



ASYLUM SEEKER ADVOCACY PROJECT

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EOIR Docket No. 18-0203
85 F.R. 78240

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To Whom It May Concern:

The Asylum Seeker Advocacy Project (ASAP) respectfully submits the following comments to the Department of Justice's proposed rule Executive Office for Immigration Review Electronic Case Access and filing, RIN 1125-AA81 or EOIR Docket No. 18-0203, 85 F.R. 78240, (Dec. 4, 2020) ("the Notice").

Interest in the Proposed Rule:

ASAP is a membership organization of more than 30,000 asylum seekers from 140 countries now living in all 50 U.S. states. ASAP's members are asylum seekers who want to: (1) learn how to navigate the asylum process; (2) get connected with legal services; (3) identify and advocate for ways to make the asylum system work for asylum seekers; and (4) connect with other asylum seekers who want to work together to help build a more humane asylum system and a United States that welcomes those who flee persecution.

ASAP provides community support and legal services to its members regardless of where they are located. Since its establishment, ASAP has provided over 13,000 legal referrals, shared legal resources with over 30,000 members, and successfully resolved nearly 2,000 legal emergencies for members in 44 states and both sides of the Mexico-U.S. border. ASAP has represented asylum seekers before 39 immigration courts, the Board of Immigration Appeals (BIA), the Department of Homeland Security (DHS), federal courts, and in administrative filings with United States Citizenship and

Immigration Services (USCIS). ASAP also conducts legal training, creates guides and resources, and provides technical assistance to pro bono attorneys.

ASAP routinely provides remote legal assistance to asylum applicants — both pro se assistance and represented — including assistance filing defensive applications for asylum, withholding of removal, and protection under the Convention Against Torture (“asylum applications”) and urgent motions in immigration courts. ASAP has assisted in the preparation of over 700 filings with EOIR for its members. Most of these filings were submitted by unrepresented respondents (“pro se”) with ASAP’s assistance. As such, ASAP and its members have a great interest in ensuring that an e-filing system functions for both represented and pro se respondents in immigration court.

Department of Homeland Security and Department of Justice Notice:

On December 4, 2020, the Executive Office of Immigration Review (EOIR) of the Department of Justice (DOJ) published the Notice proposing to update the relevant regulations necessary to implement electronic filing (e-filing), electronic application for records, and electronic service of process for cases before the immigration courts and the BIA. More specifically, the Notice indicates that the e-filing system will be limited to new cases — cases in which DHS files a charging document in the immigration court after the launch date.¹ Furthermore, the Notice states that only attorneys and accredited representatives will be able to use the e-filing system.² The Notice does not commit EOIR to transition cases for which there was a charging document filed before the launch onto an e-filing system. Nor does the Notice address whether pro se respondents will certainly be able to access e-filing after the initial launch of e-filing for attorneys and accredited representatives.

Currently, EOIR is operating an optional e-filing pilot program limited to attorneys and accredited representatives at the immigration courts in San Diego, California; Atlanta, Georgia; Denver, Colorado; Baltimore, Maryland; and York, Pennsylvania.³ However, EOIR also implemented an email filing system over the last year as an alternative to paper submissions during the COVID-19 pandemic.⁴ The Notice does not make mention of the email filing program at all. It is notable that EOIR has begun to roll

¹ See Notice at 78242.

² See *id.* at 78243-78245.

³ See *id.* at 78241.

⁴ See EOIR, *Filing by Email*, available at <https://www.justice.gov/eoir-operational-status/filing-email-immigration-courts> (last visited Jan. 4, 2021).

back email filing at some immigration courts in addition to allowing the email filing program to expire entirely at the BIA.⁵

The Notice also proposes to clarify the rules around law student and law graduate practice within EOIR; provide guidance on the use of signatures (including electronic signatures) in filings with EOIR; and update the rules on electronic payments to EOIR and duplicate filings.

Overview:

ASAP commends EOIR for recognizing the importance of modernizing the immigration courts by developing a system for e-filing. EOIR should reopen and extend the initial comment period to allow stakeholders a meaningful opportunity to analyze the proposed regulation. Importantly, EOIR should also reissue a more detailed Notice after analyzing how the proposed rule will interact with other pending regulations. If the comment period is extended, ASAP will be able to offer additional feedback and more detailed recommendations on technical issues related to the implementation of the e-filing system.

