.

OAESV strongly opposes the proposed rule because it unfairly modifies current U.S. asylum policies and processes, which will directly affect survivors of sexual violence seeking asylum in the United States. We object in particular to how these changes will prevent victims of brutal gender-based violence and oppression from obtaining protection under our immigration laws. We urge the Departments to rescind the rule.

### **Current Conditions Impacting Procedural Fairness**

The proposed rule is extremely dense, containing numerous and varied substantial changes to current and long-standing asylum regulations. Under any circumstances, it would be unfair to give the public such a short time to comment on changes that are this extensive.



But the challenges to respond to the Asylum NPRM are magnified at this time by the additional stress survivor advocates have been placed under during the ongoing pandemic. Ohio advocates currently face a severe lack of equipment necessary for distance advocacy, both for advocates and the survivors they serve. As a result, advocates and their employers face increased stress and time-consuming decision processes about how to best provide advocacy without putting advocates and their families at risk. Survivors seeking care and assistance face new challenges that programs must innovate to meet. Notwithstanding these additional challenges, many advocates have to juggle working from home while caring for children or other dependents.

Despite these limitations, requests for sexual violence services have increased in a majority of Ohio counties. In cases where the perpetrator of sexual violence is a family member or intimate partner, an estimated 1 in 5 of such cases for women and 1 in 10 men,<sup>1</sup> survivors have been in close and constant proximity to their abusers, placing them in unsafe housing situations. Many survivors of sexual violence have experienced heightened stress and tension due to the pandemic and isolation during stay-at-home and quarantine orders. If a survivor has recently lost their job due the pandemic, and therefore their health insurance, they may fear seeking medical care and treatment for sexual violence, resulting in health concerns as well as a potential loss of important forensic evidence.<sup>2</sup>

Ultimately, survivor needs have increased and the pandemic has restricted time available to already understaffed agencies. As a result, the comments below are less detailed than they would have been with sufficient time to respond. This overly brief and burdensome Notice and Comment period restricts access to and review of information critical to the administrative rulemaking process.

Simply, COVID-19 presents substantial barriers to participating in democratic processes and procedures. Providing adequate time for stakeholders to respond requires acknowledging and responding to the ways in which COVID-19 impacts our citizens. For this reason, we urge the Departments to rescind the proposed rule immediately as a matter of procedural fairness to the public and key stakeholders like OAESV and our member rape crisis centers. At a minimum, the public should be given at least 60 days to respond in order to have adequate time to provide comments.

We also urge the Departments to rescind the proposed rule because of OAESV's serious, substantive -- including, but not limited to, the following:

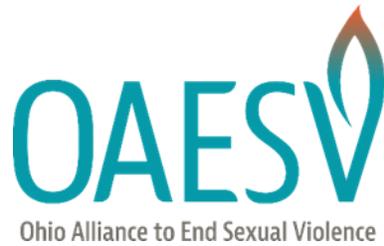
**I. Survivors deserve and need the equal protection from persecution the proposed rule would deny them.**

Asylum was created as a path to safety for people harmed because of gender. All survivors of persecution in any form deserve a chance to seek protection.

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<sup>1</sup> Centers for Disease Control and Prevention, The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief, <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>

<sup>2</sup> These and other challenges described in this paragraph may be found and described in greater detail at the following link: [https://www.oaesv.org/site/assets/files/1866/covid-19\\_report\\_only\\_--\\_final.pdf](https://www.oaesv.org/site/assets/files/1866/covid-19_report_only_--_final.pdf)



When the police, courts, legislatures, and other official systems in survivors' home countries will not or cannot protect them, survivors of gender-based violence need the protection of asylum.

OAESV opposes the proposed rule because it would expressly exclude those who suffer persecution based on gender asylum eligibility.<sup>3</sup>

The majority of those who suffer such persecution worldwide are those who identify as women and girls. The World Health Organization estimates that 35% of women worldwide experience sexual or gender-based violence during their lifetime. This rate doubles in crisis circumstances, such as the current pandemic. Beyond the COVID-19 pandemic, instances of sexual violence against women increase during conflict and in times of social upheaval. Denying them the U.S.'s protection unfairly discriminates against them, and discounts the severe harm they experience.

OAESV works with survivors of sexual violence, and in so doing advocates for many survivors of intimate partner violence and human trafficking. In our client services programming, OAESV has served families impacted directly by sexual and intimate partner violence who, if unable to avail themselves of asylum protections, would have faced potentially fatal outcomes.

