

Daniel Delgado
Acting Deputy Assistant Secretary for
Immigration Policy
Office of Strategy, Policy, and Plans
U.S. Department of Homeland Security

cc. Sarah Flinn, Assistant Director, Office of Policy, EOIR
Alejandro Mayorkas, Secretary, Department of Homeland Security

November 5, 2024

RE: Request to Provide for Public Comment on the Final Rule by the Department of Homeland Security (DHS) and the Department of Justice (DOJ) on Securing the Border, USCIS Docket No. USCIS 2024-0006; A.G. Order No. 6053-2024

Dear Acting Deputy Assistant Delgado,

By notice issued on October 7, 2024, the Department of Homeland Security (DHS) has published new rules modifying the previous IFR on asylum-seeking at the Southwest Border (SWB), “Securing the Border,” and accompanying request for comment on expanding and extending the Circumvention of Lawful Pathways Rule. **Hispanic Federation (HF)** respectfully submits the following comment in response to DHS and DOJ request for comment on the IFR and proposed rulemaking, USCIS Docket No. USCIS 2024-0006; A.G. Order No. 6053-2024.

1. Hispanic Federation Interest in Rule

Hispanic Federation is a nonprofit membership and advocacy organization with a network of over 650 organizations across the country. HF is committed to empowering and advancing the Hispanic community, with a focus on low-income, marginalized, and immigrant Latines. With programs in 42 states, Puerto Rico, the U.S. Virgin Islands and the District of Columbia, HF’s focus areas include immigration, economic empowerment, civic engagement, disaster relief, philanthropy, education, health, and the environment. HF also maintains ongoing immigration advocacy and welcome campaigns and meets the organizational development needs of its member agencies through grant-making and capacity-building assistance.

Per DOJ and DHS’ invitation to interested parties to submit relevant written data, views, or arguments on the interim final rule and proposed rule, we address here the IFR’s potentially harmful consequences in addressing humane immigration and asylum, as well as shortsighted proposals to expand the Circumvention of Lawful Pathways rule. We also note optimism about some procedural and linguistic changes in the IFR to provide greater transparency and reject harmful language.

2. **The Interim Final Rule will Deny Material Benefits to Asylum Seekers According to Subjective Determinations of Manifestations of Fear.**

Hispanic Federation opposes proposals to expand the IFR's rules for emergency restriction of asylum seekers at the Southwest Border for their capacity to enshrine a subjective standard of 'manifestation of fear' with material consequences to asylum seekers. The expansion of the period during which the 7-day rolling average of interceptions must fall below 1500 for emergency restrictions to be lifted from 7-days to 28-days warrants renewed scrutiny of the new "manifestation of fear" standard. The proposed expansion of this window necessarily increases the period of time in which the manifestation of fear will be a pertinent factor in asylum decision-making, warranting a re-examination of the adequacy of the standard as it currently stands, in light of the Department's own acknowledgement that "the rule's manifestation of fear and reasonable probability standards may increase the risk that some noncitizens with meritorious claims may not be referred for credible fear interviews or may not receive a positive credible fear determination."¹ In light of the acknowledged shortcoming of the manifestation of fear standard, HF proposes to eliminate any potential material advantages conferred by DHS adjudication of a manifestation of fear vs. other asylum-seeking actions, and clear, public guidance on what constitutes a manifestation of fear, as well as constant retraining for Department staff on such manifestations in recognition of the constantly changing circumstances driving different groups of people to seek asylum for different reasons.

The Department has repeatedly clarified that individuals will be referred to credible fear interviews if noncitizens manifest a fear of return, express intent to apply for asylum, or express fear of persecution or torture. However, according to public guidance provided by the Department, it is only those who manifest fear in either CBP or ICE custody to whom the Department explicitly provides "a list of legal service providers" whose proximity or hours of operation may accord with the timing of credible fear interviews.² HF exhorts the Department to explicitly clarify that this information is to be provided in advance to all asylum seekers granted credible fear interviews, rather than solely those who meet one of the three requirements. By ensuring equitable access to information material to credible fear interviews and providing culturally-sensitive and timely public guidance on assessing manifestations of fear, the Department can better ensure that the IFR aligns with its stated intent of maintaining access to asylum.

3. **Insufficient Comment Period**

The extremely limited comment period of thirty days that comes after implementation of the IFR is unjust and denies the public their right to provide adequate comment. HF recommends extending the comment period to 60 days considering the strong investment all Americans have in immigration policy. While the Department claims the right to preemptively implement the rule and adjust the comment period to suit their purposes according to the foreign policy exception to notice-and-comment procedures, Hispanic Federation nonetheless strongly urges the Department

¹ <https://www.federalregister.gov/d/2024-22602/p-610>

² <https://www.federalregister.gov/d/2024-22602/p-559>

to take steps far beyond their statutory requirement in inviting comment on one of the most discussed policy issues of our time.

