Submitted via www.regulations.gov

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RE: RIN 1125-AB03, EOIR Docket No. 19-0410, Dir. Order No. 02-2021,
Public Comment Opposing Proposed Executive Office for Immigration Review Rule Titled "Good Cause for a Continuance in Immigration Proceedings"

Innovation Law Lab respectfully submits this comment urging the Executive Office for Immigration Review (EOIR) to withdraw in its entirety its proposed rule that would virtually eliminate continuances in immigration court proceedings. The proposed changes would prevent a significant number of respondents in removal proceedings from obtaining counsel to represent them and would also obstruct respondents from pursuing collateral relief that they are entitled to pursue. The proposed rule would also create a significant burden on immigration attorneys, limiting the number of cases they are able to take on because of the increased burden and accelerated timelines of cases. The proposed rule fails to grapple with the logical consequence of these changes – the human toll of a high increase in deportations. The agency should not prioritize claimed "efficiencies" over the right to due process and the statutory right to counsel in removal proceedings. We urge you to withdraw the proposed rule in its entirety.

Innovation Law Lab is a nonprofit organization dedicated to upholding the rights of immigrants and refugees. Founded in 2014 in response to the mass detention and deportation of asylum-seeking immigrant families, Innovation Law Lab specializes in the creation of scalable, highly replicable, and connected sites of resistance that create paradigm shifts in immigration representation, litigation, and advocacy. By bringing technology to the fight for immigrant justice, Innovation Law Lab empowers advocates to scale their impact and provide effective representation to immigrants in detention and in hostile immigration courts across the country. Innovation Law Lab works directly with low-income immigrants and the pro bono attorneys who serve them, providing legal services, direct representation, and tactical support before the United States Citizenship and Immigration Services (USCIS) and EOIR. Continuances form a crucial part of Innovation Law Lab's representation programs, as they give unrepresented respondents

adequate time to find counsel, allow pro bono attorneys time to properly prepare and represent previously unrepresented respondents, and ensure that respondents can pursue all forms of relief for which they are eligible.

Innovation Law Lab Objects to EOIR Allowing Only 30 Days for Public Comments on the Proposed Rule

Innovation Law Lab objects to the agency's decision to provide only a 30-day comment period instead of the customary 60-day period.[1] The proposed regulation would make significant changes to immigration court practice that dramatically affect both respondents and practitioners, including our organization and its clients. There is no reason to provide such an abbreviated comment period over several major holidays (including Thanksgiving, Hanukkah, Kwanzaa, and Christmas), during a global pandemic, and alongside the simultaneous proposing and publishing of several other rules[2] that would dramatically affect immigrants in removal proceedings as well as immigration attorneys and nonprofits (including our own). The public deserves adequate time to fully consider and thoughtfully respond to these proposed changes.

Innovation Law Lab Strongly Objects to the Substance of the Proposed Rule and Urges the Administration to Rescind It in Its Entirety

The proposed rule would essentially eliminate continuances in immigration court, except in very narrow circumstances. Continuances play a crucial role in ensuring that immigrants are able to exercise their statutorily-authorized right to representation, to prepare evidence necessary for their cases, and to pursue other forms of relief for which they are eligible. Continuances are particularly important given the current administration's recent elimination of other docket management techniques, like administrative closure.[3]

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[1] *See* Exec. Order No. 13563, Improving Regulation and Regulatory Review § 2(b) (Jan. 18, 2011).

[2] *See, e.g.,* EOIR NPRM, Motions to Reopen and Reconsider; Effect of Departure; Stay of Removal, 85 Fed. Reg. 75942 (proposed Nov. 27, 2020); Department of Homeland Security (DHS) NPRM, Employment Authorization for Certain Classes of Aliens with Final Orders of Removal, 85 Fed. Reg. 74196 (proposed Nov. 19, 2020); DHS NPRM, Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 85 Fed. Reg. 56338 (proposed Sept. 11, 2020); EOIR NPRM, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 52491 (proposed Aug. 26, 2020).

