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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

[Docket No. EOIR-26-AB37; Dir. Order No. 12-2026]

RIN 1125-AB37

Appellate Procedures for the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review ("EOIR"), Department of Justice ("DOJ" or "Department").

ACTION: Final rule.

SUMMARY: In February 2026, the Department issued an interim final rule ("IFR"), effective March 9, 2026, to streamline Board of Immigration Appeals ("Board" or "BIA") procedures. The IFR's comment period closed on April 8, 2026. In this final rule, the Department responds to comments received and finalizes the IFR with minor changes.

DATES: This rule is effective on [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

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SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 2026, the Department published an IFR that: (1) streamlined the process for the Board to review Immigration Judge decisions by making such review discretionary regarding certain aspects of the review; (2) established briefing schedules for cases being reviewed; and (3) streamlined other aspects of the appellate process to

ensure timely adjudications and avoid adding to the Board's backlog. *See* Appellate Procedures for the Board of Immigration Appeals, 91 FR 5267 (Feb. 6, 2026). The IFR also made technical and non-substantive changes to EOIR's regulations. *See id*. These changes are discussed in more detail in Section I.C of this preamble.

The comment period for the IFR opened on February 6, 2026, and, after an extension,[1] closed on April 8, 2026, with 1,615 comments received.

In this final rule, the Department adopts as final the amendments made by the IFR with some changes. These changes are described in Section II of this preamble. In Section III of this preamble, the Department summarizes and responds to public comments received on the IFR.

A. Purpose of this Rulemaking

As discussed in the IFR, the Department issued the IFR in an effort to address lengthy and unprecedented appeal backlogs at the Board. *See* 91 FR 5270. The Department has attempted to address the Board's backlog multiple times over the years, *see* 91 FR 5268–70, yet the Board's pending caseload has continued to increase. Specifically, the Board's pending caseload increased from 35,837 cases in Fiscal Year ("FY") 2017 to 325,774 cases in FY 2026—a nearly ninefold increase.[2] Lengthy backlogs and their accompanying adjudication delays significantly undermine the Government's efforts to effectively administer the Nation's immigration system, where many aliens with non-meritorious claims know they can potentially remain in the United States for years upon the filing of an appeal with the Board. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) ("[A]s a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States.").

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[1] *See* Appellate Procedures for the Board of Immigration Appeals; Extension of Comment Period, 91 FR 9705 (Feb. 27, 2026).

[2] *See* EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/3K4F-N2CJ].

These unsustainable numbers required the Department to fundamentally "reconsider[] the Board's role as an appellate tribunal" and, in turn, implement significant reforms to the Board's adjudicatory role and processes to better allow it to simultaneously keep up with incoming filings and meaningfully reduce its backlog. *See* 91 FR 5270. In issuing this rule, the Department ultimately determined that anything less than a significant departure from past practice would not achieve the necessary outcomes. Indeed, when the Department proposed its streamlining reforms in 2002, it laid out similar objectives to those animating this rulemaking: "(1) Eliminating the current backlog of cases pending before the Board; (2) Eliminating unwarranted delays in the adjudication of administrative appeals; (3) Utilizing the resources of the Board more efficiently; and (4) Allowing more resources to be allocated to the resolution of those cases that present difficult or controversial legal questions—cases that are most appropriate for searching appellate review." *See* Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 FR 7309, 7310 (Feb. 19, 2002) (notice of proposed rulemaking). Learning from that effort, the Department decided here that, rather than continuing a path of modest and likely ineffectual changes, fundamental reform was needed.

Importantly, although the changes made in this rule are a significant departure from past Board processes—in particular, the switch to summary dismissal as the default outcome—this rule does not alter an alien's statutory right to obtain Federal court review. *See generally* INA 242, 8 U.S.C. 1252.

B. Legal Authority

The Department issues this final rule through authority granted by section 103(g) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 ("HSA"), Pub. L. 107-296, 116 Stat. 2135. *See* 91 FR 5267–68.

C. Summary of Regulatory Changes Made by IFR

The IFR revised 8 CFR 1003.1–1003.3, 1003.5–1003.6, 1003.18, 1003.38, 1003.42, 1003.55, 1208.31, 1208.35, 1240.15, 1240.26, and 1240.53 in Chapter V of title 8 of the Code of Federal Regulations ("CFR").

The IFR amended EOIR's regulations to:

(1) Require appeals to be summarily dismissed by a single Board Member within 15 days of the appeal being filed, except where the appeal has been referred for consideration by the Board *en banc* and a majority of permanent Board members vote to accept the appeal for further consideration within 10 days of the appeal being filed, 91 FR 5270–71;

(2) Shorten the timeline for filing an appeal with the Board (except for appeals of asylum decisions on the merits) from 30 days to 10 days, 91 FR 5272;

(3) Standardize briefing schedules by requiring simultaneous briefing in all appeals that are not summarily dismissed within 20 days of the Board setting the briefing schedule, with no reply briefs permitted and grants of extensions of time limited to "exceptional circumstances," 91 FR 5272–73;

(4) Eliminate the requirement that Immigration Judges review transcripts of their oral decisions before the Board adjudicates appeals of their decisions, 91 FR 5273–74;

(5) Remove or revise regulatory provisions authorizing the Chief Appellate Immigration Judge to either extend adjudication deadlines in particular cases or to hold cases based on pending action, 91 FR 5274;

(6) Codify the requirement that all arguments must be raised in a Notice of Appeal to the Board, and that all other arguments will be deemed waived, 91 FR 5278;

(7) Correct outdated regulatory cross-references, 91 FR 5274; and

(8) Align the regulatory terminology with statutory terminology by updating the term "noncitizen" to "alien" and the term "unaccompanied child" or "unaccompanied

children" to "unaccompanied alien child" or "unaccompanied alien children," as appropriate, 91 FR 5274.

D. Procedural Validity of the Final Rule

A few weeks after the IFR published, a group of advocacy organizations challenged it in the U.S. District Court for the District of Columbia. On March 8, 2026, the court partially vacated the IFR, holding that certain portions violated the Administrative Procedure Act's ("APA") notice-and-comment requirements. *See Amica Ctr. for Immigrant Rights v. EOIR*, 822 F. Supp. 3d 119, 168 (D.D.C. 2026).

Specifically, the court vacated the following three of the IFR's amendments[3] because, in the court's view, the procedural rule and foreign affairs exemptions to the APA's notice-and-comment requirement did not apply: (1) shortening the timeline for filing an appeal with the Board (except for appeals of the merits of certain asylum decisions) from 30 days to 10 days; (2) requiring that issues not raised in the Notice of Appeal be deemed waived; and (3) requiring that appeals be summarily dismissed by a single Board Member within 15 days of the appeal being filed, unless referred for consideration by the Board *en banc* and a majority of permanent Board members vote to accept for further consideration within 10 days of the appeal being filed. *Amica*, 822 F. Supp. 3d at 156–60 (procedural rule exemption analysis), 163–65 (foreign affairs exemption analysis).

However, in issuing this final rule, the Department has fully complied with the requirements of the APA, thereby obviating the basis for the *Amica* court's decision regarding these three provisions. As the Supreme Court has explained, an IFR containing all of the APA-required elements of a notice of proposed rulemaking ("NPRM"), as provided in 5 U.S.C. 553(b)–(d), satisfies the APA's procedural requirements. *See Little*

[3] For all other provisions of the IFR, either no challenge was raised or the court affirmatively determined that a stay was not warranted. *See Amica*, 822 F. Supp. 3d at 141–46, 165–68. Accordingly, those provisions are currently in effect.

Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 591 U.S. 657, 682–86 (2020). That notice of a final rule's provisions was provided via an IFR rather than an NPRM does not itself invalidate a final rule; rather, the focus is on whether fair notice was provided to the public. *Id.* at 684 (quoting *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007)).

Here, the IFR contained all APA-required elements of an NPRM: a reference to legal authority, as required by 5 U.S.C. 553(b)(2) (91 FR 5267–68); a description of the terms and substance of the rule, as required by 5 U.S.C. 553(b)(3) (91 FR 5270–74); and a request for public comment, as required by 5 U.S.C. 553(c) (91 FR 5267). Additionally, this final rule provides a statement of the rule's purpose and basis, as required by 5 U.S.C. 553(c). Further, this final rule is being published 30 days prior to its effective date, as required by 5 U.S.C. 553(d) and reiterated in *Little Sisters*. *See* 591 U.S. at 686.

In sum, this final rule is now being issued after the notice-and-comment procedures required by the APA, thus alleviating the procedural concerns raised by the *Amica* court. As such, all provisions of the rule are presumed operative on the effective date.

E. Severability

To the extent that any portion of this rule is stayed, enjoined, or held invalid by a court, the Department intends for all other parts of the rule to remain in effect. Each change may operate independently of the others and would be unaffected if any other part of the rule were stayed, enjoined, or held invalid.

II. Revisions to IFR in Final Rule

This final rule adopts the provisions of the IFR, with the following revisions:

A. Clarifying Effect of a Summary Dismissal Order

First, in response to some commenters' confusion, the Department is updating

regulatory language at 8 CFR 1003.1(d)(2)(ii) to clarify the contents and effect of a summary dismissal order for Federal court review purposes.

In the IFR, the Department included regulatory language stating that, when an appeal is summarily dismissed under the relevant paragraph, "the Immigration Judge's decision is adopted by the Board and articulates the rationale for removal that is subject to judicial review." 8 CFR 1003.1(d)(2)(ii). The IFR explained that this language "would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed." 91 FR 5271. Nevertheless, commenters expressed confusion over various issues relating to the processes for Board appeals and Federal circuit court petitions for review ("PFRs"), such as exhaustion or issue-preservation requirements.

Therefore, the Department is replacing this language with more specific procedures to ensure that parties and courts understand the effect of a summary dismissal order under this rule, including that such dismissal is done after consideration of the substance of the appeal. To do so, the new regulatory language mirrors the Board's pre-existing affirmance-without-opinion language in 8 CFR 1003.1(e)(4). For example, under this rule's summary dismissal procedures, when the Board summarily dismisses an appeal, the new regulatory language states that the Board will issue an order stating: "The Board dismisses, without opinion, the appeal from the Immigration Judge's decision. The decision below is, therefore, the final agency determination. *See* 8 CFR 1003.1(d)(2)(ii)." 8 CFR 1003.1(d)(2)(ii). Moreover, the newly added regulatory language at 8 CFR 1003.1(d)(2)(ii)(C) states that no further explanation or reasoning will be included and explains what this means for purposes of summary dismissals without opinion. Specifically, a summary dismissal without opinion shall, like affirmances without opinion, be deemed to reflect the following considerations: (1) that the result reached in the Immigration Judge's decision under review was correct; (2) that it does not

necessarily imply approval of all of the reasoning of the Immigration Judge's decision; (3) that any errors in the decision under review were harmless or nonmaterial; and (4) that either the issues on appeal are squarely controlled by existing Board or Federal court precedent and do not involve the application of precedent to a novel factual situation, or the factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

These changes will standardize the contents of summary dismissal orders issued pursuant to 8 CFR 1003.1(d)(2)(ii) and specify the impacts of such orders, thereby reducing confusion over the scope of such orders and, relatedly, the attendant impacts they will have on issue exhaustion or preservation requirements before the Federal circuit courts.

Finally, the Department is also inserting language in 8 CFR 1003.1(d)(2)(ii) to make clear that the new summary dismissal procedure remains subject to the Board's existing prohibition on "issu[ing] a decision affirming or granting to an alien an immigration status, relief or protection from removal, or other immigration benefit, as provided in 8 CFR 1003.47(b), that requires completion of identity, law enforcement, or security investigations or examinations if" those checks have not been completed or need to be updated. 8 CFR 1003.1(d)(6)(i); *see also* 8 U.S.C. 1158(d)(5)(A)(i) (prohibiting the granting of asylum until appropriate checks have been completed regarding the applicant). Because such checks are required to be complete and current before an Immigration Judge grants status, relief, protection, or a benefit, *see* 8 CFR 1003.47(g), under the new procedures, it is unlikely that those checks will have expired by the time the Board would summarily dismiss any appeal. Nevertheless, the inserted language makes clear that if the checks expire between the date of the Immigration Judge order and the Board's decision to summarily dismiss the appeal, then the Board must wait until the checks have been updated.

B. Clarifying Appeal Deadline for Practitioner Discipline Cases

In the IFR, the Department stated that it had reconsidered the appeal timeline before the Board and was "reducing the appeal period from 30 days to 10 days for all cases" except for certain cases involving asylum applications. *See* 91 FR 5272. Other than the narrow exception for certain cases involving asylum applications, the Department intended for the 10-day appeal deadline to apply to all appeals, including appeals from decisions of an adjudicating official in practitioner discipline cases. *See* 8 CFR 1003.1(b)(13) (providing the Board with jurisdiction over appeals filed from "[d]ecisions of adjudicating officials in disciplinary proceedings involving practitioners or recognized organizations as provided in [subpart G of 8 CFR 1003]").

To clarify this intent, the Department is now amending 8 CFR 1003.106(c) to explicitly state that appeals from decisions in practitioner discipline cases must also be filed with the Board within 10 calendar days of the decision issued under 8 CFR 1003.106(b). The 10-day deadline applies regardless of which party files the appeal. *See* 8 CFR 1003.106(c) (noting either or both parties may file an appeal with the Board). This change will ensure that the intent of the IFR—to harmonize appellate deadlines across EOIR—is fully effectuated. *See, e.g.*, 28 CFR 68.54(a) (10-day deadline to appeal a decision of an Administrative Law Judge to the Chief Administrative Hearing Officer); 8 CFR 1003.6(c)(1) (10-day deadline for the Department of Homeland Security ("DHS") to file an appeal of an Immigration Judge's order to maintain an automatic stay of a custody redetermination order pursuant to 8 CFR 1003.19(i)). Further, this change will ensure that EOIR can swiftly impose sanctions on practitioners subject to discipline as a result of criminal, unethical, or unprofessional conduct, or frivolous behavior. 8 CFR 1003.101(a). This change will apply only prospectively to appeals of decisions in practitioner discipline cases issued on or after the effective date of this final rule.

C. Clarifying Temporary Appellate Immigration Judge Authority to Summarily Dismiss

Cases

The IFR introduced, and this rule finalizes, streamlining provisions involving the Board's expanded use of summary dismissal. 8 CFR 1003.1(d)(2)(ii); *see also* 91 FR 5270–71. The Department is now amending 8 CFR 1003.1(a)(4) to clarify that Temporary Appellate Immigration Judges ("TAIJs") have the authority to issue written orders summarily dismissing cases pursuant to 8 CFR 1003.1(d)(2). This was the intent of the IFR, and this change merely makes that intent explicit in the regulations to avoid confusion.

TAIJs possess all of the authority of permanent Appellate Immigration Judges, except they do not vote in the Board's *en banc* process. *See* 8 CFR 1003.1(a)(4). They also have the experience necessary to make appropriate decisions on whether to issue orders summarily dismissing cases. *See* 8 CFR 1003.1(a)(4) (listing individuals qualified to serve as TAIJs, including "immigration judges, retired Board members, retired immigration judges, and administrative law judges" and "senior EOIR attorneys with at least ten years of experience in the field of immigration law"). Further, TAIJs are often appointed to help address fluctuations in the Board's caseload or changes in Board priorities. *See* Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15527 (Apr. 4, 2025) (explaining role and purpose of TAIJs). Allowing TAIJs to summarily dismiss cases will thus further advance this rule's goal of streamlining Board procedures and increasing the efficient processing of appeals. Although TAIJs do "not have the authority to vote on any matter decided by the Board *en banc*," including whether a case should be decided pursuant to the procedures finalized in this rule or if a decision should be designated as precedent, *see* 8 CFR 1003.1(a)(4)–(5), (d)(2)(ii), (g)(3), under this rule, TAIJs will summarily dismiss cases or refer them to the permanent Appellate Immigration Judges for an *en banc* vote.

The Department is not making any changes to existing regulations limiting *en*

banc voting to permanent Appellate Immigration Judges. However, TAIJs "may serve as the author or panel member for a precedent decision" or may adjudicate a case assigned to them if a majority of the Board votes to decide an appeal with full briefing. *See* 90 FR 15527 n.3.

D. Other Technical Changes

The Department is also making technical changes in this final rule to ensure consistency, clarity, and accuracy in the regulatory text.

First, the Department is making formatting changes to 8 CFR 1003.1(d)(2)(ii) to add subparagraphs for readability.

Second, the Department is making a minor correction to 8 CFR 1003.1(e)(8)(ii) to remove a reference to an "extension period." The IFR amended 8 CFR 1003.1(e)(8)(ii) to remove language that previously authorized the Chief Appellate Immigration Judge to extend adjudication deadlines or hold cases based on a pending precedential decision or new regulatory actions, explaining that the previous language allowed the Chief Appellate Immigration Judge to "delay cases at whim, either to avoid applying established regulatory adjudicatory timeframes or to effectuate policy goals of delaying cases." *See* 91 FR 5274. Consistent with the removal of language authorizing the extension of adjudication deadlines, this final rule removes a reference to an "extension period" in 8 CFR 1003.1(e)(8)(ii) and clarifies that if a dissenting or concurring panel member fails to complete his or her opinion by the end of the established time limits for adjudicating cases, the majority decision will be issued without the separate opinion.

Third, the Department is amending 8 CFR 1003.1(d)(2)(ii) to remove the date previously listed in that provision (March 9, 2026) and clarify that all appeals of any decision issued on or after the effective date of this final rule—and not the IFR—are subject to this rule's summary dismissal procedures.

Fourth, the Department is making minor terminology amendments updating the

terms “Chairman” and “Vice Chairman” to “Chief Appellate Immigration Judge” and “Deputy Chief Appellate Immigration Judge,” respectively, in a relevant section of this rule. *See* 8 CFR 1003.1(e)(8)(ii). These changes will conform the regulatory text to current EOIR terminology and thereby promote clarity and consistency.

Fifth, the Department is making a minor technical edit to 8 CFR 1003.1(e)(3) to avoid confusion regarding the production of transcripts. After issuance of the IFR, 8 CFR 1003.1(e)(3) stated that “[i]n any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceeding and transcript, and the issuance of a briefing schedule, as appropriate.” The phrase “as appropriate” may not clearly convey that transcripts need not be produced in every Board case that has not been summarily dismissed. For example, the Board routinely considers several types of appeals that do not have transcripts, such as where there was no hearing to transcribe in the underlying proceeding (*e.g.*, appeals of motions to reopen or reconsider decisions and appeals of certain visa decisions by DHS), the hearing in the underlying proceeding was not recorded (*e.g.*, appeals of custody redetermination decisions), or a new transcript is not necessary or germane to the procedural posture of the case (*e.g.*, interlocutory appeals; consideration of appeals remanded from Federal court). Thus, the Department is making a minor edit to 8 CFR 1003.1(e)(3) to make clear that, in any case not summarily dismissed, the Board will produce a transcript only if a transcript is otherwise warranted, which excludes the examples given above where the Board has historically not created a transcript.

III. Public Comments and Responses

A. General

The Department received 1,615 public comments on the IFR. Many commenters opposed the IFR based on policy disagreements, while several commenters wrote in support. In general, comments in opposition raised policy concerns about the IFR’s

narrowing of appellate review before the Board, and the burdens that the IFR would place on aliens and their counsel. Commenters also noted legal concerns based on purported violations of due process and the APA. In contrast, supportive commenters reiterated and reinforced the Department's concerns regarding the need to efficiently process appeals and reduce the Board's significant backlog, which they argued encourages illegal immigration into the United States due to lengthy adjudication delays. The Department has thoroughly reviewed and considered all comments received and responds to specific concerns raised by commenters below.[4] While the Department appreciates the policy-based opposition comments, ultimately, they are not persuasive for the reasons outlined below. Similarly, the Department disagrees with the results-oriented view of due process raised by many commenters, and the issues raised relating to the Department foregoing notice and comment are obviated by the issuance of this final rule, as discussed in Section I.D of this preamble.

B. Ineffectiveness of/Improper Motivation for IFR

1. Rule based on inappropriate data and reasoning

Comment: Commenters argued that the IFR relies on erroneous data to support its determination that it is appropriate to increase the use of summary dismissal on the basis that the appealing party rarely succeeds before the Board. Commenters stated that the cited statistics were misleading because the Department's data related to successful appeals did not accurately capture cases that were remanded to an Immigration Judge. Commenters posited that the Department counted appeals given the specific decision code of "SUS," which stands for "sustained," but did not count the many cases that were both sustained and remanded, coded "REM," that also reflect disagreement with the

[4] The Department does not address comments seeking changes to U.S. laws, regulations, or agency policies that are unrelated to the changes made by the IFR, nor does this rule resolve issues raised by commenters that are outside the scope of this rule, including comments related to broader immigration policies, immigration enforcement activities, the scope of detention policies, and specific hiring advertisements or practices.

decision below. In support of their assertion, commenters provided separate data purporting to show at least 450 appeals in an approximately 14-month period that had been sustained but not marked "SUS." Commenters also asserted that the Department should have considered other decision codes as representative of the Board's disagreement with the Immigration Judge, referencing "TER" (termination) and "ACR" (administrative closure).

Commenters also objected to the IFR's statement that the data related to the number of sustained appeals established that "the Board generally agrees with the outcome of the decision below," because cases where the Board remands a case to the Immigration Judge or terminates removal proceedings altogether do not reflect agreement with the Immigration Judge's decision. Commenters asserted that these remanded cases, which they estimated—without citing any data or evidence to support—to number in the thousands or tens of thousands, suggest that the Board identified an error that required correction before the Immigration Court. Commenters stated that such remands should be calculated as a "substantive win" for the appealing party because the Board is required to defer to Immigration Judges on factual issues.

More broadly, commenters stated that the Department did not sufficiently explain why the Board should relinquish its appellate review function, even if there were only a small portion of sustained appeals. Commenters claimed that the fact that the Board sustained any appeals or remanded any cases to the Immigration Judge is sufficient proof that careful appellate review is warranted. Commenters also stated that the IFR's justification based on backlog statistics is flawed and said the Department has admitted that EOIR historically has not tracked case processing times accurately and has ignored Inspector General recommendations related to data integrity.

Response: The Department disagrees with commenter assertions on this topic. As an initial point, the Department's decision to expand the use of summary dismissal rests

on many grounds, not solely on the basis of the statistics with which commenters take issue. *See, e.g.*, 91 FR 5270. Even so, it is undisputed—even by opposition commenters—that the vast majority of appeals to the Board are not sustained or remanded; instead, they result in decisions upholding the underlying decisions of Immigration Judges. Thus, whether one counts Board decisions sustaining an appeal or all Board decisions resulting in a remand,[5] the overall picture remains the same: the overwhelming majority of appeals to the Board—just like the overwhelming majority of appeals in court systems in the United States generally[6]—do not result in a different outcome for the appellant.[7]

Similarly, counting actions that typically do not reflect a judgment regarding the merits of an Immigration Judge's decision, such as terminations or administrative closures, does not change the overall picture. Both actions, particularly in recent years, reflect policy choices, generally tied to exercises of prosecutorial discretion, that provide no commentary on the specific issues on appeal.[8] Thus, in most cases, they reflect no

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[5] Contrary to some commenters' assertions, the Department acknowledged in the IFR that it was not counting all remanded cases because "the Board may remand a case for many reasons," 91 FR 5270 n.8, and certain types of common remands (e.g. solely to update background checks or address defects in a transcript) are not indicative of the merits of the case. Regardless, whether all remands are counted or not, the fundamental conclusion remains the same regarding the scope of appeals which result in a change in the overall outcome of a case.

[6] *See generally* Barry C. Edwards, *Why Appeals Courts Rarely Reverse Lower Courts: An Experimental Study to Explore Affirmation Bias*, 68 Emory L. J. Online 1035 (2019), https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1006&context=elj-online.

[7] Indeed, commenters neglected to place their numbers in context. Between FY 2020 and FY 2025, the Board completed at least 30,000 cases each year. *See* EOIR Workload and Adjudication Statistics, *All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/3K4F-N2CJ]. Thus, even using commenters' data, the Department's conclusion remains valid.

[8] Between 2011 and 2017, there were various memoranda issued by DHS setting enforcement priorities and encouraging DHS attorneys to seek administrative closure of cases those memoranda deemed to be low priority. *See, e.g.*, Memorandum from Peter S. Vincent, Principal Legal Advisor, U.S. Immigration & Customs Enf't, to All OPLA Attorneys, U.S. Immigration & Customs Enf't, *Case-by-Case Review of Incoming and Certain Pending Cases* 2 (Nov. 17, 2011), https://www.ice.gov/doclib/foia/prosecutorial-discretion/case-by-case-review-incoming-certain-pending-cases-memorandum.pdf [https://perma.cc/2YCT-6GTB]. Between 2022 and 2025, DHS attorneys were similarly encouraged to seek dismissal of cases then viewed as low priority. *See* Memorandum from Kerry A. Doyle, Principal Legal Advisor, U.S. Immigration & Customs Enf't, to All OPLA Attorneys, U.S. Immigration & Customs Enf't, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* 10 (Apr. 3, 2022), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf [https://perma.cc/565Z-6ABV]. And EOIR similarly issued

judgment about the merit of the appeal, only a decision that the case should not be resolved on the merits. Contrary to commenter suggestions that an "ACR" decision should be considered reflective of the Board's disagreement with an underlying Immigration Judge decision, administrative closure has been used primarily as a policy tool to avoid reaching the merits in cases where a straightforward conclusion of the case would have likely resulted in an order of removal. *See generally* EOIR, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl?inline [https://perma.cc/SH9J-CKXL]. Before the Board, this could have involved cases where the Appellate Immigration Judge agreed with an Immigration Judge that, on the merits, an alien was properly ordered removed, but, for policy reasons, allowed the indefinite delay of proceedings through administrative closure.

Even where not used for policy purposes, termination or administrative closure generally has no bearing on whether the Appellate Immigration Judge believes the Immigration Judge erred. Thus, codes for both administrative closure and termination were properly excluded.

Additionally, the Department disagrees with commenters' claims that remands reflect disagreement with the decision below. A remand for new background checks

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memoranda in 2022 and 2023 encouraging the use of administrative closure and dismissal in cases of aliens who were not priorities for removal under the then-effective DHS memoranda. *See* EOIR, *DM 22-03: Administrative Closure* 2–3 (Nov. 22, 2021) ("[I]t is important that adjudicators focus on two categories of cases: those in which the . . . [DHS] deems the respondent to be an immigration enforcement priority, and those in which the respondent desires a full adjudication of his or her claim or claims. Being able to administratively close low priority cases will help adjudicators do this."); EOIR, *DM 23-04: Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives* 6 (Sept. 28, 2023) ("[W]here the respondent is not[a civil immigration priority], giv[e] the parties an opportunity to make requests in light of the respondent's nonpriority status. . . . [A]ppellate immigration judges should adjudicate motions to dismiss as is appropriate under the law, taking into account any objection to dismissal from the respondent."). Those DHS and EOIR memoranda have since been canceled or otherwise superseded. *See* E.O. 14159, sec. 3(a), 90 FR 8443 (Jan. 20, 2025) (revoking Executive Orders from 2021 setting immigration priorities); EOIR, *PM 25-16: Cancellation of Director's Memorandum 23-04* (Feb. 3, 2025), https://www.justice.gov/eoir/media/1388051/dl?inline [https://perma.cc/6QBZ-AXGC]; EOIR, *PM 25-29: Cancellation of Director's Memorandum 22-03* (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl [https://perma.cc/SH9J-CKXL].

often means that DHS was the appellant for a grant of relief to an alien and the Board dismissed DHS's appeal, but that the length of time the Board took to decide the appeal meant that the background checks had expired and new ones were required.[9] And a remand to correct a defective transcript says nothing about the merits of a case and therefore is not a "win" for either party.