In the remainder of this comment, we identify positive aspects of the proposed rule, as well as those aspects that should be revised. A number of the proposed changes will create invaluable benefits in immigration adjudication, including the creation of a permanent nationwide e-filing system (described as an electronic record of proceeding or “eROP”). However, the proposed rule’s mandatory provisions have the potential to negatively impact immigration court practice and pro se applicants. EOIR should revise the rule in light of these potential impacts and adopt the reasonable alternative proposals suggested here that would better achieve its underlying goals before welcoming further comment. Additionally, we emphasize that any e-filing system must be free and ensure language accessibility.

I. EOIR Should Reopen the Comment Period to Provide a Meaningful Opportunity for Stakeholders to Comment.

The proposed rule cannot receive proper consideration and comments from impacted members of the public due to the deadline immediately following several

⁵ See EOIR, *Filing by Email Board of Immigration Appeals*, available at <https://www.justice.gov/eoir-operational-status/filing-email-board-immigration-appeals> (last visited Jan. 4, 2021).

federal holidays. The proposed rule was first published on December 4, 2020 and offered a 30-day comment period, terminating on January 4, 2020. This truncated period, which includes several federal holidays, has deprived the public of a meaningful opportunity to review and analyze the proposed changes in the rule. In the past, other federal agencies have reopened comment periods in similar circumstances, giving the public additional time to comment on proposed changes.⁶

Executive orders and other federal regulations also indicate that, in general, agencies should allow the public, at minimum, 60 days to review and comment on proposed regulations.⁷ Nothing in the current rule justifies departure from the standard period of 60 days, nor does the agency offer any rationale for limiting the comment period.

The public has not had time to address the potential economic impact of the proposed rule, which has the potential to dramatically affect the day-to-day practice of every immigration court practitioner in the country. In particular, the private bar and nonprofit organizations have not been able to focus on commenting on this proposed rule at a time when many offices are closed, especially amidst many other proposed rules requiring comment that could potentially impact immigration court practice recently issued by EOIR and DHS.⁸

⁶ See Notice of Proposed Rulemaking on U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, DHS Docket No. USCIS– 2019–0010, in the Federal Register at 84 F.R. 67243, issued Dec. 9, 2019 (extending the comment period for this proposed rule from November 14, 2019 to December 30, 2019).

⁷ Executive Order 12866 states 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.” Exec. Order No. 12866, 58 F.R. 190 (Oct. 4, 1993). Executive Order 13563 states 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.” Exec. Order No. 13563, 76 F.R. 3821 (Jan. 21, 2011). The minimum standard review period under the Paperwork Reduction Act (PRA) is also 60 days. See 5 C.F.R § 1320.8(d)(1).

⁸ See Maegan Vazquez, Ellie Kaufman, Katie Lobosco, Janie Boschma and Marshall Cohen, *Trump administration Pushes 'Midnight Regulations' After Breaking Records for Final-Year Rulemaking*, CNN (Dec. 6, 2020) available at <https://www.cnn.com/2020/12/06/politics/trump-midnight-regulations-record-rulemaking/index.html> (detailing the late minute rush to finalize and publish nearly a 1000 pages of new immigration regulations in December 2020); see also, Priscilla Alvarez, *Trump Administration Tries to Push Last-Minute Immigration Limits*, CNN (Nov. 19, 2020) available at <https://www.cnn.com/2020/11/19/politics/immigration-trump-transition/index.html>.

The Notice acknowledges that immigration attorneys and accredited representatives have long requested an electronic filing system.⁹ Many members of the private bar, as well as attorneys and accredited representatives with non-profit organizations have participated in the e-filing pilot program at the following immigration courts: San Diego, California; Atlanta, Georgia; Denver, Colorado; Baltimore, Maryland; and York, Pennsylvania. As such, these stakeholders have significant insight and should be afforded the opportunity to meaningfully comment on how such a system is implemented. By denying practitioners, including those with direct experience with EOIR's e-filing pilot program, adequate time to analyze the proposed rule, EOIR will likely miss out on critical comments and feedback from many of the individuals most impacted by its proposed changes.

If the comment period were extended, ASAP would be able to provide more detailed feedback on the implementation of the e-filing system. Given adequate opportunity to comment, we could provide the agency detailed suggestions about improving language access, mobile use, integration across different digital platforms and interfaces, best practices for e-signature verification, and comparative assessments of other functional e-filing systems. Without providing adequate time to comment the agency will not receive this feedback and ASAP and other stakeholders will be denied a meaningful opportunity to engage with the more detailed aspects of EOIR's proposals.

II. EOIR Should Reissue the Proposed Rule because it Fails to Consider how it Interacts with Other Pending Regulations and Creates Uncertainty.