[3] *See Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (removing immigration judges' general administrative closure authority). *See also Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018) (ruling that immigration judges do not have discretionary termination authority); EOIR, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81588 (final rule published Dec. 16, 2020) (largely eradicating administrative closure and motions to remand, among many other things); EOIR NPRM, Motions to Reopen and Reconsider; Effect of Departure; Stay of Removal, 85 Fed. Reg. 75942 (proposed Nov. 27, 2020); Memorandum from James R. McHenry, EOIR Dir., PM 21-05, Enhanced Case Flow Processing in Removal Proceedings (Nov. 30, 2020), https://www.justice.gov/eoir/page/file/1341121/download; Memorandum from James R. McHenry, EOIR Dir., PM 19-13, Use of Status Dockets (Aug. 16, 2019), https://www.justice.gov/eoir/page/file/1196336/download; Priscilla Alvarez, *Justice Department Places New Pressure on Immigrants Facing Deportation*, CNN, Nov. 24, 2020, https://www.cnn.com/2020/11/24/politics/immigration-justice-department/index.html.

Continuances play a crucial role in many of the representation programs under Innovation Law Lab's umbrella. Innovation Law Lab coordinates the Equity Corps of Oregon, a collaborative of nonprofit immigrant legal services organizations who provide legal assistance and representation to low-income unrepresented respondents in removal proceedings before the Portland Immigration Court. Many of the clients in Equity Corps have searched widely for an attorney who can represent them within their means – calling every nonprofit repeatedly and attending every consultation with private practitioners they can afford – without avail. Without reasonable continuances from the immigration court, these clients would be forced to proceed with their cases without counsel, likely dooming them to lose their cases without the assistance of an attorney.

Troublingly, the proposed rule contains no exceptions for particularly vulnerable respondents, including unaccompanied children, survivors of domestic violence and trafficking, individuals in immigrant detention, speakers of indigenous and rare languages, individuals who are illiterate, and individuals with disabilities. Through the Equity Corps of Oregon, Innovation Law Lab matches many speakers of indigenous languages with legal representation. It can take significant additional time to implement representation strategies with speakers of indigenous and other rare languages because of the additional communication barriers and the scarcity of available qualified interpreters. Across the southern United States, Innovation Law Lab also facilitates and provides no-cost representation for release from detention through projects including BorderX, the El Paso Immigration Collaborative, and the nascent Gulf Coast Immigration Collaborative. Absent reasonable continuances, each of these programs and coalitions, as well as others under development, would effectively be unable to deliver services to clients in immigration detention who face numerous barriers to communicating initial and ongoing needs for their cases. Continuances provide an already-limited period of time for legal intakes to be conducted, retainers and other documents to be exchanged via mail or in person, case assignments to be made, and legal products to be developed. Under the proposed rule, would-be or actual clients in detention would very likely be ordered deported before any legal product could be developed or submitted to Immigration and Customs Enforcement or an immigration judge.

If implemented, the proposed rule will disproportionately harm low-income immigrants and others who are unable to locate counsel. As the agency well knows, there is strong correlation between representation by an attorney and success on the merits. Represented respondents are fifteen times more likely to request relief for which they are eligible and five-and-a-half times more likely to win relief from deportation.[4] Thus, the inability to access counsel will directly lead to more deportations.

[4] Ingrid V. Eagly and Steven Shafer, *A National Study of Access to Counsel in Immigration Court*. 164 University of Pennsylvania Law Review 1 (2015), UCLA School of Law Research Paper No. 15-10, Criminal Justice, Borders and Citizenship Research Paper No. 2581161, Available at SSRN: https://ssrn.com/abstract=2581161

The proposed rule is also significantly problematic because the notice of proposed rulemaking (NPRM) incorrectly claims that it will not have a significant economic impact on a substantial number of small entities, and thus does not conduct the required regulatory flexibility analysis.[5] On the contrary, the proposed rule would directly regulate thousands of small entities, including Innovation Law Lab, through its near-elimination of continuance requests. Indeed, many of the restrictions directly target immigration practitioners who work at small entities like our own. If enacted, the proposed rule would impose an enormous amount of extra work on our staff, who would be forced to entirely re-work many of our representation programs to account for the nonexistence of continuances. Moreover, small organizations like Innovation Law Lab who work with low-income and unrepresented immigrants will likely have to create entirely new projects and direct resources to assisting the thousands of people who will be ordered removed because of their inability to obtain a reasonable continuance to locate an attorney or to prepare their case. This would require investment in complex matters like appeals, ICE stays, and motions to reopen – matters that require either a significant degree of expertise in immigration law, or intensive mentoring and assistance in the pro bono context.