Remands for further factfinding are similarly not a "win" for either party. As commenters stated, the Board is, with limited exception, precluded from engaging in factfinding and may remand a decision to the Immigration Court where it has determined that further factfinding is needed. 8 CFR 1003.1(d)(3)(iv). A remand for further factfinding does not, by itself, signal that the Board agrees or disagrees with the Immigration Judge's ultimate conclusions pertaining to removability or relief and protection, or whether the alien or DHS will ultimately prevail before EOIR. Rather, a remand for such purpose represents only that the Board has determined that additional factfinding is required in a particular case. The Department reiterates that including these types of remands as "wins" for the appellant—regardless of whether the appellant is an alien or DHS—is inappropriate and misleading.

Thus, although the Department appreciates commenters' views, it does not find them persuasive. Instead, the Department has determined that the small number of cases where an appeal has been explicitly coded as sustained in recent years, as opposed to remanded, represents the most accurate and representative dataset because it captures only those cases where the Board has definitively determined that the outcome of the proceedings before the Immigration Judge should be reversed without further consideration.

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[9] This may also arise where an alien is granted one form of relief or protection but appeals the denial of another form of relief or protection they sought before the Immigration Judge. If the Board affirmed the decision denying relief or protection but DHS did not cross appeal to challenge the grant of relief or protection, then background checks may have expired while the case was pending before the Board and the Board had to remand for new background checks.

Moreover, even according to some commenters' own assessments, on average over the past 25 years, fewer than 20 percent of the Board's cases were remanded to the Immigration Courts and, of that small subset, only a little more than half resulted in an "outcome that was favorable" to the alien. Extrapolating commenters' assessment to the current pending caseload, approximately 289,000 of the 325,774 currently pending cases will not be remanded or result in an outcome that the commenter would deem "favorable" to the alien.[10]

Thus, at bottom, commenters did not present any data or analyses that undermine the Department's position that the Board affirms the Immigration Judge's underlying decision in the vast majority of cases. 91 FR 5270. Therefore, the Department continues to believe that it is prudent to develop a framework for administrative review that focuses Board resources on adjudicating cases that will be most impactful to EOIR due to the novel or complex issues involved.

The Department also disagrees with commenters' characterization that the Board is relinquishing its appellate review authority. On the contrary, under this rule, the Board is taking more control over its appellate review authority to focus on only those cases it deems in need of further consideration. Notably, nothing in this rule precludes the Board from adjudicating any case that the Board deems in need of correction, notwithstanding the requirement that it vote to take the case within 10 days of the appeal being filed. *See* 8 CFR 1003.1(d)(2)(ii)(A) (only requiring a "majority of the permanent Board members vote *en banc* to accept the appeal for further review"). And, to the extent that an alien believes further administrative review of his or her case is needed beyond the parameters of this rule, the alien may file any available motions to reopen or reconsider before the Immigration Court or the Board. *See, e.g.*, INA 240(c)(6)–(7), 8 U.S.C. 1229a(c)(6)–(7).

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[10] *See* EOIR. *Workload and Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/3K4F-N2CJ].

Further, where an alien has concerns over the agency's final determination, the alien may pursue any statutorily available review of the agency's determinations before the Federal courts. *See generally* INA 242, 8 U.S.C. 1252.

Separately, the Department stands by the accuracy of the IFR's statistics on EOIR's pending caseload and case processing times. As noted by commenters, in 2012, the Department's Office of Inspector General ("DOJ OIG") found that EOIR failed to implement models for case processing that captured accurate tracking and reporting of case processing times.[11] Although the Department disagrees with some of the conclusions in the report, even accepting them as true the report in no way affects the base justifications in the IFR that EOIR has significant case backlogs in need of addressing, regardless of the case-counting methodologies employed. As such, this rule is motivated in part to clarify potentially confusing metrics by establishing clear, uniform guidance to avoid the reported inaccuracies and confusion resulting from prior methods that EOIR has used to track and report case processing times.

Comment: Commenters disagreed with the Department's claim that the IFR will only affect a "relatively small" number of aliens unable to find legal counsel within 10 days. Moreover, commenters stated that, even if the affected population is "relatively small," any violation of the right to counsel is unacceptable.

Response: The Department is unpersuaded by commenters' assertions and data. Indeed, commenters' data, which appears to have been taken from advocacy and policy groups and did not account for the nature of how representation is reflected in EOIR's system,[12] even if it were accurate, pertains to cases pending before the Immigration

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[11] *See* DOJ OIG, *Management of Immigration Cases and Appeals by the Executive Office for Immigration Review* (Oct. 2012), https://oig.justice.gov/reports/2012/e1301.pdf [https://perma.cc/TPZ8-47JC].

[12] EOIR's system only counts a case as represented when an attorney or accredited representative files a notice of appearance. However, by practice, many such representatives do not file a notice of appearance until the day of the alien's hearing. Thus, many aliens have representation but are not yet coded as such in EOIR's system because they have not yet had a hearing. Similarly, aliens newly placed in immigration proceedings are counted as "unrepresented," even though they have not been given time to secure

Courts, not cases pending appeal before the Board. As noted in EOIR's statistics, in completed case appeals from FY 2025, a significant majority of aliens (76 percent) had representation before the Board.[13] Commenters did not meaningfully dispute that most aliens are represented when their cases are considered by the Board.

Furthermore, the Department does not view the length of time available to file an appeal as singularly impacting the likelihood that an alien will have representation. Indeed, by statute aliens are only entitled to 10 days to secure counsel at the Immigration Court level, *see* INA 240(b)(1), 8 U.S.C. 1229(b)(1), so a similar period for an appeal should be no more onerous, especially for aliens who already had representation at the Immigration Court level. Additionally, the Board appeal window begins only after the completion of removal proceedings, during which the alien will have maintained the opportunity to obtain representation, and in which the majority of aliens do in fact obtain representation.[14]

Likewise, aliens may also seek limited assistance from practitioners for preparation of legal documents, including the Notice of Appeal and legal briefs outside of the scope of full representation, through EOIR's limited appearance procedures before the Board. *See* 8 CFR 1003.38(g)(2). The Department expects that the availability of limited appearances in particular can be leveraged for assistance during the administrative appellate process, which is largely paper based.

Taken together, the opportunity to obtain counsel during the often-lengthy removal proceedings period and the availability of limited assistance forecloses any

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representation. In short, EOIR's data on representation at the Immigration Court level both significantly undercounts actual representation and is distorted by newer cases where the alien has not yet had time to seek representation and by the fact that a certain percentage of aliens do not want to retain representation, either because they do not want to pay for it or because they have no intention of appearing at their hearing. In EOIR's experience, most aliens who genuinely seek representation are able to obtain it.

[13] EOIR, *Current Representation Rates* (Nov. 18, 2025), https://www.justice.gov/eoir/media/1344931/dl?inline [https://perma.cc/QC5J-3DD6].

[14] *See id.* (noting that over half of aliens with cases completed by the Immigration Courts in 2025 had representation).

argument that the failure of some aliens to obtain counsel for a Board appeal, by itself, undermines any right to counsel.

Comment: Commenters characterized the Department's justification for the IFR as a "deterrence" justification and asserted that such a justification was both unfounded and improper as a policy matter. More specifically, commenters stated that there is no evidence that aliens entered the United States unlawfully based on an expectation of lengthy delays of their proceedings. Commenters stated that, even if this theory were supportable, the Board is an appellate adjudicatory body and should ensure that the procedures it establishes afford aliens due process in their adjudications beyond what the law requires.

Response: Commenters conflate the Department's reasoning in promulgating the rule (to improve adjudicatory efficiency), one of the Department's bases for issuing an IFR rather than an NPRM under the APA (a foreign affairs function which may include deterrence of illegal immigration), and the specific procedures applied by the Board in individual cases. The only deterrence-related language in the IFR was focused on the foreign affairs exception to APA procedures. *See* 91 FR 5275. Regardless, the rule's stated justifications have no bearing on the Board's case-by-case adjudications. The Board continues to follow its duty to resolve cases impartially, as required by regulation. *See* 8 CFR 1003.1(d)(1). This impartiality applies to all aspects of adjudication, including a Board member's consideration of any newly filed appeal for potential referral for *en banc* consideration. *See* 8 CFR 1003.1(d)(2)(ii). At no point does this rule require, or even suggest, that a Board member consider broader deterrent effects in adjudicating a specific case.

The Department also declines to add additional Board procedures, which would negate the significant efficiency improvements made by this rule. The procedures implemented by this rule fully comply with due process, as more fully addressed in

Sections C.1 & 2 of this preamble; more is not necessary.

2. Rule will not effectively address backlog

Comment: Commenters stated that the IFR does not meaningfully address the root causes of the Board backlog. Commenters believe that the backlog is not created by the existence of full appellate review but by multiple other factors, including understaffing, expanding DHS enforcement priorities, insufficient EOIR resources, inconsistent Immigration Judge decision-making, politicized adjudications, and agency mismanagement. Commenters also disagreed with the Department's characterization that the backlog of pending appeals is a result of inefficiency. Further, commenters asserted that the IFR will not reduce the existing backlog of pending cases because it only applies prospectively. Commenters stated that a backlog is not a legal justification for shrinking individual rights and expressed that efficiency cannot come at the expense of due process. Additionally, commenters proposed several policy alternatives to the IFR that, they asserted, would reduce the backlog of pending appeals and improve efficiency.

Response: The Department shares commenters' concerns about the Board's sizeable backlog of pending appeals. The Board's backlog impairs the timely adjudication of appeals, delays aliens' ability to access judicial review in Federal courts and hinders the efficient administration of the Nation's immigration laws. However, the Department disagrees with commenters that this rule will not effectively address the backlog.

As explained in the IFR, since 2021, the only regulatory change implemented to increase case completions was a rule to increase the number of Board members to 28, despite a rapidly growing backlog of pending appeals. 91 FR 5270 (discussing Expanding the Size of the Board of Immigration Appeals, 89 FR 22630 (Apr. 2, 2024)). That measure failed to result in a meaningful reduction of the backlog of pending

appeals, and the Board's current backlog exceeds 320,000 pending appeals.[15] *See id.* Even if the Board were to have additional resources and better case management, it would be unable to resolve the significant backlog of pending appeals while keeping pace with new incoming filings using the current procedures and tools available. *Id.* Accordingly, given the size of the current backlog of pending appeals and the demonstrated insufficiency of currently available procedures, the Department assessed—and continues to believe—that the streamlining changes implemented in this rule are the best way to efficiently and expeditiously resolve new appeal filings and free up adjudicatory resources to address the backlog. Commenters are correct that this rule does not apply to appeals already pending before the Board. But they are incorrect in asserting that this rule will not impact the existing backlog. The rule's streamlining measures—to wit, the implementation of default summary dismissals, condensed adjudicatory timelines, standardized filing and briefing, and more efficient transcription procedures—give the Board additional adjudicatory resources to resolve its backlog of pending appeals in a more timely and efficient manner and will prevent the backlog from continuing to grow at an unsustainable rate.

The Department acknowledges that EOIR's backlog of pending cases at the Immigration Court level is impacted by the number of initial receipts of cases from DHS, which in turn impacts the number of appeals filed with the Board. However, comments about DHS enforcement operations and its determinations about how to exercise prosecutorial authority are outside of the scope of this rulemaking and are more appropriately directed to DHS. Instead, measures such as those outlined in this rule are intended to improve EOIR's ability to efficiently complete removal proceedings and appeals even as DHS continues to enforce the immigration laws.

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[15] EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/3K4F-N2CJ].

The Department also disagrees with comments suggesting that the Department restore the Board to a larger size to reduce the backlog. As the Department has explained, "increasing the size of the Board has not necessarily equated to a corresponding increase in the number of cases adjudicated or a reduction in the pending caseload." 90 FR 15526. In reality, an increased number of Board members created difficulties in administrative oversight and coherent management and strained the Board's limited legal staff. *Id.* The Department believes that this rule's procedural changes will be a far more effective way to reduce the backlog of pending cases.[16]

Additionally, the Department continues to prioritize hiring Immigration Judges who are committed to following the law and to remaining neutral and free of bias, as well as other attorney and non-attorney support staff to aid EOIR's ongoing efforts to reduce the backlog at both the Immigration Court and Board levels. The Department is also utilizing Temporary Immigration Judges and TAIJs to provide additional support in reducing EOIR's backlog of cases and appeals. Still, the Department has determined that increased staffing alone is insufficient to fully address the Board's backlog absent the broader reshaping of the Board's procedures as implemented by this rule.

Separately, the Department appreciates commenters who provided streamlining and case management suggestions to improve the efficient processing of appeals, and the Department will continue to evaluate additional measures to maximize efficiency in the Board's internal operations. Overall, the Department believes that this rule is the best option for responding to the current, untenable situation at the Board.

The Department has fully considered all of commenters' proposed policy alternatives. Many of them—*e.g.*, changes to DHS immigration enforcement priorities—

[16] As reflected in the reactions to expansions of the Board in 2020 and 2024, the Department notes that many commenters' views about expanding the size of the Board vary considerably depending on the Administration in power at the time of the expansion. As a result, many comments about Board expansion are inherently less persuasive.

are well beyond the scope of this rule. Others—*e.g.*, hiring politically neutral Board members—are based on inaccurate factual premises, as all Board members are career positions chosen based on merit. Others—*e.g.*, expanding Immigration Judges' training or hiring more Immigration Judges who would hear more cases leading to more appeals—are poorly tailored to improving efficiency at the Board. Moreover, EOIR has been hiring more Immigration Judges and the likely resulting increase in appeals only underscores the importance of implementing this rule. Others—*e.g.*, allowing aliens to waive production of a hearing transcript—raise both due process concerns and would do little to address efficiency because DHS may still need a transcript for an appeal. Still others—*e.g.*, consulting with stakeholders outside of the notice-and-comment process—would accomplish little due to the binary polarization of opinions on immigration by stakeholders. Most, if not all, stakeholders in the immigration field want EOIR to adopt measures that will lead to more of their preferred case outcomes—either more or fewer aliens being allowed to remain in the United States—rather than measures that improve the efficiency and performance of EOIR itself. Further, the comment period for this rule has provided stakeholders ample ability to make their thoughts known. In sum, none of the proposals is persuasive enough to warrant changing the final rule in the ways such commenters would prefer.

Comment: Commenters stated that the Department did not consider a 2017 Booz Allen Hamilton ("BAH") report referenced in litigation over a previous rulemaking, which commenters claimed recommended other backlog-reduction ideas, including a requirement that Immigration Judges issue written, rather than oral decisions.

Response: The Department is aware of the 2017 BAH report, commonly called a Legal Case Study ("LCS"). However, the Department has repeatedly debunked the LCS as unscientific and unsound, first in 2018, *see* EOIR, *LOP Cohort Analysis* 7 n.13 (Sept. 5, 2018), https://www.justice.gov/eoir/file/1091801/dl?inline= [https://perma.cc/E96E-

556M], and, more recently, in 2025, *see* EOIR, PM 25-15, *Office of Legal Access Programs* 2 n.3 (Jan. 31, 2025), https://www.justice.gov/eoir/media/1387916/dl?inline [https://perma.cc/DM54-B8DU] ("The 2017 [LCS] was methodologically flawed due to a selection bias issue regarding its interviews with EOIR personnel and a failure to control for the biases or valences of its non-EOIR subjects. In light of these flaws, EOIR cannot necessarily validate any of the conclusions of the 2017 [LCS]."). Due to the methodological flaws in creating it, the Department does not consider any of the 2017 LCS's recommendations to be scientifically or analytically sound. Moreover, requiring written decisions—which necessarily take longer than oral decisions, slow the completion of cases, and would potentially force detained aliens to remain in custody longer—in all Immigration Court cases would delay the overall adjudication of cases at the Board, not make it more efficient.

3. Impacts to Board's role and functions

Comment: Commenters stated that the Board serves an important error-correction and accountability function and asserted that the IFR functionally removes the ability of most aliens to remedy errors in decisions in their cases via an appeal to the Board. Commenters stated that the purpose of administrative appeals is to have a more careful review of a particular case, and that the IFR undermines that purpose. Commenters also asserted that Immigration Judges are more likely to engage in rushed or less detailed decision-making if they believe their decisions are unlikely to be reviewed substantively by the Board.

Commenters expressed concern that the Board would issue fewer precedential decisions if considering fewer cases with full procedures. Commenters stated that precedential decisions are important to provide clarity and uniformity across immigration adjudications. However, other commenters disagreed and asserted that fewer precedential decisions would be preferable—because commenters perceived that

precedential decisions tend to disfavor aliens—and expressed policy-driven concerns regarding the IFR's stated goal of focusing Board resources to permit the Board to issue more precedential decisions.

Response: The Department disagrees with commenters that this rule prevents aliens from raising alleged factual or legal errors for correction. First, nothing in this rule prevents the Board from accepting an appeal for further review and full briefing where an alien identifies errors of law or fact in the underlying Immigration Judge decision. Second, this rule does not change the availability of existing procedures for seeking error correction through a motion to reconsider. Indeed, aliens have a statutory right to file a motion to reconsider a decision determining that an alien is removable from the United States. INA 240(c)(6), 8 U.S.C. 1229a(c)(6). Such motions allow aliens to "specify the errors of law or fact in the previous order." INA 240(c)(6)(C), 8 U.S.C. 1229a(c)(6)(C). To the extent that an alien feels unable to raise an error of law or fact through a Notice of Appeal, he or she may do so through a motion to reconsider. Third, this rule does not change existing Federal court review of issues over which the Federal courts have jurisdiction. *See* INA 242, 8 U.S.C. 1252. Accordingly, several avenues remain available for an alien to raise an alleged error in an Immigration Judge's decision.

Further, commenters' suggestion that Board review is necessary to correct errors that may arise as a result of concerns related to EOIR's personnel practices and training are misplaced.[17] Immigration Judges must be qualified, are evaluated through a competitive process before being selected for their role, and receive significant training before being appointed to the bench. *See* 8 CFR 1003.0(b)(1)(vii) (stating that the Director has authority to "[p]rovide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality

[17] Many of these comments are also well beyond the scope of this rule. Moreover, the Department finds insinuations by commenters that its adjudicators are commonly incompetent or unethical to be wholly unsupported.

and consistency of adjudications"), 1003.9(b)(2) (providing the Chief Immigration Judge with authority to "[p]rovide for appropriate training of the immigration judges and other [Office of the Chief Immigration Judge] staff on the conduct of their powers and duties"), 1003.10(a) (requirement that Immigration Judges be attorneys); *see also* EOIR, Fact Sheet: Immigration Judge Training Fact Sheet (Aug. 2026), https://www.justice.gov/eoir/page/file/1513996/dl?inline [https://perma.cc/Q3AK-N7ZF]. EOIR monitors the performance of Immigration Judges and Appellate Immigration Judges and has an established process if an adjudicator's conduct falls short of EOIR's professional expectations.[18]

Finally, commenters' concerns related to the Board issuing fewer precedential decisions are unwarranted. As explained in the IFR, one goal of the streamlining measures adopted in this final rule is to allow the Board to focus on resolving cases presenting novel or complex legal issues, and the Department expects that the Board will have greater bandwidth to issue precedential decisions clarifying the law for Immigration Judges to ensure consistent adjudications. *See* 91 FR 5271 ("This change will allow the Board to focus on appeals with particularly novel or complex legal questions without becoming bogged down in mine-run or straightforward cases that may already be subject to being affirmed without an opinion or summarily affirmed."). The Department also disagrees with the assertion that precedential cases will favor one party; the Board adjudicates cases based on the relevant facts and applicable law using the appropriate standard of review.

C. Opposition to Specific Rule Provisions

1. Summary Dismissal

a. Due Process Concerns

[18] EOIR, PM 26-03, *Judicial Conduct and Professionalism* (Mar. 20, 2026), https://www.justice.gov/eoir/media/1432036/dl?inline [https://perma.cc/FC8R-ZRHS] (clarifying EOIR's Judicial Complaint Process for all adjudicators).

Comment: Commenters expressed concern that the IFR's summary dismissal procedures undermine an alien's due-process rights by prioritizing efficiency at the expense of constitutional protections. According to these commenters, the IFR's summary dismissal procedures effectively deprive aliens of due process by eliminating individualized, meaningful review of most Board appeals. Commenters claimed this procedure diminishes the Board's function from an appellate tribunal into a discretionary screening body that will essentially "rubber stamp" Immigration Judge decisions through summary dismissal. Commenters similarly asserted that by making meaningful review of appeals by the Board discretionary rather than a guaranteed right, the IFR sacrifices fundamental fairness for the sake of efficiency.

Commenters further stated that the IFR's summary dismissal procedures restricting meaningful review by the Board will force aliens to seek judicial review in Federal court as the only recourse to meaningful review of their cases. However, commenters also pointed out that, due to jurisdiction stripping provisions in the INA, Federal courts do not have jurisdiction to review Immigration Judge decisions on discretionary applications for relief, such as adjustment of status. Commenters explained that if cases involving discretionary applications for relief are subjected to default summary dismissal, then the decisions in those cases are final and aliens will not have an opportunity to seek meaningful review of the discretionary decisions made in their cases.

Another commenter raised due-process concerns in cases involving a bilateral or multilateral agreement as described in section 208(a)(2)(A) of the Act, 8 U.S.C. 1158(a)(2)(A) ("Asylum Cooperative Agreement" or "ACA"), asserting that Immigration Judge review is limited in those cases and that the Board is unlikely to accept such cases for review under the IFR's provisions, leaving only Federal court review, at which point aliens may be subject to prolonged detention.

Separately, commenters stated that the IFR undermines the purpose of the DOJ

Recognition and Accreditation program and the work of nonprofit legal service providers. Additionally, commenters also stated that the Department did not adequately consider or address the fact that aliens will have more limited access to representation before the Federal courts because EOIR authorizes Accredited Representatives to provide immigration legal services before administrative bodies, but they cannot provide representation in Federal court.

Further, as several commenters noted, when an alien files an appeal before the Board, he or she is generally subject to an automatic stay of removal pending adjudication of the appeal. However, in the Federal courts, aliens are not subject to automatic stays of removal while their PFRs are pending. INA 242(b)(3)(B), 8 U.S.C. 1252(b)(3)(B). Therefore, if an alien's case is summarily dismissed under the IFR, and he or she seeks judicial review of his or her case before the Federal courts, the alien must file a motion requesting a discretionary stay of removal. If the alien's request for a discretionary stay of removal is denied, the alien could be removed before the Federal court issues a decision.

Response: The Department disagrees that the IFR's summary dismissal procedures violate due process. As a general matter, comments on this issue either proceeded from a flawed or inaccurate understanding of due process in immigration proceedings or highlighted issues that exist under the current regulations, which are unaffected by the rule.

As an initial point, the well-established definition of "due process" is notice and a meaningful opportunity to be heard. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970). Neither of those principles is violated by the rule. Nothing in this rule alters the substantial procedural protections available to aliens when presenting their claims before an Immigration Judge. *See generally* INA 240(b)(4), 8 U.S.C. 1229a(b)(4). And, as discussed further below in this section, there is no constitutional due process right

entitling an alien to an administrative appeal before the Board. *Dia v. Ashcroft*, 353 F.3d 228, 242 (3d Cir. 2003) (*en banc*); *see also Alexander-Mendoza v. Att'y Gen.*, 55 F.4th 197, 204 (3d Cir. 2022) ("An alien's right to administratively appeal a removal order is not grounded in the Constitution."). Nevertheless, beyond the underlying proceedings before an Immigration Judge, which themselves guarantee due process before EOIR, aliens still have notice of the right to appeal to the Board, and they still have a meaningful opportunity to do so. That the rule no longer guarantees that the Board will take more than a certain amount of time to decide an appeal does not change those fundamental facts.

However, many commenters used the term "due process" in a different, outcome-determinative sense—*e.g.*, an alien who is not granted relief or protection necessarily did not receive due process.[19] Further, many commenters considered "due process" on a continuum related to outcomes, such that their criticisms were couched in terms of "due process" because, according to commenters, "due process" means more favorable outcomes for aliens. Yet, due process is not measured by outcome, and viewing due process through a results-oriented lens is incorrect. *See*, *e.g.*, *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 321 (1985) (noting that "we must keep in mind . . . that the very nature of the due process inquiry indicates that the fundamental fairness of a particular procedure does not turn on the result obtained in any individual case"). Because this is not the appropriate view of due process implicated by the rule, the Department strongly disagrees with commenters' assertions that the rule violates due process.

The Department emphasizes that the summary dismissal procedures employed by

[19] Indeed, few—if any—of the commenters acknowledged that the government has a compelling interest in administering and enforcing the law as well as in decisional finality, underscoring both the inappropriate, results-oriented focus of their due process arguments and the overall unpersuasiveness of their comments on this topic.

this rule are simply common-sense measures to help address the backlog of immigration cases pending before the Board and ensure efficient processing of cases moving forward. These procedures increase efficiency by streamlining appellate review of Immigration Judge decisions and promote fairness through expeditious review of meritorious claims. Prior to this rule, review of such cases would have been delayed behind a backlog of meritless claims. Importantly, the rule's summary dismissal procedures affect only the Board's review process, which exists only as an exercise of the Attorney General's discretion, not as a result of any constitutional requirement. Put more directly, there is no constitutional due process right entitling an alien to an administrative appeal before the Board. *Dia*, 353 F.3d at 242 (quoting *Albathani v. INS*, 318 F.3d 365, 376 (1st Cir. 2003)); *Guentchev v. INS*, 77 F.3d 1036, 1037–38 (7th Cir. 1996); *see also Alexander-Mendoza*, 55 F.4th at 204.

Congress has afforded aliens subject to removal the right to a trial-type hearing (removal proceedings) before an Immigration Judge. *See* INA 240, 8 U.S.C. 1229a. Congress has also provided aliens with substantial procedural protections during removal proceedings to ensure that due process is not undermined, including notice of the charges against them, the right to be represented by counsel, and the right to examine and present evidence, among others. *See generally* INA 239, 240, 8 U.S.C. 1229, 1229a.

Thus, the provisions in the INA ensure removal proceedings are conducted at a meaningful time and in a meaningful manner to afford aliens full and fair hearings in accordance with standards of due process. The Due Process Clause of the Fifth Amendment requires nothing more. *See Antia-Perea v. Holder*, 768 F.3d 647, 656 (7th Cir. 2014) ("Any proceeding that meets the requirements of the [INA] also satisfies the requirements of constitutional due process."). And, as already noted, due process does not require substantive review of every determination made by an Immigration Judge in removal proceedings. *See, e.g.*, *Dia*, 353 F.3d at 242; *Guentchev*, 77 F.3d at 1037.

Furthermore, the Department finds commenters' assertion that aliens will be deprived of due process because they will be unable to seek meaningful review of decisions on discretionary applications for relief before the Federal courts after summary dismissal is meritless. Fundamentally, there is no constitutionally protected due process interest in purely discretionary forms of relief. *Alkotof v. U.S. Att'y Gen.*, 106 F.4th 1289, 1298 (11th Cir. 2024). Moreover, Federal courts retain jurisdiction to consider constitutional claims and questions of law raised in a PFR of a discretionary decision. *See* INA 242(a)(2)(D), 8 U.S.C. 1252(a)(2)(D). And to the extent a discretionary decision turns on a factual determination, aliens retain their statutory right to file a motion to reconsider with the Immigration Judge. *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6).

