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Assistant Director
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1800
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DHS Docket No. USCIS-2020-0013

Public Comment of the Immigration Reform Law Institute Re: Security Bars and Processing; Delay of Effective Date

Dear Assistant Director Reid,

The Immigration Reform Law Institute ("IRLI") submits the following public comment to the Department of Homeland Security, U.S. Citizenship and Immigration Service, and the Department of Justice, Executive Office for Immigration Review (collectively, "the Departments"), in response to the Departments' interim final rule with request for comments as published in the Federal Register on March 22, 2021. *See Security Bars and Processing; Delay of Effective Date*, (86 Fed. Reg. 15069).

IRLI is a nonprofit public interest law organization that exists to defend individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful. IRLI works to monitor and hold accountable federal, state, and local government officials who undermine, fail to respect, or fail to comply with our national immigration and citizenship laws. IRLI also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

On December 23, 2020, the Departments published a final rule (the "Security Bars rule") to clarify that the "danger to the security of the United States" standard in the statutory bar to eligibility for asylum and withholding of removal encompasses emergency public health concerns. Before that rule could take effect, the Departments delayed the rule's effective date until March 22, 2021. Now, the Departments are further extending and delaying the rule's effective

date to December 31, 2021, and have notified the public that they are "considering action to rescind or revise the Security Bars rule." The Departments ask for public comments on "whether that rule represents an effective way to protect public health while reducing barriers for noncitizens seeking forms of protection in the United States, or whether the Security Bars rule should be revised or revoked."

IRLI fully supports the Security Bars rule as published on December 23, 2020, because that rule is necessary to protect public health. The rule is consistent with the Immigration and Nationality Act ("INA") and the Refugee Convention and Protocol, both of which recognize that the security of the country supplants the obligation to afford protection to refugees. Under Article 33.2 of the Refugee Convention, the non-refoulement provision may not "be claimed" by a refugee for whom there are "reasonable grounds for regarding as a danger to the security of the country" in which he or she seeks protection. Correspondingly, the INA bars asylum and withholding of removal to aliens where "there are reasonable grounds for regarding the alien as a danger to the security of the United States." 8 U.S.C. § 1158(b)(2)(A)(iv); *see also* 8 U.S.C. § 1231(b)(3)(B)(iv).

In order to protect the public health, Congress has long deemed any alien who has "a communicable disease of public health significance" to be inadmissible to the United States. 8 U.S.C. § 1182(a)(1)(A)(i). Further, Congress has mandated the detention of any aliens who "are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic" for a sufficient time to determine if the alien is inadmissible for health-related reasons. 8 U.S.C. § 1222(a).

The Security Bars rule is consistent with all of these provisions and is necessary to protect the public health. *See* 8 C.F.R. §§ 208.13(c)(10), 208.16(d)(2), 1208.13(c)(10), 1208.16(d)(2) (published at 85 Fed. Reg. at 84193-97). Importantly, the Security Bars rule would not be appliable unless the DHS Secretary and the Attorney General has already affirmatively designated a specific public health risk as meeting the threshold to be considered a threat to the country's security. *See*, *e.g.*, 8 C.F.R. § 208.13(c)(10)(ii) (requiring "an ongoing declaration of a public health emergency under Federal law" triggered by an outbreak of a communicable disease); § 208.13(c)(10)(iii) (requiring a determination by the DHS Secretary and Attorney General, in consultation with the HHS Secretary, that the physical presence of an alien from a country or territory where such a communicable disease is prevalent or epidemic would be a danger to the public health).

The Departments should not revise or revoke the Security Bars rule because it strikes the right balance between affording protection to aliens fleeing persecution and protecting the American public health. If the rule were revoked, future administrations faced with a serious public health crisis would lack an important tool to prevent the spread of disease and protect public health. In order to implement such a tool in the future, the Departments would have to go

through the same legal and rulemaking hurdles that the previous administration has already cleared in approving the Security Bars rule.

In conclusion, the Security Bars rule is necessary to protect the public health and is narrowly fashioned so as to not constitute an unreasonable barrier to refugees seeking protection in the United States. It is consistent with international and federal law, both of which recognize that public health and security concerns may supplant the obligation and ideal of affording protection to refugees. Because the Security Bars rule strikes the right balance between public health and the protection of refugees, IRLI strongly supports the Security Bars rule and urges the Departments to retain the rule as published on December 23, 2020.

Respectfully submitted,

Immigration Reform Law Institute
by Matt A. Crapo