The NPRM claims that the benefits of fewer continuances will outweigh any "de minimis" costs.[6] On the contrary, the NPRM entirely fails to acknowledge the human cost of the increased deportations that these changes will cause. The NPRM asserts that the changes will "benefit aliens with valid claims who would otherwise have to wait longer to receive relief or protection" and "provide some benefit to attorneys, particularly pro bono attorneys, who would not need to commit to representation for several years if the hearing process worked more efficiently."[7] But significantly undercutting the ability of respondents to access pro bono counsel in the first place is not the right solution to delays on the immigration court docket. It will be highly challenging, if not impossible, for Innovation Law Lab to find pro bono attorneys willing and able to jump into cases that have extremely accelerated timelines and no ability to request a continuance when necessary. The NPRM utterly fails to wrestle with the harm that this change will cause Innovation Law Lab and other organizations that run pro bono representation projects.

We urge EOIR to withdraw the rule in its entirety and to restore the ability of immigration judges to fairly manage their dockets and consider continuances on a case-by-case basis. Below we provide additional comments on specific provisions of the proposed rule.

[5] 85 Fed. Reg. at 75939. A "small entity" is statutorily defined as a "small business," "small organization," or "small governmental jurisdiction." 5 U.S.C. § 601(6).
[6] 85 Fed. Reg. at 75939.
[7] *Id.*

Comments on Specific Provisions

A. Innovation Law Lab Opposes the Proposed Changes to 8 C.F.R. § 1003.29(a), As They Would Prohibit Continuances for Asylum Seekers That Are Necessary to Ensure Due Process

Innovation Law Lab strongly opposes the proposed rule's limitation on immigration judges' authority to grant a continuance that would cause the adjudication of an asylum application to exceed 180 days.[8] The agency should not impose a one-size-fits-all continuance policy on asylum applicants, many of whom face a diverse array of barriers to accessing counsel and gathering necessary evidence. Many asylum seekers who are represented by projects of Innovation Law Lab face significant challenges in gathering the evidence necessary to prevail in their cases, including mental health evaluations, witness declarations and testimony from their home countries, original documents, and expert reports. Often through no fault of their own, such evidence will not be available within 180 days of the start of their case. Though the rule obtains an exception for "exceptional circumstances," such an exception will likely be insufficient to cover the multitude of cases in which highly ordinary factors (that are still out of the respondent's control) necessitate a continuance for evidence gathering.

Similarly, the proposed rule would highly prejudice the ability of Innovation Law Lab to place asylum cases with pro bono attorneys. Many unrepresented respondents do not become aware of free and affordable resources for legal representation until after their removal proceedings are initiated. Once their search begins, it can take weeks and months to connect with available legal counsel. Considering that many respondents will not come to the attention of Innovation Law Lab until well into the running of the proposed rule's 180-day clock, it will be extremely difficult, if not impossible, to find pro bono counsel able to step in and attempt to complete an entire asylum case within the remaining short months and weeks left in a case.

[8] Proposed 8 CFR § 1003.29(a), 85 Fed. Reg. at 75940. On December 16, 2020, EOIR published a separate final rule with nearly identical language to the text of proposed 8 CFR § 1003.29(a). *See* Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 81698, 81750. We urge EOIR to rescind that rule for the same reasons as those discussed here. While the 180-day timeframe derives from the INA, *see* INA § 208(d)(5)(iii), in more than two decades since Congress added this language to the asylum statute, the agency has never before implemented this unworkable standard through regulations.