The Department similarly disagrees with commenters' generalized due process concerns about detention and the availability of counsel before the Federal courts. Nothing in this rule affects detention decisions made by DHS, EOIR, or the Federal courts, nor prevents aliens from obtaining counsel for the PFR process. Moreover, the rule does not affect the Department's Recognition and Accreditation Program at all, nor does it prohibit Accredited Representatives from providing representation to aliens on appeal. To the extent commenters have concerns about the lack of representation in Federal court, those concerns (1) reflect the status quo, which is unchanged by the rule and (2) are beyond the authority of EOIR to address.

Lastly, although commenters may prefer an automatic stay at the Board to a discretionary stay before the Federal courts, they have not alleged any colorable argument as to why a Federal court's denial of a motion for stay amounts to a due process violation. Congress explicitly made such stays discretionary, *see* INA 242(b)(3)(B), 8 U.S.C. 1252(b)(3)(B), and this rule in no way affects Federal court adjudication of any such stay motions. *See generally Nken v. Holder*, 556 U.S. 418, 433–34 (2009)

(explaining stay factors in the PFR context). Moreover, the scenario raised by commenters already existed prior to the promulgation of the IFR—*i.e.*, once the Board dismisses or denies an appeal of a removal order, then the removal order is subject to execution, absent a stay from a Federal court—and nothing in this rule would alter that situation. Further, the Department is unaware of any creditable argument that the status quo constitutes a due process violation. To be sure, aliens may not receive as lengthy a stay of removal from the Board as they currently enjoy, but a reduction in the length of a stay does not change the conclusion. If the Board's decision results in an administratively final removal order, then affected aliens will need to seek a further stay from Federal courts, just as they are required to do now in such circumstances.

Moreover, longstanding Board precedent recognizes that the stay of removal that accompanies an appeal to the Board encourages frivolous appeals. *See Matter of Holguin*, 13 I&N Dec. 423, 424 (BIA 1969). The Board has been combatting appellate delays for over 55 years, and commenters' desires for continued delays are simply unpersuasive, particularly in light of the Board's increasing backlog of cases. *See id*. at 424–25 ("Frivolous and dilatory appeals are extremely wasteful of . . . this Board's limited resources. They require needless transcription of the records of deportation hearings. They impinge upon the time and professional attention needed for truly meritorious cases, of which there are many. Effective administration of the immigration laws requires that we discourage frivolous appeals. We try to do this by expediting our consideration and decision in appeals of that sort.").

b. Statutory Concerns

Comment: Numerous commenters expressed concern that the IFR's summary dismissal procedures violate the INA. Commenters stated that the INA creates a statutory right to "meaningful" administrative review before the Board, citing for example, to sections 101(a)(47)(B), 240(c)(4)(C) and (c)(5), and 292 of the Act, 8 U.S.C.

1101(a)(47)(B), 1229a(c)(4)(C) and (c)(5), and 1362, as well as Supreme Court precedent such as *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), and *Garland v. Ming Dai*, 593 U.S. 357 (2021). Commenters claimed that the IFR's summary dismissal procedures violate this statutory right to appeal by treating such appeals as discretionary, with many appeals likely to be summarily dismissed without any review.

Further, some commenters claimed that certain INA provisions also provide for baseline procedural requirements. For example, commenters pointed to language in section 101(a)(47)(B) of the Act, 8 U.S.C. 1101(a)(47)(B), referencing a "determination" by the Board "affirming" an order as requiring a substantive review and decision on each appeal. Similarly, commenters argued that the statutory right to counsel "in any appeal proceedings before the Attorney General" in section 292 of the Act, 8 U.S.C. 1362, and the rebuttable presumption of credibility "on appeal" in section 240(c)(4)(C) of the Act, 8 U.S.C. 1229a(c)(4)(C), would be rendered superfluous if the Board did not conduct a substantive review in each case. Also, commenters asserted, Congress would not have set such a significant Board appeal filing fee in the One Big Beautiful Bill Act[20] if appeals were going to be summarily dismissed as the default.

Commenters further stated that the IFR's summary dismissal procedures are contrary to the INA's exhaustion requirements in section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), because the summary dismissal procedures make the Board's administrative appeal process discretionary, which conflicts with the exhaustion statute's references to exhausting all administrative "remedies" that are available to the alien "as of right." Citing *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023), commenters explained that this statutory language provides an administrative remedy through the Board appeal process as a matter of right, and they argued that the IFR's summary dismissal procedures violate this right by treating appeals as discretionary by default, thereby preventing aliens from

[20] *See generally* One Big Beautiful Bill Act, Pub. L. 119–21, sec. 100013(d)–(e), 139 Stat. 72 (2025).

receiving meaningful review of their claims. Commenters further argued that to hold otherwise would render section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), superfluous, as there are no other administrative remedies available under the INA for aliens in removal proceedings to exhaust other than a Board appeal.

Response: The Department disagrees with commenters that the IFR's summary dismissal procedures violate the INA. As an initial matter, commenters mischaracterize the appellate process contained in the rule as discretionary; it is not. The rule still allows an alien to file an appeal and requires the Board to review the appeal. It does not authorize the Board to reject an appeal out of hand without review, as a matter of discretion or otherwise. This mischaracterization compounds commenters' confusion of an alien's ability to file an appeal—which the rule does not alter—with an alien's alleged entitlement to a non-summary decision by the Board, which is not located in any text of the INA. Assuming there is a statutory right to an appeal to the Board located in the INA,[21] this rule does not alter that right. In other words, this rule's summary dismissal procedures do not address an alien's ability to file an appeal; rather, the rule modifies the Board's procedures after such an appeal has been filed.

Further, as some commenters acknowledged, the INA does not contain any explicit references to—let alone mandates for—specific Board procedures. Rather, the statute contains one explicit reference to the Board, *see* INA 101(a)(47)(B), 8 U.S.C. 1101(a)(47)(B), and a handful of cursory references to "appeals" or "administrative appeals," *see, e.g.*, INA 208(d)(5)(A)(iii)–(iv), 8 U.S.C. 1158(d)(5)(A)(iii)–(iv); INA 238(a)(3)(A), 8 U.S.C. 1228(a)(3)(A); INA 240(c)(5), 8 U.S.C. 1229a(c)(5); INA 292, 8 U.S.C. 1362.

[21] The Department does not concede such a statutory right exists. But even if it does, "[b]ased on the fact that [8 U.S.C. 1101(a)(47)(B)] contains the only mention of the BIA in the INA, it seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General's discretion." *Dia*, 353 F.3d at 237.

Most importantly, far from creating a detailed statutory framework for administrative appeals, these provisions are silent as to the form or structure of such appeals. Indeed, Congress could have—and can at any time—provide for specific procedures for administrative appeals, just as Congress provided extensive procedures for removal proceedings before Immigration Judges. *See* INA 240, 8 U.S.C. 1229a *et seq*. But Congress has not done so. Rather, to the extent the statute creates any right to an administrative appeal, Congress has remained silent as to the procedures for adjudicating any such appeals; those procedures are thus left to the Attorney General to prescribe by regulation. *See* HSA 1102, 116 Stat. at 2273–74; INA 103(g)(2), 8 U.S.C. 1103(g)(2); *see also Dia*, 353 F.3d at 237; *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 280 (4th Cir. 2004) ("One section of the INA refers to the existence of the BIA . . . and other sections refer to an administrative appeal for asylum seekers . . . . But the INA is simply silent as to what procedures should apply to that appeal . . . . This fact suggests that the INA vests broad discretion in the Attorney General to fashion the procedures of the BIA.").

So long as such procedures are constitutionally permissible and such regulations comply with the APA—as the Department believes the IFR and this final rule are and do—the Attorney General has the full authority to modify such procedures by regulation to address problems as they arise. *See Zhang v. Dep't of Justice*, 362 F.3d 155, 157 (2d Cir. 2004); *Blanco*, 362 F.3d at 280; *see also Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) ("Even apart from the Administrative Procedure Act this Court has for more than four decades emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments.").

Under the Attorney General's authority, the Department has carefully reviewed Board processes in an attempt to address critical backlogs at the Board, just as it did over

25 years ago in its past streamlining efforts, *see, e.g.*, Executive Office for Immigration Review; Board of Immigration Appeals; Streamlining, 64 FR 56135, 56137–38 (Oct. 18, 1999), and attempted to further address in 2020, *see* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (Dec. 16, 2020). Recognizing that past streamlining efforts, while beneficial, have not kept pace with unprecedented appeal numbers, the Department understood that dramatic changes were necessary. *See* 91 FR 5268–70. Those changes include, as relevant here, shifting the administrative appellate process to expand the use of summary dismissal to allow the Board to focus its resources on issuing written opinions in cases presenting novel or complex legal issues. The Department believes that this summary dismissal change will create significant efficiencies and make a meaningful difference in addressing the Board's lengthy backlog.

Additionally, the Department disagrees that any of the statutory references or cases cited by commenters create any specific procedural requirements before the Board. Some commenters pointed to references in section 101(a)(47)(B) of the Act, 8 U.S.C. 1101(a)(47)(B), to a "determination" by the Board "affirming" an order as creating requirements for the Board to review each appeal and issue a substantive opinion. However, commenters read too much into this language, and that argument has been rejected by Federal courts previously during litigation over prior regulations streamlining Board procedures. *See, e.g.*, *Dia*, 353 F.3d at 237 (explaining that section 101(a)(47)(B) "says absolutely nothing about procedures to be employed by the BIA, or the right to, or manner of, review generally"). This definitional language simply explains when an order of deportation is final, which is when a Board's order is issued or, if no appeal is taken, when the appeal period ends. In no way does this language convey any substantive requirements for what such a Board order must contain, much less the procedures by which the Board must issue an order. *Atemnkeng v. Barr*, 948 F.3d 231, 239 (4th Cir.

2020); *Blanco*, 362 F.3d at 280; *Dia*, 353 F.3d at 237.

Furthermore, this rule is consistent with the INA's language. Under this rule's summary dismissal procedures, if the Board does not vote *en banc* to accept an appeal for full briefing and further review, the Board will dismiss the appeal without opinion by issuing an order summarily dismissing the alien's appeal. However, in no way does that suggest that the Board did not review the appeal; instead, it simply means the Board did not find it worthy of further consideration. *See* 8 CFR 1003.1(d)(2)(ii).

Commenters' references to other sections of the INA are similarly misplaced. The ability to retain counsel during the Board appeals process, INA 292, 8 U.S.C. 1362, or to maintain a rebuttable presumption of credibility on appeal, INA 208(b)(1)(B)(iii), 8 U.S.C. 1158(b)(1)(B)(iii), are discrete provisions that provide exactly what they state—no more, no less. Neither provision is affected by the IFR's summary dismissal procedures; aliens continue to have the statutory right to counsel during the Board appeals process, as well as a rebuttable presumption of credibility during the appeals process, when applicable.

Similarly, commenters argued that the INA's exhaustion statute for Federal court review in section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), requires aliens to exhaust administrative remedies available "as of right," which in turn requires Board appeals to be treated as a legal entitlement with no discretion to deny review under *Santos-Zacaria*, 598 U.S. at 424–26. However, as explained in the IFR, the Department drafted the IFR with the intention that the rule "would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed." *See* 91 FR 5271. Put differently, nothing about the rule affects section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), because the rule does not affect an alien's ability to seek review by the Board.

In sum, "[a]bsent constitutional constraints or extremely compelling

circumstances, the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." *Vt. Yankee Nuclear Power Corp.*, 435 U.S. at 543 (internal quotations omitted). That is all the Department has done here.

c. Additional Concerns with Summary Dismissal

Commenters raised a number of additional miscellaneous concerns regarding the IFR's summary dismissal procedures. The Department acknowledges the comments and has thoroughly considered them; however, none is persuasive, and the criticisms in them are vastly outweighed by the efficiency benefits that the rule would provide.

Comment: Commenters stated that summarily dismissing most appeals will allow erroneous legal decisions by Immigration Judges to stand, thereby undermining EOIR's mission to adjudicate immigration cases by fairly and uniformly interpreting immigration laws, as well as likely leading to erroneous removals.

Response: If an alien's appeal to the Board is summarily dismissed, the alien may raise any alleged legal errors made by the agency before the Federal circuit courts for further review, except where Congress has expressly stated that Federal court review is not available. Additionally, the alien may file a motion to reconsider before the Immigration Court or the Board, as applicable. Under the current procedures, there is also a risk of erroneous decisions by Immigration Judges being affirmed by the Board.[22] Because the Board will still review each appeal, however, the rule does not alter the possibility of the Board making an erroneous decision. Moreover, as is the case now, erroneous decisions by the Board will still be subject to correction by Federal courts.

Comment: Commenters similarly noted that summary dismissal will functionally

[22] Indeed, legal error is inherent in any system of adjudication and is impossible to eliminate—even by an appeals court. *C.f. Brown v. Allen*, 344 U.S. 443, 427 (1953) (Jackson, J., concurring) ("There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final.").

exhaust all appeal options for most types of claims for discretionary immigration relief.

Response: This point describes the situation currently, which is unchanged by the rule. Once the Board rules on an appeal regarding a discretionary form of relief other than asylum, there is limited recourse to Federal court. The rule does not alter that dynamic.

Comment: Commenters argued that Federal court review is not sufficient, as Federal courts have narrower jurisdiction and use more deferential standards of review than the Board, and that PFRs serve a fundamentally different purpose: to review the appellate determinations made by the Board.

Response: The scope of Federal court review, including comments related to jurisdiction and applicable standards of review, is outside the scope of the rule, and the Department declines to predict how Federal courts will interpret the provisions of the rule. The Department emphasizes, however, that this rule does not change any procedures related to seeking Federal court review or existing substantive standards that constrain Federal court jurisdiction.

Nothing in this rule affects the baseline process of filing a PFR to allege errors in the underlying proceedings. Immigration Judges will continue to issue decisions in removal proceedings, which may then be addressed by the Board through a summary dismissal order or an adjudication with briefing. Regardless of how the Board chooses to handle a specific appeal, the alien will then maintain the existing ability to further file a PFR of that decision with the relevant Federal court, which will accept briefing and provide further review of the alleged issues according to existing procedures. *See, e.g.*, INA 242(b), 8 U.S.C. 1252(b) (providing requirements and standards for PFRs).

With regard to the alleged limitations of Federal court review, the Department notes that Congress explicitly exempted from review denials of certain discretionary forms of relief and factual issues when the alien is removable on certain criminal

grounds. *See* INA 242(a)(2)(B)–(D); 8 U.S.C. 1252(a)(2)(B)–(D). If Congress wished to provide specific procedures for administrative review of such claims in lieu of or in addition to Federal court review, or to provide certain standards of review for any administrative appeals, it could certainly do so; but it has not. Instead, Congress chose to explicitly limit Federal court review while leaving any administrative appellate processes and standards to the Attorney General. *See, e.g.*, *Dia*, 353 F.3d at 237 ("[I]t seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General's discretion."). As a result, in implementing this rule's summary dismissal procedures, the Department balanced any limitations on the availability of Federal court review, among other concerns, with the strong need to address the Board's growing backlog of overwhelmingly straightforward cases. *See* 91 FR 5271.

In doing so, the Department also notes that, in addition to PFRs in the Federal courts, Congress explicitly provided aliens with a statutory right to file a motion to reconsider an Immigration Judge's removability decision. *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6). As the statute clearly states, such motions are intended to address "errors of law or fact in the previous order . . . ." INA 240(c)(6)(C), 8 U.S.C. 1229a(c)(6)(C). Thus, to address the kinds of potential Immigration Judge errors raised by commenters, Congress provided aliens with an additional statutory process for correcting such errors.

Comment: Commenters stated that the IFR did not include a timeline for single Board members to refer a case for consideration by the Board *en banc*. Commenters asserted that this could result in a scenario where a case is automatically dismissed because the timeline to vote to consider an appeal has passed. Commenters also noted that if the Board does not have a quorum, it will be unable to vote to consider an appeal, and all cases would be summarily dismissed until a quorum is available. Commenters worried that meritorious appeals could be summarily dismissed if the Board lacks

sufficient members. Alternatively, commenters claimed that without a quorum, DHS would instead refer all potential Board appeals to the Attorney General in lieu of Board review.

Response: The Department is confident that the Board will have no issues establishing a quorum to vote on whether to accept appeals for full briefing and further consideration and thus does not share commenters' concerns that DHS will make large numbers of referrals directly to the Attorney General to bypass the Board. Further, it is unnecessary to provide specific timelines for single member referrals in this rule, as the Department expects that the Board will implement internal case-processing procedures to ensure compliance with the timelines in this rule.

Comment: Commenters noted that the rule does not contain any standards for determining whether an issue is sufficiently novel or complex to warrant further Board adjudication.

Response: There is no universal standard for determining novelty or complexity, and the Department believes that it is an issue best reserved for the Board to determine on a case-by-case basis.

The Department also clarifies that the rule itself does not explicitly limit the Board to only adjudicating "novel or complex" issues and, as such, has no need to set any such regulatory standards interpreting these terms. *See* 8 CFR 1003.1(d)(2)(ii)(A) (only requiring a Board vote on whether to accept an appeal for full briefing and further consideration). Rather, the Department expects that the Board will, in its discretion, focus its resources on requesting further briefing and issuing written opinions in appeals presenting novel or complex legal or factual issues, rather than mine-run appeals involving issues sufficiently addressed by the Immigration Judge or controlled by existing Board or Federal court precedent.

Comment: Commenters raised concerns that summary dismissal will occur before

briefing, which is where novel or complex legal issues often surface. Commenters also stated that Board members will have to vote whether to accept a case for adjudication without the benefit of a full record or briefing, which will prevent Board members from fully determining the legal and factual issues in the proceedings before the Immigration Judge.

Response: These comments proceeded from erroneous factual premises. First, even under current rules, issues must be raised in the Notice of Appeal—before briefing—or else they will be waived. Thus, if an issue does not surface until briefing, it will be waived anyway, and the Board will not consider it. Consequently, the commenters' concerns are misplaced.

Second, the Board will have the full record of proceedings from the Immigration Court when it considers the appeal, including the Immigration Judge's written decision, if applicable, as well as access to the hearing recordings and the Notice of Appeal, which, for purposes of notifying the Board of the legal and factual issues for review, serves a similar function to the appellant's brief, as it must identify the alleged errors made by the Immigration Judge. Should the Board decide it needs further information and orders briefing, the appellant would expand upon those issues in his or her brief. *See Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986) ("Depending on the complexity of the issues raised, a brief may be essential to an adequate presentation of the appeal. In all cases, however, the reasons for an appeal must be meaningfully identified on the Notice of Appeal.").

Novel or complex issues or obvious errors in an Immigration Judge decision can be easily signaled in a Notice of Appeal. For example, underlying criminal convictions often create complex issues in immigration law, but those issues can be succinctly summarized in the Notice of Appeal sufficient to flag for the Board a specific legal issue on which the Board could determine whether to accept the appeal for full briefing and

further review. If the Board then voted affirmatively, a briefing schedule would subsequently be issued to fully develop the arguments.

Comment: Commenters stated that summary dismissal would affect cases where administrative review is most necessary, such as appeals filed pro se or under emergency conditions.

Response: The Board will determine whether fulsome review is necessary, and there is no statutory, regulatory, or other legal basis to mandate that all appeals of a particular category automatically receive full review. Moreover, the Department does not believe that there is a policy justification weighing in favor of requiring full briefing of appeals filed by certain classes of aliens. The most efficient use of the Board's limited resources is to decide appeals involving novel or complex legal or factual situations. Commenters offered no data indicating that the personal characteristics of a specific alien (for example, pro se or detained) make the substantive legal basis of the alien's appeal any more likely to involve such issues. Thus, rather than treating certain categories of aliens as automatically entitled to further consideration after additional briefing, it is better policy for the Board to consider all appeals equally and determine whether the legal claims themselves merit further consideration.

Comment: Commenters also stated that the rule would favor DHS. For example, because a single Board member would decide whether to refer a case to *en banc* review solely based on the Notice of Appeal, commenters claimed that aliens will be required to fully frame issues from the outset, but DHS will not have an obligation to fully respond unless the Board orders briefing.

Response: Commenters either misunderstood the rule or were mischaracterizing it, but in either case, the comments proceeded from a false premise. The rule does not favor either party. DHS has the same obligations as an alien when it is the party filing the appeal, and the alien is in the same position as DHS when an alien files an appeal.

The rule does not provide DHS with any special treatment. The Board's decision to accept a case for full briefing and further review will be based solely on the Board's determination that the case would benefit from further review, and not who the filing party is. Moreover, if a case is accepted for full briefing and further review, both parties will have the ability to file briefs explaining their position on the relevant issues on appeal. These comments are misplaced.

Comment: Relatedly, commenters expressed concerns that aliens would not have an opportunity to file a written response to DHS-filed Notices of Appeal before the Board decides whether to accept the appeal. Specifically, commenters were concerned that this would give DHS disproportionate power to frame issues in such a way that the Board will accept their appeals, thereby resulting in decisions that narrow the rights of aliens.

Response: Again, these comments mischaracterize the rule. Both parties, regardless of which one is the appellant, are subject to the same regulations and have the same responsibilities, depending on the procedural posture of the case. And the parties will have an opportunity to submit briefs in most cases not summarily dismissed by the Board,[23] so no decision will result from such appeals without the alien having an opportunity to respond to the issues raised in DHS's Notice of Appeal, an aspect of the process that commenters failed to acknowledge.

Comment: Commenters also argued that the recently increased filing fee for appeals is exceedingly high for appeals that, in a majority of cases, would be summarily dismissed by the Board, and that the Department should therefore reduce or eliminate the fee. Relatedly, commenters claimed that restrictions on fee waivers would make such waivers largely unavailable, citing the Board's recent decision in *Matter of Garcia Martinez*, 29 I&N Dec. 169 (BIA 2025).

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[23] The Board's longstanding practice has been to not issue a separate briefing schedule for most interlocutory appeals, though the party against whom such an appeal is sought may always file an opposition to the appeal.

Response: Comments on Department fees are beyond the scope of this rulemaking; however, the Department has fully considered the impact of the increased fees—as well as the continued availability of fee waivers—in promulgating this rule and has determined that such an impact on aliens does not outweigh the beneficial effects of the rule. *See* 91 FR 5270 n.10. The Department notes that Congress—not the Department—recently increased the appeal filing fee before the Board. *See* One Big Beautiful Bill Act, Pub. L. 119-21, sec. 100013(d)–(e), 139 Stat. 72 (2025) ("OBBBA"). As such, the Department has no ability to change this fee. The Department also disagrees with commenters that the increased fee justifies any particular type or amount of administrative review. As explained in the IFR and earlier in this section of this preamble, Congress left Board procedures to the Attorney General to address through regulation, and the Department has determined that the procedures in this rule best address the Board's overwhelming caseload. *See* 91 FR 5268.

Moreover, neither OBBBA nor this rule affects the ability of aliens to request fee waivers under existing regulations. *See* 8 CFR 1003.8(a)(3). The Department disagrees with commenters' allegations regarding the availability of fee waivers. Although this rule does not make any changes to fee waivers, the Department disagrees with commenters' characterization of the Board's decision in *Matter of Garcia Martinez*, which at base merely explains that aliens requesting a fee waiver must provide sufficient evidence of their inability to pay the requisite filing fee. *See* 29 I&N Dec. at 171–72.

Comment: Commenters further questioned the IFR's justification that the summary dismissal changes would help offset asymmetry in review available to aliens and DHS. Commenters stated that, if DHS appeals are subject to summary dismissal at the same rate as appeals from aliens, the status quo would remain the same, with one more level of review available to aliens than DHS.

Commenters raised concerns that the IFR's summary dismissal procedures will

occur before transcripts are produced, which prevents aliens from identifying issues evident in the transcript, including potential due process concerns. As such, commenters stated that aliens will need access to the transcript to survive summary dismissal at the Notice of Appeal stage. Commenters also questioned whether transcripts would be produced for the PFR process before the Federal courts. If so, commenters claimed that any such transcript production could delay Federal court review by months or years.

Response: The Department reiterates that the rule applies to both parties. Thus, its requirements apply equally to DHS and an alien, and there is no expectation that one party or the other will benefit from the rule's changes.

EOIR regulations already provide for several categories of summary dismissals of appeals to the Board without the production of a transcript, *see*, *e.g.*, 8 CFR 1003.1(d)(2)(A), (C), (F), (G), (H), so the addition of another category does not alter the fundamental structural dynamic.[24]

Moreover, it has long been the case that issues must be raised in the Notice of Appeal or risk summary dismissal; thus, even under pre-IFR procedures, the parties could not wait until a transcript is produced to raise issues. *See* 8 CFR 3.3(b) (1997), *adopted by* Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings, 61 FR 18900, 18906 (Apr. 29, 1996); 8 CFR 1003.3(b) (2026) ("The party taking the appeal must identify the reasons for the appeal in the Notice of Appeal (Form EOIR-26 or Form EOIR-29) or in any attachments thereto, in order to avoid summary dismissal pursuant to § 1003.1(d)(2)(i).").

To be clear, the Board does not—and did not prior to this rule—produce transcripts at the Notice of Appeal stage. Rather, aliens filing a Notice of Appeal focus

[24] The Board also considers several types of appeals already that do not have transcripts, *e.g.*, appeals of motion to reopen and reconsider decisions, interlocutory appeals, appeals of custody redetermination decisions, and appeals of certain visa decisions by DHS. Commenters failed to acknowledge that these other categories of appeals are processed without any evident concerns even though they do not generate transcripts.

on defects in the Immigration Judge's decision and, only once an appeal is accepted for full briefing and further review and docketed—and not summarily dismissed under an existing provision—is a transcript of proceedings produced, provided the appeal warrants a transcript in the first instance.[25] This rule follows that general understanding: aliens will continue to allege errors in the Immigration Judge's decision in their Notice of Appeal and, like before, if an alien believes that any errors were the result of testimonial issues necessitating review of the transcripts, he or she can explain this in the Notice of Appeal and the Board will then determine whether such issues warrant further review.

To the extent there are concerns about the potential for defective transcripts, those will always exist, regardless of this rule, and can be addressed on a case-by-case basis, as they are now. In short, none of the concerns about transcripts outweigh the efficiency benefits of the rule. Finally, as to commenters' questions about transcripts during the PFR process, EOIR will produce transcripts for PFRs if needed, and there is no expectation that such production would delay Federal court review by any significant amount of time.

Comment: One commenter expressed confusion over which EOIR determination the Federal courts will review after summary dismissal.

Response: To address the commenter's confusion over which EOIR determination Federal courts will review, the Department notes this final rule's changes to 8 CFR 1003.1(d)(2)(ii). The Department is revising 8 CFR 1003.1(d)(2)(ii) to clarify the language the Board will include in a summary dismissal order issued under that paragraph and the effect of such a summary dismissal order for Federal court review. The added language—which is similar to longstanding language applicable in cases where the Board affirms a decision without opinion—clarifies that a summary dismissal

[25] For example, a transcript is generally not prepared for interlocutory appeals, appeals of motion to reopen decisions by Immigration Judges, custody redetermination appeals, and appeals of visa petition decisions.

order shall be deemed to reflect the same considerations as an order where the Board affirms a decision without opinion: that the result reached in the decision was correct, without necessarily implying approval of all the reasoning; that any errors were harmless or nonmaterial; and that the issues are either squarely controlled by existing Board or Federal court precedent and do not present the application of precedent to a novel factual situation or the factual and legal issues raised on appeal are not so substantial to warrant a written opinion. *See* 8 CFR 1003.1(d)(2)(ii)(C).

