July 14, 2020

Maine Equal Justice’s Comment Opposing RIN 1125-AA94 by the Executive Office for Immigration Review: Procedures for Asylum and Withholding of Removal

Dear Attorney General Barr, Director McHenry, Assistant Director Reid, Acting Secretary Wolf, Senior Official Mizelle, Senior Official Cuccinelli, Division Chief Dunn, and Administrator Ray:

Below are Maine Equal Justice’s comments opposing the above-referenced Notice of Proposed Rulemaking (“NPRM”), which would destroy the opportunity for millions of families, children, mothers, fathers and individuals from escaping persecution and seeking refuge in the United States, a country that thrives in large part due to the hard work and contributions of immigrants, and a country proudly known as the melting pot of the world.

Maine Equal Justice is a non-profit civil legal aid and economic justice organization that advocates for low income and vulnerable populations in Maine. In large part, that includes countless asylum-seeking clients who have been raped or beaten, witnessed their child or spouse being raped, beaten, or killed, or experienced the imminent threat of such persecution occurring to them or someone they love as a result of tyranny and/or discrimination in their country of origin. Many of the countries that Maine and U.S. asylum-seekers come from are countries that have been exploited and put into chaos in large part by the United States. When these clients arrive in the United States, they are immediately forced to navigate, without guarantee of representation, the most complicated area of law: immigration. They are expected to take care of all of this and more on their own within a year when the current immigration system can take more than a year to even schedule a master calendar hearing. They are asked to participate in work requirements that make them poorer and re-traumatize them as a condition to receiving government benefits. They are also the people that work direct care services and minimum wage jobs, essential employees waiting for an asylum decision, which can take many years. All the while, these asylum seekers are threatened with deportation constantly and live in constant fear. Our clients experience these hardships as they simultaneously deal with our already slow, inconsistent, inefficient immigration system.

Despite the U.S.’ long history of protecting those escaping danger, the proposed rule seeks to target the most vulnerable individuals fleeing to the U.S. in search of safety. The rule imposes new barriers at every stage of the process that will be impossible to meet for the vast majority of asylum applicants, resulting in scores more asylum seekers being returned to persecution, domestic violence, death, and other horrific injustices due to their race, political views, religion, national origin, and/or social group participation.

Fundamental to the American system of justice is the guarantee of due process. But under this rule, thousands of asylum seekers would be denied that most basic right to a fair day in court. The regulation would give immigration judges and asylum officers greater leeway to throw out requests for asylum as "frivolous," and to deny applications without so much as a hearing. Because eligibility for asylum is a complicated legal question, the impact of this rule would fall most harshly on unrepresented asylum seekers, limiting asylum only to those with substantial financial means or lucky enough to obtain legal counsel.
The new regulation would also ban from asylum many people who submit their applications more than a year after arriving in the United States with no exceptions. This rule improperly contravenes the plain language of the statute it seeks to implement as it explicitly violates the plain language contained in provisions of the Immigration and Nationality Act, passed by Congress. The rule also punishes asylum seekers who fail to report even one penny of income to the IRS, even unintentionally, by stripping them of their right to ever become an American through asylum.

Even more arbitrarily, an asylum seeker who flies to the United States with two or more layovers in different countries would be banned from asylum, while an asylum seeker who flies to the United States with just one layover in a different country would be eligible for asylum. The number of layovers on a flight does not constitute evidence that demonstrates whether someone meet the grounds for asylum set forth in law.

Grounds for asylum - including those based on gender and so-called "private criminal acts" such as domestic and gang violence - would no longer be recognized as viable claims, despite generations of domestic and international law affirming that refugee status is available on those grounds. The administration may not disregard these standing precedents to achieve the illegitimate goal of dismantling the asylum system.

This regulation attempts to completely dismantle nearly every aspect of our asylum laws and seeks to eliminate critical pathways to humanitarian relief that our laws were designed to protect. The rule strikes at the very heart of our historic commitment to providing safe haven to people fleeing persecution and calls into question our integrity as a country.

We strongly oppose this proposed rule, as it would have a disastrous impact on those that are already suffering.

Respectfully,

Deborah Ibonwa
Police & Legal Advocate
Maine Equal Justice