B. Innovation Law Lab Opposes the Proposed Rule's List of Scenarios That Would Not Demonstrate Good Cause for a Continuance (Proposed 8 C.F.R. § 1003.29(b)(2))

The proposed rule lists situations that would not show good cause for a continuance. Innovation Law Lab strongly opposes this part of the rule.

First, the proposed rule would find that "[g]ood cause for a continuance is not shown when the continuance would not materially affect the outcome of removal proceedings or, for a continuance request based on a collateral matter, when the alien has not demonstrated by clear and convincing evidence a likelihood of obtaining relief on the collateral matter."[9] This change would place a significant (and unnecessary) evidentiary burden on respondents and their counsel at an early stage in the proceeding, and would unfairly invite immigration judges to prejudge both the outcomes of cases before them and ancillary matters outside of their jurisdiction. Moreover, as written, the rule appears to apply to *any* request for a continuance – even one to find counsel or to contest the charges in the Notice to Appear. At this early stage of the proceedings, the record will not contain sufficient evidence for an immigration judge to determine whether or not a continuance would make a material difference, and an unrepresented respondent, or counsel seeing charges with allegations that need investigating, may not be able to produce the requisite evidence. The proposed rule also flies in the face of Ninth Circuit precedent that does not require a showing of prejudice to demonstrate a violation of the statutory right to counsel. *Montes-Lopez v. Holder*, 694 F.3d 1085, 1090-94 (9th Cir. 2012); *accord Gomez-Velasco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018). This requirement thus violates both due process and the INA's statutory right to counsel. *See, e.g.*, 8 U.S.C. §§ 1158(d)(4); 1229a(b)(4)(A); 1362.

Second, the proposed rule would find that good cause is not shown where a continuance is sought to seek "parole, deferred action, or the exercise of prosecutorial discretion" by the Department of Homeland Security (DHS).[10] This change would unfairly punish respondents who are eligible for Deferred Action for Childhood Arrivals (DACA), humanitarian deferred action, parole in place, and prosecutorial discretion. In the absence of administrative closure, a continuance is realistically the only available mechanism for requesting such relief. The proposed rule changes would effectively foreclose these forms of relief for anyone in removal proceedings.

[9] 85 Fed. Reg. at 75940.
[10] *Id.*

C. Innovation Law Lab Opposes the Proposed Regulation's Presumption Against Continuances for Individuals Applying for or Awaiting an Immigrant or Nonimmigrant Visa (Proposed 8 C.F.R. § 1003.29(b)(3)(i), (ii), (iii), (iv))

Innovation Law Lab strongly opposes the proposed rule's presumption against continuances for many respondents pursuing visa petitions, adjustment of status, and nonimmigrant status. The changes are unnecessary, likely violate the intent of Congress as expressed in the INA, and will wreak significant harm on respondents who are eligible for humanitarian and family-based forms of relief.

Innovation Law Lab works with several groups who would be immediately and adversely affected by this change. For example, immigrant children who are eligible for Special Immigrant Juvenile Status (SIJS) because they have been abused, abandoned, or neglected would face removal through no fault of their own because of the visa bulletin backlog. Many of these children would be removed to the very same countries where they were abused and face a risk of serious harm and death. The proposed rule would have a similarly devastating effect on self-petitioners under the Violence Against Women Act and beneficiaries of family- and employment-based petitions who are awaiting visa availability. Innovation Law Lab's programs also include clients who are eligible to adjust status via family members, but who need time to save money for the ever-increasing fees required to file the visa petition and adjustment applications (fees that have recently risen dramatically under a separate rule change). Absent the opportunity to obtain reasonable continuances to await visa availability or to file the necessary applications and accompanying fees, many immigrants will be denied their opportunity to receive permanent residence and will be deported.

The change would be particularly cruel in its effect on applicants for U and T nonimmigrant visas – victims of violent crimes and human trafficking who are awaiting adjudication of their applications by USCIS. USCIS processing times vary widely and are often significantly delayed through no fault of the applicant, making it nearly impossible for a respondent to prove that they will actually receive the visa within six months of the requested continuance, as the rule would require. Moreover, given that only 10,000 U Visas are available each year, the current wait times for U Visa applicants, including those who have been found *prima facie* eligible for relief, is *five to ten years*.[11] These changes functionally mean that U Visa applicants will not be able to avoid removal in spite of their U Visa eligibility. The NPRM notes that U Visas may be adjudicated after a person is removed. But this cursory aside fails to account for the human cost wrought by deportation, and does not consider the challenge of pursuing relief, and accessing counsel, from a foreign country.