In OAESV's experience, immigrant survivors of sexual violence are particularly vulnerable, traumatized, and susceptible to multiple victimization and re-victimization, including because of their immigration case status being dependent on a relationship with their abuser, isolation, lack of access to legal assistance or community advocacy, or long waits on their immigration cases. Survivors who are both physically and sexually abused are at greater risk of injury or death than survivors who experience only one form of abuse. In addition, survivors who are pregnant or attempting to leave their abusers are at a greater risk for intimate partner violence. Approximately 45% of survivors of domestic violence have also experienced sexual violence.<sup>4</sup>

Asylum in the U.S. can be a critical lifeline for survivors, and must continue to provide protection for them. Returning survivors to places where they face persecution will put them at life-threatening risk.

## **II. Sexual violence is NOT just an “interpersonal dispute” or a “private criminal act.”**

The proposed rule says that a persecuted group cannot be defined by circumstances related to “interpersonal disputes” or “private criminal acts” as to which governmental authorities were “unaware or uninvolved.”<sup>5</sup>

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<sup>3</sup> While the rule purports to allow gender-based claims in “rare circumstances,” in practice, this exception will have no effect. The rule allows judges to pre-emptively terminate any “legally insufficient” claims – e.g., those based on gender – at the outset. Such claims will then be deemed “frivolous” under another provision in the rule, forever barring an applicant from any immigration status or benefits of any kind. Survivors will be deterred or prevented from applying at all, and the parameters of the exception will go untested.

<sup>4</sup> National Coalition Against Domestic Violence, Quick Guide: Domestic Violence and Sexual Abuse, <https://ncadv.org/blog/posts/quick-guide-domestic-violence-and-sexual-abuse#:~:text=How%20Do%20Domestic%20Violence%20and,experience%20one%20form%20of%20abuse>.

<sup>5</sup> Again, while the rule alludes to “rare circumstances” in which such cases might be considered, this is ultimately an empty assurance and will serve to deny survivors of gender-based violence any protection.



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This proposed change ignores long-standing and purposeful inclusions in place after the 1984 passage of the Family Violence Prevention and Services Act and the 1994 Violence Against Women Act, before which intimate partner violence was treated as a “private matter”. This proposed change minimizes interpersonal violence as nothing more than a simple relationship dispute, and shows how survivors in countries with such attitudes find themselves with no hope of protection and no way out. As practitioners are well aware, sexual violence is most frequently committed by someone the survivor knows, as opposed to strangers, and survivors of sexual violence perpetrated by intimate partners and family members deserve recognition as a persecuted group.

Importantly, too, the very indifference of governmental authorities to the plight of survivors in fact proves that persecution exists. There is no legal or ethical reason to deny survivors the chance to include evidence of their government’s failure to protect them in their asylum applications. Social norms can hide sexual violence from public view, and governments often allow those norms to go unchecked and unchallenged. A significant proportion of sexual violence cases go unreported to police and government entities, with an estimated 75% of sexual assaults in the U.S. being unreported in 2016.<sup>6</sup> In addition, legal protections for survivors of sexual violence are lacking in more than 1/3<sup>rd</sup> of countries.<sup>7</sup>

OAESV’s clients face incredible barriers to reporting, including retaliation, fear, social isolation, loss of financial stability, housing, family relationships or employment, and others. If we require reports to law enforcement as a predecessor to asylum claims, survivors will lose access. Survivors often fear increased violence and may already know, from their own past experience or the experience of other survivors, that the authorities cannot or will not protect them. They may fear being blamed for an assault. They may feel shame and embarrassment. They may also fear that going to the authorities will itself alert a perpetrator/persecutor that the survivor is trying to escape, and close off her escape route. In the U.S., 20% of unreported sexual violence was unreported for fear of reprisal, with 10% unreported because of a real or perceived lack of ability on behalf of police to help.<sup>8</sup> This change will force survivors to either engage in reporting they know will escalate violence or forgo the possibility of asylum altogether.

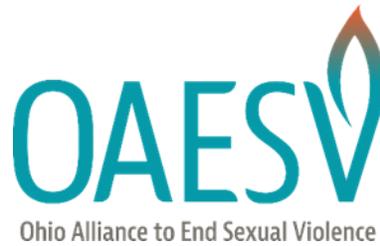
Further, laws against intimate partner and sexual violence are limited or non-existent in many countries. In some countries, law enforcement officers ignore or dismiss reports, and at times, may even be complicit in harming survivors. A law enforcement officer may themselves be a perpetrator, and fellow or supervising officers may turn a blind eye or help cover up violence. Or, officers may

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<sup>6</sup> Rape, Abuse & Incest National Network (RAINN), *The Criminal Justice System: Statistics* (2020), <https://www.rainn.org/statistics/criminal-justice-system#:~:text=The%20Majority%20of%20Sexual%20Assaults,out%20of%204%20go%20unreported.&text=Members%20of%20the%20military%3A%2043,10%25%20of%20male%20victims%20reported>.

<sup>7</sup> The World Bank, *Global and Regional Trends in Women’s Legal Protection Against Domestic Violence and Sexual Harassment* (2018), <http://pubdocs.worldbank.org/en/679221517425064052/EndingViolenceAgainstWomenandGirls-GBVLaws-Feb2018.pdf>.

