



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

via email

August 21, 2024

Re: Recommendations for Executive Action and Regulations on Immigration

Dear President Biden:

On behalf of the American Immigration Lawyers Association (AILA), we write to express our appreciation for your recently announced programs providing relief to immigrants that will keep American families together and allow more young people to contribute to our economy. These initiatives will have a significant impact on the lives of tens of thousands of long-term family members of U.S. citizens and will create opportunities for U.S.-educated foreign nationals, including Dreamers, to participate more fully in the American Dream. In March 2024, [AILA urged](#) you to implement these vital programs, and since its announcement, our membership has been actively engaged in ensuring successful implementation.

In the final months of your Administration, it is imperative that you take additional regulatory actions to ensure the positive policy changes you have made during your term will be codified to protect foreign nationals and advance the needs of American families, businesses, and our nation. In particular, we recommend that you act immediately to finalize four administrative actions that would accomplish the following: 1) modernize the process for businesses seeking to hire temporary foreign workers through the H-1B program; 2) ensure people who are applying for their green cards and stuck in lengthy backlogs are provided security as they wait to complete the adjustment process; 3) improve the processing of visas for individuals already in the United States; and 4) automatically renew work permits before they expire for people with pending applications.

Second, your predecessor advanced many harmful regulations and policies that undermine the fairness of the immigration court system and jeopardize asylum seekers. We urge you to immediately withdraw two proposed regulations that undermine fairness and due process in the immigration courts to ensure they never take effect. In addition, we ask that you rescind a final Trump-era rule, which has not yet been implemented, that would restrict meaningful access to protection for asylum seekers. If Vice President Harris does not win in the November elections, it would be far too easy for an Administration hostile to immigrants to quickly implement these proposed or final regulations.

We recognize that Congress ultimately bears the responsibility for passing new immigration laws and spending bills to fund the immigration system. Until Congress acts, we look to you for continued leadership to implement a fair, humane, and effective immigration system that works

for America. We stand ready to work with you and the able leaders of your Administration to implement these suggested changes.

A. Finalize Key Regulations that Improve the Immigration System

1. Finalize the remainder of the H-1B Modernization Rule (DHS/USCIS).

Consistent with our [comments](#) submitted in December 2023, we believe it is critically important that DHS finalize the Modernizing H-1B Requirements and Oversight, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers NPRM (88 FR 72870). We commend DHS/USCIS for finalizing a portion of the rule to ensure efficiency and fairness in the registration and lottery process earlier this year; however, the remainder of the rule provides important consistency and modernization enhancements that will bolster the U.S. economy. Specifically, this rule will help facilitate the President's initiative for college-educated Dreamers by clarifying when they may be employed by cap-exempt organizations. Furthermore, the rule provides consistency to U.S. businesses, their employees, and clients by codifying the USCIS policy of deferring to its prior adjudications of similar benefit requests. It will also address harmful changes proposed by the Trump Administration that would have imposed extreme measures on H-1B visas, restricted access to critically needed foreign talent, and ultimately harm the U.S. economy. The rule will also protect U.S. workers and ensure the job market remains competitive. Accordingly, we urgently request that the Administration prioritize issuance of this final rule before the end of this year to ensure stability in the program and make it harder for a future Administration to impose burdensome restrictions. In case it is not finalized and President Trump is re-elected, AILA recommends that the proposed rule be withdrawn before the end of this Administration so it is not finalized in a manner that would be detrimental to the U.S. economy.

2. Protect individuals who are stuck in the immigrant visa backlogs (DHS/USCIS)

Our outdated and complex immigration system is not meeting the needs of the United States and is not working for foreign nationals who are trying to pursue lawful pathways to be reunited with family or work in the United States. Unfortunately, many individuals who are seeking lawful permanent residence fall out of status or endure long separations from loved ones while they wait for an immigrant visa to become available. While only Congress can fix the problem, DHS can take important steps to provide relief to these individuals while they wait by prioritizing the issuance of the [Updating Adjustment of Status Procedures for More Efficient Processing and Immigrant Visa Usage Rule \(RIN 1615-AC22\)](#). This rule will help the children of green card applicants from aging out by codifying important policy changes and granting them the ability to stay and work in the United States. Moreover, this rule will ensure that American communities will not lose the support of their religious leaders. Finally, this rule will also codify important policy changes for individuals with Temporary Protected Status (TPS).

3. Expand and make permanent the domestic nonimmigrant visa renewal program (DOS).

On January 29, 2024, DOS successfully launched a limited pilot program for stateside visa renewal. As AILA recommended in April 2024, we believe that DOS should make permanent

and expand the domestic visa renewal program to individuals from all countries, additional visa categories, including E, F, H, I, J, L, and O nonimmigrants, as well as their dependents. Expansion of the program and making it permanent will reduce consular processing delays, enhance efficiency in processing, and create more certainty for applicants. A robust stateside visa processing program is an efficient method for DOS to manage resources and improve service while providing a low-risk visa renewal option for eligible applicants if a future Administration restricts consular access.

4. Make permanent the Temporary Final Rule ensuring that individuals with work authorization are not hurt by processing delays (DHS/USCIS).

AILA commends DHS for renewing the temporary final rule extending automatic work authorization for certain employment authorization renewal applicants from 180 days to 540 days in April 2024. This was a crucial step to ensure that individuals do not lose their eligibility to work simply because USCIS is taking too long to review employment authorization applications. However, the Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants Rule (89 FR 24628) is set to expire on October 15, 2025. We urge the Administration to make the expanded automatic extension period permanent to protect individuals from current and any future processing delays by permanently finalizing this rule and expanding the automatic extension period to 730 days.