[11] USCIS, *U Visa Filing Trends*, 3 (April 2020), https://www.uscis.gov/sites/default/files/document/reports/Mini_U_Report-Filing_Trends_508.pdf.

Contrary to the agency's claims that this will increase efficiency, the rule will actually *decrease* efficiency by forcing many respondents to move forward with other requests for relief before the immigration court, thus creating unnecessary work for immigration judges and filling more of the limited spots available for individual hearings. For example, an unaccompanied child with an approved SIJS petition would not need to move forward on their asylum claim if allowed to wait for their visa availability. But absent a continuance, the child would have to litigate their asylum claim as well to avoid deportation. This situation would add unnecessary additional work to both an overburdened court system and under-resourced nonprofits like our own.

D. Innovation Law Lab Opposes the Proposed Regulation's Counter-Statutory Restrictions on Continuances for Individuals Seeking Relief over Which DHS Has Initial Jurisdiction (Proposed 8 C.F.R. § 1003.29(b)(3)(v))

Innovation Law Lab strongly opposes the proposed rule's limitations on continuances for individuals pursuing immigration protections over which DHS has initial jurisdiction. This proposed change would allow an immigration judge to deny a continuance if they believe a person has not shown *prima facie* eligibility for the benefit, if the person has any other form of relief pending before the immigration court, or if pleadings have not yet been entered. Like the other proposed changes, this change would require immigration judges to prejudge applications for relief that are not before them and that are being adjudicated by an entirely different agency. The change would have a devastating effect on unaccompanied children, who have a statutory right under the Trafficking Victims Protection Reauthorization Act to seek asylum in a non-adversarial interview before USCI; on conditional permanent residents applying for an I-751 waiver; and on individuals applying for Temporary Protected Status.

The Equity Corps of Oregon, which Innovation Law Lab manages, represents over 100 unaccompanied immigrant children throughout the state of Oregon. All have undergone significant trauma to seek safety in the United States, and most are awaiting interviews before USCIS. With this rule change in effect, the program could be forced to move forward with immigration court hearings on the merits for almost all of these children if the immigration judge prejudges their USCIS applications and determines they are not prima facie eligible. Moreover, it is not uncommon for immigration judges to request asylum applications from unaccompanied children, especially those who have already turned 18 but who have not been de-designated. Unrepresented children in particular may therefore inadvertently file an I-589 with the immigration court even while their application is pending with USCIS – which, under this rule, would force them to move forward on the merits before the immigration court.

E. Innovation Law Lab Strongly Opposes the Proposed Regulation's Harsh and Arbitrary Limitations on Continuances to Secure Representation (Proposed 8 C.F.R. § 1003.29(b)(4)(i), (ii))

Of the proposed rule's many draconian, unnecessary, and likely unlawful changes, Innovation Law Lab would perhaps be most devastated by the proposed rule's limitations on continuances to allow a *pro se* respondent to find counsel. Innovation Law Lab strongly opposes this portion of the proposed rule, which entirely fails to account for the reality faced by low-income unrepresented respondents before the immigration court and which would force hundreds of thousands of immigrants to proceed without the assistance of an attorney.

Flying in the face of precedent, due process, and the INA's express provision of a statutory right to counsel, the proposed rule would allow unrepresented respondents *at most* 30 days – and, in many cases, zero days – to find counsel after their first court appearance. This is an extremely unrealistic period of time for most unrepresented respondents to find an attorney willing and able to take their case. Many nonprofit legal service providers and private immigration attorneys have wait times of several weeks, if not months, for an initial consultation appointment; and after that, an attorney may take several days or more to determine whether or not she can take on representation. Additionally, respondents who are unable to afford the private bar will likely not become aware of the nonprofit services available in their area until they receive EOIR's list of pro bono legal service providers, which may not be given to them until their first hearing.

