

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Organization of the Executive Office for Immigration        )        EOIR Docket No. 18-0502;  
Review; Interim Rule; Request for Comment                    )        A.G. Order No. 4515-2019

COMMENTS OF WHITMAN-WALKER HEALTH ON THE INTERIM RULE RELATED TO  
THE REORGANIZATION OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Pursuant to Executive Office for Immigration Review (EOIR) August 26, 2019 Notice, 84 Fed. Reg. 44537, Whitman-Walker Health submits these comments on the reorganization of the EOIR, the role of the Office of Policy and the Office of the General Counsel (OGC), and the changes to the Office of Legal Access Programs (OLAP). Whitman-Walker Health opposes the reorganization of the EOIR, the demarcation of the role of the OGC, and the eradication of the OLAP. We oppose the reorganization of EOIR because it erodes the professionalism of the Nation’s immigration system and invites influence over immigration proceedings by political appointees. Such a move is likely to degrade the public trust in the adjudication of immigration cases, increasing the time and resources necessary for adjudication of immigration applications.

INTEREST AND EXPERTISE OF WHITMAN-WALKER HEALTH

Whitman-Walker Health (WWH or Whitman-Walker) is a nonprofit, community-based health center serving the Washington, D.C. metropolitan area, offering medical, mental health, dental, legal, and community health services, with specialties in HIV care and the health of the lesbian, gay, bisexual, and transgender (LGBT) community. Established in 1986, WWH’s Legal Services Program provides pro bono legal services to WWH patients, and to others in the greater Washington, DC community who identify as LGBT or who are living with HIV. A substantial number of WWH health care patients, and legal clients, are foreign nationals and noncitizens, and a substantial portion of our legal practice is devoted to immigration law.

Whitman-Walker Legal Services is recently accredited and recognized by OLAP as authorized to represent persons in immigration proceedings before DHS. Whitman-Walker has a vested interest in the future of the OLAP program, as it extends our potential to increase our ability to serve clients in our service area. Access to legal and immigration services is vital to our mission to provide accessible comprehensive medical and legal services. Whitman-Walker Health's immigration practice of over 20 years includes family-based immigration, inadmissibility waivers, removal defense, naturalization, adjustments, and applications for humanitarian-based relief such as asylum, U Visas, T Visas, VAWA, and Special Immigrant Juvenile Status. Due to increased demand for our no-cost legal services for immigration representation and pro bono placement for low-income individuals in DC, Maryland and Virginia, particularly for asylum cases, we sought DOJ recognition to expand our capacity to supplement these existing services. Whitman-Walker was approved for Recognition and Accreditation on July 31, 2019.

## COMMENTS OF WHITMAN-WALKER HEALTH

### WE OPPOSE THE RULE FOR FAILING TO CONSIDER ITS EFFECT ON THE PUBLIC

**We oppose the rule because we are concerned with the cursory nature of the Notice of reorganization**, as it differs substantially from the extended and deliberative process by which OLAP was established.<sup>1</sup> The Notice contemplates reorganizing the allocation of authority

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<sup>1</sup> Among the first recognized legal services programs under the Recognition & Accreditation (R & A) program was the Connecticut Institute for Refugees and Immigrants in 1958, which continues to deliver legal services today for immigrants with a six person staff of accredited representatives, EOIR, Recognition and Accreditation roster, <https://www.justice.gov/eoir/page/file/942301/download>. R & A was initially operated by the Board of Immigration Appeals within the Justice Department. In 2000, OLAP (then known as the legal orientation and pro bono programs) was established in the Office of the EOIR Director, administering programs that promoted legal representation for immigrants in removal proceedings by offering legal education on rights and responsibilities by pro bono legal services providers. In 2016, after more than five years of notice and comment procedures it was decided to move the R & A program under OLAP and away from the Board of Immigration appeals. 81 Fed. Reg. 92346 (Dec. 19,

within the Department of Justice, the Board of Immigration Appeals, and the EOIR without describing or considering the consequences. There is simply not enough information in the Notice to know what the practicable effects of the change will be on these programs that are vital for meaningful access to the immigration adjudication process, including access to counsel.

**The rule requires an additional notice and comment period to comply with the requirements of the Administrative Procedures Act.** The rule impacts almost 2000 accredited representatives and the 800 non-profit programs that employ them, in addition to the thousands of immigrants who those programs represent. The transfer of OLAP to the Office of Policy implicates several important programs that are mandated by court order or funded by specific Congressional appropriations — including the National Qualified Representative Program, which provides counsel for people in removal proceedings who are deemed mentally incompetent, and the Legal Orientation Program and the Legal Orientation Program for Custodians of Unaccompanied Alien Children.