EOIR should reissue the proposed rule, or at a minimum extend the notice and comment period, because of uncertainty produced by interactions between the proposed rule and EOIR's other recently proposed rule, Professional Conduct for Practitioners – Rules and Procedures, and Representation and Appearances.¹⁰ The latter rule distinguishes between acts that involve the provision of legal advice or exercise of legal judgment (practice) and acts that consist of purely non-legal assistance (preparation) for Department purposes, and proposes different procedures based on this distinction.¹¹ The proposed rule for electronic filing does not address interactions with

⁹ See Notice at 78251 (citing EOIR, EOIR/AILA Liaison Meeting (Sept. 26, 2002), <https://www.justice.gov/eoir/eoir-aila-sep26-2002>).

¹⁰ See Notice of Proposed Rulemaking, Professional Conduct for Practitioners – Rules and Procedures, and Representation and Appearances, EOIR Docket No. 18–0301; A.G. Order No. 4841–2020, 85 F.R. 61640, issued Sept. 20, 2020.

¹¹ *Id.* at 61646.

these newly redefined categories of preparation and practice. Specifically, it is unclear whether the new electronic filing system would require different forms or procedures for individuals receiving limited-scope legal assistance. This would certainly impact the issue of service of process as well as eligibility for e-filing.

Whether the mandatory provisions of the new e-filing system apply to limited scope legal assistance also affects the agency's cost-benefit analysis. The Notice thus fails to consider its potential impact on a significant portion of immigration practice. Additionally, because there has been no overlapping comment period between these two rules, commenters on the first rule did not have the opportunity to address how the potential impact of the e-filing rule on the Professional Conduct for Practitioners proposed rule.

To address the uncertainty produced by these interactions, ASAP recommends that EOIR reissue the proposed rule, extend the comment period, and explicitly solicit comments from about the interaction of limited-scope assistance and electronic filing. Affected members of the public must be able to evaluate how rules interact with other rules before offering their comments. Without adopting a longer comment period, the public is deprived of the opportunity to be heard.

III. EOIR Should Seek to Modernize the Immigration Courts through an E-filing Program.

The proposed rule identifies and pursues important goals of modernizing the immigration courts and the BIA. The proposed rule seeks to permanently implement electronic filing and applications for records across immigration courts and the BIA to streamline immigration adjudication.¹² ASAP recognizes the immensity of this undertaking and commends the overarching goal, as well as certain aspects of the proposed rule. This change has the potential to benefit ASAP members and staff, as well as improve immigration court procedure more broadly.

First, the implementation of a permanent e-filing system in immigration courts through eROP is a major step in the right direction. E-filing has the potential to improve ease of access to immigration courts for practitioners and pro se respondents. ASAP has advocated for implementation of a flexible e-filing system in the past. The exact system on which the e-filing system could be modelled is something ASAP would be happy to comment further, but at a minimum PACER and CM/ECF provide one model, although

¹² See Notice at 78241-78242.

EOIR should also study more recently implemented e-filing systems, including those of other agencies and state courts.¹³

Second, the contingency plans in case of a system malfunction assures that EOIR can adapt to unexpected technological difficulties. In case of an unexpected outage, deadlines will at times be automatically extended, and parties will maintain the ability to file paper motions and request further extensions as a result of unanticipated outages. Similarly, the inclusion of e-signatures is an important step forward for the immigration system.

IV. The Notice Omits EOIR's Critical and Ongoing Use of Email Filing During the COVID-19 Pandemic.

As noted above, EOIR has implemented an email filing system during the COVID-19 pandemic.¹⁴ The Notice, however, does not address this email filing system, nor analyze how it operated during the pandemic. The Notice fails to clarify whether the proposed eROP system will replace the email filing system entirely, or whether that alternative procedure will concurrently remain available during the pandemic.

Given its recent extensive experience with an email filing system, EOIR should first evaluate and consider the functioning of an email filing system before replacing it or creating an alternative e-filing system. EOIR should also consider keeping its current email filing system in place for pro se respondents and for attorneys and accredited representatives whose cases would not initially be eligible for e-filing under the eROP system as described in the Notice. Additionally, although the Notice discusses contingency plans for failures in its proposed e-filing system, it makes no mention of the current email filing procedures, nor does it analyze whether email filing would be a viable alternative for filing if and when the eROP system is down.