Comment: Commenters provided recommendations related to the summary dismissal provisions, asserting that the recommendations would improve transparency and preserve core adjudicatory functions while aligning with the Department's efficiency goal. Commenters suggested establishing criteria to guide the selection of cases for review with briefing, stating that while discretion is essential, the lack of any established criteria could lead to inconsistency. Commenters stated that regular sampling and assessment would allow the agency to refine its selection process.

Response: The Department considered adopting regulatory criteria to guide the Board's consideration whether to summarily dismiss appeals but ultimately determined that the Board is best suited to adopt internal procedures and criteria for selecting cases where further briefing is necessary for review. The Department agrees that regular auditing of internal procedures is useful to ensure the success of the program; however, codifying such a program through rulemaking is unnecessary, as the Department already has such standard management practices. *See, e.g.*, 8 CFR 1003.1(e) ("The Chief Appellate Immigration Judge, under the supervision of the Director, shall be responsible for the success of the case management system.").

Comment: Commenters expressed concern that an appellate framework that consists of a Notice of Appeal followed by summary dismissal may incentivize unscrupulous attorneys to perform substandard work.

Response: The Department does not share commenters' concerns that the provisions of this rule will incentivize any attorneys to perform substandard work, as all practitioners appearing before the Immigration Courts and the Board remain subject to EOIR's professional conduct regulations. *See, e.g.*, 8 CFR 1003.101 *et seq*. Further, State bars may always analyze and address, or decline to address, a practitioner's conduct, including any alleged substandard work, according to their own rules if the practitioner is an attorney subject to their disciplinary authority.

2. 10-day Appeal Deadline

a. Due Process Concerns

Comment: Numerous commenters asserted that by shortening the appeal deadline from 30 days to 10 days, the IFR deprives aliens of their constitutional guarantee of a full and fair hearing under the Due Process Clause of the Fifth Amendment by severely restricting their right to representation by counsel and a meaningful opportunity to be heard. Commenters asserted these impacts would be particularly acute in cases of detained aliens, pro se aliens, and unaccompanied alien children ("UACs").

Commenters also argued that the 10-day appeal deadline imposed by the IFR deprives aliens of due process by creating another procedural barrier to meaningful review, as 10 days, according to commenters, is an insufficient amount of time for an alien to either apply for a fee waiver or to gather funds to pay the substantial filing fee for appeals. Commenters stated that other appellate tribunals provide longer deadlines to file appeals.

Response: The Department disagrees with commenters' assertion that the 10-day appeal deadline deprives aliens of due process by restricting their right to be represented by counsel or to a meaningful opportunity to be heard.

To begin, commenters misconstrued an alien's right to counsel in immigration proceedings and the alleged due process implications. Under the Fifth Amendment,

aliens are guaranteed due process in immigration proceedings, *see Reno v. Flores*, 507 U.S. 292, 306 (1993), but the Sixth Amendment's right to counsel applies only to "criminal prosecutions," U.S. Const. amend. VI. Notably, Congress has provided aliens with substantial due process protections by statute, including the "privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in [] [immigration] proceedings" including "any appeal proceedings before the Attorney General from any such removal proceedings." INA 240(b)(4)(A), 292, 8 U.S.C. 1229a(b)(4)(A), 1362.

But importantly, an alien's failure to obtain counsel in immigration proceedings does not constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1470 (9th Cir. 1986). The IFR focuses entirely on the appellate process before the Board and does not address or affect an alien's statutory privilege of being represented by counsel of the alien's choosing, at no expense to the Government, regardless of whether initially placed into removal proceedings or at any other point in time during the pendency of the case. *See* INA 240(b)(4)(A), 292, 8 U.S.C. 1229a(b)(4)(A), 1362. Moreover, the IFR's 10-day appeal deadline aligns with the existing 10-day statutory timeframe aliens are afforded to find counsel prior to the initial immigration hearing after the commencement of immigration proceedings. INA 239(b)(1), 8 U.S.C. 1229(b)(1). If that timeline is sufficient to find counsel for the initial hearing, it is unclear why it would not also be sufficient for an appeal. *See generally Dakane v. Att'y Gen.*, 399 F.3d 1269, 1273 n.6 (11th Cir. 2005) ("[T]he Supreme Court has held that [aliens] are ensured a fundamentally fair hearing through statutory protections provided for by Congress").

Commenters also artificially limited their due process arguments to the narrow Board appeal window, rather than acknowledging that Board appeals are only part of an often-lengthy administrative process before EOIR. Aliens placed in proceedings before an Immigration Judge are advised of their right to self-funded counsel and are often

provided continuances to find counsel. *See, e.g.*, 8 CFR 1240.10(a)(1). Removal proceedings then proceed to determine removability and adjudicate any potential applications for relief or protection. Only once an Immigration Judge issues a decision does the appeal period begin to run. Throughout this entire process, aliens have the ability to retain counsel. So, arguing that the 10-day appeal period after the conclusion of removal proceedings is the only relevant period to consider due process concerns misrepresents the actual, lengthy process of such cases. Being given a reasonable amount of time to obtain counsel in a proceeding where counsel is not guaranteed does not rise to the level of a due process violation. Thus, the Department finds commenters' allegations that the IFR's 10-day appeal deadline deprives aliens of due process by restricting their right to counsel are without merit.

The Department similarly finds meritless commenters' assertion that the IFR's 10-day appeal deadline undermines due process by imposing procedural barriers that deprive aliens of a meaningful opportunity to be heard. The Department stresses that the IFR's 10-day appeal deadline does not prevent any class of aliens—*e.g.*, aliens represented by counsel, pro se aliens, detained aliens, or UACs—from seeking an appeal, paying the appeal fee, or applying for a fee waiver. The procedures for filing an appeal, just as they existed before the IFR, simply require aliens to complete the appeal form by providing, with specificity, the reasons for disagreement with the Immigration Judge's decision. Similarly, this rule does not change an alien's ability to apply for a fee waiver, which only requires completion of a simple form listing the alien's monthly income sources and expense sources. Likewise, even for those aliens who do not qualify for a fee waiver, having to pay the requisite appeal fee should be accounted for throughout their removal proceedings and not come as a surprise.[26] None of these requirements—even

[26] EOIR notifies aliens that there may be fees associated with any filed appeals in multiple publicly available locations. *See, e.g.*, 8 CFR 1103.7; EOIR, *Types of Appeals, Motions, and Required Fees* (Feb. 1,

under a 10-day appeal period—prevents aliens from having a meaningful opportunity to file a Board appeal. Thus, even if due process required access to an administrative appeal, none of these requirements would violate due process.

Any due process concerns regarding the 10-day deadline are further obviated by the availability of electronic filing and electronic fee payments to EOIR, including the ability of pro se aliens to electronically file the Notice of Appeal with the Board. *See generally* EOIR, Respondent Access Portal, https://respondentaccess.eoir.justice.gov/en/ [https://perma.cc/7W3Y-JH5R].

Instead, the 10-day appeal deadline treats all classes of aliens equally and serves to expedite the appellate process by allowing aliens to have their appeals reviewed by the Board faster, instead of being delayed as a result of backlogged claims. This will allow aliens to receive expeditious final administrative decisions in their cases and pursue Federal court review faster which, in turn, will aid the Board in addressing its backlog of pending appeals.

Moreover, the IFR's 10-day appeal deadline only affects the Board's review process, which is wholly within the authority of the Attorney General. It does not impact any of the procedural protections afforded to aliens in immigration proceedings as set by Congress. *See* INA 240(b)(4), 8 U.S.C. 1229a(b)(4). The Board is a regulatory creation of the Attorney General; there is no due process or statutory right entitling an alien to an administrative appeal before the Board because the Attorney General has the authority to eliminate the Board entirely and could delegate his power elsewhere. *Guentchev*, 77 F.3d

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2026), https://www.justice.gov/eoir/types-appeals-motions-and-required-fees [https://perma.cc/V8AD-VJDT]; EOIR, *EOIR Forms & Fees* (Feb. 1, 2026), https://www.justice.gov/eoir/eoir-forms [https://perma.cc/2VX5-KCUE]; EOIR, *EOIR Payment Portal,* https://epay.eoir.justice.gov/index [https://perma.cc/E8QS-QREY]. Additionally, both the INA and EOIR's regulations require that Immigration Judges provide aliens with notice about the appeals process. *See* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to "inform the alien of the right to appeal that decision"); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to "[a]scertain that the respondent has received a copy of appeal rights"). This ordinarily includes oral and written advisals that a fee may be required for any such appeals.

at 1037 ("Even litigants in the federal courts are not constitutionally entitled to multiple layers of review. The Attorney General could dispense with the Board and delegate her powers to the immigration judges[.]").

Comment: Commenters also stated that the Ninth Circuit previously determined that a 10-day appeal filing deadline violates the Due Process Clause, citing *Gonzales-Julio v. INS*, 34 F.3d 820 (9th Cir. 1994). Commenters asserted that in promulgating the IFR, the Department failed to acknowledge that precedent or explain how the IFR's 10-day deadline does not violate the same constitutional provision.

Response: The Department believes that commenters misunderstood the breadth of the Ninth Circuit's holding in *Gonzales-Julio* and, regardless, the circumstances underlying the case have changed over the intervening 30-plus years, such that any due-process concerns raised regarding a 10-day appeal deadline in that case are no longer applicable.[27] In *Gonzales-Julio*, the Ninth Circuit considered the case of an alien who lived in Hawaii and had to file a Notice of Appeal by mail with an office in San Diego, California, within 10 days and concluded that the alien's due process rights were violated. 34 F.3d at 825. But the facts presented in that case are important. At the time, the ability to electronically file an appeal did not exist; all documents had to be filed with the Office of the Chief Immigration Judge; and filing fees were paid separately to an office of the former Immigration and Naturalization Service. *Id.* at 822. Further, in cases where an alien sought a fee waiver, "the notice of appeal [wa]s sent directly to the Office and [wa]s not filed until the fee waiver [wa]s approved." *Id.* Finally, "no record [wa]s kept of when the notice of appeal [wa]s received, nor [wa]s a notice of appeal date-

[27] As noted above, courts have determined that the Due Process Clause does not require an opportunity to file an administrative appeal in immigration proceedings. *See, e.g.*, *Dia*, 353 F.3d at 242; *Guentchev*, 77 F.3d at 1037. The Department acknowledges that because the Government has nonetheless granted aliens the right to do so, it cannot impose procedural requirements that unduly restrict that right. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). For the reasons explained below, however, this rule's procedural changes do not impose any problematic burden on the pursuit of administrative appeals from decisions of Immigration Judges.

stamped upon receipt." *Id.*

Within the context of these now-outdated appeal procedures, the court concluded that "[w]here a petitioner residing in Hawaii has only ten days to appeal an order of deportation, has no control over the delivery of the mail, and has no control over whether the appeal is filed upon receipt in the Office of the Immigration Judge (especially when a fee waiver is requested)," the alien's due process rights were violated. *Id.* at 825. The Ninth Circuit *did not* hold that a 10-day filing deadline is per se violative of due process rights in all cases and under all circumstances. Moreover, the Ninth Circuit in *Gonzales-Julio* did not address the possibility of equitable tolling of the filing deadline, which would obviate the concerns raised, and which may be available under this rule. *See Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023).[28]

Shortly after the *Gonzales-Julio* decision, the Eighth Circuit considered a similar challenge from an alien asserting that the 10-day period to file an appeal violated her due process rights. *See Talamantes-Penalver v. INS*, 51 F.3d 133 (8th Cir. 1995). But the Eighth Circuit held "that the ten-day filing deadline comports with due process, even as applied to aliens living in remote locations who make reasonable efforts to comply with the regulation." *Id.* at 135. Seemingly in recognition of the importance of evaluating the facts and circumstances of each individual case, the court explained that "[t]he ten-day filing period arguably could be unconstitutional as applied to a petitioner in Hawaii, a somewhat 'remote' location, but constitutional as applied to a petitioner in a location not so remote from the place where the notice of appeal is to be filed." *Id.* at 136. In determining that the agency's procedures provided sufficient due process, the Eighth Circuit emphasized the Government's "significant" interest in the filing deadline,

[28] The Department recognizes that the legal foundation for an administrative agency to exercise equitable authority such as equitable tolling is unclear. Nevertheless, current Board precedent allows for it, and it would mitigate many of the concerns raised by commenters about "one-off" situations in which the new deadline could affect the exercise of a party's appeal rights.

explaining that filing deadlines aid the Government in "bring[ing] litigation to an end" and "determin[ing] with certainty when an alien's right to appeal is cut off and the [Immigration Judge]'s deportation order is conclusive." *Id.* at 137. And, as remains true today, "[e]nforcement of this nation's immigration laws is enhanced by the speedy adjudication of cases and the prompt deportation of offenders." *Id.*

Accordingly, the Department does not read the Ninth Circuit's holding in *Gonzales-Julio* as precluding the adoption of a 10-day appeal deadline in this rule. EOIR has made several changes to its appeal filing procedures since that decision that have alleviated the concerns identified by the Ninth Circuit. Most significantly, the Board implemented electronic filing in 2021 and further expanded electronic filing to allow pro se aliens to file Notices of Appeal with the Board. 91 FR 5272; *see also Irigoyen-Briones v. Holder*, 644 F.3d 943, 951 (9th Cir. 2011) ("To protect its important interest in proceeding expeditiously with these cases, yet avoid subjecting aliens to the risk of losing their appeals due to bad weather or delivery service error, all the Board need do is what courts and private companies routinely do: allow people to send their notices of appeal over the internet."). Electronic filing "allows parties to submit Notices of Appeal at any time of day from any location with internet access, removing concerns related to mail delays and the restrictions business hours create to meet filing deadlines." 91 FR 5272.

Similarly, appeal filing fees are also paid directly to the Board via EOIR's Payment Portal, and regulations clearly establish the Board's procedure for assessing fee waivers submitted with a Notice of Appeal. *See* 8 CFR 1003.8(a)(3) ("If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed, provided the Board grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period.").

Taken together, the availability of electronic filing for appeals and electronic

payments for appeal fees represents a significant shift from the circumstances the Ninth Circuit was considering in *Gonzales-Julio*, particularly as internet access and usage has become ubiquitous even for pro se aliens. Given the ability to immediately file a Notice of Appeal from any place at any time, the Department believes a 10-day appeal deadline comports with due process. And, even if the specific circumstances presented by an alien's case could result in the violation of an alien's due process rights, the Board has the authority to equitably toll the appeal deadline, as discussed above.

b. Statutory Concerns

Comment: Commenters stated that a 10-day timeline for appeals violates the INA. Specifically, commenters stated that a 10-day timeline is insufficient for aliens to prepare their claims, including obtaining counsel and obtaining documents that they wish to submit in support of their claims. Commenters asserted that the IFR violates provisions of the INA guaranteeing aliens the right to counsel in removal proceedings, citing sections 240(b)(4) and 292 of the Act, 8 U.S.C. 1229a(b)(4) and 1362. Commenters noted that section 292 of the Act, 8 U.S.C. 1362, specifically provides aliens with a right to counsel "in any appeal proceedings before the Attorney General from any such removal proceedings." Commenters acknowledged, however, that the INA does not guarantee representation in every case.

Commenters alleged that the IFR's provisions shortening appeal deadlines will violate this statutory right to counsel by interfering with aliens' ability to find counsel, particularly if the alien is detained, indigent, or appeared pro se before the Immigration Judge during removal proceedings. Commenters further stated that the shortened appeal deadlines impede counsel's ability to accept representation in a new case, request the oral record of proceedings, review the case, and prepare an appeal in the allotted time frame, thereby contravening the INA's right to counsel, which commenters claimed could reduce the availability of competent counsel.

Response: Nothing in the INA precludes the Department from establishing a 10-day deadline to file most appeals with the Board, as is supported by legislative history and prior Departmental policy. Indeed, a 10-day deadline to file an administrative appeal of an Immigration Judge decision is not unprecedented. Notably, after a reorganization consolidated Immigration Judges and the Board into the newly created EOIR, the agency issued a rule establishing "a uniform procedure for filing administrative appeals relating to Immigration Judge proceedings." Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 FR 2931 (Jan. 29, 1987). As part of the uniform procedures, the regulatory deadline to file an appeal of a decision of an Immigration Judge was 10 days after service of the decision or 13 days if the decision was mailed. *See, e.g.*, 8 CFR 3.36(b) (1987); 52 FR 2935. These appeal deadlines remained in place for almost a decade, including following Congress' directive in the Immigration Act of 1990 for the Attorney General to issue regulations with respect to "the time period for the filing of administrative appeals in deportation proceedings." Pub. L. 101–649, § 545(d), 104 Stat. 4978, 5066 (1990); *see also* Executive Office for Immigration Review; Rules of Procedures, 57 FR 11568 (Apr. 6, 1992) (amending regulations to implement various provisions of the Immigration Act of 1990 but maintaining existing 10-day appeal deadline); 8 CFR 3.38(b) (1993) ("The notice of appeal of the decision shall be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding within ten (10) calendar days after service of the decision. Time will be 13 days if mailed."), 3.1(b) (1993).

Subsequently, in passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, sec. 604(d)(5)(A)(iv), 110 Stat. 3009–546, 3009–694 (Sept. 30, 1996), Congress enacted a 30-day timeline for filing an appeal for certain asylum-related cases, which overrode the regulatory 10-day period as it applied to such cases. *See* INA 208(d)(5)(A)(iv), 8 U.S.C. 1158(d)(5)(A)(iv); *Liadov v. Mukasey*,

518 F.3d 1003, 1009 (8th Cir. 2008) ("Without question, the statute trumped the ten-day appeal period previously adopted in the regulations."). At the same time, Congress remained silent with respect to timelines for filing appeals from other types of Immigration Judge decisions. Congress's silence in this regard, against the backdrop of an existing regulatory 10-day filing deadline, indicates that Congress made a determination not to intervene with respect to the 10-day filing deadlines applicable to the other remaining appeal types before the Board.

Nor has Congress taken action since then to codify additional filing deadlines for appeals beyond those specified in section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv). However, DOJ subsequently amended EOIR's regulations to implement a 30-day filing deadline to appeal from Immigration Judge decisions. *See* 61 FR 18902. In that rule, DOJ stated that it was increasing the deadline for filing an appeal from 10 to 30 days in order to respond to concerns raised by the Ninth Circuit and commenters regarding the sufficiency of time to initiate the appellate process. However, as already discussed above in this section, circumstances have changed in intervening years, and the Department has therefore determined that a 10-day filing deadline is more appropriate.

The 10-day deadline to file most appeals with the Board is also wholly consistent with the INA's provisions related to obtaining counsel in Immigration Court proceedings. The INA provides aliens in removal proceedings with "the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings." INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A). The INA's privilege of representation extends to "any appeal proceedings before the Attorney General from any such removal proceedings." INA 292, 8 U.S.C. 1362. Consistent with the INA's requirements, EOIR's regulations clearly state that an alien may be represented in removal proceedings. *See* 8 CFR 1003.16(b), 1240.3.

Nothing in the IFR nor in this final rule changes any of EOIR's regulations ensuring that aliens may be represented by counsel of their choosing, at their expense. This rule is focused on streamlining the administrative appellate process, and nothing in this rule prevents, precludes, or limits an alien's ability to seek counsel. Arguments to the contrary ignore the reality that aliens often have a significant amount of time to seek and obtain counsel prior to their Immigration Court hearing and entry of a removal order, despite the fact that the INA requires aliens be provided only 10 days to seek counsel prior to an initial hearing before an Immigration Judge. *See* INA 239(b)(1), 8 U.S.C. 1229(b)(1) ("In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings . . . , the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.").

Moreover, aliens often receive multiple continuances to seek representation before the Immigration Judge. *See, e.g.*, *Matter of C-B-*, 25 I&N Dec. 888, 889–90 (BIA 2012). Further, an Immigration Judge is required to advise an alien of his or her right to representation, to inquire as to whether the alien desires representation, and to advise the alien about the availability of pro bono legal services. INA 239(a)(1)(E), 8 U.S.C. 1229(a)(1)(E); 8 CFR 1240.10(a)(1)–(2).

Indeed, many aliens are represented in proceedings before an Immigration Judge and may retain the same counsel throughout the appellate process, obviating commenters' concerns regarding finding and obtaining counsel. The Department also anticipates that, as a potential response to this rule, counsel will likely begin explaining the shortened appeal deadline to clients earlier in removal proceedings and increasing the amount of representation agreements that include administrative appeals as part of the initial agreement.

In cases where an alien is not represented before the Immigration Judge, the

Department acknowledges that aliens whose cases are subject to the 10-day appeal period may face difficulties securing representation prior to the deadline for filing a Notice of Appeal with the Board.[29] *See* 91 FR 5272 n.16 ("The Department acknowledges that some aliens proceed pro se before the Immigration Judge and *may* seek counsel after an adverse decision and that in those circumstances changing the deadline from 30 to 10 days, except for asylum appeals by aliens not barred from applying, *may* impact their ability to obtain counsel to file a Notice of Appeal."). However, such aliens likely will have had multiple opportunities to seek and secure counsel prior to the Immigration Judge's decision, particularly as Immigration Judges generally provide right-to-counsel advisals during the very first hearing in removal proceedings. Functionally, the change in appeal deadline implemented by this rule is 20 fewer days to seek counsel in an often years-long process. And an alien unable to obtain counsel prior to the deadline for filing a Notice of Appeal will also have additional time to continue seeking counsel if the Board accepts the appeal for further consideration with briefing prior to seeking Federal court review.

Difficulties in securing legal representation are not unique to aliens, and many aliens affirmatively elect to forgo legal representation for their own personal reasons. The INA does not guarantee that every alien will obtain legal counsel, nor does it require the Department to delay the efficient completion of removal proceedings beyond the statutorily delineated period of time that an alien must be provided to seek counsel prior to the beginning of removal proceedings before an Immigration Judge. *See* INA

[29] Although the representation rate is higher for appeals before the Board when compared to completed cases before the Immigration Court, it is not clear whether that is due to the nature of cases that are appealed (*i.e.*, a greater percentage of cases with representation file appeals, leading to a higher representation rate at the Board overall) or due to aliens who were unrepresented before the Immigration Courts deciding to obtain representation at the appellate stage. EOIR's experience is that the former explanation is likely correct, but regardless of the reason, the Department has considered the impact of this final rule on the population of aliens unrepresented at the trial level and ultimately determined that the efficiency benefits of this rule outweigh any potential costs.

239(b)(3), 8 U.S.C. 1229(b)(3) ("Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien . . . if the [10-day time period] has elapsed and the alien has failed to secure counsel."). Had Congress intended to provide another minimum period of time for aliens to seek counsel prior to filing an appeal with the Board, it easily could have done so. Accordingly, this rule's changes to the appeal deadline do not violate the INA's requirements.

The Department is further unpersuaded by commenters' concerns related to counsel's ability to provide effective legal representation to clients. The Department is unaware of any reason why 10 days is an insufficient amount of time for counsel to file a Notice of Appeal that adequately identifies the issues being raised on appeal. Counsel must only preserve issues in a Notice of Appeal with appropriate specificity; the rule does not require full legal briefing at the Notice of Appeal stage.

Despite commenter assertions to the contrary, the Department considered the impact of the IFR on aliens' ability to obtain counsel for an appeal to the Board. *See* 91 FR 5272 n.16. The Department has further considered comments related to legal representation and continues to believe that "the interest in timely adjudications outweighs" potential concerns related to aliens' ability to obtain counsel and that "the benefits of the reforms in this rule outweigh that potential impact, especially given that such aliens would have had time prior to the removal order to seek the assistance of counsel." *Id.* In short, the Department has considered all of the comments and concerns, but it continues to believe that the benefits of the rule outweigh any potential—and highly speculative—costs related to legal representation.

Comment: Commenters argued that the IFR violates section 240(b)(4)(C) of the Act, 8 U.S.C. 1229a(b)(4)(C), which requires EOIR to maintain a complete record of proceedings, and that the 10-day appeal period also conflicts with section 240(c)(6) of the Act, 8 U.S.C. 1229a(c)(6), which provides a 30-day window for motions to reconsider.

Response: This rule is wholly consistent with section 240(b)(4)(C) of the Act, 8 U.S.C. 1229a(b)(4)(C), which states that "a complete record shall be kept of all testimony and evidence produced at the proceedings." Nothing in this rule affects the development of a record in removal proceedings before an Immigration Judge, on which this statutory section focuses. *See also* 8 CFR 1003.36 ("The Immigration Court shall create and control the Record of Proceeding.").

Separately, the 10-day appeal filing deadline does not foreclose the statutory availability of motions to reconsider, and any change to the appeal filing deadline is irrelevant to such availability. *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6). Nothing in this rule changes the potential avenues for addressing alleged errors in an Immigration Judge's decision: an alien may choose to file a motion to reconsider with the Immigration Judge, an appeal with the Board, and even a subsequent motion to reconsider following a Board appeal denial. Moreover, should an alien choose to file a motion to reconsider with the Immigration Judge, the alien may appeal any Immigration Judge denial of such motion to the Board and seek further review in the Federal courts if necessary. *See, e.g.*, Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, Question 5 (Sept. 2019), https://www.justice.gov/eoir/file/eoir26/dl [https://perma.cc/P3PP-7T3H] (providing an option to file "an appeal from the Immigration Judge's decision ***denying a motion to reopen or a motion to reconsider*** . . . .") (emphasis in original); *Ayala v. Sessions*, 855 F.3d 1012, 1020 (9th Cir. 2017) (reviewing Immigration Judge's denial of motion to reconsider).

Comment: Commenters argued that the IFR violates section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), which they asserted requires 30 days for an administrative appeal of any decision granting or denying asylum. Commenters argued that the INA does not have a carve-out from the 30-day appeal deadline based on the Immigration Judge's reasoning in an asylum denial. Further, commenters asserted that

the Department's position in the IFR that asylum seekers whose applications are barred under section 208(a)(2) of the Act, 8 U.S.C. 1158(a)(2), are not entitled to the 30-day appeal deadline has no support in the statute. Commenters expressed that if Congress had intended for there to be a different appeal deadline for asylum applications denied under section 208(a)(2) of the Act, 8 U.S.C. 1158(a)(2), it would have specified it in the INA.

Further, commenters alleged that the Department ignored the second part of section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), which states that an administrative appeal must be filed within 30 days of a decision granting or denying asylum "or within 30 days of the completion of removal proceedings before an immigration judge under section 240, whichever is later." Commenters also noted that, functionally, the appeal deadline for nearly all asylum cases will be 10 days because asylum cases almost always include claims for withholding of removal or protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S 85 ("CAT"), and the appeal deadline for those claims remains 10 days.

Commenters also stated that the IFR's exception for some asylum cases is confusing. Commenters stressed that in order for an alien or the alien's counsel to know which filing deadline applies, the alien or counsel must understand whether the Immigration Judge denied the asylum application on its merits or on a ground subject to a 10-day appeal deadline. Commenters expressed that it is unclear which deadline applies if an application is denied for multiple reasons, providing as an example an asylum case where an Immigration Judge finds that the one-year bar applies, but also finds that the alien did not demonstrate a well-founded fear of future persecution.