4. **Opposition to Expansion of the Circumvention of Lawful Pathways Rule to All Maritime Borders**

Hispanic Federation opposes the proposal to expand the Circumvention of Lawful Pathways rule across all maritime borders. Given that measures like the IFR have been introduced explicitly to address the inability to process high volumes of asylum claims under current DHS staffing and resources, the Department has not provided adequate guarantees that more intensive policies like the CLP would be safely or reasonably implemented at such a scale. If DHS is to be taken at their word, the DHS lacks the resources to process credible fear interviews across the length of US coastal borders, particularly given that the types of fears and demographics of such migrants would differ from those of the SWB, requiring expanded training or guidance. Instead, HF would encourage the Department to devise an alternative rulemaking for differentiated stretches of coastal borders, in recognition that one size does not fit all in immigration policy.

5. **In Support of Certain Transparency and Linguistic Changes**

While **Hispanic Federation** disagrees with many of the proposals and terms of the IFR, we do support the decision to include all Unaccompanied Children in the IFR with the caveat that the targeted interception number should be raised from 1500 to a larger value to accommodate the new accounting. Counting all people, including children, regardless of their origin country is a crucial first step toward the ability to provide adequate social services and opportunity to immigrants coming into the United States. However, given that the Department has stated that the previous terms of the IFR yielded successes in bringing encounter numbers to levels they sought - under prior iterations in which not all unaccompanied children were counted - it is both reasonable and imperative that the Department revise its target number above 1500 encounters to ensure that this accounting change does further decrease asylum eligibility. This change will be particularly necessary for the Department to avoid credible accusations that the IFR qualifies as illegal metering.³

HF is encouraged by the decision within IFR modifications to revise statutory language to eliminate the derogatory term “alien,” instead substituting the term “noncitizen.” Linguistic changes like these are sensible ways to reduce discriminatory enforcement cultures. HF encourages the Department to continue seeking plausible routes to implement more culturally competent language in statute, training, and practice.

6. **Hispanic Federation Serving Immigration Initiatives**

Hispanic Federation and its network have been serving immigrants and particularly asylum seekers for decades through programs coordinating legal aid, representation, and culturally and linguistically competent support upon arrival. As an umbrella organization, Hispanic Federation

³ <https://www.reuters.com/legal/government/us-court-says-metering-policy-limiting-asylum-applications-is-illegal-2024-10-23/>

has a proven track record of designing and launching national, state-wide, and locally focused immigration initiatives, including direct legal, case management, and navigation services to vulnerable migrants and asylum seekers. Programs include:

- *Caminos de Esperanza*: A legal support program serving immigrant communities across the country in conjunction with 12 organizations. HF has provided more than 4,000 legal screenings, and direct representation for more than 1,000 asylum seekers. This program speaks not only to HF's investment in the asylum-seeking process but also the organization's qualification to offer feedback on the IFR.
- *Welcoming New York*: A New York Statewide initiative providing legal screenings for asylum seekers, pro se assistance for asylum applications, EADs, and Temporary Protected Status applications. This work is conducted in conjunction with both external attorneys and Department of Justice representatives. HF has served over 18,000 immigrants through 33 partner organizations through this program's universal service model. HF's leadership in this program highlights our experience cooperating with federal officials on sensitive agenda, including on asylum.
- *Florida's HELLO Program*: Through Florida's HELLO (Help, Education, Legal Assistance, Listening, Outreach) program, HF conducts monthly workshops with the Orlando Center For Justice to provide immigrant community members, including newly arrived migrants, with culturally and linguistically competent information about the immigration system in America. This includes free legal guidance with trained lawyers and staff to help participants navigate this immigration system. HF's experience serving the immigrant community in Florida is particularly relevant to our assessment of the proposed maritime expansion of the Circumvention of Legal Pathways rule.

7. Conclusion

Hispanic Federation opposes critical components of both the IFR and the expansion of the Circumvention of Legal Pathways rule. In keeping with the Department's request that comments pertain specifically to the call within the most recent IFR and subsequent proposed changes, our commentary has focused on limited, keenly salient changes. With the expanded timeframe of 'emergency' protocol, there is a firm expectation that the IFR procedures will remain in place for longer. This growing duration necessitates a reconsideration of the guidance and protocols relating to the manifestation of fear standard, particularly necessitating the explicit clarification that subjective determinations by officials prior to the credible fear screening will not bar asylum seekers from material legal assistance. We caution against the maritime expansion of the Circumvention of Legal Pathways rule as any expansion would be a further drain on DHS' already outstretched resources. While we are encouraged by the decision to shift to non-discriminatory regulatory language and the move toward transparency for all those encountered by USCIS, HF remains concerned that the revised counting method will be used to unlawfully restrict asylum-seekers. The cap must be commensurately raised above 1500, in proportion to

the expected increase in registered encounters as the Departments begin to count encounters with unaccompanied children. Finally, we encourage the Department to accept public input above-and-beyond statutory requirements to ensure that all voices are heard on these crucial processes.

Sincerely,

Julietta Lopez
Vice President for Federal Advocacy and Network Mobilization
Hispanic Federation