<sup>8</sup> U.S. Department of Justice, *Female Victims of Sexual Violence, 1994-2010* (2016), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>



have a family or personal relationship with perpetrators. Prosecutors may likewise fail to bring charges, and judges and juries may render weak verdicts or acquittals.

Survivors should not be punished twice: first by the failure of their own government to protect them, and second by the U.S.'s refusal to accept evidence of that failure.

### **III. Advocating for equal rights and pressing for social norm changes can make one a target for persecution, and thus should make one eligible for protection.**

The Asylum NPRM proposes to narrow the definition of “political opinion” for the purposes of asylum to require “furtherance of a discrete cause related to political control of a state or a unit thereof.” This seems to convey that, unless an asylum-seeker was persecuted for fighting the ruling party for political control, or for staging a coup, they could not pursue an asylum claim based on “political opinion.”

This exceptionally restrictive definition would exclude survivors persecuted for trying to advance equal rights for women or LGBTQI+ individuals in socio-economic matters of education and employment; in legal matters like marriage, business contracts, property ownership and inheritance; or in civil rights like voting or serving in office. The proposed rule would exclude such persecution, no matter how heinous the harm meted out against such activists. A telling example comes from Central America, where a father had experienced harassment for his political activities in the past, but it was only after his family received threats of rape against their daughters that the family fled their country, attempting to claim refuge in Canada.<sup>9</sup> Under the proposed rule, neither the father - for his political activism - or the daughter - for threats of sexual violence - would be eligible for asylum in the U.S.

Under the proposed rule, any such request for asylum under the “political opinion” ground for persecution would be deemed “legally insufficient.” It is well understood that “political opinion” applies to a greater range of causes than the extreme forms of political action such a coup. The severity of political change sought by political opinions does not always directly correlate to the very real and potential persecution levied upon asylum seekers. By narrowing the definition of “political opinion”

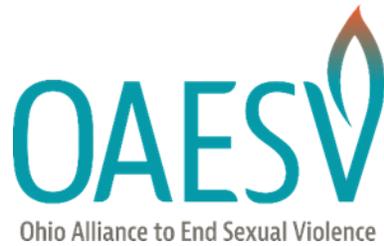
in a severe and confusing manner, and deeming those claims which do not conform with the narrow definition as “legally insufficient”, the Asylum NPRM will deny persecuted individuals a hearing and sentence those who attempt to exercise many of the freedoms enjoyed by U.S. citizens to persecution in their home countries.

### **IV. The proposed rule will deny immigrant survivors a fair day in court to seek protection from deportation, and further victimize survivors.**

As an advocate for immigrant survivors of sexual violence, the Asylum NPRM poses huge concerns to OAESV, not only because it could cut survivors off from asylum protection, but also because it

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<sup>9</sup> Evangelia Tastsoglou & Shiva Nourpanah, (Re)Producing Gender: Refugee Advocacy and Sexual and Gender-Based Violence in Refugee Narratives, 51 *Canadian Ethnic Studies* 3, 46 (2019).



could make them unable to apply for protection under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA).

In our experience, many survivors have experienced violence and victimization both in their home countries and in the U.S., and under current law, they may have both a VAWA/TVPA and asylum case. The proposed rule, however, would limit survivors who are put into “expedited removal” to “asylum-and-withholding” proceedings only, preventing survivors from obtaining protection under VAWA/TVPA.

The Asylum NPRM would effectively block all avenues of relief from deportation for survivors of gender-based violence, in multiple ways, including by:

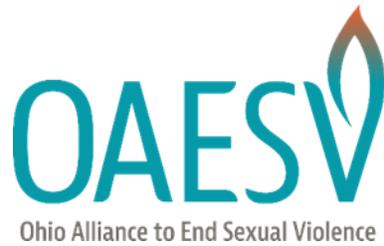
- “streamlining” hearings in ways that will prohibit survivors from seeking VAWA/TVPA protections;
- creating more barriers to survivors in initial screenings that determine whether they will even get a hearing;
- characterizing the kinds of persecution that survivors face as “legally insufficient”;
- re-defining what makes an asylum claim “frivolous” in ways that mean a survivor of gender-based persecution could be deemed permanently ineligible for any immigration benefits
- allowing immigration judges to “pretermite” -- preemptively deny, without ever holding a hearing -- an asylum application whenever they deem it “legally insufficient”; and
- expanding “firm resettlement” to preempt children of asylum seekers from asylum protections due to a parent’s status as resettled in a country other than the U.S.
- outlining more factors that must be considered “significantly adverse” or will cause an asylum application to be denied, including things that can be directly related to PTSD.