Commenters also stated that although the Department justified the 10-day

deadline by asserting it would harmonize administrative appellate deadlines, the Department did not explain how doing the opposite for asylum appeals by implementing two deadlines contributes to this goal. Moreover, commenters asserted that the rule creates different appeal deadlines for pretermitted cases, where cases pretermitted because of an applicable ACA are subject to the 10-day deadline and cases pretermitted due to, for example, failure to pay the fee or not adequately completing the application are subject to the longer 30-day deadline, which is inconsistent with the Department's stated harmonization goal. Commenters further expressed that the IFR does not explain how disputes over the applicable deadline should be determined.

Response: The Department disagrees that appeal deadlines for cases involving asylum applications are confusing but nonetheless appreciates the opportunity to provide clarity. The INA requires that the Attorney General establish procedures for considering asylum applications "filed under" section 208(a) of the Act, 8 U.S.C. 1158(a). INA 208(d)(1), 8 U.S.C. 1158(d)(1). Those procedures must provide that "any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge . . . whichever is later." INA 208(d)(5)(A)(iv), 8 U.S.C. 1158 (d)(5)(A)(iv). But those procedures, including the 30-day appeal deadline, do not apply where an alien is ineligible to apply for asylum at all under section 208(a)(1) of the Act, 8 U.S.C. 1158(a)(1). Said differently, if an alien is ineligible to even apply for asylum pursuant to section 208(a)(1) of the Act, 8 U.S.C. 1158(a)(1), the alien is not entitled to subsequent procedures implementing a 30-day appeal deadline. *See* 91 FR 5272 n.15.

The INA provides three such scenarios in which an alien is barred from applying for asylum: (1) the alien may be removed to a safe third country pursuant to an agreement commonly referred to as an ACA; (2) the alien does not show by a preponderance of the evidence that his or her application has been filed within one year after the date of the

alien's arrival in the United States, subject to narrow exceptions; or (3) the alien has previously applied for asylum and had such application denied, subject to narrow exceptions. INA 208(a)(2)(A), (B), (C), 8 U.S.C. 1158(a)(2)(A), (B), (C).

Accordingly, in any case where an alien is deemed ineligible to apply for asylum pursuant to one of these three subparagraphs, the applicable appeal deadline, in accordance with this rule, is 10 days. This 10-day appeal period similarly applies to cases where application of these ineligibility provisions is followed by alternative substantive holdings denying asylum, as these ineligibility provisions serve as the baseline denial reason in addressing whether the alien is even eligible to apply for asylum. To use an example provided by commenters, if an Immigration Judge determines an alien is subject to the one-year bar and also concludes that the alien failed to establish a well-founded fear of future persecution, the 10-day deadline applies.

In any other asylum case, the appeal deadline remains 30 days, consistent with the INA's requirements. For clarity, in such cases, the 30-day appeal deadline attaches to the entire case, not to the asylum claim itself. Indeed, the relevant regulatory provision applies in "cases" where an Immigration Judge has adjudicated an asylum application and did not deny the application under 208(a)(2)(A), (B), or (C) of the Act, 8 U.S.C. 1158(a)(2)(A), (B), or (C)—not to individual claims within those cases. 91 FR 5278 (amending 8 CFR 1003.38(b)(2)). For example, in cases where an alien has applied for asylum, withholding of removal, and protection under the CAT regulations, if the alien's asylum application was not denied due to application of an ACA, failure to apply for asylum within one year of entry, or because he or she previously has been denied asylum, the alien has 30 days to appeal the decision in his or her case, which includes all claims for relief and protection from removal.

Additionally, commenters' assertion that the Department did not consider the "whichever is later" statutory language is incorrect. The Department analyzed the

language in section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), and determined that, for clarity 8 CFR 1003.38(b) should provide that the appeal filing period begins to run with the "date of the stating of an Immigration Judge's oral decision or the mailing or electronic notification of an Immigration Judge's written decision." In rare cases, an Immigration Judge might adjudicate an asylum application earlier in the proceedings and then issue a final decision fully resolving removal proceedings at a later date. In these circumstances, the appeal period under 8 CFR 1003.38(b) would not begin to run until that later date because that is the date when the Immigration Judge completes the case, rather than simply disposing of a single claim. Thus, because the appeal period would begin to run from this later date, 8 CFR 1003.38(b) is consistent with the requirement in section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), that the time period in which to appeal a decision granting or denying asylum run from "whichever [of the relevant dates] is later." Accordingly, the Department believes that the language as drafted complies with the INA.

The Department further disagrees with commenters that it will be unclear which deadline applies to an asylum case because it will be unclear on what basis an Immigration Judge denies an asylum application. The Department is confident that Immigration Judges will clearly articulate any basis for denying an alien's asylum application such that the applicable appeal-filing deadline will be readily apparent. Additionally, the Department expects that Immigration Judges will advise aliens of the applicable appeal deadline as part of the obligation to advise an alien of his or her appeal rights. *See generally* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to "inform the alien of the right to appeal that decision"); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to "[a]scertain that the respondent has received a copy of appeal rights"); EOIR, Policy Manual, pt. II, ch. 3.15(h) (Feb. 10, 2026), https://www.justice.gov/eoir/policy-manual-eoir/part-

II/icpm/chapter-3-15 [https://perma.cc/HK27-PJAZ] (stating that "the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived").

Finally, commenters are correct that the changes to appeal filing deadlines will result in different appeal deadlines for asylum cases depending on the reason for denial. But the Department has determined that the different appeal deadlines for asylum cases—which are a function of statutory requirements and, thus, cannot be altered by EOIR—do not meaningfully detract from the Department's appellate deadline harmonization goal.

c. Additional Concerns with 10-day Appeal Deadline

Comment: Commenters opposed decreasing the time to file an appeal with the Board to 10 days, describing the new deadline as unworkable, unrealistic, and not enough time to prepare and file a Notice of Appeal. Commenters expressed concern that the 10-day appeal deadline will exacerbate existing barriers to access to justice.

Commenters also stated that the IFR did not provide any empirical evidence that the 30-day period in which to file an appeal has contributed to an increase in appeal filings or the Board's backlog, pointing out that appeals tripled between 2015 and 2025 while the deadline to file an appeal was 30 days and asserting that such increase was likely related to immigration enforcement activity and evolving substantive law. Commenters said that, absent data showing the 30-day deadline drives delay, shortening the appeal deadline risks impairing access to appellate review without corresponding efficiency gains. Commenters also stated that the IFR puts pressure on Immigration Judges who are already overwhelmed by implicitly forcing them to produce immediate written decisions and a review-ready record to make appeals possible, which commenters alleged risks incentivizing rushed oral decisions and increasing post-hearing confusion, litigation, and motions.

Commenters also stated that the IFR does not explain whether Immigration

Judges will inform aliens if the 10-day or 30-day deadline applies in their cases.

Lastly, commenters believed that the use of electronic filing through the EOIR Courts & Appeals System ("ECAS") was not sufficient to ameliorate their concerns.

Response: The Department declines to retain the 30-day appeal deadline in all cases. The Department disagrees with commenters' claims that the 10-day deadline is unworkable or unrealistic. First, as the Department explained in the IFR, other types of appeals before EOIR are already subject to a 10-day filing deadline. *See* 8 CFR 1003.6(c)(1) (10-day deadline for DHS to appeal an Immigration Judge's order to maintain an automatic stay of a custody redetermination order pursuant to 8 CFR 1003.19(i)); 28 CFR 68.54(a) (10-day deadline to appeal Administrative Law Judge's decision to Chief Administrative Hearing Officer). Second, the Board's adoption of electronic filing in 2021, and the further expansion allowing pro se aliens to file Notices of Appeal with the Board, allow parties to submit a Notice of Appeal electronically, obviating the need to account for mail difficulties or delays in filing deadlines in the vast majority of Board cases. 91 FR 5272.

The Department does not find persuasive commenters' arguments that the length of the appeal deadline is unrelated to the number of appeals filed or the backlog. Several factors contribute to how many appeals are filed in any given year. Although factors like the scope of immigration enforcement activity by DHS or changes in the substantive law as a result of Federal court decisions are outside the Department's control, the Department can control its own procedures, like filing deadlines, to keep cases moving expeditiously before the Board. And the shortened appeal deadline—which applies equally to aliens and DHS—will work in concert with the expanded summary dismissal procedures to ensure that EOIR is efficiently and expeditiously completing appeals. *See* 91 FR 5272 (explaining that the 10-day deadline applies to both DHS and aliens "so neither side will be procedurally advantaged or disadvantaged by the change").

Further, as previously discussed, a 10-day deadline to file an administrative appeal of an Immigration Judge decision is not unprecedented: A 1987 rule set the regulatory deadline to file an appeal of a decision of an Immigration Judge at 10 days after service of the decision or 13 days if the decision was mailed. That rule was in place for almost a decade. *See, e.g.*, 8 CFR 3.36(b) (1987); 52 FR 2935.

In 1996, EOIR established a centralized process for filing Notices of Appeal directly with the Board and increased the appeal deadline to 30 days. 61 FR 18903; 8 CFR 3.38(b) (1996). The Department increased the time frame to file an appeal to address concerns "regarding the sufficiency of time to initiate the appellate process" and concerns raised by Federal courts related to the 10-day filing period and the requirement that parties file a Notice of Appeal in one forum and pay the requisite fee in another forum. 61 FR 18903. But importantly, when implementing the 30-day deadline, the Department did not indicate that such a change was required by law. Rather, the deadline was implemented as a matter of policy, reflective of the Department's judgment regarding the appropriate procedures at that time. The decision to now revert the deadline to 10 days is similarly reflective of the Department's judgment that, as a matter of policy, the 10-day deadline, in combination with other streamlining measures implemented by this rule, is the best way for the Department to address present circumstances, which include a significant backlog of pending cases at the Immigration Courts and Board.

Regarding commenters' concerns that some aliens may not understand the appeal deadline applicable to their cases, the Department does not believe that determining the applicable case deadline will be a challenge, as the appeal deadline will be 10 days in most cases, except for cases involving certain asylum applications. Nonetheless, the Department expects that Immigration Judges will advise aliens of the applicable appeal deadline as part of the obligation to advise an alien of his or her appeal rights. *See* INA

240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to "inform the alien of the right to appeal that decision"); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to "[a]scertain that the respondent has received a copy of appeal rights"); *see also* EOIR, Policy Manual, pt. II, ch. 3.15(h) (Feb. 10, 2026), https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-15 [https://perma.cc/HK27-PJAZ] (stating that "the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived"). Commenters' concerns related to the 10-day deadline's impact on Immigration Judges are misplaced, as this rule does not alter any requirements for an Immigration Judge when issuing a decision.

Next, the Department believes that the 10-day filing deadline is a key piece of efforts to streamline immigration proceedings and that a "deadline for filing a notice of appeal is essential for the overall working of an immigration court system in order to bring cases to a final conclusion." *Morales-Morales*, 28 I&N Dec. at 716. Indeed, without deadlines, an alien could attempt to delay proceedings indefinitely. *Id.* "Moreover, '[f]iling deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced.'" *Id.* (quoting *United States v. Locke*, 471 U.S. 84, 101 (1985)).

Although this final rule does not change the general 10-day filing deadline, the Department notes that if the unique circumstances in a case warrant equitable tolling pursuant to the Board's existing standards, nothing in this rule prevents the Board from accepting an untimely appeal through that mechanism. The Department believes that this existing authority is sufficient to address truly exceptional circumstances that may arise in an individual case and provides the Board with sufficient flexibility to account for the facts presented by each individual case.

Finally, to the extent that commenters expressed concerns about ECAS reliability, EOIR has provided clear guidance in the event of any technical issues affecting electronic filing. *See* 8 CFR 1003.3(g)(2) (addressing ECAS system outages for Board appeals).

Comment: Commenters questioned the interplay between the 10-day appeal filing deadline and fee waiver requests. Specifically, commenters requested clarity on what happens in cases where a fee waiver is denied and whether the pre-existing 15-day cure period in 8 CFR 1003.8(a)(3) will still apply, as commenters stated it is unclear how the Board will construe this regulation in light of the 10-day deadline.

Response: Neither the IFR nor this final rule alters existing Board practice with respect to fee waivers. Aliens seeking a waiver of the appeal filing fee must file a fee waiver request, Form EOIR-26A, alongside the Notice of Appeal. 8 CFR 1003.8(a)(3). If the fee waiver request does not demonstrate an inability to pay, the appeal will not be considered properly filed, "provided the Board grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period." *Id.* Accordingly, if an alien files a fee waiver request and Notice of Appeal prior to the 10-day deadline, if the fee waiver is denied, the alien will have 15 days to pay the filing fee or correct the filing.

Comment: Commenters stated that, in some cases, the Immigration Judge will signal an intention to rule a particular way from the bench but will expand on their reasoning through a written decision that is later mailed or uploaded. Commenters cited the precedential Board decision *Matter of Iskandarani*, 29 I&N Dec. 26 (BIA 2025), which, according to commenters, held that if the Immigration Judge issues an oral decision that is later memorialized in writing, the appeal deadline clock begins to run on the date of the oral decision. Commenters recommended that, because the alien's Notice of Appeal—which will generally be their only communication with the Board—must be filed within 10 days, the filing deadline should not start to run with the issuance of the

oral decision.

Response: Commenters misinterpreted the Board's holding in *Iskandarani*, which merely held that when an Immigration Judge renders an oral decision, the appeal deadline begins on that date, regardless of any summary of the oral decision later provided to the alien. *See* 29 I&N Dec. at 28 ("An oral decision is not transformed into a written decision merely because the Immigration Judge prepares a memorandum summarizing the oral decision."). When an Immigration Judge issues an oral decision, that is the official decision of the Immigration Judge for appeal purposes. Immigration Judges may also provide the parties with a summary of the oral decision's holding, generally on an EOIR-provided template. But any accompanying summary is just that—a summary of the oral decision.

As such, this rule does not change EOIR's existing regulations governing the issuance of Immigration Judge decisions or EOIR's existing practice related to calculating when the time for an appeal begins to run. Immigration Judges may issue decisions orally or in writing. 8 CFR 1003.37(a). When issuing a decision orally, the Immigration Judge must state the decision in the presence of the parties, and "a memorandum summarizing the oral decision shall be served on the parties." *Id.* In those cases, the time in which to file an appeal is calculated "from the date of the stating of an Immigration Judge's oral decision." 8 CFR 1003.38(b). As noted by commenters, the Board has held that the beginning of the appeal period in such cases "is unaffected by the subsequent mailing of a memorandum summarizing the oral decision." *Iskandarani*, 29 I&N Dec. at 28.

The Department does not believe that the shortened appeal deadline presents concerns related to the issuance of oral decisions where aliens are represented. The alien and his or her representative will be present for the issuance of an oral decision, and representatives also have access to the hearing recording containing the oral decision

through ECAS. The Department is confident that Immigration Judges will explain the bases for their decisions with clarity sufficient for aliens to identify any alleged errors of fact or law for Board appeals. Any subsequent written memorandum summarizing the oral decision is not intended to provide separate bases for appeal, although it may provide further explanation of points raised in the oral decision that may be used in any Notice of Appeal. *See id.* (noting that the memorandum summarizing the oral decision was not a separate written decision).

The Department has considered that, in some cases, the shortened appeal deadline may be less than optimal for certain unrepresented aliens to file a Notice of Appeal within 10 days when a decision is rendered orally. But in all cases, the alien will be present when an oral decision is issued, and the Department expects that Immigration Judges will deliver decisions to unrepresented aliens in a manner they understand, and aliens may use that knowledge when preparing and submitting a Notice of Appeal, consistent with longstanding practice. Aliens will also have additional time in which to review the decision if seeking further review in Federal court.

Congress entrusted decisions related to the conduct of removal proceedings to the Attorney General's discretion. And given the unprecedented scope of the backlog of appeals pending before the Board, the shortened appeal deadline is necessary to ensure the efficient and expeditious processing of appeals; the benefit of implementing such changes outweighs any costs. *See* 91 FR 5276.

Comment: Commenters argued that two comparative 10-day appeal deadlines cited in the IFR—8 CFR 1003.6(c)(1) related to appeals of certain custody-related stays and 28 CFR 68.54(a) related to certain appeals before the Office of the Chief Administrative Hearing Officer—were not comparable to regular Board appeals because the former is only available to DHS and the latter is necessary under the relevant statutory framework.

Response: The Department cited those two EOIR provisions in the IFR to make the basic point that a 10-day appeal deadline is not unusual in EOIR administrative proceedings. *See* 91 FR 5272 (noting only that the 30-day Board appeal deadline "differs from other EOIR administrative appellate deadlines"). Separate from that point, the Department explained that a 10-day Board appeal deadline begins after an appellant's claim has already been fully considered by EOIR at the Immigration Court and was broadly intended to improve the efficient consideration of Board appeals, particularly in light of the expansion of electronic filing with EOIR. *See id.*

3. Issue Waiver in Notice of Appeal

Comment: Commenters raised concerns with the IFR's appeal-waiver language in 8 CFR 1003.38(b)(3), which states that "[a]ny issue not raised in the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) shall be deemed waived."

Commenters argued that, particularly in combination with the 10-day filing deadline, this language risks forfeiture of meritorious issues on appeal, and that the risks would be greater for certain groups. Other commenters claimed that the appeal form now requires an entire page of legal arguments as to why the appeal is being filed, which, they asserted, transforms the Notice of Appeal into a legal brief.

Response: The Department disagrees with commenters' concerns regarding the IFR's waiver language in 8 CFR 1003.38(b)(3). Pre-existing regulations limit the Board to "resolv[ing] the questions before it." *See* 8 CFR 1003.1(d)(1). To place an issue before the Board, aliens must provide the basis for their appeal for the Board to consider. *See* 8 CFR 1003.3(b) ("Statement of the basis of appeal."). Similarly, pre-existing regulatory language already requires that a notice of appeal include sufficient specificity. Under current regulations, the notice must "specifically" identify the findings of fact, the conclusions of law, or both, that are being challenged, including, if applicable, "specific" contested facts and "specific" factual and legal findings. 8 CFR 1003.3(b). These

requirements were not altered by the IFR and are well established. In short, the IFR does not change expectations or legal requirements regarding what information must be included in a Notice of Appeal and what the consequences are for omitting that information.

This rule's waiver language in 8 CFR 1003.38(b) therefore merely states the obvious: a failure to raise an issue in the Notice of Appeal necessarily waives that issue. Although a shortened appellate period might require identifying those issues more quickly, stating the basis for an appeal is a baseline prerequisite without which the Board (or any appellate body) cannot function. Moreover, well-established Board precedent already treats issues not raised on appeal as waived, *see, e.g.*, *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012), the rule merely incorporates that precedent.

Commenters appeared to obliquely express concerns that the appeal-waiver language will indirectly cause aliens to fail to exhaust their administrative remedies for purposes of a subsequent petition for review pursuant to section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1). However, those concerns are not persuasive for several reasons. First, the Board already deems issues not raised on appeal to be waived, and aliens already encounter exhaustion hurdles pursuant to section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1). The rule does not alter that dynamic, nor does it prohibit aliens from arguing that they have exhausted their administrative remedies under the statute. Second, Federal circuit courts of appeal will ultimately set the binding interpretation of section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), just as they do now. Because this provision of the rule merely codifies in regulation the status quo, the Department does not believe there is a basis for a circuit court to change its view of section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1); however, that is ultimately a question for those courts, and the Department cannot predict whether the new rule will cause them to revisit prior interpretations of that statute. The Department has merely considered the interaction between the rule and that

statutory provision and found any concerns to be unavailing. Third, administrative exhaustion is inherently a fact-specific question. As such, the Department cannot state a general position on whether section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), will bar review of an issue without reference to the specific facts of a particular case. Even general hypotheticals raised by commenters—*e.g.*, pro se aliens—resist a generalized statement due to the nearly infinite number of factual permutations among a backlog of over 3 million cases.

Furthermore, contrary to commenters' concerns, this rule does not address the Board's longstanding specificity requirements with regard to issues raised on appeal. *See* 8 CFR 1003.1(d)(2)(i)(A) (stating that the Board may summarily dismiss any appeal or portion of any appeal in any case in which "the party concerned fails to specify the reasons for the appeal on Form EOIR-26 or Form EOIR-29 (Notices of Appeal) or other document filed therewith"); 8 CFR 1003.3(b) (reiterating same).

As explained by the Ninth Circuit, "[t]he purpose of the BIA's strict specificity requirement is to ensure that the BIA is adequately apprised of the issues on appeal so that the BIA is not left to search through the record and speculate on what possible errors the [petitioner] claims." *Singh v. Gonzales*, 416 F.3d 1006, 1010 (9th Cir. 2005) (cleaned up). Thus, "when the BIA receives ample specific advice about the reasons for an appeal, the BIA can deal promptly with appeals and focus resources on nonfrivolous appeals to reach a correct resolution." *See id*.

This is a common sense understanding of the appellate process. For example, Federal courts follow the principle of party presentation, in that they "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *See United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). Similarly, the Board must be sufficiently apprised of the issues on appeal so that it can properly exercise its duties.

To be clear, this rule does not change the level of specificity required, it merely codifies the existing requirement that aliens must affirmatively raise issues on appeal to the Board or else risk waiver. In raising any relevant issues on appeal, existing specificity requirements apply. Just as before the IFR, aliens are not required to file a lengthy brief on each issue at the time the Notice of Appeal is filed. Rather, the appeal form must simply include enough specific information so that the Board can review the issues being appealed and, under this rule's procedures, determine whether to accept the appeal *en banc* for full briefing and further review. *See* Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, Sec. 6, (Sept. 2019), https://www.justice.gov/eoir/file/eoir26/dl [https://perma.cc/P3PP-7T3H] ("State in detail the reasons for this appeal."); *see also Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1012 (9th Cir. 2021) (alien must "provide meaningful guidance to the BIA by informing it of the issues contested on appeal; a generalized and conclusory statement about the proceedings before the [Immigration Judge] does not suffice") (cleaned up).

The pre-existing instructions for the Form EOIR-26 appeal form provide clear guidance on what such specificity entails: "Give specific details why you disagree with the Immigration Judge's decision. Specify the findings of fact, the conclusions of law, or both, that you are challenging. If a question of law is presented, cite supporting legal authority. If the dispute is over the findings of fact, identify the specific facts you are challenging." Form EOIR-26 Instructions, Section F (Sept. 2019), https://www.justice.gov/eoir/file/eoir26/dl [https://perma.cc/P3PP-7T3H].

4. Briefing Schedules

Comments: Commenters raised concerns regarding the IFR's briefing changes, including the simultaneous 20-day briefing schedule, the general prohibition on reply briefs, and the limitations on briefing extensions.

Commenters argued that, taken together, these changes would not leave aliens

with sufficient time to fully present their arguments nor rebut arguments made by DHS counsel, though they did not explain why DHS would not be similarly disadvantaged. They also claimed that the Department did not consider the purposes underlying prior briefing schedules.

Commenters also noted that these briefing changes would force attorneys to compress complex briefing into truncated timelines, which would be further compounded if the attorneys were taking on representation for the first time on appeal to the Board. Commenters contended that limiting extensions to only "exceptional" circumstances of the alien—and not counsel—would reduce the amount of representation on appeal. Commenters also asserted that these changes would be particularly challenging for pro se and detained aliens, as well as UACs. Commenters suggested that the IFR not taking into account workload concerns for purposes of extending briefing schedules would impose difficulties on attorneys. Overall, commenters posited that the result of these briefing provisions would be to negatively impact the Board's ability to produce well-reasoned decisions.

Commenters argued that sequential briefing and reply briefs would benefit the Board under the summary dismissal provisions of this rule, since the rule focuses Board resources on cases with novel or complex legal issues. Commenters suggested that if the Department was to move forward with simultaneous briefing in all cases, reply briefs would serve a more important purpose than they did previously. Commenters also stated that the Department did not acknowledge that reply briefs serve an important role before other appellate bodies, including Federal courts. Commenters claimed the tradeoff in quality for expediency is not worthwhile and would lead to erroneous decision-making in cases the Board does decide to adjudicate.

Finally, commenters noted possible alternatives to these briefing changes, including increasing EOIR staffing levels and expanding the use of motions to reopen or

reconsider before an Immigration Judge.

Response: The Department has considered commenters' concerns regarding the IFR's briefing schedule changes but does not believe that any stated concerns outweigh the rule's benefits.

First, the Board has long used simultaneous briefing for detained cases without incident. *See* Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 FR 54878, 54904 (Aug. 26, 2002) (implementation of simultaneous briefing for detained aliens). Moreover, since the simultaneous briefing requirement of the IFR went into effect in March 2026, there has been no notable change in the quality of briefs or the handling of cases. Of course, in reviewing the comments on this rule, the Department understands that an attorney would wish to request as much time as possible to file and respond to briefs. But, as the *Amica* court noted in litigation over the IFR, "Plaintiffs offer no evidence . . . that [the pre-IFR simultaneous briefing requirement in detained cases has] proven unworkable." 822 F. Supp. 3d at 167. Similarly, since March 2026, there is scant evidence that simultaneous briefing has proven unworkable. The Department agrees with the *Amica* court: the Board has longstanding expertise in adjudicating administrative appeals and has found simultaneous briefing sufficient to address the relevant issues on appeal. As explained in the IFR, simultaneous briefing "provides both parties sufficient opportunity to address any issues needed to be resolved on appeal or to identify any reasons for opposing the appeal, while balancing the need to expeditiously resolve the case." 91 FR 5273.

As to reply briefs, the Board retains the discretion to accept further briefing as needed. *See* 8 CFR 1003.3(c). Thus, under this rule, once the Board has accepted a case for full briefing and further review, the Board can review the evidence and briefs provided and determine whether the facts of the particular case warrant additional briefing. Allowing reply briefs as standard practice merely delays adjudication in the

many cases where the Board does not require further argument. Moreover, as with simultaneous briefing, the general prohibition on reply briefs has not proven unworkable or problematic since it went into effect in March 2026.

Third, limitations on briefing extensions are necessary to ensure that the Board efficiently perfects the record so that Board members can begin adjudicating appeals within the prescribed timelines. *See generally* 8 CFR 1003.1(e)(8) (Board adjudication timeline requirements). Notwithstanding EOIR's longstanding policy that briefing extensions are disfavored, under the prior "good cause" standard, *see, e.g.*, 8 CFR 1003.3(c)(1) (2002) ("The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown."), attorneys often came to feel entitled to a briefing extension as a matter of course, even when the basis was entirely foreseeable and raised only at the last minute. In the IFR, the Department tightened the standard to ensure that briefing extensions are provided only when truly necessary. The Department also believes that prohibiting "workload concerns" as a reason for an extension is consistent with both common sense and an attorney's responsibility not to take on more work than the attorney can reasonably handle. *See, e.g.*, 8 CFR 1003.102(q)(1) (stating that a "practitioner's workload must be controlled and managed so that each matter can be handled competently"); *see also* ABA Model Rules of Professional Responsibility, Rule 1.3, comment 2 ("A lawyer's work load must be controlled so that each matter can be handled competently."). Indeed, in the Board's experience, many attorneys routinely seek briefing extensions citing workload concerns, suggesting an alarming pattern of problematic behavior. A de facto entitlement to a briefing extension could inadvertently encourage practitioners to take on more cases than they can handle and violate their professional responsibility obligations.