OLAP administers the Recognition & Accreditation program, known as R&A. This important program creates the opportunity for immigrants to access qualified legal advocates, no matter how much money they have. The public has not been consulted on this change despite its major stake in these programs and failing to publish this as a proposed rule is a violation of due process and the Administrative Procedures Act, which requires prior notice and comment if the public will be adversely impacted.<sup>2</sup>

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2016). *See* 77 Fed. Reg. 9590 (Feb. 17, 2012) (notice of two public meetings on possible changes with R & A program).

<sup>2</sup> The Administrative Procedure Act, 5 U.S.C. § 553 (2011).

WWH OPPOSES THE RULE AS LIKELY TO POLITICIZE THE NATION'S IMMIGRATION SYSTEM

It is highly likely that delegation of power to a political appointee to decide immigration adjudications **is likely to decrease the efficiency of the immigration system and degrade the public trust in the immigration process.**

**The reorganization removes the expertise of the long-existing OLAP from R & A procedures.** The previous organization recognized that OLAP is in the best position to evaluate the R & A programs to determine whether organizations have the experience and training around immigration law and policy that is necessary for accreditation and recognition. Putting a political appointee in charge of these functions undermines the professionalism of the immigration adjudicatory process and further erodes access to due process.

**The OLAP's administration of the R & A program substantially increases the efficiency of the immigration system** for the applicants who are most in need of aid. The OLAP extends the limited resources of non-profits who are providing much-needed free or low-cost services to asylum applicants and other immigrants seeking relief. Individuals seeking immigration relief are not guaranteed access to counsel, despite an increasingly-complex immigration system. By increasing access to self-help materials and pro bono representation for low-income individuals, OLAP enhances the immigration system's ability to fairly adjudicate cases while attempting to safeguard the principle of due process for the most vulnerable respondents.

**The professionalism of the immigration system and the adjudicatory process are challenged by EOIR's changes.** The current Administration's animosity toward immigrants is well-publicized and undermines the public trust in the rule of law as it pertains to immigration matters. The perception of bias and unfairness is only exacerbated by making political appointees responsible for decisions previously made by career professionals.

**Politicizing the process by which someone seeking immigration relief seeks assistance has negative effects.** The OLAP and EOIR reorganization are potentially catastrophic for clients who would be unrepresented but for the OLAP and the R & A program. Degrading the public trust in the OLAP and the R & A program could cause the potential client pool to go unrepresented, pay exorbitant legal fees for a private attorney, or become targets for unscrupulous persons taking advantage of their desperate situation. The legal assistance facilitated by OLAP is beneficial for the DOJ. Politicization of immigration adjudications unnecessarily increases the inefficiencies of the process by increasing the number of unrepresented persons. Applicants and Respondents who submit filings with experienced immigration representation are more likely to submit organized, complete filings, which make the adjudication process more efficient.

#### WHH OPPOSES THE RULE'S LIMITATIONS ON THE ROLE OF CAREER PROFESSIONALS

The rule restricts the role of General Counsel in providing oversight or assistance of questions related to immigration law and allows the Director of EOIR to unilaterally issue precedential decisions. The General Counsel is removed from much of their policy advisory role and is restricted to advising on organizational matters related to ethics, records management, and

disciplinary matters. The rule empowers the Director of the EOIR, or their designee, to overturn the decisions of BIA members. BIA members are career professionals with more experience adjudicating and understanding the complexity of immigration cases than the Director of the EOIR, so are more likely to issue fair and accurate decisions. Allowing a political appointee the unilateral authority to make precedential decisions that would be binding on all Immigration Judges and DHS officers nationwide is an affront to due process and fundamental fairness. The changes to the Office of General Counsel and authority of the Director of EOIR to issue precedential adjudicative decisions are indicative of a wholesale takeover. **We oppose the change as likely to undermine the professionalism, integrity, and impartiality of the immigration law adjudicatory process.**

**We also oppose the arbitrary time limits put on immigration judges to adjudicate their cases.** The rule offers no information about the way the timelines were decided. There is no indication that the standard is based on analysis of the time necessary to properly adjudicate routine immigration applications. Additionally, there is no indication that the rule considered the time needed for particular applications that may be complex and require careful consideration. The scope and nature of the rule signals a degradation of the professional and fair adjudication of applications for immigrants and is a threat to due process.

## CONCLUSION

For the reasons stated above, Whitman-Walker Health is opposed to the Interim Rule's reorganization of the EOIR, the role of the Office of Policy and the Office of the General Counsel, and the changes to the Office of Legal Access Programs.

Thank you for this opportunity to submit comments. We would be happy to provide any additional information that might be helpful.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CB Brooks". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

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