The short timeframe the Departments have set for public comment does not permit OAESV to address all the ways these sweeping changes are especially unfair to survivors of gender-based violence and will deny them any hope of due process or a fair chance at obtaining protection.

We are alarmed that the proposed rule will block immigrant survivors’ cases well before they ever see a judge, and in any event will deny them a fair hearing.

We are also tremendously concerned about the Departments’ planned expansion of the harsh “expedited removal” policy to reach anyone encountered by DHS officers anywhere in the U.S. who cannot prove legal status or that they have been continuously present in the U.S. for the last two years or more. This “expanded expedited removal” policy, in combination with the Asylum NPRM, will sweep in many immigrant survivors who will be swiftly deported.

Abusers and traffickers invariably isolate and control their victims; confiscate or destroy their identity documents or other government records; and prevent survivors from having anything in their own name, even a library card, let alone a lease or utility bill or a bank statement that could help show how long an immigrant survivor has been in the U.S. Abusers and traffickers also routinely manipulate systems to silence or punish victims by trying to get them jailed or deported, or threatening to do so.



In combination, the Departments' policy changes will make it even easier for perpetrators to terrorize their victims and even more likely that survivors will be deported before they can access protections that Congress specifically created for them under U.S. asylum law, VAWA and the TVPA.

Immigrant survivors already have tremendous challenges to accessing safety, especially at this time. Approximately 76% of advocates report that immigrant survivors have concerns about reporting abuse to authorities, with 52% reporting that immigrant survivors have dropped civil or criminal cases because they were fearful to continue with their cases, many due to fear of removal proceedings or a lack of a fair day in court.<sup>10</sup> OAESV's own legal program saw a blunt and pronounced reduction in applications for services as U.S. lawmakers sought to reduce access to safety.

During the COVID-19 pandemic, when orders to socially distance and shelter in place are in effect, abusers are more easily able to perpetrate violence upon survivors. Survivors are cut off from family and friends. With the wide-spread loss of employment, many immigrant survivors have lost jobs and are unable to apply for unemployment, leading to an increased dependence on abusive partners and family members to provide food, shelter, and access to services.

This Asylum NPRM would make things far worse for all immigrant survivors, and will also undermine public health and safety. Afraid that any contact with the authorities could lead to their being placed in expedited removal, survivors will fear stepping forward and instead retreat further into danger. Among other concerns, they may decline to seek medical care, which would exacerbate our public health crisis.

#### **V. Compromising the confidentiality of asylum records will harm survivors.**

Though the form that border officers currently recite to asylum-seekers says that "United States law provides strict rules to prevent disclosure of what you tell an asylum officer about the reasons you fear harm," the proposed rule sets forth a string of new and vaguely worded circumstances that would allow for the disclosure of asylum records, without any clear limitation as to whom it may be disclosed, so long as it is for a specified purpose. Not only is the proposed rule problematic due to its confusing and unclear limitations in-and-of-itself, but the vague guidelines will result in problems of enforcement for border and immigration officers.

The proposed rule would allow for disclosure of information in an asylum application "as part of a federal or state investigation, proceeding, or prosecution; as a defense to any legal action relating to the alien's immigration or custody status; an adjudication of the application itself or an adjudication of any other application or proceeding arising under the immigration laws; pursuant to any state or federal mandatory reporting requirement; and to deter, prevent, or ameliorate the effects of child abuse."

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<sup>10</sup> Immigrant Survivors Fear Reporting Violence, <https://static1.squarespace.com/static/5b9f1d48da02bc44473c36f1/t/5d290b07a8dea8000138bf97/1562970888076/2019-Advocate-Survey-Final.pdf>



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This destruction of confidentiality will hurt survivors. As already discussed above, survivors may fear retaliation, both legal and illegal in nature, from their abusers. A survivor may fear that reporting will lead to their abuser obtaining confidential information which may be used to retaliate, harass, and further abuse the survivor. A survivor with children may refuse to report abuse for fear of Child Protective Services inquiries. Survivors may fear retaliation from actors other than their abuser, such as their employer, social services, or other organizations which could use confidential information to take legal action and file frivolous suits against a survivor.

## **VI. Conclusion**

OAESV firmly opposes U.S. 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): Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review; RIN 1615-AC42 / 1125-AA94 / EOIR Docket No. 18-0002/ A.G. Order No. 4714-2020 published in the Federal Register on June 15, 2020.

The proposed rule effectively eliminates survivor access to asylum and must not take effect. Further, the Notice and Comment Period is wholly insufficient for the contribution of meaningful responses by knowledgeable stakeholders and must be extended.

Thank you for considering these comments in response and opposition to this NPRM. I am available at your convenience if I can provide any additional information or insight.

With Utmost Urgency,

A handwritten signature in black ink, appearing to read "Rosa Beltré".

Rosa Beltré  
*Executive Director*  
Ohio Alliance to End Sexual Violence