The Department also clarifies a potential point of confusion: under this rule, the briefing schedule only begins once the Board has determined not to summarily dismiss an

appeal and instead has accepted it for full briefing and further review. For example, in a case where the Board accepts an appeal for such briefing and review and transcripts are ordered, attorneys will often have a significant amount of time to prepare a brief. As such, the Department does not share commenters' concerns that a stricter standard for briefing extensions will result in fewer represented aliens or lower-quality briefing. Further, the Department has not been presented with evidence that such concerns have materialized since March 2026 when that portion of the IFR went into effect.

Taken together, the IFR's briefing provisions fully allow the Board to make well-informed and well-reasoned decisions. And, despite commenters' claims to the contrary, in no way do these procedures rise to the level of a due process violation. *See, e.g.*, *Gutierrez v. Holder*, 662 F.3d 1083, 1091 (9th Cir. 2011) (explaining that, to violate due process, procedures must be "so fundamentally unfair that the alien was prevented from reasonably presenting his case"); *Singh v. Ashcroft*, 362 F.3d 1164, 1168 (9th Cir. 2004) (finding due process violation where alien was prevented from filing a brief after Board mailed briefing schedule to wrong address).

Under these changes, aliens fully retain their ability to file a brief in cases accepted for full briefing and further consideration by the Board, thus satisfying their opportunity to raise alleged issues with the Immigration Judge's decision. Moreover, due process does not require reply briefs. Initial briefs are intended to raise any alleged issues at the Immigration Judge level and provide the parties with the opportunity to be heard; the Board can choose to request further briefing if additional clarification is needed. And simultaneous briefing in detained cases has been in effect at the Board for decades without issue—and no court, to the Department's knowledge, has deemed simultaneous briefing in such cases a due process violation.

Separately, the Department does not believe commenters' proposed alternatives would be viable substitutes for the rule's briefing-schedule changes. Although EOIR is

increasing its staffing, including administrative support staff at the Board, ultimately, hiring is controlled by the Congressional budget process and is well beyond the scope of this rule. Additionally, the increased usage of motions practice before the Immigration Courts would not impact the efficiency of the Board, which is the subject of this rule.

Lastly, in response to commenters' claims that the "exceptional circumstances" briefing extension language only applies to aliens and not their counsel, the Department reiterates for clarity this rule's language that workload concerns, travel plans, or similar concerns within the control of either party "or their representatives" do not constitute exceptional circumstances. 8 CFR 1003.3(c)(1). This language is clear that exceptional circumstances may therefore apply to counsel but must still meet the requisite exceptionality as described in section 240(e)(1) of the Act, 8 U.S.C. 1229a(e)(1).

5. Transcription Procedures

Comment: Some commenters raised concerns about the IFR's elimination of Immigration Judge transcript review in 8 CFR 1003.5. Commenters asserted that removing the ability of Immigration Judges to review hearing transcripts for Board appeals will leave errors uncorrected on the record and heighten the risk of mistakes in the record. Commenters also contended that this change would place a burden on aliens to request copies of the Digital Audio Recordings ("DAR") of their proceedings. As a result, commenters argued, this would lead to erroneous Board decisions and, in turn, incorrect removal orders.

Response: The Department disagrees regarding the effects of eliminating Immigration Judge transcript review. Immigration Judge transcript review in EOIR's regulations is a vestige of outdated technology at the Immigration Courts from a time when hearings were manually recorded on tapes. *See* 67 FR 54878–901 (2002 rulemaking adding Immigration Judge transcript review timelines). Now, EOIR's courtrooms use advanced digital recording technology, which produces significantly

better recordings and lessens the potential for mistakes in subsequent transcription.[30]

And, to the extent there are potential mistakes in any transcriptions, there are longstanding procedures for addressing such mistakes, rather than having busy Immigration Judges take time away from their dockets to pore over transcripts for typographical errors. *See* EOIR Policy Manual, pt. III, ch. 3.2(f)(3) (Mar. 18, 2026), https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-3-2 [https://perma.cc/HWM3-9QDP]. Obvious defects should be brought to the attention of the Board's Clerk's Office. *Id.* Where the Clerk's Office does not or cannot remedy the defects and the party believes the defect to be significant to the party's argument or the adjudication of the appeal, the party should identify the defect and argue its significance with specificity in the appeal brief for the Board to consider. *Id.* Further, there is no practical purpose to Immigration Judge transcription review. Immigration Judges cannot make substantive changes to transcripts without potentially violating due process, and requiring Immigration Judges to review transcripts solely to correct typographical errors is a waste of adjudicatory resources.

Additionally, commenters' argument regarding the necessity of requesting a copy of the DAR is unrelated to the transcription-review change described above. As it relates to transcription, this rule makes only a small modification to remove Immigration Judge transcription review during the transcript production process at the Board. Once produced, that transcript is made available to the parties and any transcription errors can then be addressed by the parties. None of this happens at the initial Notice of Appeal stage, so commenters' arguments regarding the availability of a copy of the DAR at that point are irrelevant to this rule.

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[30] Press Release, *EOIR Completes Digital Audio Recording Implementation* (Sept. 2, 2010), https://www.justice.gov/sites/ default/files/pages/attachments/2015/ 08/20/eoircompletesdar09022010.pdf [https://perma.cc/EMK4-QSY9] ("This new system improves the quality of recordings and transcriptions through the use of more microphones throughout each courtroom.").

Finally, the Department is making a minor, technical edit to 8 CFR 1003.1(e)(3) to avoid confusion regarding the production of transcripts. That section currently states that "[i]n any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceeding and transcript, and the issuance of a briefing schedule, as appropriate." There may be confusion surrounding the concluding phrase "as appropriate" and whether it modifies "transcript," leaving the incorrect impression that the provision requires the production of a transcript in all cases. However, the Board has for many years considered several types of appeals that do not have transcripts. Thus, the Department is making a minor edit to 8 CFR 1003.1(e)(3) to make it clear that the Board will produce a transcript only in cases not subject to summary dismissal and where a transcript is otherwise warranted, which excludes those where the Board has historically not created a transcript.

6. Other Procedural Changes

Comment: A few commenters disagreed with the IFR's changes to remove the Chief Appellate Immigration Judge's ability to extend adjudication deadlines or hold certain cases. Commenters stated that this change eliminates flexibility, particularly in managing complex or time-sensitive appeals. Commenters also argued that removing the ability to hold a case pending resolution of a Federal court case, including a Supreme Court case, would create inefficiencies, stating that aliens would effectively have to file a motion to reopen or an additional appeal after the new controlling decision is issued.

Separately, another commenter raised concerns with the IFR's harmonization of the 90- and 180-day Board adjudication timelines to both start from when the record is complete. The commenter stated that these timelines will prolong the backlog because this rule only applies prospectively to new cases. The commenter also claimed that further assignment of cases not meeting the deadlines to the Chief Appellate Immigration Judge or Deputy Chief Appellate Immigration Judge will only lead to rushed

decisionmaking.

Response: This rule was promulgated to address significant backlogs facing the Board, with a particular aim of reducing any delays in adjudicating cases before the Board. One means to that end is reducing rarely used mechanisms that provide for delays in certain circumstances. Fundamentally, in light of the significant backlog facing the Board, appeals must be adjudicated within the timelines provided, *see* 8 CFR 1003.1(e)(8), or else the Board will never be able to gain control of its caseload. Moreover, in removing the hold provision, the Department recognizes a simple maxim—cases ready to be adjudicated should be adjudicated—and not delayed pending some uncertain outside action beyond the agency's control. Otherwise, as the Department learned from the past use of administrative closure, for example, delays can quickly compound into crises. *See* EOIR, PM 25-29, *Cancellation of Director's Memorandum 22-03* (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl?inline [https://perma.cc/SH9J-CKXL] ("Administrative closure merely 'kicks the can down the road,' increasing the overall backlog while leaving ripple effects—*e.g.* multiple continuances and lost adjudication time—in its wake, which further exacerbate the backlog.").

With regard to the harmonization of the adjudication timelines, the commenter misread the effect of this rule. The adjudication timelines and further referral processes already existed in EOIR's regulations. For consistency, this rule merely modifies the date on which the record is deemed complete for these adjudication timelines to begin running.

Finally, as with other changes made by the IFR that were allowed to go into effect in March 2026, these changes have not created any notable issues or concerns with Board procedures or case processing.

7. Terminology

Comment: Commenters disagreed with the IFR's replacement of "noncitizen" and "unaccompanied child" with "alien" and "unaccompanied alien child," respectively. Commenters claimed the use of the term "alien" is pejorative and is a rhetorical move towards more dehumanizing language as compared to neutral, immigration-status focused words like "noncitizen."

Response: The terms "noncitizen" and "unaccompanied child" are inconsistent with the statutory language. "Alien" is the statutory term defined in the INA and uniformly used throughout title 8 of the United States Code. *See generally* INA, 8 U.S.C. 1101 *et seq*. (using the term "alien," not "noncitizen," when referring to persons who are not citizens or nationals of the United States). Similarly, the term "unaccompanied alien child" has a specific statutory definition, *see* 6 U.S.C. 279(g)(2), that is not fully captured by the term "unaccompanied child." Retaining the terms "noncitizen" and "unaccompanied child" would be inconsistent even within EOIR's regulations, as, without amendment, chapter V of title 8 of the CFR would sometimes refer to aliens as "noncitizens" and other times as "aliens." *See generally* 8 CFR Ch. V. The terms "noncitizen" and "unaccompanied child" are also inconsistent with DHS regulations, which continue to use the term "alien." *See generally* 8 CFR Ch. I. Further exacerbating the risk of confusion, the term "noncitizen" is not a precise synonym for the term "alien." *See* EOIR PM 25-07, *Cancellation of Policy Memorandum 21-27*, 4 & n.4 (Jan. 29, 2025), https://www.justice.gov/eoir/media/1387446/dl?inline [https://perma.cc/HU2H-V2TF]. The INA defines the term "alien" to mean a person who is neither a citizen nor a national of the United States. INA 101(a)(3), 8 U.S.C. 1101(a)(3). The term "noncitizen" does not recognize the full scope of people who are "aliens" because the term "noncitizen" includes "national[s] of the United States," who are individuals "who, though not [ ] citizen[s] of the United States, owe[] permanent allegiance to the United States." INA 101(a)(22), 8 U.S.C. 1101(a)(22). Thus, a plain-language understanding of

the term "noncitizen" is incongruous with its usage in the CFR prior to this amendment.

Indeed, caselaw shows that these imprecise terms do not in fact have a well-settled meaning, and their use risks creating confusion through imprecision, in addition to improperly suggesting that longstanding and well-defined statutory terms are imbued with pejorative meaning. *See Khan* v. *Garland*, 69 F.4th 265, 272 (5th Cir. 2023) (Ho, J., concurring) ("[I]n the context of immigration law, we use 'alien,' not to disparage one's character—or to denote one's planetary origin—but to describe one's legal status."). By contrast, the term "alien" has a long-established usage and settled understanding. *Id.* (describing the term "alien" as "a centuries-old legal term found in countless judicial decisions" dating back to the 1800s). The legal status of alienage is fundamental to EOIR's authority to exercise jurisdiction over an individual and is at the core of all proceedings, including findings of removability and orders of removal, as well as forms of eligibility for relief and protection from removal.

As Judge Bea, himself a naturalized citizen, stated in his concurrence in *Avilez v. Garland*: "These distinctions matter. Words matter. Our federal immigration statutes concern themselves with aliens. This word is not a pejorative nor an insult." 69 F.4th 525, 544 (9th Cir. 2023). Judge Bea went on to state that "when used in its statutory context," the world "alien" "admits of its statutory definition, not those definitions with negative connotations that can be plucked at will from the dictionary." *Id.*

Regulations should reflect the statutes they implement and apply, so using the same terms avoids any confusion over the relevant populations being addressed by regulation. Any suggestions that such changes are the result of animus are unfounded. Any concerns about that language are more appropriately directed to Congress.

D. Effects of Rule

1. Impacts to Federal Courts

Comment: Commenters asserted that the IFR's changes will, in effect, shift a large

portion of the Board's work and the backlog of pending appeals to the Federal courts as the only remaining mechanism available to aliens to substantively challenge an Immigration Judge's decision. Commenters stated that this shift will result in increased habeas petitions and remands back to the Board, thus inundating the Federal court system with more PFRs and increasing the likelihood of judicial error. Commenters argued that this shift violates due process, the INA, and the Trafficking Victims Protection Reauthorization Act ("TVPRA"). Commenters also posited that this rule would shield agencies from the Equal Access to Justice Act ("EAJA") by accelerating removals and creating defective records that would inhibit successful challenges to unlawful detention and prevent the recovery of attorneys' fees.

Commenters anticipated, without citing any evidence, that aliens whose appeals are summarily dismissed will file PFRs at a higher rate than those whose appeals are dismissed on the merits.

Commenters argued that an increased immigration caseload before the Federal courts would ultimately result in the less efficient resolution of cases because the Federal courts would be overwhelmed by the volume of the cases coming before them, which could total in the millions of cases. Specifically, commenters explained that without transcripts, Federal courts may lack the factual record necessary to evaluate credibility findings, evidentiary rulings, or the basis for the Immigration Judge's decision, thus generating delays and procedural complications.

Commenters also asserted an increase in PFRs with Federal courts would require the Department to assign more attorneys, or attorneys outside of the Office of Immigration Litigation, to handle the surge in PFRs. Concomitantly, commenters alleged that this surge in PFRs would be accompanied by a significant reduction in the number of attorneys available to represent aliens on appeal because appearances before Federal courts are subject to specific requirements that are not applicable to practice before

EOIR.

Response: As an initial matter, the Department notes that Congress created a statutory scheme for Federal court review of removal orders, *see* INA 242, 8 U.S.C. 1252, and to the extent that commenters have concerns about the impacts to Federal courts within that statutory scheme, including the amount of time to consider such appeals, docketing practices before the Federal courts, development of the record before the Federal courts, or decisions issued by the Federal courts, such concerns are both wholly speculative and outside of the scope of this rulemaking.

Commenters' views about a potential surge in Federal court PFRs are illogical and unfounded. Although the initial rate at which PFRs are filed may temporarily increase due to this rule, that rate would stabilize over time as courts and practitioners became accustomed to the new procedures. More importantly, the overall number of PFRs over time would not be expected to change, and commenters did not advance a persuasive argument as to why it should. As the IFR explained, even if all appeals were adjudicated with full briefing, there would be two general outcomes: (1) some cases would be decided in the alien's favor, in which case no PFR would be filed because Board decisions in the alien's favor cannot be reviewed by Federal courts; and (2) some cases would be decided adversely to the alien, in which case an alien might file a PFR. *See* 91 FR 5272 n.14. The summary dismissal provisions of this rule do not change those two expected outcomes. In cases where the Board summarily dismisses an appeal where the Immigration Judge's decision was erroneously adverse to the alien, the Board's decision not to further consider the appeal would mean that the alien might file a PFR to contest the adverse agency action, just as they could have prior to the IFR after an adverse Board decision. Meanwhile, in cases where the Board summarily dismisses an Immigration Judge's decision that was erroneously favorable to the alien and adverse to DHS, the failure of the Board to correct the decision would mean no PFR would be filed,

because, as just noted, there is no Federal court review of cases erroneously decided in the alien's favor. Thus, although it is possible that this rule might change the timing of PFRs, the Department anticipates that there would be minimal to no impact on the volume of PFRs over time.

Moreover, even if there were an increase in PFRs, it would be more appropriately viewed as a byproduct of this rule's increasing efficiencies and should not be considered a negative result. Specifically, because the Department expects EOIR to render final administrative adjudications more swiftly due to this rule's provisions, aliens will much more efficiently be able to raise any available challenges to the agency determination for resolution before the Federal courts. Specific concerns related to the Department's staffing, including in the Office of Immigration Litigation, are outside the scope of this rulemaking, but the Department notes it has considered the impact of this rule's changes on Department resources necessary to handle immigration matters in Federal court. Likewise, the Department has similarly considered any impacts to the availability of private counsel and finds any concerns regarding potential unavailability at the PFR stage wholly speculative. Additionally, any resource constraints faced by the Federal courts in adjudicating cases within their Congressionally mandated jurisdiction, *see* INA 242, 8 U.S.C. 1252, are both outside the scope of this rulemaking and outside the control of the Department.

With respect to commenters' concerns about potential impacts to EOIR, such as predictions of dramatic increases in remands to the agency, these concerns are both speculative and unsupported by current operations. As stated in the IFR, on substantive review the Board generally agrees with Immigration Judge decisions in the overwhelming majority of cases—a conclusion that is unchallenged by commenters. Thus, even before this rule, Federal courts were already often considering the Immigration Judge's reasoning when considering PFRs. Accordingly, the Department

does not expect there to be a dramatic shift in the number of cases remanded to the agency where the Board summarily dismisses an appeal, similarly leaving the Immigration Judge's decision undisturbed. And even if there were to be a modest increase in the number of remands to the Board, the IFR's fundamental changes to make the appellate process more efficient outweigh the negatives of any such increase.

Comment: Commenters also expressed concern with the sufficiency of the record to be reviewed by the Federal courts. Specifically, commenters stated that the Federal courts would largely conduct the first substantive appellate review of cases without the benefit of prior briefing by the parties or legal analysis by the Board, which would deprive the Federal courts of the agency's analysis that, in commenters' view, is needed to undertake meaningful judicial review.

According to commenters, because the Board creates transcripts only in cases that are not summarily dismissed, the administrative record received by the Federal courts will not contain a transcript of the underlying proceedings or the Immigration Judge's oral decision, thereby preventing the appellate court from reviewing testimony or the basis for the order of removal. Lastly, commenters argued that the rulemaking should explain how transcripts and oral decisions will be provided after an alien files a PFR.

Response: The Department will comply with all statutory requirements for submitting the appellate record for cases being considered by the Federal courts. *See, e.g.*, INA 242(b)(2), 8 U.S.C. 1252(b)(2); Fed. R. App. P. 17(b). It will also provide transcripts in all cases where it otherwise would have provided a transcript if the Board had decided the case under prior procedures. The specific transcription process, including contract services and the provision of transcripts internally to submit the administrative record, are beyond the scope of this rulemaking, and the Department declines to specify them.

Further, the Department notes that the statute also sets forth requirements for

parties before the Federal courts, such as the required submission of briefs. *See* INA 242(b)(3)(C), 8 U.S.C. 1252(b)(3)(C); *see also* Fed. R. App. P. 28, 31 (setting briefing requirements). Thus, irrespective of whether briefs have been submitted to the Board, the Federal courts will have the benefit of briefing for all issues subject to Federal court review. Moreover, any relevant agency record will be available for purposes of review before the Federal courts and, to the extent that aliens have concerns over the adequacy of the record, such arguments can be directed to the Federal courts, which can hold the case for the filing of the complete record or remand where the record is incorrect or incomplete.

Comment: Commenters posited that aliens could bypass the Board altogether and file a PFR directly with a Federal court, as the INA requires aliens to exhaust only administrative remedies that are available as of right, and not contingent on permission or discretion. *See Santos-Zacaria*, 598 U.S. at 424. Thus, according to commenters, the Federal courts would become the default venue for review, flooding the Federal courts with PFRs and stays of removal, and resulting in extensive backlogs.

Response: Any concerns regarding interpretations of the INA's exhaustion requirements are properly raised before the Federal courts, to whom such requirements apply. *See* INA 242(d)(1), 8 U.S.C. 1252(d)(1). As the Department explained in the IFR, when an appeal is summarily dismissed under the provisions added by this rule, the Department intends that the Immigration Judge's decision become the final agency decision for purposes of Federal court review, unless the Attorney General exercises discretion to review under 8 CFR 1003.1(h). In any PFR of a final removal order under section 242(a)(1) of the Act, 8 U.S.C. 1252(a)(1), following a summary dismissal by the Board, the Department expects that the Federal courts would review the substance of the Immigration Judge's decision as the basis for the final order. Thus, this rule does not change any existing understanding regarding when a removal order becomes final or

when a PFR must be filed.

Comment: Some commenters suggested possible alternatives, arguing, for example, that if the Federal courts are the appropriate venue to adjudicate appeals, then the entirety of immigration proceedings should be removed from the control of the Department. Commenters also suggested that if the Department eliminated the Board's jurisdiction over appeals of motions to reopen and reconsider, aliens would be able to file a PFR of such decisions directly with the Federal courts, which would result in only a comparatively minimal increase in PFRs.

Response: Commenters' recommendations are beyond the scope of this rulemaking and the Department's authority. Congress has provided for a system of administrative hearings for immigration cases, and the Department cannot change that system. *See generally* INA 240, 8 U.S.C. 1229a (establishing administrative procedures for removal proceedings); *cf. Strengthening and Reforming America's Immigration Court System: Hearing before the Subcomm. on Border Sec. & Immigration of the S. Comm. on the Judiciary,* 115th Cong. 1 (2018) (written response to Questions for the Record of James McHenry, Director, Executive Office for Immigration Review) ("The financial costs and logistical hurdles to implementing an Article I immigration court system would be monumental and would likely delay pending cases even further."). Because commenters' claims are unfounded in law or practice and well beyond the scope of this rulemaking, the Department declines to make any revisions to the rule on the basis of such claims.

Commenters' recommendations to remove Board jurisdiction over appeals of Immigration Judge denials of motions to reopen or reconsider are outside of the scope of this rulemaking, which addresses the procedures for filing and consideration of appeals before the Board and does not address the Board's jurisdiction.

2. Harm to Specific Populations

Comments: Commenters asserted that the Department did not consider the IFR's impact on specific vulnerable populations, including pro se aliens; detained aliens; indigent aliens; alien children, including UACs, those eligible for Special Immigrant Juvenile visas ("SIJ"), and U.S. citizen children with at least one parent without legal immigration status; aliens with mental illnesses or disabilities; aliens at risk of gender-based violence or human trafficking; non-English speaking or low-literacy aliens; communities of color; asylum-seekers; and pro bono organizations or providers. In general, commenters argued that the IFR would disproportionately harm these populations by denying them access to legal counsel, meaningful review of their proceedings, and a reasonable opportunity to fully assert their claims on appeal.

First, commenters stated that the Department did not consider the impact of the IFR's shorter deadlines, lack of guaranteed merits review, and limited briefing opportunities on pro se aliens. Commenters additionally highlighted the difficulty of accessing the Federal courts for a pro se alien, who, according to commenters, would be unable to navigate the complex and stringent procedural requirements of filing a PFR. Commenters claimed that due to the lack of automatic stays of removal in Federal court, pro se aliens will struggle to successfully seek a stay of removal on appeal. Commenters also contested the IFR's assumption that pro se aliens have access to its electronic filing system to file a Notice of Appeal, stating that only attorneys and Accredited Representatives can access ECAS and that EOIR is still phasing enrollment for the analogous Respondent Access Portal, so pro se aliens are only eligible to register if they receive an official notice of eligibility by mail. Relatedly, commenters noted that the Form EOIR-26, Notice of Appeal, is not available through the Respondent Access Portal. Commenters also asserted that, even for those aliens who have enrolled in the Respondent Access Portal before the Immigration Judge issues the decision, the Respondent Access Portal does not grant unrepresented aliens access to the DAR of the

proceedings.

Second, commenters stated that detained aliens will be adversely and disproportionately impacted by the IFR and the shortened appeal timeline. Specifically, commenters argued that detained appellants may be unable to, or severely limited in, timely appealing an Immigration Judge decision due to restrictions in accessing counsel, phones, mail, legal libraries, and writing materials, all of which could stifle the filing of timely and legally sufficient Notices of Appeal. Commenters claimed that detained respondents are subject to pervasive technological and communications issues, including expensive and unreliable telephone calls to discuss legal matters, lack of access to email and electronic messaging, barriers to in-person visits, and delays in mail related to their legal proceedings, thus interfering with their timely receipt of notice of an Immigration Judge's decision and their ability to file their Notice of Appeal or conduct legal research to file briefs.

Third, commenters stated that indigent aliens with limited financial resources will be unable to procure the financial support necessary to afford filing fees and representation within the shortened appeal period proposed by the IFR, particularly in light of the recently increased cost of filing appeals, and may lack computers for electronic record review or filing. Commenters asserted that the combination of high filing fees, shortened deadlines, and representation costs creates layered financial barriers that undermine meaningful access to appellate review for any aliens, but especially indigent aliens.

Fourth, commenters argued that the IFR will negatively impact children. Specifically, commenters stated that the IFR will significantly reduce UACs' and alien children's ability to secure counsel in time or to sufficiently represent themselves before the Board. Commenters added that the IFR creates a confusing two-tiered system for appeal windows that is compounded by the statutory protections in place for UACs and

alien child asylum seekers and ignores the heightened risk of errors in cases with UACs and alien children. Commenters generally stated that UACs and alien children lack the developmental capacity, legal knowledge, financial resources, and practical ability to navigate the changes delineated in the IFR.

Commenters further claimed that the IFR will adversely impact U.S. citizen children with at least one parent without immigration status and children eligible for SIJ visas. Commenters asserted that, due to the increased removals of aliens as a result of the IFR, U.S. citizen children with at least one parent will suffer mental health and long-term developmental impacts "as they fear one or both parents could be arrested, detained, or deported." Further, such U.S. citizen children, according to commenters, also risk being suddenly placed in State child welfare systems if their caregivers are detained, further exacerbating these issues. Additionally, commenters claimed that increased instances of family separation due to the IFR will prevent children eligible for SIJ visas from "seeking protection from abuse, abandonment, or neglect" if the caregiver whose care they are living under is ordered removed.

Fifth, commenters asserted that aliens with mental illnesses or disabilities and aliens dealing with trauma-related difficulties will struggle to meet tighter appeal deadlines and identify issues on appeal due to their diminished capacity and lack of legal sophistication.

Sixth, commenters contended that this rule would disproportionately impact low-literacy and non-English-speaking aliens. Commenters posited that, in addition to completing the requirements for appeal, aliens who do not speak or read in English must also obtain translations or interpretation of the Immigration Judge's decision to understand the status of their case and the options available to them, which would be impossible to do within the IFR's appeal timeframe. Commenters noted that aliens must also translate their claims to complete the Form EOIR-26, Notice of Appeal, which is

only offered in English and must be filled out in English. Commenters claimed that aliens who speak rare languages face additional barriers and will not have time to access interpretation or translation of documents under the IFR.

Seventh, commenters generally asserted that the IFR would negatively impact communities of color, leading to greater racial and economic disparities and undermining access to justice. One commenter claimed that the IFR would disproportionately impact Southeast Asians, who are uniquely situated within the immigration enforcement system due to the intersection of forced displacements, resettlement conditions, and criminalization. That commenter argued that the IFR will accelerate deportations of Southeast Asians by reducing critical safeguards against legal error.

Eighth, commenters argued that the IFR will negatively impact asylum seekers due to limitations on appeals resulting in the removal of individuals eligible for asylum without meaningful appellate oversight. Some commenters claimed that asylum seekers would lack time to gather evidence and build their cases on appeal. Commenters worried that the two distinct deadlines for asylum appeals will cause confusion for asylum seekers already navigating a complex system. Specifically, commenters emphasized that the IFR is silent as to whether aliens will be provided with notice of which deadline applies to their asylum appeal. Some commenters noted that asylum-seeking alien children will lack an opportunity for meaningful review of their cases and the opportunity to challenge legal error when their applications are denied based on ACA grounds, the one-year filing bar, or other application bars because ten days is an insufficient amount of time for a child to prepare a claim or find an attorney.

Lastly, commenters stated that organizations that serve pro se and indigent aliens are already strained, and that this rule will diminish their capacity to effectively and ethically represent clients by creating a conflict between procedural compliance and ethical duties. Commenters further argued that practice before the Federal courts is

extremely different from practice before EOIR and few organizations have sufficient staff admitted to the bars of Federal courts of appeals to handle PFRs.

