



*Protecting Immigrant
Women and Girls
Fleeing Violence*

April 26, 2019

Lauren Alder Reid, Assistant Director
Office of Policy, Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2616
Falls Church, VA 22041

Submitted via <http://www.regulations.gov>

Re: Comments in response to EOIR ANPRM: Docket No. 18–0301 / RIN 1125–AA83; Published in the Federal Register Vol. 84, No. 59 on 3/27/19

Dear Ms. Alder Reid:

I am writing on behalf of the Tahirih Justice Center (Tahirih) in response to the Executive Office for Immigration Review's Advance Notice of Proposed Rulemaking with Request for Comment regarding Professional Conduct for Practitioners, Scope of Representation and Appearances.

Tahirih is a national, nonpartisan policy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence over the past 22 years. Tahirih's clients endure unimaginable atrocities, including human trafficking, domestic violence, forced marriage, and sexual assault. Through accredited representatives and both in-house and pro bono lawyers, Tahirih provides and coordinates legal representation before the immigration courts and the Board of Immigration Appeals. We welcome this opportunity to provide input on the possibility of expanding limited representation in those forums.

Ideally, every respondent in immigration court would have full-scale representation. There can be no doubt that representation by those versed in immigration law and procedure results in additional grants of relief to deserving respondents. *E.g.*, Ingrid Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 47-58 (2015). And the representation of respondents also benefits EOIR. The presence of a representative leads to, among other things, more tailored claims and applications for relief, fewer unnecessary hearings, many fewer failures to appear, and the elimination of initial continuances to seek legal advice. *E.g.*, Eagly & Shafer, at 65-69, 72-75; ABA Section of Litigation, *Handbook on Limited Scope Legal Assistance* 11 (2003), available at <https://is.gd/DZXH0j>.

Unfortunately, resource constraints mean that full-scale representation is not possible in every case. Given that reality, we strongly believe that EOIR should adopt regulations expressly providing for various kinds of limited representation. As a general matter, limited representation allows lawyers to serve more clients,

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and thus to generate gains in efficacy and efficiency in a greater proportion of cases. Further, limited representation represents the most feasible option for respondents, especially detained respondents, who face hearings in multiple locations.

Three types of limited representation would be particularly useful. First, EOIR's regulations should expressly allow appearances limited to a particular motion or application. Limited representation of this type would allow lawyers to provide representation for significant issue and claims in any given case. It would also encourage pro bono representation by allowing lawyers to support respondents in pieces of a proceeding without requiring the subsequent filing of a motion to withdraw or substitute counsel. And it would represent a natural extension of EOIR's 2015 final rule expressly permitting representation limited to bond proceedings.

Second, in order to facilitate an initial narrowing of issues and claims, the regulations should allow representation limited to an appearance at a master calendar hearing. Third, the regulations should expressly permit attorneys to enter appearances before both the immigration courts and the BIA for the sole purpose of reviewing case files. Doing so would allow attorneys to assess their ability to represent a respondent and would lead to increased representation of respondents with potentially meritorious claims.

The ANPRM suggests a potential concern about EOIR's ability to monitor attorney performance. We believe that this concern should not arise in the context of attorneys who simply seek to review records in connection with potential representation. Attorney performance can be monitored in the context of specific applications for relief, meanwhile, by having attorneys include their name, organization, contact information, and bar information on papers they prepare. Alternatively, Form EOIR-27 could be amended to include a checkbox stating that an appearance is limited to filing a motion or pleading specified by the attorney. A similar checkbox could be used for attorneys to enter an appearance for any willing respondents at a master calendar hearing. And to ensure client consent, the form could also be amended to include certification that the client understands the limited nature of the appearance.

We look forward to your feedback on our comments. Please contact me at richardc@tahirih.org or 571-249-2131 for additional information.

Sincerely,

Richard Caldarone
Litigation Counsel