If implemented, this rule would significantly hamper Innovation Law Lab's ability to find legal assistance for unrepresented respondents. Many unrepresented respondents are not able to connect to our services until several weeks or months after their initial master calendar hearing. Currently, we are able to place these cases with attorneys through the Equity Corps of Oregon program or through our pro bono arm, the Centers of Excellence. But if unrepresented respondents are granted no time, or only 30 days, in which to seek counsel, their cases will already have moved past important substantive milestones without representation, possibly prejudicing their ability to appropriately develop their cases and making it significantly more difficult for an attorney to step in and begin representation. Moreover, as discussed *supra,* this change would have a particularly devastating effect on several of the populations that Innovation Law Lab serves, including children, speakers of indigenous and other rare languages, individuals who are illiterate, and residents of rural communities that lack immigration legal service providers and lawyers. As described on page 3 *supra*, this change would also devastate Innovation Law Lab's existing and developing programs that facilitate and provide no-cost representation for release from detention.

The NPRM claims, without a convincing citation, that respondents "generally have ample time to seek representation if they exercise due diligence."[12] This assertion is unsupported by reality, and either deliberately ignores, or fails to consider, the entirely reasonable time periods necessary to obtain counsel for those who have access. The NPRM entirely fails to account for the additional burdens, and delays, facing unrepresented persons who are part of vulnerable populations, like children and speakers of indigenous and rare languages. While the NPRM claims that 90% of asylum seekers are represented,[13] that statistic is not true in Oregon, where almost half of respondents in removal proceedings are unrepresented,[14] and it is certainly not true in detention, where only about 30% of respondents have representation.[15]

F. Innovation Law Lab Opposes the Proposed Regulation's Blanket Rejection of Good Cause for a Continuance Based on Representative Workload and Scheduling Conflicts (Proposed 8 C.F.R. § 1003.29(b)(4)(iii), (v))

Innovation Law Lab strongly opposes the proposed rule's limitations on continuances based on a representative's workload or obligations in other cases. This change is highly unrealistic and would force immigration attorneys to carry smaller caseloads, greatly decreasing the chances that unrepresented respondents can find counsel. Though the proposed rule claims it is only seeking to hold attorneys to the ethical standards that already exist, this rule would go far beyond that by restricting any ability for scheduling flexibility except in relation to obligations arising from responsibilities stemming from court appointments as defense counsel. The proposed rule would not allow for consideration of workload or scheduling conflicts that later arise from any other obligation, including obligations that arise from representation of immigrants in civil litigation and other federal court matters. This would cause a particular challenge for organizations like Innovation Law Lab, which engage not only in direct representation but also in federal litigation.

The rule's imbalance is also worth noting: it applies a heightened standard of availability to attorneys representing respondents, while imposing no such requirement on attorneys representing the government. The NPRM offers no explanation or attempted justification for the inequitable application, in spite of the fact that DHS attorneys often seek continuances due to their own lack of preparation.

[12] 85 Fed. Reg. at 75936.
[13] *Id.* at 75935.
[14] *See* https://trac.syr.edu/phptools/immigration/nta/.
[15] *See* TRAC Immigration, *Who Is Represented in Immigration Court?*, *available at* https://perma.cc/HPX7-GPF6.

G. Innovation Law Lab Strongly Opposes the Proposed Regulation's Near Eradication of Continuances for a Respondent or Legal Representative's Preparation (Proposed 8 C.F.R. § 1003.29(b)(4)(iv))

Innovation Law Lab strongly opposes the proposed rule's unreasonable and draconian limit on continuances to prepare the case, as it conflicts with respondents' statutory right to present evidence and examine the government's evidence, *see* 8 U.S.C. § 1229a(b)(4)(B), and right to due process in removal proceedings.

The proposed rule would allow no more than a single continuance for attorney preparation time, of no more than 14 days, and only for preparation prior to the pleadings.[16] Two weeks will often be an insufficient amount of time to conduct the necessary factual and legal research required to determine if a client has grounds to deny the charges. This is especially true when criminal grounds of removability are alleged, as it will almost invariably take longer than two weeks to request and gather the necessary criminal records, which may be very old.