With regard to possible alternatives to reduce the impact on the populations noted above, some commenters suggested incorporating safeguards into the IFR, including automatic extensions for detained aliens and acceptance of a "short form protective" Notice of Appeal followed by a supplemental statement of issues, in recognition of the significant logistical barriers to communicating with counsel, reviewing records, and securing required signatures.

Response: The Department has considered the impact of the rule on all of the populations raised by commenters and has thoroughly reviewed the concerns raised. In general, the commenters' concerns relate to the hypothetical experiences of individuals in unusual, isolated circumstances, or policy disagreements that already exist under the current regulations. The commenters' concerns about these hypothetical scenarios and differing policy views are not persuasive. Furthermore, the Department has concluded that even if the concerns raised are factually accurate and accurately reflect the law and practice, those concerns—both singularly and cumulatively—are nonetheless outweighed by the salutary efficiency benefits of the rule.

The agency recognizes that no rule can cover every single possible scenario regarding an alien population currently in immigration proceedings of approximately 3.5 million, each of whom is differently situated in terms of background, education level, immigration status, English proficiency, personal characteristics, sophistication, representation status or desire for representation, and availability of relief. Many of these permutations have been raised by commenters, and there will inevitably be others, too. However, the potential existence of unique cases, which can be addressed through other means on a case-by-case basis, is insufficient to outweigh the efficiency benefits generated by this rule. In short, the agency has considered all of the commenters'

concerns and acknowledges that there may be individual cases in which commenters' concerns are validated; however, as a policy matter, those concerns are outweighed by the benefits of the rule.

This rule is intended to streamline administrative appellate review by the Board and will benefit aliens, including particularly vulnerable groups, by removing obstacles to timely adjudications. *See* 91 FR 5270. Moreover, this rule does not distinguish between individuals based on race, nationality, ethnicity, or any other protected characteristic. As detailed in the IFR, the Department is changing the regulations to provide the Board with more flexibility in reviewing appeals, allowing the Board to focus its limited resources on addressing the backlog of pending appeals and, going forward, ensure that aliens benefit from efficient adjudication of appeals.

In doing so, the Department considered the impact that the IFR would have on specific populations, including those highlighted by commenters above. *See* 91 FR 5270 n.9–10; *id.* at 5272 n.16; *id.* at 5273. The Department considered the potential effects of the IFR's changes, including on the populations mentioned by commenters, but ultimately determined that the changes would provide significant benefits that outweigh the potential costs. *See* 91 FR 5276. The Department discusses the impact on those populations below; for a more detailed discussion of the specific provisions referenced by commenters and relevant due process and statutory concerns, please see Section III.C of this preamble.

The Department recognizes that pro se aliens can face difficulties while navigating the immigration system, as compared to those with counsel. *See* 91 FR 5272 n.16. These difficulties are to be expected with respect to any unrepresented individual in a legal setting. As a general matter, the Department notes the statutory right to self-funded counsel, *see* INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A), and the ability to seek

pro bono legal counsel.[31] The Department also notes that many aliens voluntarily choose to forgo counsel for personal reasons and that commenters did not explain why those who deliberately choose to proceed without counsel should receive special solicitude.

The IFR explicitly considered the impact on unrepresented aliens and their access to counsel. *See* 91 FR 5272 n.16. As explained in Section III.C of this preamble, the rule is entirely focused on the administrative appellate process and does not change any alien's right or ability to obtain or confer with counsel when initially placed into removal proceedings or at any other point in time. And, in fact, the Department notes that a clear majority of aliens appearing before the Board have representation. For those who do not, various regulations implement an alien's right to self-funded counsel and to seek pro bono counsel by requiring Immigration Judges to advise aliens of that right and the availability of pro bono legal services. *See* 8 CFR 1240.10(a)(1), (a)(2); *see also* 8 CFR 1003.61(b) (requiring the Director of EOIR to maintain the List of Pro Bono Legal Service Providers and update it not less than quarterly). The Department notes that aliens are entitled by statute to only 10 days to seek counsel before their case may proceed at the trial level, which mirrors the IFR's 10-day appeal window. *See* INA 239(b)(1), 8 U.S.C. 1229(b)(1).

Furthermore, pro se aliens have the ability to request continuances to obtain counsel while in proceedings. Additionally, a pro se alien unable to obtain counsel prior to the deadline for filing a Notice of Appeal will have additional time to seek counsel if the Board accepts the appeal for consideration with briefing prior to filing a PFR with the Federal courts. *See* INA 242(b)(1), 8 U.S.C. 1252(b)(1). The Department, therefore, continues to anticipate that the rule would have any potential impact only on the relatively small number of pro se aliens who may not be able to find legal counsel, or

[31] *See, e.g.*, EOIR, *PM 21–08*, *Pro Bono Legal Services* (Dec. 10, 2020), https://www.justice.gov/eoir/book/file/1446651/download [https://perma.cc/U6ZW-FX8U].

secure limited document assistance, after diligent attempts to do so, in time to file a Notice of Appeal. Commenters did not provide evidence that this population of pro se aliens would be especially larger than the current number of unrepresented aliens before the Board,[32] and having considered that impact, the Department finds it is outweighed by the efficiency benefits associated with the rule.

Separately, the Department finds that commenters were speculating as to the impact that the rule's provisions will have on pro se aliens' ability to adequately file a Notice of Appeal. Functionally, the change in the appeal deadline implemented by this rule is 20 fewer days to seek counsel in proceedings that often have taken years to complete. Nor are the filing or briefing deadlines impediments to effective representation. There is no reason that pro se aliens should be unable to file an adequate and timely Notice of Appeal identifying the relevant issues to be considered on appeal with the requisite specificity—just as pro se aliens do under the current regime. Contrary to commenters' characterizations, there is no change in the IFR requiring that issues must be raised with a high level of exactitude. Rather, the Notice of Appeal must simply include enough specific information that the Board can review the issues being appealed and, under this rule's procedures, determine whether to accept the appeal for further review with briefing. *See* Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, Sec. 6, (Sept. 2019), https://www.justice.gov/eoir/file/eoir26/dl [https://perma.cc/P3PP-7T3H] ("State in detail the reasons for this appeal."); *see also Nolasco-Amaya*, 14 F.4th at 1012 (an alien must "provide meaningful guidance to the BIA by informing it of the issues contested on appeal; a generalized and conclusory statement about the proceedings before the [Immigration Judge] does not suffice") (cleaned up).

[32] *See generally* EOIR, *Current Representation Rates* (Nov. 18, 2025), https://www.justice.gov/eoir/media/1344931/dl?inline [https://perma.cc/QC5J-3DD6].

With regard to commenters' concerns about the availability of electronic filing for pro se aliens, the Department notes that the Respondent Access Portal allows for the electronic filing of the Notice of Appeal.

Although commenters expressed concerns regarding pro se aliens or new counsel having to file a Notice of Appeal without having access to the oral decision being challenged, the Department notes that, as discussed in Section III.C.2 of this preamble, when issuing a decision orally, the Immigration Judge must state the decision in the presence of the parties. *See* 8 CFR 1003.37(a). The alien, therefore, will be present for the issuance of an oral decision, and the Department is confident that Immigration Judges will clearly and adequately orally explain any basis for their decision, taking into consideration the circumstances of the alien. Aliens may then use that knowledge when preparing and submitting a Notice of Appeal.

The IFR further maintains Board discretion over briefing extensions and supplemental briefing. *See* 91 FR 5277. Further, as noted above, pro se aliens benefit from a statutory right to file a motion to reconsider an Immigration Judge's decision to address "errors of law or fact in the previous order . . . ." *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6). In addition, exceptional situations may be addressed on a case-by-case basis through the Board's consideration of equitable tolling.

Next, the Department has considered the potential that the rule—despite the safeguards just mentioned—may impact some pro se aliens' ability to file their appeal or PFR as a result of the generally shortened Board appeal deadline, the comparative complexity of PFRs, and the lack of automatic stays of removal in Federal courts. Although commenters may prefer an automatic stay at the Board to a discretionary stay before the Federal courts,[33] Congress, as discussed in Section III.C.1.a of the preamble,

[33] Moreover, several circuit courts of appeals have local rules or practices under which the filing of a PFR and a timely stay motion does effectively trigger an automatic stay. *See*, *e.g.*, National Immigration

explicitly made such stays discretionary, *see* INA 242(b)(3)(B), 8 U.S.C. 1252(b)(3)(B), and this rule in no way affects Federal court adjudication of any such stay motions. Ultimately, the Department believes that the interest in timely adjudications outweighs these potential concerns.

The Department further acknowledges commenters' concerns regarding the IFR's impact on pro se detained aliens but does not believe that the rule makes it more challenging for pro se detained aliens to access legal representation or to file a timely appeal, as explained above with regards to pro se aliens more broadly. To the extent that commenters believe detained aliens should have improved access to counsel, faster communication, and better access to legal resources while in detention, those issues lie outside the scope of this rulemaking. The difficulties highlighted by commenters relate largely to challenges that existed prior to the IFR and by virtue of an alien's detention or lack of representation, which remain unaffected by this rulemaking. Additionally, EOIR, DHS, and detained aliens, as well as the broader public, have a heightened interest in the efficient resolution of such cases, including any administrative appeals, given the potential liberty interests implicated when an alien is in detention during the pendency of a case before EOIR, as well as heightened costs to the Government. As such, it is even more important that a case involving a detained alien does not remain pending with the Board for longer than necessary. This rule's provision for summary dismissal, except in those cases in which the Board has determined further briefing and administrative review is needed to address novel or complex situations, will help promote these policy interests.

With regard to indigent or low-income aliens, this rule does not affect an alien's ability to request fee waivers under existing regulations, as discussed in Section III.C.2 of this preamble. *See* 8 CFR 1003.8(a)(3). The Department emphasizes that the recent

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Litigation Alliance, *Courts of Appeals Rules Governing Judicial Motions to Stay Removal*, https://immigrationlitigation.org/wp-content/uploads/2025/01/2023.11-Circuit-Stay-Rules-FINAL-FINAL.pdf [https://perma.cc/7R93-JC4Y]. This rule does not affect those rules or practices.

statutory changes in filing fees and the applicability of a waiver for certain fees are beyond the purview of the Department and beyond the scope of this rulemaking.[34]

Relatedly, the Department recognizes the categorization of UACs and the unique protections afforded them under the law, including in the TVPRA and within the immigration system. *See, e.g.*., INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C) (stating that an Asylum Officer has initial jurisdiction over the asylum claims of UACs); 8 U.S.C. 1232(d)(8) ("Applications for asylum and other forms of relief from removal in which a [UAC] is the principal applicant shall be governed by regulations which take into account the specialized needs of [UACs] and which address both procedural and substantive aspects of handling [UACs]' cases."); 8 U.S.C. 1232(c)(5) (TVPRA's provision that "[t]he Secretary of Health and Human Services shall ensure, to the greatest extent practicable . . . that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings."). The Department acknowledges that the Government is statutorily required to "ensure, to the greatest extent practicable" that UACs are represented in Immigration Court, though that does not categorically require access to counsel in every removal proceeding. *See* 8 U.S.C. 1232(c)(5). But the IFR is consistent with these laws and regulations, including the TVPRA; nothing in this rule is implicated by, or conflicts with, the provisions therein because those statutes and regulations do not relate to the Board's appellate procedures.

The Department recognizes commenters' concerns that UACs may not have the autonomy or understanding of proceedings to assert their claims on appeal or to seek adequate representation, but these obstacles existed prior to the changes made by the IFR, and the existing protections that serve this population are intended to address such obstacles. Further, with respect to the effects of trauma on children and concerns about

[34] *See* OBBBA, Pub. L. 119–21, sec. 100013(d)–(e), 139 Stat. 72 (2025).

re-traumatization, the Department is confident in the ability of Immigration Judges and the Board to follow appropriate safeguards available for children in processing appeals. Adjudicators receive training and guidance related to special considerations in cases involving children.[35] The Board also has the ability to exercise discretion in extending deadlines and granting supplementary briefing to aid in accounting for these special considerations.

The Department additionally recognizes the difficulties faced by aliens with mental impairments, disabilities, and associated competency issues. However, this rule does not in any way alter existing protections for aliens with mental impairments and other competency issues. Notably, the Board's decision in *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), continues to provide applicable guidelines for assessment of competency issues in proceedings before EOIR. Furthermore, this rule in no way impacts existing programs like the National Qualified Representative Program ("NQRP") for detained aliens who are found mentally incompetent.[36] The Department believes that the existing protocols, in conjunction with the Board's discretionary authority to extend filing deadlines in appropriate situations and the various exceptions provided by the rule, are sufficient to ensure fairness towards aliens with mental competency issues. The Department finds commenters' assertions regarding victims of human trafficking facing difficulties in meeting the appeal deadline and the resulting loss of critical information that would help dismantle human trafficking networks to be highly speculative given the resources and protections in place for such individuals.[37]

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[35] *See, e.g.*, EOIR PM 17–03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (Dec. 20, 2017), https://www.justice.gov/eoir/file/oppm17-03/download [https://perma.cc/J6LG-SHY6] (recognizing unique circumstances presented by immigration cases involving children and providing guidance for those cases); *see also* EOIR, *Policy Manual*, pt. II, ch. 3.21 (Feb. 10, 2026), https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-21 [https://perma.cc/RS8P-YQ4A] (delineating safeguards for juvenile appearances in Immigration Court).
[36] *See* EOIR, *National Qualified Representative Program* (July 23, 2025), https://www.justice.gov/eoir/national-qualified-representative-program-nqrp [https://perma.cc/3F46-DJ95].
[37] *See, e.g.*, EOIR PM 17–03: Guidelines for Immigration Court Cases Involving Juveniles, Including

With respect to commenters' concerns that low-literacy and non-English-speaking aliens may be impacted by the IFR's changes due to the need to procure translations of documents and interpretation of communications, the Department notes that nothing in the IFR prevents an alien from coordinating with counsel, an interpreter, or a translator, if the alien chooses, as needed to pursue an appeal. To the extent the concern relates to the alien's evidence, most commenters failed to acknowledge that all evidence submitted in an immigration hearing, regardless of who submits it, is to be submitted in English or with an English translation. *See* 8 CFR 1003.33. As such, evidence filed with the Immigration Courts that serves as the basis for appeal will already have a translation. Additionally, nothing in the statute or regulations requires that evidence of record be written or explained in the alien's native language. *Cf. Singh v. Holder,* 749 F.3d 622, 626 (7th Cir. 2014) ("[I]n the immigration context, personal service in English to a non-English-speaker typically satisfies due process because it puts the alien on notice that further inquiry is needed, leaving the alien to seek help from someone who can overcome the language barrier."); *Ojeda-Calderon v. Holder*, 726 F.3d 669, 675 (5th Cir. 2013) ("Due process allows notice of a hearing to be given solely in English to a non-English speaker if the notice would put a reasonable recipient on notice that further inquiry is required.").

The Department also acknowledges that certain other populations may have unique vulnerabilities while navigating the immigration system. The Department notes that the rule and its exceptions apply equally to all aliens, regardless of nationality, race, ethnicity, or other demographics of concern identified by the commenters. Further, as explained in this section, adjudicators receive training to help them account for the harm that any particular alien, regardless of the alien's group, may face. *See* EOIR, *Fact*

Unaccompanied Alien Children (Dec. 20, 2017), https://www.justice.gov/eoir/file/oppm17-03/download [https://perma.cc/J6LG-SHY6] (delineating human trafficking protocols for EOIR); *see* INA 101(a)(15)(T)–(U), 8 U.S.C. 1101(a)(15)(T)–(U) (T and U visa provisions).

Sheet: Immigration Judge Training Fact Sheet (Aug. 2026), https://www.justice.gov/eoir/page/file/1513996/dl?inline [https://perma.cc/Q3AK-N7ZF]. Adjudicators can apply that training when exercising their discretion. As described above, the Board maintains the ability to exercise discretion in extending deadlines and granting supplementary briefing to account for special considerations on a case-by-case basis through the Board's consideration of equitable tolling. The Board can also grant aliens additional time to seek counsel if the Board accepts an appeal for consideration with briefing prior to the alien filing a PFR with the Federal courts. *See* INA 242(b)(1), 8 U.S.C. 1252(b)(1). The Department also has confidence in the Board's ability to follow all relevant laws and policies, described above, that aim to protect vulnerable groups.

The Department further disagrees with commenters that it will be unclear which deadline applies to an asylum case because aliens will not know on what basis an Immigration Judge denied an asylum application. The Department is confident that Immigration Judges will clearly articulate any basis for denying an alien's asylum application such that the applicable appeal-filing deadline will be readily apparent. Additionally, the Department expects that Immigration Judges will advise aliens of the applicable appeal deadline as part of the obligation to advise an alien of his or her appeal rights. *See* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to "inform the alien of the right to appeal that decision"); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to "[a]scertain that the respondent has received a copy of appeal rights"); *see also* EOIR, Policy Manual, pt. II, ch. 3.15(h) (Feb. 10, 2026), https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-15 [https://perma.cc/HK27-PJAZ] (stating that "the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived"). The Department notes commenters' concerns regarding the additional strain that the rule will potentially place on pro bono providers and organizations who serve pro

se and indigent aliens. To the extent that commenters posited hypothetical scenarios about particular pro bono service providers, law student clinics, or particular types of cases, the Department notes that if such scenarios materialize in practice, then the Board can consider whether any of the factors referenced by the commenters warrant additional briefing or extensions. The intent of this rule is to streamline the appellate process and avoid undue delays. Because lengthy delays in immigration proceedings often dissuade pro bono representation, especially by law student clinic volunteers, ensuring expeditious adjudication of appeals may in fact encourage more pro bono representation.[38]

Further, nothing in this rule requires the diversion of resources or alteration of the mission of any low cost or pro bono legal service providers, including nonprofit organizations, pro bono volunteers, clinics and law students, and Government-funded representatives, beyond what is already required by existing regulations and professional responsibility requirements. For example, Immigration Judges already possess the authority to set shorter application filing deadlines. *See* 8 CFR 1003.31(h). Further, practitioners are already prohibited from taking on more work than they can handle competently. 8 CFR 1003.102(q)(1). Thus, pro bono organizations already operate under the conditions outlined in this rule. Although the Department acknowledges that nonprofit organizations, pro bono volunteers, and Government-funded representatives may prefer longer deadlines—as most legal representatives do, especially when additional delays benefit their clients—the Department is confident that such representatives will be able to handle such deadlines, just as they do in other courts and just as they handle all regulatory changes inherent across Government agencies, and will

[38] Human Rights First, *In the Balance: Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems* (Apr. 2016) at 16, https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-In-The-Balance.pdf [https://perma.cc/8CV2-WB9R] (finding, based on a 2016 survey of pro bono coordinators, that "nearly 75 percent of pro bono professionals indicated that delays at the immigration court are a significant or very significant negative factor in their ability to accept a case."), *id.* at 18 (finding that "[l]aw school clinics also report wasted resources and concerns about clients' re-traumatization when they repeat their stories to new students."); *see also* EOIR, *PM 21-08, Pro Bono Legal Services* (Dec. 10, 2020) at fn. 4, https://www.justice.gov/eoir/media/1387501/dl?inline [https://perma.cc/H53U-TE7X].

continue to be able to provide assistance and resources to aliens in proceedings before EOIR. It is not the Department's responsibility to account for the staffing requirements, training, expertise, or opportunities for appearances of pro bono providers, organizations, and volunteers before the Board, in its rulemaking. Nevertheless, the Department has considered the concerns raised by commenters and has determined that they do not outweigh the benefits of this rulemaking.

Lastly, commenters made a number of recommendations regarding changes or alternatives to various provisions of the rule that, they suggested, would reduce the impact on the populations noted above, including a longer appeal deadline for aliens due to heightened burden in comparison with DHS, incorporating automatic extensions for detained aliens, acceptance of a "short form protective" Notice of Appeal followed by a supplemental statement of issues, and a "carve-out" for UACs and youth under the age of 21, requiring mandatory, non-discretionary further review with briefing in their appeals. The Department appreciates the recommendations submitted by commenters, but the Department has determined that none is preferable to the rule. In light of existing protections in place for these populations, the strong need to address the lengthy backlogs at the Board outweighs the interests advanced by commenters' suggestions.

In short, the Department disagrees that the sorts of speculative challenges raised by the commenters are sufficient to outweigh the benefits obtained from this rule's implementation. The IFR neither singles such aliens out for particularized treatment under the Board's procedures, nor does it restrict or alter any of the avenues noted above that may assist pro se, detained, or otherwise vulnerable aliens. Further, the Department has difficulty responding to commenters' generalized statements about various populations, trauma experienced by those populations, and other asserted difficulties because appeals are adjudicated on a case-by-case basis based on their specific facts. Given the limited available avenues for relief or protection and the risk of loss or

degradation of evidence with the passage of time, the Department believes the significant efficiency benefits of the rule, on balance, far outweigh the speculative concerns raised by commenters. Moreover, in the event that there are "one-off" scenarios that do occur involving aliens in these groups, existing Board procedures—*e.g.*, the use of equitable tolling—can address such situations on a case-by-case basis.

3. Rule Violates International Law

Comment: Commenters argued that the IFR violates the United States' obligations under international law because it violates aliens' due process rights. Commenters also stated that the rule will have a discriminatory impact on aliens on the basis of national, ethnic, or social origin by limiting access to due process and appeals in Immigration Court, but not for non-Immigration Court matters. Commenters asserted that it would be a breach of international human rights obligations for the Department to subordinate equality and due process to its policy objectives.

Commenters also expressed concern that the IFR would exacerbate existing concerns about EOIR policies not complying with the United States' international obligations against refoulement. Specifically, commenters said that the IFR's provisions would prevent appropriate adjudications of claims for protection and limit meaningful appeal and review of asylum claims, thereby restricting access to asylum.

Commenters further expressed concern that the IFR precludes Board review of withholding-only proceedings. Commenters asserted that under the IFR, claims for both withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. 1231(b)(3), and protection under the regulations implementing the CAT will be decided by Immigration Judges with no substantive appellate review available. Commenters cited *Riley v. Bondi*, 606 U.S. 259 (2025), in which the Supreme Court determined that the deadline to file a PFR for aliens in withholding-only proceedings is within 30 days of the prior removal order being reinstated. Thus, commenters stated, to obtain Federal court review in most

withholding-only cases, an alien must file a PFR shortly after re-entering the United States or shortly after being arrested in the interior and having an old order reinstated. Commenters stated that most aliens are not able to locate counsel to file a PFR in that timeframe, and, in any event, until an alien has retained counsel, it is not logical to assume that they would wish to preserve their right to seek review of a withholding of removal or CAT decision before they have even filed for that protection (and in many instances before they have even received a reasonable fear interview placing their claims before an Immigration Judge).

Commenters noted that, under the IFR, the Board will continue to hear appeals in other matters where Federal court review is not available, including bond appeals and appeals of DHS visa decisions, but not withholding-only proceedings. Commenters argued that this prohibition on review does not make sense in the context of protection claims that are specifically designed to evaluate eligibility for mandatory forms of protection and comply with international human rights laws.

Response: This rule is consistent with international law, including the United States' treaty obligations, and, as stated in Section III.C of this preamble, the Department does not believe that this rule violates due process rights in any way.

Three primary documents govern the rights of refugees and corresponding obligations of states in international law: the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 ("Refugee Convention"); the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 ("Refugee Protocol"), which incorporates Articles 2 through 34 of the Refugee Convention; and Article 3 of the CAT. Together, these documents provide a framework for states to provide protection to aliens fleeing persecution or torture and establish the principle of non-refoulement, which prohibits states from returning refugees to territories in specific circumstances.

These treaties, however, do not prescribe or impose any particular minimum procedures for implementation of non-refoulement obligations. Although the United States is a party to the Refugee Protocol[39] and the CAT, these treaties are not directly enforceable in U.S. law. *See INS v. Stevic*, 467 U.S. 407, 428 & n.22 (1984); *Al-Fara v. Gonzales*, 404 F.3d 733, 743 (3d Cir. 2005) ("The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation."); *Omar v. McHugh*, 646 F.3d 13, 17 (D.C. Cir. 2011) (explaining that the CAT "is non-self-executing and thus does not itself create any rights enforceable in U.S. courts"). Instead, the United States has implemented its obligations through domestic legislation and implementing regulations. The United States has implemented the non-refoulement provisions of the Refugee Convention through the withholding of removal provisions at section 241(b)(3) of the Act, 8 U.S.C. 1231(b)(3), rather than through the asylum provisions at section 208 of the Act, 8 U.S.C. 1158. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 429, 440–41 (1987).[40] The United States has implemented its obligations under Article 3 of the CAT's non-refoulement provisions through regulations. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, sec. 2242(b), 112 Stat. 2681–761, 2681–822 (codified at 8 U.S.C. 1231 note) ("FARRA"); *see also, e.g.*, 8 CFR 208.16(c), 208.17, 208.18, 1208.16(c), 1208.17, 1208.18.

This rule does not change or limit ultimate eligibility for asylum, statutory

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[39] *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 169 n.19 (1993) ("Although the United States is not a signatory to the [1951 Refugee] Convention itself, in 1968 it acceded to the United Nations Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951." (citation omitted)).

[40] As the Supreme Court explained, asylum "does not correspond to Article 33 of the [Refugee] Convention, but instead corresponds to Article 34[,]" which provides that contracting countries "shall as far as possible facilitate the assimilation and naturalization of refugees." *Cardoza-Fonseca,* 480 U.S. at 441 (quoting Refugee Convention art. 34, 19 U.S.T. at 6276, 189 U.N.T.S. at 176); *see also* United Nations High Commissioner for Refugees ("UNHCR"), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* 16 para. 25 (2019 ed.) ("[T]he granting of asylum is not dealt with in the 1951 Convention or the 1967 Protocol"). Article 34 of the Refugee Convention "is precatory; it does not require the implementing authority actually to grant asylum to all those who are eligible." *Cardoza-Fonseca,* 480 U.S. at 441.

withholding of removal, or CAT protection and accordingly does not implicate the United States' non-refoulement obligations under international law. As explained in Section III.C of this preamble, none of the provisions contained in the IFR and adopted as final in this rule would prevent appropriate adjudication of claims for relief or protection, nor do they limit meaningful appeal or review of such claims. Instead, the rule is intended to reduce the backlog preventing such claims from being efficiently adjudicated.

Furthermore, the rule does not violate the nondiscrimination requirement in Article 3 of the Refugee Convention, which prohibits discrimination on the basis of "race, religion or country of origin." 19 U.S.T. at 6264, 189 U.N.T.S. at 156. As discussed in Section III.D.2 of this preamble, the rule does not discriminate on the basis of any of the protected characteristics described in Article 3. For the same reason, the rule does not violate other antidiscrimination principles described in other international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2–5, Dec. 21, 1965, T.I.A.S. No. 94-1120, 660 U.N.T.S. 195 (signed and ratified by the United States), and the International Covenant on Civil and Political Rights, arts. 2–3, Dec. 16, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 (signed and ratified with reservations, understandings, and declarations by the United States).

