



February 27, 2023

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

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**Re: Comments in Response to the Department of Homeland Security (DHS) and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) Interim Final Rule with Request for Comments:**

***Security Bars and Processing: Delay of Effective Date***

**RIN 1615-AC57 / USCIS 2020-0013 / RIN 1125-AB08 / A.G. Order No. 5577-2022**

The Tahirih Justice Center<sup>1</sup> (Tahirih) submits the following comments to DHS and EOIR in response to the above-referenced request for comments published on December 28, 2022.<sup>2</sup> See 87 Fed. Reg. 79,789 (Dec. 28, 2022). Tahirih urges DHS and DOJ to promptly rescind rather than merely delay the so-called “security bars” rule in its entirety, both as a matter of public policy and because the rule violates numerous laws, including the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and the international obligations of the United States as a State party to the United Nations (UN) Convention Relating to the Status of Refugees and 1967 Protocol (collectively, the Convention). See *generally* UNHCR, *The 1951 Refugee Convention*.<sup>3</sup> Rescission is essential to protect the right to seek asylum and comply with U.S. domestic and international obligations. In the alternative, if the rule is not rescinded, its implementation should be delayed indefinitely.

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<sup>1</sup> <https://www.tahirih.org/>.

<sup>2</sup> All sources cited in this comment—including, but not limited to, court opinions, legislative history, and secondary sources—are to be considered part of the administrative record.

<sup>3</sup> <https://www.unhcr.org/1951-refugee-convention.html>.

## I. Introduction

Tahirih is a national, nonpartisan policy and direct services organization that has served more than 30,000 survivors of gender-based violence and their families since its inception in 1997. Our clients are survivors of gender-based violence, including domestic violence, rape and sexual torture, forced marriage, human trafficking, widow rituals, female genital mutilation/cutting (FGM/C), and so-called “honor” crimes.<sup>4</sup>

Tahirih provides free legal and social services to help our clients find safety and justice as they work to rebuild their lives and contribute to their communities. Tahirih also serves as an expert resource for the media, Congress, policymakers, and others on immigration remedies for survivors fleeing gender-based violence. See, e.g., Tahirih Justice Center, *Tahirih in the News*;<sup>5</sup> Tahirih Justice Center, *Congressional Testimony*;<sup>6</sup> Tahirih Justice Center, *Comments*.<sup>7</sup>

## II. The Security Bars Rule Must Be Rescinded

The Rule should be rescinded in its entirety. As discussed above, it will lead to the persecution, torture, and death of survivors of gender-based violence—and countless others. The entirety of the Rule also violates federal law in at least three ways, which Tahirih has described in comments filed in response to requests for comments on the original rule and the subsequent rule delaying its implementation.<sup>8</sup>

First, the Rule uses the COVID-19 public health emergency as a pretext to severely restrict asylum in the United States, both in violation of our asylum laws and with no justification from a public health standpoint, according to numerous experts.<sup>9</sup> Second, issuance of the Rule was void *ab initio*

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<sup>4</sup> For background information on these types of gender-based violence, see, e.g., UNHCR, *Guidelines on the Protection of Refugee Women* 17, <https://www.unhcr.org/3d4f915e4.html>; UN Women, *Defining “honour” crimes and “honour” killings*, <https://endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>; [https://en.wikipedia.org/wiki/Female\\_genital\\_mutilation](https://en.wikipedia.org/wiki/Female_genital_mutilation); [https://en.wikipedia.org/wiki/Forced\\_marriage](https://en.wikipedia.org/wiki/Forced_marriage); <https://www.widowsrights.org/>.

<sup>5</sup> [https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news\\_](https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news_)

<sup>6</sup> [https://www.tahirih.org/pubs/?qmt%5Bpub\\_cat%5D%5B%5D=131](https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=131).

<sup>7</sup> [https://www.tahirih.org/pubs/?qmt%5Bpub\\_cat%5D%5B%5D=261](https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=261).

<sup>8</sup> Tahirih Justice Center, *Comments in Response to the Department of Homeland Security and Department of Justice Executive Office of Immigration Review Notice of Proposed Rulemaking: Security Bars and Processing, RIN 1615-AC57 / USCIS 2020-0013 / RIN 1125-AB08 / A.G. Order No. 4747-2020* (submitted Aug. 10, 2020) (“Tahirih 2020 Comment”); Tahirih Justice Center, *Comments in Response to the Department of Homeland Security and Department of Justice Executive Office of Immigration Review Interim Final Rule and Request for Comments: Security Bars and Processing; Delay of Effective Date, RIN 1615-AC57 / USCIS 2020-0013 / RIN 1125-AB08 / A.G. Order No. 5004-2021* (submitted Apr. 20, 2021) (“Tahirih 2021 Comment”).

<sup>9</sup> Letter from Public Health Experts to Alex Azar and Robert Redfield (May 18, 2020) (“There is no public health rationale for denying admission to individuals based on legal status.”), available at <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>; see also, e.g., Letter from Georgia Public

because it violated the Federal Vacancies Reform Act (FVRA) and the Homeland Security Act (HSA).<sup>10</sup> Third, the standards and processes the Rule purports to implement are illegal under U.S. statutes, violate constitutional principles of equal protection, contravene administrative law, and bear no rational relationship to the Rule's stated purpose.<sup>11</sup>

Finally, the administration's recent announcement that the COVID-19 public health emergency will end on May 11, 2023, belies any purported, albeit baseless, rationale that exclusionary measures are required to protect public health beyond that date.<sup>12</sup> For all of these reasons, the Rule must be immediately rescinded.

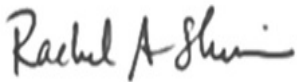
### III. Delay Is No Longer Justified

The deeply harmful security bars rule has never been implemented so the government will not incur any costs by rescinding it. Simply delaying the Rule as the administration proposes, however, will allow a new administration to implement it quickly, easily, and without further review. As explained above and in our previously filed comments, the result will be to wreak untold havoc on traumatized survivors of gender-based and other violence. As a vulnerable population this nation is legally bound to protect, asylum seekers merit access to safety rather than punishment.

### IV. Conclusion

The Rule must be promptly rescinded in its entirety. In the alternative, and until such rescission, it should be delayed indefinitely.

Sincerely,



Rachel A. Sheridan  
Senior Litigation Counsel



Irena Sullivan  
Senior Immigration Policy Counsel

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Health Experts to Robert Redfield (June 17, 2020), *available at* [https://www.cvt.org/sites/default/files/attachments/u101/downloads/letter\\_to\\_dir.\\_redfield\\_from\\_georgia\\_professionals\\_re\\_border\\_closure\\_order\\_final\\_dcl61420.pdf](https://www.cvt.org/sites/default/files/attachments/u101/downloads/letter_to_dir._redfield_from_georgia_professionals_re_border_closure_order_final_dcl61420.pdf); see *generally* Tahiri 2020 Comment at 7-11; Tahiri 2021 Comment at 8-13.

<sup>10</sup> See *generally* Tahiri 2020 Comment at 12; Tahiri 2021 Comment at 13.

<sup>11</sup> See *generally* Tahiri 2020 Comment at 13-19; Tahiri 2021 Comment at 14-19.

<sup>12</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/>