EOIR should therefore present an analysis of how its current email filing operations are proceeding and evaluate the proposed rule in light of its experience with an email filing system that was implemented nationwide in 2020. If the email filing system presents distinct advantages over the proposed eROP system — i.e., including greater efficiency and ease of access for pro se filers — EOIR should consider whether it makes

¹³ See National Center for State Courts, *Electronic Filing Resource Guide*, (last visited Jan. 4, 2020) available at <https://www.ncsc.org/topics/technology/electronic-filing/resource-guide>.

¹⁴ *Supra*, nt. 4 & 5.

sense to include this system as part of the modernization program included in the proposed rule.

V. EOIR Must Develop a Clear Plan for Pro Se Respondents and Limited Scope Representation.

EOIR does not adequately or clearly address the impact of the proposed rule on pro se respondents or practitioners providing pro se assistance or limited scope representation. The Notice does not outline how pro se respondents will be included in the new e-filing system, nor does it indicate definitively that EOIR has future plans to extend e-filing to be accessible to them.¹⁵ Additionally, the cost saving estimates in the Notice do not anticipate pro se respondents using an e-filing system.¹⁶

The failure to consider the impact of the proposed rule on pro se respondents is particularly concerning, because, absent revision and clarification, it could negatively impact pro se respondents. For example, pro se respondents are already using the current email filing system implemented during the COVID-19 pandemic. If EOIR proposes to use the outlined e-filing system to replace the email filing system entirely, it would then be decreasing access to a form of e-filing for pro se respondents.

EOIR should reissue a new Notice for Proposed Rulemaking that provides clarification of how the rollout of this e-filing system will impact pro se respondents and practitioners providing pro se assistance and limited scope representation, and a clear plan or next step toward extending the benefits of an e-filing system to pro se respondents. EOIR should also address: (1) a detailed analysis of its impact on pro se respondents, including how this e-filing system will interact with an ongoing email filing system; (2) next steps for extending e-filing to pro se respondents, including the consideration of a pilot program and feasibility of continuing email filing system for pro se respondents; (3) opportunities for practitioners and organizations that support pro se

¹⁵ See Notice at 78244. (“However, in the event that EOIR decides to expand electronic filing in the future to persons other than attorneys or accredited representatives, EOIR anticipates that those persons who are not currently enrolled in eRegistry would be required to complete a one-time registration through EOIR’s eRegistry application, consistent with current practice.”)

¹⁶ EOIR identified three different scenarios in calculating the economic impact of the proposed rule: “(1) Legacy paper ROPs that were started but not completed before this proposed rule; (2) eROPs for pro se respondents that are submitted in paper and scanned by court staff; and (3) eROPs for represented respondents that are completely electronic.” Notice at 78248. This breakdown of cases does not make it clear whether the proposed rule takes into account that some pro se respondents would be able to utilize e-filing.

filers, including immigration help desks, to provide feedback on how to set up an e-filing system for pro se respondents.

ASAP is committed to providing further feedback on how to set up an e-filing system for pro se respondents. ASAP currently has over 30,000 members, thousands of whom are in removal proceedings, and can solicit feedback from its members about accessing an e-filing system. Unfortunately, however, ASAP has not had a meaningful opportunity to gather feedback from members given the limited 30-day comment period and lack of clarification on how this system would work for pro se respondents and practitioners providing pro se assistance and limited representation.

VI. EOIR Should Consider Making the Following Changes to an E-Filing System.

There are numerous concerns we believe should be addressed before finalizing the proposed rule and launching a larger e-filing system. EOIR should evaluate whether to (a) allow attorneys and accredited representatives a transition period during which they can continue to fully operate with paper filings; (b) provide the opportunity for attorneys and accredited representatives to opt into e-filing regardless of when the charging document was filed; (c) remove the requirement that e-registry registration take place in person; (d) create a centralized filing system for changes of addresses ; (e) require adequate service of process by DHS through both paper and electronic notifications; and (f) extend and clarify the availability of digital signatures for e-filing. Below we address some of these concerns in a preliminary fashion, but we would be able to go into more detail if provided with a more meaningful opportunity to comment.

A. Allow Attorneys and Accredited Representatives to Operate with Paper Filings When Taking on New Immigration Court Cases

The proposed rule would make electronic filing mandatory for DHS as well as attorneys and accredited representatives who represent respondents before EOIR. ASAP agrees that DHS should be required to electronically file with EOIR to increase public access to critical information. However, EOIR should consider implementing a period of transition for attorneys and accredited representatives to adapt to e-filing. During that time, e-filing would be optional for attorneys and accredited representatives and paper filings would be scanned and put on eROP. This would allow time for the private bar and nonprofit organizations to adapt, since it's likely that there will be economic implications related to staffing, retraining of staff, and file storage that could be done at the pace that makes the most sense for the law firm or nonprofit. By not immediately making e-filing mandatory for attorneys and accredited representatives taking on new cases, EOIR

would also lessen the risk of attorneys and accredited representatives screening which cases to take on based on whether e-filing is mandatory or not.