B. Withdraw Trump-Era Proposed Rules that Undermine Due Process in Immigration Court

1. Withdraw the Trump-era DOJ proposed regulation “Motions to Reopen and Reconsider; Effect of Departure;” (“Motions to Reopen”) (DOJ/EOIR)

The Trump Administration issued but did not finalize the proposed Motions to Reopen regulation (85 FR 75942). The proposed rule would change the long-standing procedures governing motions practice before the immigration courts and the BIA. These changes would impose obstacles to seeking relief from removal orders or to correct errors that led to the issuance of a removal order via motions to reopen pursuant to 8 USC Sec. 1229a(c)(7) and motions to reconsider pursuant to 8 USC Sec. 1229a(c)(6).

The proposed rule also establishes an overly broad definition of departure that includes departures from the United States after the government had granted advance parole. The proposed rule, if implemented, would foreclose the ability of noncitizens to regularize their status after returning via their advance parole. As a result, the rule would block these returning noncitizens from applying for adjustment of status. Specifically, this proposed rule would overturn *Matter of Arrabally*, 25 I&N Dec. 771 (BIA 2012), a Board precedent decision, which states that when an individual leaves the United States with advance parole, they do not effect a “departure” for purposes of the departure bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II). See 8 C.F.R. § 1003.1(g)(1) (stating that BIA precedent decisions are “binding on all officers and employees of DHS”).

In December 2020, AILA and the American Immigration Council [submitted a comment in opposition](#) to this proposed rule. In September 2022, the Biden Administration announced its intention [to issue a Supplemental Notice of Proposed Rulemaking](#) but has not announced further actions. The [rule continues to appear as a proposed rule](#) in the Unified Agenda and should be immediately withdrawn.

2. Withdraw proposed regulation that redefines good cause for a continuance in immigration proceedings (DOJ/EOIR)

This Trump Administration proposed [regulation](#) would sacrifice due process by restricting immigration judges' authority to grant continuances and, as a result, severely curtail the ability of people appearing before immigration courts to find and obtain counsel. When the rule was proposed in 2020, AILA and the Council [submitted a comment](#) explaining how it will restrict the right to be represented by counsel of one's choice. The rule would adopt a presumption, ultra vires, that 10 calendar days is a "reasonable" period of time to obtain counsel – many people, particularly those who are detained and have limited resources, cannot find and retain counsel in such a short period. The proposed rule would block immigration judges from granting a continuance to someone still seeking counsel after 40 days. Finally, the rule restricts a judge's discretion to consider a respondent's circumstances and decide whether good cause has been shown justifying a continuance. These limitations on immigration judge authority will undermine their ability to effectively manage their caseloads, which are among the highest of any category of bench officers nationwide. This proposed regulation should be immediately withdrawn.

C. Rescind the Trump-era Security Bars and Processing Final Rule (DHS/DOJ)

AILA urges you to rescind the Security Bars and Processing regulation (85 FR 84160) which would impose severe restrictions upon asylum seekers and other migrants, denying them meaningful protections guaranteed under United States and international law. Already, the Biden Administration has forcefully stated its opposition to the rule, stating that it has no place in the current regulatory framework: "If the [Final Rule] were to become effective as published, then, when combined with the changes made by the Asylum Processing IFR to the regulations governing the credible fear screening framework and standards, the result would be to create confusing and nonsensical regulatory text."¹ The Trump Administration finalized the rule in December 2020, but the Biden Administration has never implemented it and has instead delayed its implementation four times. These repeated delays are an inefficient use of agency time and resources. Before the end of the term, the Biden Administration should issue an NPRM to rescind the final rule. AILA has submitted several [comments](#) urging rescission of the rule.

D. Withdraw Biden Administration Proposed Rules that Do Not Improve the Immigration System

AILA urges the Biden Administration to withdraw two proposed rules that it published that we believe would not improve the immigration system or advance immigration policy.

1. First, we recommend that DHS withdraw the NPRM “9–11 Response & Biometric Entry-Exit Fee for H–1B and L–1 Visas,” (89 FR 48339). AILA [opposed](#) this rule as we believe that it is contrary to the governing statute and long-standing agency policy.
2. Second, we urge DOS to formally withdraw the NPRM entitled Visas: Temporary Visitors for Business or Pleasure NPRM (85 FR 66878) which was published in October 2020. As AILA noted in its [comments](#) to this rule, the proposed rule unnecessarily limits the use of the B-1 visa. While DOS has not finalized this rule, we believe it must be formally withdrawn.

We appreciate your urgent consideration of these recommendations and are available to discuss them with your staff. If you should have any questions, please contact Greg Chen at Gchen@aila.org or Shev Dalal-Dheini at Sdalal-dheini@aila.org.

Sincerely,



Benjamin Johnson
Executive Director

cc: Neera Tanden, Director, Domestic Policy Council
Betsy Lawrence, Deputy Assistant to the President for Immigration

Alejandro Mayorkas, Secretary Homeland Security
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Anthony Blinken, Secretary of State
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Merrick Garland, Attorney General
Lisa Monaco, Deputy Attorney General
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Mary Cheng, Acting Director, Executive Office for Immigration Review

¹ See Victoria Neilson, “The Death to Asylum Regulations Continue to Harm Asylum Seekers Even Though They Are Enjoined,” *AILA Blog* (Dec. 19, 2022) <https://www.aila.org/blog/the-death-to-asylum-regulations-continue-to-harm-asylum-seekers-even-though-they-are-enjoined/>.