The rule also appears to eliminate all other continuances for attorney preparation, including time to prepare applications for relief, to conduct additional merits preparation, and to review late-filed evidence by the DHS. Once again, this rule would be unequally applied, as no restriction on preparatory continuances would apply to DHS attorneys.

It is not uncommon for the need for additional preparation time to emerge during the course of work on a case. Many delays in gathering needed evidence arise due to circumstances outside of an attorney's control: testimony preparation may trigger an emotional crisis in a client suffering from post-traumatic stress disorder; expert witnesses may have limits on their availability and need additional time to complete supporting reports and prepare testimony; supporting records from government agencies, often in foreign countries, may take weeks, or months, to process. Additionally, requests for immigration files under the Freedom of Immigration Act often take months to receive and contain crucial information for a respondent's defense on the merits.

[16] 85 Fed. Reg. at 75941.

H. Innovation Law Lab Opposes the Proposed Regulation's Overly Narrow Provision for Continuances Where the Representative Fails to Appear at a Hearing (Proposed 8 C.F.R. § 1003.29(b)(4)(vi))

While respondents whose representatives fail to appear for a scheduled hearing should be afforded a continuance as a matter of course, the proposed rule is overly restrictive in that it permits a continuance only for a maximum of 14 days. A circumstance-specific approach, as currently exists, would be more appropriate in this context, considering the number of reasons that an attorney might fail to appear at a hearing, including health emergencies or other serious matters.

I. Innovation Law Lab Opposes the Proposed Regulation's Drastic Limitations on Immigration Judges' Ability to Continue a Case on Their Own Motion (Proposed 8 C.F.R. § 1003.29(b)(5))

Innovation Law Lab opposes the proposed rule's removal of immigration judges' discretion to continue cases *sua sponte* where they determine that a continuance is warranted. This proposed rule is yet another attempt to unreasonably restrict the ability of immigration judges to manage their own dockets and to respond to the unique facts of the situations before them. The rule would not allow immigration judge continuances outside of the delineated circumstances unless there are "[u]nforeseen exceptional or extraordinary circumstances beyond the control of the alien, the alien's representative, government counsel, or the immigration judge require a continuance."[17] This is an unnecessarily high standard that may force immigration judges to proceed with cases even when it is not in the best interests of the parties or the court to go forward.

J. Innovation Law Lab Opposes the Proposed Regulation's Curtailing of IJ Discretion to Continue Merits Hearings (Proposed 8 C.F.R. § 1003.29(b)(6))

Innovation Law Lab opposes the proposed rule's curtailing of IJs' authority to continue merits hearings except in strictly limited circumstances. The proposed rule fails to account for other situations in which a merits postponement would be necessary to protect the due process rights of respondents; for example, to present evidence in support of their applications or to examine and investigate evidence filed by DHS.

The proposed rule would allow a continuance of only 30 days regardless of the reason that the continuance was granted – meaning that the continuance would not necessarily cure the problem that led to the need for the continuance in the first place. While the NPRM claims that this "is a

[17] 85 Fed. Reg. at 75941.

reasonable amount of time to address the issue that necessitated the continuance,"[18] this will not always be the case. For example, attorneys working in Innovation Law Lab programs have had to withdraw from cases involving joint representation of families when a conflict between family members has arisen close in time to the final merits hearing. A continuance of only 30 days would not have allowed these clients to find new counsel, file a motion for severance, and re-prepare their (now separate) cases for hearings on the merits. Similarly, a 30-day continuance requested to preserve the due process rights of respondents to prevent evidence on their behalf (if it could even be granted under the new rules) would often not allow enough time to gather and prepare the missing evidence.

Conclusion

The proposed rule would significantly undermine due process in immigration proceedings. It would also severely limit the ability of Innovation Law Lab and other similar organizations to represent people in removal proceedings. We urge EOIR to rescind the "Good Cause for a Continuance in Immigration Proceedings" proposed rule.

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[18] 85 Fed. Reg. at 75938.