EOIR can benefit from other agencies' experience with implementing e-filing procedures, particularly the experience of another immigration agency, U.S. Citizenship and Immigration Services (USCIS).¹⁷ Failure to allow sufficient time to develop and execute public-facing updates of this scale has previously been disastrous.¹⁸ EOIR should analyze and learn from the problems with USCIS's phased-in implementation in order to ensure that the proposed updates for electronic filing are effectively executed.

Furthermore, it is feasible for EOIR to create a transition period for attorneys and accredited representatives to have the option of paper filing or e-filing since there is already a plan in place for EOIR staff to scan paper filings to put on the eROP system for pro se respondents. EOIR has already successfully maintained a similar system for the five immigration courts currently piloting an e-filing program.

B. Provide Option of E-Filing for Cases Where the Charging Document was Already Filed

EOIR should consider making e-filing optional for cases where the charging document was already filed upon request by attorneys or accredited representatives. Given how extensive the backlogs in immigration court are, most immigration cases will take many years to resolve.¹⁹ As such, there should be a way for those attorneys and accredited representatives who are interested in doing so, to operate their offices

¹⁷ USCIS has made changes to transition to e-filing over a period of four years with quarterly updates refining online forms and procedures. USCIS's "Transformation Initiative" demonstrates the multi-year execution scheme required for an electronic filing update. See, USCIS, Archive, *USCIS Transformation: Proposed Rule for Mandatory E-Filing*, available at <https://www.uscis.gov/archive/uscis-transformation-proposed-rule-for-mandatory-e-filing> (last visited Jan. 4, 2020).

¹⁸ For instance, the 2005 implementation of the U.S. Department of Labor's "Program Electronic Review Management" (PERM) program proved to be disastrously premature. See, Department of Labor, *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity*, 72 Fed. Reg. 27903, issued May 16, 2007.

¹⁹ If there is a concern about the amount of paperwork required to scan for cases that have spent years in immigration court, EOIR could provide an alternative timeframe for these cases, i.e., only requiring more immediate transfer of electronic records for cases in which a merits briefing has not been filed or a merits hearing has not yet occurred.

entirely through e-filing within a year of the program launching. EOIR would benefit from working with attorneys and accredited representatives who are excited about digitizing their files and transitioning to e-filing (like the staff at ASAP). This is the best audience to work with while an e-filing system is new and still undergoing updates and development.

C. Change In-Person Requirement for E-Registry System

The proposed e-registry system creates unnecessary burdens on attorneys and accredited representatives and fails to consider other reasonable alternative models. EOIR proposes that accredited representatives and attorneys continue to physically go to immigration courts in person to set up an e-registry profile and verify their identity. This is an unnecessary and cumbersome requirement, especially in light of the outgoing health risks associated with the COVID-19 pandemic.

Alternatively, EOIR should allow accredited representatives and attorneys to set up e-registry accounts remotely, by including their bar numbers or identification numbers and uploading photo identification if necessary. Other successful online filing systems, including the PACER system used by all federal district and appellate courts, allow for similar procedures. EOIR must consider this reasonable alternative proposal and should adopt it when reissuing the proposed rule.

This change is particularly important once e-filing is mandated in certain cases, especially since immigration court practice often involves pro bono representation by attorneys who have not previously practiced in immigration court. Immigration courts are often hours away from respondents and practitioners. Including this requirement as a necessary step to taking on representation for a client could deter pro bono attorneys from representing respondents in immigration court.

Additionally, an in-person requirement does not contemplate emergency filings in which attorneys become involved in cases at the last minute. In those instances, there may not be time to join the e-registry in person prior to submitting filings. The system needs to provide an option for emergency filings that does not impair representation.

D. Create a Centralized E-filing of Change of Address (Form EOIR-33)

EOIR should also create a centralized e-filing system for Form EOIR-33 for changes of address. E-filing of this form needs to be available to all pro se respondents and attorneys and accredited representatives, regardless of when the case was filed. Individuals should be able to easily and automatically provide service to ICE's Office of

Principal Legal Advisor (OPLA). Enabling easy access to changes of address is essential because the status of a pending immigration case, including which immigration courts they are pending before, is often unclear. The ability to easily and reliably submit address changes is significant for correct adjudication of cases, and ensures adequate service of process as well. EOIR should adopt USCIS's model in this regard, which uses a simple online form for making address changes that can be submitted on a cell phone, regardless of whether someone has access to an electronic court docket.