Neither is the rule inconsistent with Article 16 of the Refugee Convention or other international agreements to which the United States is a signatory. *See* Refugee Convention, art. 16, 189 U.N.T.S. 137 (Jul. 28, 1951). Article 16 of the Refugee Convention relates to access to courts, providing, in part, that refugees "shall have free access to the courts of law on the territory of all Contracting States." *Id.* Commenters argued that the IFR imposes impediments on judicial review of EOIR decisions in the courts of appeals, thus impermissibly preventing refugees from freely accessing the courts. As discussed in Section III.C.1 of this preamble, however, the IFR's summary

dismissal procedures do not affect access to the courts of appeals. Rather, they affect only the Board's review process, which is wholly within the authority of the Attorney General, as the Board is a regulatory creation of the Attorney General and its existence is not mandated by Congress. *See Alexander-Mendoza*, 55 F.4th at 197 ("An alien's right to administratively appeal a removal order is not grounded in the Constitution."); *Dia*, 353 F.3d at 242 ("Quite clearly, '[a]n alien has no constitutional right to any administrative appeal at all.'").

Lastly, the Department disagrees with commenters' assertions that the IFR's summary dismissal provisions violate international law by further limiting substantive appellate review of statutory withholding of removal and protection under the CAT regulations in withholding-only proceedings, given the Supreme Court's holdings in *Riley*. As relevant to Board appeals, nothing in this rule prevents an alien from filing a Board appeal in a relevant withholding-only proceeding. As explained in the IFR, the Department intended that the rule "would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed." *See* 91 FR 5271.

And regardless of how the Board chooses to handle a specific appeal, the alien will then maintain their existing ability to further file a PFR of that decision in the relevant Federal court. *See, e.g.*, INA 242(b), 8 U.S.C. 1252(b) (providing requirements and standards for PFRs). Whether any timing issues regarding reinstatement of a prior removal order preclude such Federal court review is, however, outside the scope of this rule. In *Riley*, the Supreme Court recognized logistical concerns regarding when a removal order becomes final for purposes of Federal court review in withholding-only proceedings but ultimately determined the court "must nevertheless follow the statutory text and [] prior precedents." 606 U.S. at 272.

E. APA Concerns

Comment: Commenters raised APA concerns over the IFR's justifications for foregoing standard notice and comment procedures, including concerns over the availability and duration of the comment period prior to the IFR's issuance. Commenters argued that the APA's procedural and foreign affairs exceptions did not apply to the IFR and that the Department's invocation of these exceptions was improper. Commenters also stated that a regulatory flexibility analysis should have been conducted under the Regulatory Flexibility Act ("RFA"), specifically on the impact of the IFR on nonprofit organizations serving aliens in immigration proceedings.

Commenters claimed that the APA exceptions should be read narrowly, and that the IFR's justifications interpreted these exceptions too broadly. Other commenters claimed that the IFR did not adequately address the consequences of the IFR's changes on the accuracy, uniformity, and fairness of the Board's decisions, nor consider less restrictive alternatives. Commenters likewise claimed that future Administrations would use the same justifications in rulemakings, which would have a negative effect on the quality of such rulemakings.

Separately, commenters stated that the original 30-day comment period was not sufficient for such a significant rule.

Response: Commenters' concerns regarding APA procedures echo those raised in recent litigation over the IFR. *See Amica*, 822 F. Supp. 3d at 168. However, as explained in Section I.D of this preamble, the Department's publication of this final rule addresses these procedural concerns. The IFR contained a request for comments, and the Department has fully considered and responded to such comments in this final rule. Thus, the APA's notice and comment procedures have been fully satisfied. *See Little Sisters*, 591 U.S. at 682–86 ("Formal labels aside, the rules contained all of the elements of a notice of proposed rulemaking as required by the APA.").

Further, as discussed at length in Sections III.B. and III.C of this preamble, the

final rule has addressed concerns about its effect on the accuracy, uniformity, and fairness of the Board's decisions and considered alternatives; thus, it has addressed those concerns as they pertain to the IFR. The Department also finds commenters' concerns about applying similar APA exception-related justifications to other rulemakings to be outside the scope of this rulemaking; such concerns can and should be raised in response to those rulemakings, as applicable.

With regard to the comment period duration, the Department extended the comment period to include an additional 30-day period in addition to the original 30-day period. *See* 91 FR 9705. Thus, the Department has no concerns that the total 60-day period was insufficient. This view is supported by the more than 1,600 comments received, including dozens of lengthy, detailed comments from interested advocacy organizations.

Finally, with regard to commenters' claims that the Department did not adequately address the IFR's impact on accuracy, uniformity, and fairness of Board decisions, commenters' concerns are vague and relate to aspects of the law outside the Department's control. For example, commenters expressed concern that, beyond correcting errors in individual cases, the Board serves an important function to develop, clarify, and harmonize immigration law, and that increased Federal court involvement in review of such decisions will raise the likelihood of acute inter-circuit conflict. However, EOIR cannot control which decisions are subject to an alien's choice to seek Federal court review, nor can it accurately predict how the different circuits will rule on issues as they percolate. Even so, the Board will continue to clarify and harmonize immigration law through precedential decisions in cases where the *en banc* Board determines that further review and clarification is necessary.

Comment: Commenters also claimed that the IFR is arbitrary and capricious under the APA because it failed to consider important impacts on affected populations.

Commenters stated that the rule would place significant burdens on aliens and their counsel by shortening appeal timelines and reducing the availability of substantive Board decisions through summary dismissal and limiting briefing. Taken together, these changes would make it difficult to present fully developed arguments to the Board, would reduce the availability of counsel, and would have a particularly detrimental impact on vulnerable populations, such as detained aliens, among others.

Commenters also noted that the IFR's changes were occurring in the context of other changes to the Immigration Court system, including increased fee amounts, recent Board decisions tightening standards for relief, and personnel changes at EOIR, among others, that, according to commenters, raised the risk of higher Immigration Judge error rates going uncorrected under the IFR's provisions.

Response: In issuing this rule, the Department explicitly considered the various impacts the rule may have on interested parties. *See* 91 FR 5270 n.9 ("The Department has considered the potential impacts of these amendments individually and in context with the other amendments made by this rule on aliens and attorneys appearing before EOIR."). The Department further discusses such impacts in Section III.D.2 of this preamble. The types of concerns raised by commenters are commonly raised in response to EOIR rulemakings, and the Department is adept in considering the effects of regulatory changes on affected populations. *See, e.g.*, Securing the Border, 89 FR 81156 (Oct. 7, 2024) (addressing similar categories of commenters' concerns, including concerns related to APA procedures, due process, effect on vulnerable populations, etc.). In this rulemaking, the Department ultimately determined that significant changes are needed to address the Board's significant backlog, and these changes outweigh any potential negative effects on aliens and their counsel, among others.

The Department also believes that commenters overstated the effect of the changes in considering the potential burdens of the rule. Certainly, the summary

dismissal procedures mark a significant revision to Board processes. However, the basic process remains the same: aliens may still file an appeal with the Board and, if that appeal is denied, the alien may file a PFR with the Federal courts or file a motion to reconsider. Far from foreclosing the ability to correct significant Immigration Judge errors, the summary dismissal procedures are intended simply to separate straightforward cases with no—or harmless or nonmaterial—errors from those which require more attention by the Board.

Likewise, a 10-day appeal period of course necessitates quicker action than a 30-day appeal period. But the 10-day appeal period simply applies to the filing of a Notice of Appeal, which focuses on providing a concise explanation of the basis for appeal. Thus, the Department determined that, on balance, the efficiency savings of shortening the appeal period outweighed the burdens on aliens and their counsel in meeting the shortened deadline. Moreover, the Department also ensured the rule applies prospectively to limit any potential effects on aliens and their counsel whose cases are currently in the appellate process. Accordingly, these changes should not undermine any reliance interests of either an alien or DHS. *See* 91 FR 5271 ("Because there is no right to a merits adjudication of any appeal in the first instance, and because the rule does not change the process for aliens who submitted an appeal with the expectation of receiving a different process, this change will not undermine any reliance interests of either an alien or DHS. Indeed, there is no evidence that DHS initiates a case in immigration proceedings or an alien brings a claim for relief or protection from removal based on the availability of an appeal to the Board if they lose, nor is there any logical reason that either party would do so.")

F. Miscellaneous

Comment: Commenters claimed that the IFR would erode public confidence in the integrity of the immigration adjudication system and that the system is harmful and

dehumanizing.

Response: The Department strongly disagrees with commenters. On the contrary, the Department believes that the full and efficient enforcement of the Nation's immigration laws will inspire confidence in EOIR and the Immigration Court system. Undoubtedly, prior practices and poor agency management have undermined public confidence in EOIR and eroded the integrity of EOIR as an impartial adjudicatory agency.[41] But the agency has recently made strides in restoring EOIR's integrity as a preeminent administrative adjudicatory agency through the return of adjudicator impartiality and the rescission of policies unfounded in law. This final rule promotes efficiency in the agency's appellate process and provides for prompt final determinations in immigration proceedings, thus taking another step toward reducing the backlog, enabling the prompt removal of aliens with no lawful basis to remain in the country, allowing for swifter corrections of Immigration Judge errors that result in wrongful removal orders, and strengthening public confidence in immigration decisions. *See, e.g.*, *Hernandez-Rodriguez v. Pasquarell*, 118 F.3d 1034, 1042 (5th Cir. 1997) (citing *Abudu v. INS*, 485 U.S. 94, 106–08 (1988)) ("Both the public and the Board have significant, cognizable interests in the finality of immigration proceedings.").

Comment: Commenters raised concerns about the IFR's impact on public defenders advising their alien clients in State criminal court proceedings regarding the immigration consequences of criminal convictions. Specifically, commenters asserted that the IFR would significantly restrict the number of precedential decisions by the Board interpreting criminal statutes, which would in turn make it more difficult for attorneys to advise their alien clients regarding the immigration consequences resulting

[41] *See* EOIR, PM 25-02, *EOIR's Core Policy Values* (Jan. 27, 2025), https://www.justice.gov/eoir/media/1386541/dl?inline [https://perma.cc/LE74-NRTK]; EOIR, PM 25-04, *Cancellation of Policy Memorandum 21-16* (Jan. 27, 2025), https://www.justice.gov/eoir/media/1386546/dl?inline [https://perma.cc/8ZLM-9H5X] (explaining management problems at the Board).

from a criminal conviction. Commenters also asserted that the IFR's impact of expediting the removal of aliens would lead to even more unresolved State criminal cases where the alien is removed from the United States prior to resolution of the criminal matter. Commenters stated that the IFR may lead to inconsistent decisions among Immigration Judges regarding criminal issues and cited circuit splits between Federal courts interpreting the impact of criminal convictions.

Response: The Department does not expect that the streamlining measures adopted in this final rule will impact attorneys' ability to advise alien clients regarding the immigration consequences of a criminal conviction. This rule in no way impacts or alters existing precedent from the Board or Federal courts nor materially alters the role that precedential authority plays in immigration proceedings. The Department further notes that one purpose of this rule is to free up resources to permit the Board to focus on cases presenting novel or complex legal issues—like, for example, novel criminal issues or interpretation of a criminal statute—which may lead to an increase in precedential decisions. *See* 91 FR 5271. This rule does not change any existing obligations attorneys have to their alien clients.

Regarding concerns related to inconsistent Immigration Judge decisions interpreting criminal statutes, those concerns exist under current procedures, and this final rule does not preclude the Board from reviewing such decisions and issuing a precedential decision to provide clarity and ensure consistent adjudications. In fact, the streamlining measures implemented in this rule will enable the Board to better focus its resources on issuing decisions to resolve such inconsistencies. Further, to the extent there are circuit splits on any issue, Immigration Judges and the Board are bound by the caselaw of each relevant Federal Circuit.

Comment: Commenters noted inconsistent Board appeal deadline language in EOIR's Policy Manual.

Response: The Department is working to update all relevant EOIR materials related to changes made by this rule. To the extent that the Department has not yet updated any specific materials, the provisions of this rule supersede any such materials.

Comment: Commenters alleged that the rule is inconsistent with 8 CFR 1003.1(a)(5), which states that *en banc* proceedings are "not favored."

Response: Although this rule is not inconsistent with the referenced regulatory section, which is focused on full *en banc* Board adjudications, the Department understands that the language may be confusing because the Board's regular *en banc* process involves several steps. Accordingly, in response to the comment, and to avoid confusion, the Department is deleting the relevant language from 8 CFR 1003.1(a)(5).

Comment: Commenters asserted that the IFR limited EOIR's termination authority in most cases other than those involving UACs and questioned how this change improves efficiency.

Response: Commenters misunderstood the IFR's changes to 8 CFR 1003.1(m)(2)(iii). The only changes made to that regulatory provision by the IFR and finalized in this rule are updating the term "unaccompanied children" to "unaccompanied alien children" and updating the cross-reference to the relevant statutory provision, 6 U.S.C. 279(g)(2), rather than a now-rescinded regulatory provision. Nothing in this rule changes termination authority.

Comment: Commenters noted that the IFR is silent on the Department's obligations under the National Environmental Policy Act ("NEPA"). Commenters recommended that the Department add a categorical exclusion to its NEPA procedures to strengthen the legal foundation of the rule and bolster what commenters asserted is the Department's position that the IFR does not require an environmental assessment. More broadly, commenters suggested that the Department could adopt a categorical exclusion for rules that do not increase immigration to the United States.

Response: The Department appreciates commenters' suggestion related to establishing a categorical exclusion in Department NEPA procedures for rules that do not increase immigration to the United States. While outside the scope of this rulemaking, the Department will consider adopting such an exclusion to apply in future rulemakings to ensure compliance with NEPA when applicable.

Comment: Commenters recommended amending 8 CFR 1003.1(d)(6) to impose firmer deadlines for background-check-related requirements. Specifically, commenters suggested that an alien's failure to comply with background-check requirements at the Board should be treated as automatically abandoning the underlying application for relief, absent a showing of good cause. Commenters stated that the good cause exception will ensure that aliens who face unusual or unpredictable hardships can proceed with their case while incentivizing aliens to comply with background-check requirements in a timely manner. According to commenters, this policy would be less likely to be abused than the existing policy at 8 CFR 1003.1(d)(6)(iii) authorizing the discretionary authority to continue holding cases.

Response: The Department declines to make the suggested changes to background-check procedures, which are outside the scope of this rulemaking. However, the Department may consider such a suggestion in a future rulemaking.

Comment: Commenters also proposed a number of alternatives to improve Board processing, including divesting the Board of jurisdiction to consider any appeal by DHS, any interlocutory appeal, any appeal of a bond decision, any appeal of the denial of a motion to reopen or motion to reconsider, and any appeal of the denial of a visa petition or nonimmigrant waiver. Commenters stated that the INA only requires an appeal as of right for aliens ordered removed, so the Department could eliminate all other types of appeals. Commenters noted that DHS could still request that Immigration Judges certify their decisions to the Board under 8 CFR 1003.7.

Commenters also suggested allowing aliens to waive preparation of a transcript if the Immigration Judge issued a written decision and a transcript would be unnecessary to resolve the appeal, stating this could avoid delays related to transcription. Commenters further suggested allowing aliens to consent to summary affirmance of an Immigration Judge's decision if they intend only to raise challenges to the validity or constitutionality of a statute or regulation or arguments asking the Board to overturn a precedential Board decision.

Commenters also recommended requiring all motions to reopen to be filed with an Immigration Judge, regardless of the most recent decision on the merits, as Immigration Judges may be better suited to evaluate new or disputed factual claims. Commenters also suggested alternatives to benefit certain populations, including extending deadlines for underrepresented individuals and making notices more accessible and available in multiple languages.

Commenters suggested that the Department adopt performance metrics or reporting practices to evaluate the effectiveness of the new procedures adopted in this rule. Commenters recommended that metrics should consider timeliness, throughput, and indicators of adjudicatory quality, such as outcomes in subsequent judicial review, consistency across adjudicators, and reversal rates. According to commenters, transparency in reporting these metrics would enhance accountability and provide a basis for data-driven adjustments over time. Commenters also encouraged the Department to develop pathways for error correction in cases that present a higher risk of material error that may not initially be selected for consideration with briefing, such as an internal flagging system or review trigger. Commenters stated that the Department should commit to ongoing review of the rule's implementation and effects to enable any necessary improvements should unintended consequences emerge.

Response: The Department appreciates suggestions to improve efficiency and

streamline appeal processing and to evaluate the impact and effectiveness of this rule once implemented. The Department has considered these suggestions and determined that the streamlining measures adopted in this rule best address the efficiency needs at this time. Although the Department is declining to implement these suggestions as part of this rulemaking, most of which were beyond the scope of the IFR, the Department will continue to consider efficiency measures for adoption in potential future rulemakings, including those suggested by commenters. Further, although the Department declines to formally adopt any evaluative metrics as part of this rule, the Department will continue to assess the effectiveness of this rule as it is fully implemented.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Department is issuing this final rule after a 60-day notice and comment period, with full consideration of the over 1,600 comments provided, and a 30-day delay of the effective date. These procedures satisfy the requirements of the APA. *See* 5 U.S.C. 553(c)–(d).

B. Regulatory Flexibility Act

Under the RFA, a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment procedures under 5 U.S.C. 553(b) or other law. *See* 5 U.S.C. 603(a), 604(a). To that end, the Department promulgated the IFR without prior notice and comment after determining the IFR related to agency procedure and involved a foreign affairs function, thus exempting the IFR from an RFA analysis under 5 U.S.C. 603 or 604. The Department continues to maintain the applicability of these exemptions to notice-and-comment procedures in promulgating the IFR.

However, even assuming that this rule is not exempt from notice-and-comment procedures and therefore not exempt from the requirements of the RFA, the Department has reviewed this rule in accordance with the RFA. The Acting Director of EOIR, under

rulemaking authority delegated by the Attorney General, certifies that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

First, the rule regulates aliens, and aliens are not "small entit[ies]" as defined by the RFA. *See* 5 U.S.C. 601(6) (defining "small entity" as having the same meaning as "small business," "small organization," and "small government jurisdiction" as defined in 5 U.S.C. 601(3)–(5)). Second, to the extent that legal service organizations qualify as "small entities," this rule does not directly regulate them and would not be expected to have a direct effect on them. Third, even if the rule does have an effect on legal services organizations, any economic effects of this rule on such organizations would not be significant under the RFA. The rule will not economically impact representatives of aliens in immigration proceedings. It does not limit the fees they may charge or the number of cases a representative may ethically accept under the rules of professional responsibility.

For example, this rule's changes to summary dismissal procedures focus on which cases the Board chooses to accept for full briefing and further review, but does not affect the overarching process for filing an appeal itself. At the conclusion of proceedings before the Immigration Judge, aliens (or their counsel) will continue to file a Notice of Appeal with the Board, specifying the reasons for appeal and indicating whether they intend to file a brief at a later date. As such, no changes are required by the parties to comply with this new process.

Similarly, this rule's changes to shorten the appeal period and to require simultaneous briefing without reply briefs will require legal service providers to adjust to these new timelines. However, the Department expects legal service organizations to quickly acclimate without substantial disruption, as the baseline process for filing an appeal remains the same and simultaneous briefing has long been standard for detained

cases. Moreover, in non-detained cases, although parties have generally been granted 21 calendar days to file briefs, as stated in the IFR, the Board has long had the authority to set shorter briefing schedules at its discretion, 91 FR 5273 (citing 8 CFR 1003.3(c) (2023)), a possibility for which counsel should have already been prepared to accommodate prior to issuance of this IFR and final rule. The delayed effective date and prospective application of the IFR and this final rule, as well as delays caused by litigation, have also provided legal service organizations with further notice of and opportunity to prepare for these changes without substantial impacts to their current operations, including existing clients who have already filed their appeals. Thus, any costs incurred in adapting to the new timelines are not expected to be significant under the RFA.

Moreover, this rule does not limit or otherwise dictate the fees that legal service providers may charge or the number of cases the organization may ethically and competently accept. *See Mid-Tex Elec. Co-op., Inc. v. FERC*, 773 F.2d 327, 342–43 (D.C. Cir. 1985) (concluding "an agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule" and stating that legislative history of the RFA "gives rise to an inference that Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy").

Finally, this approach is consistent with previous similar rulemakings regarding immigration regulations intended to regulate aliens and streamline immigration proceedings in which the Attorney General certified that such rule would not have a significant economic impact on a substantial number of small entities. *See, e.g.*, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct

of Removal Proceedings; Asylum Procedures, 62 FR 444, 453 (Jan. 3, 1997) (certifying that the rule would not have a significant impact on a substantial number of small entities because it "affects only Federal government operations by codifying statutory amendments to the Immigration and Nationality Act primarily regarding the examination, detention, and removal of aliens from the United States" and did not impose reporting or compliance requirements on small entities).

In particular, this determination is consistent with the Department's prior determination regarding much more sweeping changes to procedures before the Board. *See* 67 FR 54900 ("The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it affects only Departmental employees, aliens, or their representatives who appear in proceedings before the Board of Immigration Appeals, and carriers who appeal decisions of [DHS] officers. Therefore, this rule does not have a significant economic impact on a substantial number of small entities."). The Department is unaware of any challenge to that determination regarding its 2002 rulemaking which significantly streamlined Board operations and made much greater changes to Board procedures, including altering the Board's standard of review for credibility determinations, than this final rule. The Department thus believes that the experience of implementing that prior, broader rule also supports its conclusion that there is no evidence that this final rule will have a significant impact on a substantial number of small entities as contemplated by the RFA.

The Department's experience implementing these previous rulemakings further supports its analysis of this rule under the RFA and certification that the rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any

one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1532(a).

D. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Management and Budget has determined that this rule is significant under Executive Order 12866.

Overall, the Department believes this rule will provide significant benefits to adjudicators, parties before the Board, the U.S. immigration system overall, and the broader public, which outweigh the potential costs. For example, the rule's procedural changes to Board practices are intended to better promote the efficient completion of removal proceedings. Such changes benefit both aliens with meritorious claims, who will obtain relief or protection faster, and DHS, which will be able to remove aliens with meritless claims more quickly. Combined, such changes provide significant benefits to the functioning of the country's immigration system overall and to the public as a whole.

The Department does not believe there are any apparent definitive costs of this rule. However, the Department fully considered the various potential costs raised by commenters in response to the IFR, including potential social and economic consequences if an increased number of aliens are removed. These costs include, for example, any potential costs to aliens ordered removed after not being able to file a Board appeal under this rule's streamlined procedures, increased workload for attorneys due to a shortened Board appeal filing period, and increased filing fees associated with any increase in PFRs to the Federal courts.

The Department believes that concerns about these costs are speculative and lack a factual basis. However, even taking any proffered costs as legitimate, on balance, the Department continues to believe that the significant efficiency benefits associated with this rule outweigh the potential costs.

Regarding Executive Order 14192, this rule is a "regulation[] issued with respect to a[n] . . . immigration-related function of the United States" and is therefore exempt from the requirements of Executive Order 14192 under section 5(a) of that Order.

E. Executive Order 14294 (Overcriminalization of Federal Regulations)

When an agency promulgates regulations with criminal regulatory offenses that are potentially subject to criminal enforcement, Executive Order 14294 requires the agency to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not create a criminal regulatory offense and so is exempt from Executive Order 14924's requirements.

F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, the Department has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement under section 6 of Executive Order 13132.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards under sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new or revisions to existing "collection[s] of information" as that term is defined under the Paperwork Reduction Act of 1995, Pub. L.

104-13, 109 Stat. 163, 44 U.S.C. chapter 35), and its implementing regulations, 5 CFR part 1320. However, the Department notes that EOIR is making nonsubstantive changes to EOIR forms and form instructions to address the changes implemented by this rule.

I. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons stated in the preamble, and by the authority vested in the Director, Executive Office for Immigration Review, by Attorney General Order Number 6260-2025, the IFR amending 8 CFR parts 1003, 1208, and 1240 that was published at 91 FR 5267 on February 6, 2026, is adopted as final with the following changes:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362, 1801, 1802, 1808, 1812; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

2. Amend § 1003.1 by:

a. Revising the third sentence of paragraph (a)(4);

b. Removing the last sentence of paragraph (a)(5);

c. Revising paragraph (d)(2)(ii);

d. Revising the paragraph heading and first sentence of paragraph (e)(3); and

e. Revising paragraph (e)(8)(ii).

The revisions read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(a) * * *

(4) * * * A temporary Board member shall have the authority of a Board member to adjudicate assigned cases, including summary dismissal authority pursuant to paragraph (d)(2) of this section, except that temporary Board members shall not have the authority to vote on any matter decided by the Board *en banc*. * * *

* * * * *

(d) * * *

(2) * * *

(ii) *Consideration by the Board*—(A) *Summary dismissal generally.* Except for appeals pursuant to paragraphs (b)(5), (6), (7), and (14) of this section, and notwithstanding any other provision of this part (except for paragraph (d)(6) of this section), for all appeals of any decision issued on or after [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], the Board

shall summarily dismiss the appeal without opinion unless a majority of the permanent Board members vote *en banc* to accept the appeal for further review after briefing. Nothing in this paragraph (d)(2)(ii) shall restrict the application of the provisions of paragraph (d)(2)(i) of this section or the authorities in paragraph (h) of this section.

(B) *Summary dismissal timeline.* Such dismissals shall be made by a single Board member without further consideration, unless the single Board member refers an appeal for consideration by the Board *en banc*. If such a referral is made, the Board shall vote *en banc* on whether to consider the appeal for further review no later than 10 days after the appeal is filed. If the Board fails to vote *en banc* within that time, the appeal shall be summarily dismissed without opinion under this paragraph (d)(2)(ii). Subject to paragraph (d)(6) of this section, all dismissals under paragraph (d)(2)(i) or (ii) of this section shall be effectuated through the issuance of a written order no later than 15 days after the appeal is filed.

(C) *Issuance of summary dismissal order.* If the Board determines that the appeal should be dismissed without opinion, the Board shall issue an order that reads as follows: "The Board dismisses, without opinion, the appeal from the Immigration Judge's decision. The decision below is, therefore, the final agency determination. *See* 8 CFR 1003.1(d)(2)(ii)." An order to summarily dismiss without opinion issued under this paragraph (d)(2)(ii) shall not include further explanation or reasoning and will be deemed to reflect the same considerations as a determination by the Board under paragraph (e)(4)(i) of this section: that the result reached in the decision under review was correct; that a summary dismissal without opinion does not necessarily imply approval of all of the reasoning of that decision; that any errors in the decision under review were harmless or nonmaterial; and that either the issues on appeal are squarely controlled by existing Board or Federal court precedent and do not involve the application of precedent to a novel factual situation, or the factual and legal issues raised on appeal are not so

substantial that the case warrants the issuance of a written opinion in the case.

* * * * *

(e) * * *

(3) *Review with briefing*. In any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceeding and transcript (if a transcript is otherwise warranted), and the issuance of a briefing schedule, as appropriate. * * *

* * * * *

(8) * * *

(ii) In those cases where the panel is unable to issue a decision within the established time limits, the Chief Appellate Immigration Judge shall either self-assign the case or assign the case to a Deputy Chief Appellate Immigration Judge for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete the member's opinion within the established time limits, the decision of the majority will be issued without the separate opinion.

* * * * *

3. Amend § 1003.106 by adding a sentence following the first sentence of paragraph (c) to read as follows:

§ 1003.106 Right to be heard and disposition.

* * * * *

(c) * * * The appeal must be filed with the Board within 10 calendar days of the decision issued under paragraph (b) of this section. * * *

* * * * *

Sirce E. Owen,
Acting Director,
Executive Office for Immigration Review,
Department of Justice.

[FR Doc. 2026-23320 Filed: 11/16/2026 8:45 am; Publication Date: 11/17/2026]