E. Consider Concerns to Service of Process

The Notice does not consider the negative impact of implementing a mandatory e-filing system on service of process and notice requirements. Specifically, the Notice does that consider (1) that attorneys and accredited representatives might initially miss an email that goes to a spam filter or is unreceived due to a technical issue; and (2) that some attorneys and accredited representatives are providing limited scope representation and will not always be in contact with the respondent to communicate important information about their case. As such, limiting service of process to e-service could lead to a greater number of in absentia removal orders and missing of other critical deadlines.

EOIR should take into account the importance of providing adequate service of process to pro se respondents and those who receive limited scope representation. In particular, the proposed rule does not contemplate situations where an individual may be represented by an attorney for a limited part of their case — e.g., representation on a review of a negative credible fear interview determination at the border, but not later on for that respondent's merits proceedings.

Since any filings would be required to go through the new e-filing system once the system is used by an attorney, it is unclear whether a respondent would then be locked into the e-filing system for the remainder of their proceedings, even if they have not secured legal representation for their case long-term. As discussed above, these concerns are compounded by the uncertainty of the interaction with the proposed rule and the changes included in the Professional Conduct for Practitioners – Rules and Procedures, and Representation and Appearances proposed rule, which appears to require entry of attorney appearances for a much wider range of limited scope representations.²⁰

²⁰ See Notice of Proposed Rulemaking, Professional Conduct for Practitioners – Rules and Procedures, and Representation and Appearances, EOIR Docket No. 18–0301; A.G. Order No. 4841–2020, 85 F.R. 61640, issued Sept. 20, 2020.

The agency should require DHS to provide both mail and electronic service, notices, and documents communicating deadlines to all respondents and their counsel initially. Then, EOIR could provide an option of where to address service, where attorneys and accredited representatives could waive the right to service by mail for both themselves and the respondent(s) once they are certain they will be involved in a case long-term.

F. Extend Flexibility and Clarify Rules Around Signatures

The proposed rule helps modernize immigration practice by allowing digital signatures in eROP filings, but EOIR should go a step further to authorize digital signatures for both eROP and paper filings. This would allow for an attorney to receive a scan or photocopy of a signature page to include in a paper filing as well. This is particularly important while some cases will not be eligible for e-filing as outlined in the Notice. It is also particularly important during COVID-19 and to plan for other similar scenarios where in-person contact between counsel and respondent may be difficult.

EOIR should also clarify uncertainty related to the submission of immigration applications created by USCIS. The Notice currently states that “if an application’s instructions require an original, handwritten ink signature, then the user must follow the application instructions instead of the proposed signature allowances in this proposed rule.”²¹ This requirement, however, creates uncertainty. For example, it is unclear whether it would require forms to be submitted by paper filing in some way in order to demonstrate that the signature is an ink signature. Alternatively, it seems that when submitting a filing electronically that includes an application, a scanned copy of a signature should be sufficient, even if it contradicts with a requirement for an ink signature. EOIR should re-issue the rule to clarify that scanned copies of ink signatures are also sufficient for all e-filings.

VII. EOIR Must Ensure Language and Financial Accessibility for any New E-filing System.

It is crucial that any e-filing system also ensure that it is broadly accessible to all potential respondents. EOIR should make sure that any e-filing system available to pro se respondents takes into account issues of language access given that many pro se users lack English fluency. Failure to include language accessibility will fundamentally

²¹ Notice at 78246.

undermine the agency's stated purposes and prevent meaningful access to the eROP system for many respondents.

Additionally, any e-filing system must be available free of cost to users in order to ensure accessibility and avoid discriminating against indigent respondents. Because the Notice makes no mention of fees for using the e-filing system in its proposal, any imposition of such fees would be a departure from the proposed rule and violate the publicity requirements of the notice and comment process. If EOIR does intend to subject the public to fees, the proposed rule should be updated and reissued to include proposed fees to allow for meaningful opportunity for the public to comment.

Conclusion

For the above reasons, EOIR should reopen the comment period, and reissue a Notice for Proposed Rulemaking that amends the proposed rule in light of the suggested changes and reasonable alternatives outlined herein.

Thank you for your time and consideration.

Sincerely,



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