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March 13, 2024

Hon. Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Hon. Alejandro N. Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

RE: Pending and Promised Regulatory Actions Related to Asylum

Dear Attorney General Garland and Secretary Mayorkas:

The undersigned 83 organizations and legal scholars urge the Departments of Justice and Homeland Security to rescind, propose, or finalize the following regulations. It is critical that the former administration's anti-asylum rules be rescinded to fully dismantle its unlawful and inhumane policies. In addition, rulemaking is essential to fulfill President Biden's [commitment to restore](#) the United States' "historic role as a safe haven for refugees and asylum-seekers" as called for in his [executive order](#) on the safe and orderly processing of asylum claims.

Most of the asylum-related rules promulgated by the former administration have been enjoined, vacated, rescinded in part, or had their effective dates delayed. Rather than relying on litigation, partial rescission, and delays, the Departments should rescind the rules in their entirety so that future administrations cannot rely on the authority they provide. Rules that should be rescinded include:

- *Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act*, [84 Fed. Reg. 63,994](#) (Nov. 19, 2019). The interim final rule provides for the implementation of cooperative arrangements that fail to meet the statutory requirements for safe third country agreements and attempt to allow the removal of asylum seekers to third countries through which they transited.
- *Procedures for Asylum and Bars to Asylum Eligibility*, [85 Fed. Reg. 67,202](#) (Nov. 20, 2020). The final rule greatly expands mandatory bars to asylum eligibility.
- *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, [85 Fed. Reg. 80,274](#), (Dec. 11, 2020). The final rule [severely restricts](#) the legal standards governing asylum and protection adjudications, including persecution, political opinion, particular social group, firm resettlement, internal relocation, and the nexus standard, as well as the evidence asylum seekers can present to support their claims, among other things.
- *Procedures for Asylum and Withholding of Removal*, [85 Fed. Reg. 81,698](#) (Dec. 16, 2020). The final rule further erects [barriers to asylum eligibility](#) through the imposition of a 15-day filing deadline for asylum applications, broadening the definition of a frivolous application, conditioning eligibility on payment of an application fee, and allowing Immigration Judges to submit their own evidence into the record, while prejudicing evidence from non-governmental organizations, among other things.

- *Asylum Eligibility and Procedural Modifications*, [85 Fed. Reg. 82,260](#) (Dec. 17, 2020). The final rule follows an [interim final rule](#) that established a [third country transit ban](#) that caused disorder, family separations, and human rights abuses.
- *Security Bars and Processing*, [85 Fed. Reg. 84,160](#) (Dec. 23, 2020). The final rule treated asylum seekers as threats to public health, on specious grounds rooted in racist tropes and that public health experts have [debunked and opposed](#).

The Departments should take the following actions on rulemaking initiated by this administration:

- *Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations*, [RIN 1615-AC65](#) (Fall 2023). Consistent with President Biden’s [executive order](#), the Departments should propose and swiftly finalize this rule. The rule should adopt a definition of “particular social group” that [accords with international law](#).
- *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, [87 Fed. Reg. 18,078](#) (Mar. 29, 2022). The Departments should publish a final rule incorporating the changes advocates have [recommended](#) to the interim final rule.
- *Circumvention of Lawful Pathways*, [88 Fed. Reg. 31,314](#) (Dec. 28, 2022). The Departments should rescind the rule, except those parts that rescind *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55,934 (Nov. 9, 2018) and *Asylum Eligibility and Procedural Modifications*, 85 Fed. Reg. 82,260 (Dec. 17, 2020). Diverse [organizations](#), [68 Members of Congress](#), and the [United Nations High Commissioner for Refugees](#) opposed the initial [notice of proposed rulemaking](#), which has led to grave human suffering, is contrary to statute, and [counterproductive](#) to safe and orderly processing.
- *Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants*, [RIN 1615-AC78](#) (Spring 2022). The Department of Homeland Security [should issue](#) an interim final rule that authorizes a renewed 540-day, or longer, automatic work authorization extension period for immigrants who apply to renew their Employment Authorization Document.

Thank you for your consideration of these recommendations. We look forward to the Departments taking action to protect access to asylum in the United States.

Sincerely,

Organizations

Acacia Center for Justice
 African Immigration Initiative
 African Human Rights Coalition
 Al Otro Lado
 Americans for Immigrant Justice
 Asian Americans Advancing Justice | AAJC
 Asian Pacific Institute on Gender-Based Violence

Asylum Seeker Advocacy Project (ASAP)
Black Alliance for Just Immigration
Borderlands Resource Initiative
Boston University School of Law Immigrants' Rights and Human Trafficking Program
Capital Area Immigrants' Rights (CAIR) Coalition
Care for Friends
Center for Gender & Refugee Studies
Center for Victims of Torture
Chacón Center for Immigrant Justice at MD Carey Law School
Church World Service
Coalición de Derechos Humanos
Community Renewal Society
Estrella del Paso (Formerly DMRS)
FAITH IN TEXAS
Freedom Network USA
Global Refuge
Haitian Bridge Alliance
HIAS
Human Rights First
Immigrant Defenders Law Center
Immigrant Legal Resource Center
Immigration Equality
Jesuit Refugee Service/USA
Justice Action Center
Justice At Last
Justice in Motion
Kingdom Embassy Center International USA
La Raza Community Resource Center
Las Americas Immigrant Advocacy Center
Lawyers for Good Government
Mariposa Legal, program of COMMON Foundation
Minnesota Freedom Fund
Muslim Advocates
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project
National Korean American Service & Education Consortium (NAKASEC)
National Partnership for New Americans
NETWORK Lobby for Catholic Social Justice
New York Immigration Coalition
Oasis Legal Services

Presente.org
Provincial Council Clerics of St. Viator
Rocky Mountain Immigrant Advocacy Network
Safe Harbor Clinic, Brooklyn Law School
Sanctuary for Families
Sanctuary Working Group
Sanctuary Working Group, Chicago
Services, Immigrant Rights and Education Network
STRANGERS NO LONGER (Michigan)
Tahirih Justice Center
The Asylum Program of Arizona
The Faith Community Initiative
Volunteer Lawyers for Justice
Washington Office on Latin America
Witness at the Border
Women's Refugee Commission

Legal Scholars (institutions provided for identification purposes only)

Raquel Aldana, UC Davis
Jon Bauer, University of Connecticut School of Law
Lenni B. Benson, New York Law School
Richard A. Boswell, University of California Law, San Francisco
J. Anna Cabot, University of Houston Law Center
Kristina M. Campbell, UDC David A. Clarke School of Law
Evelyn H. Cruz, Arizona State University, Sandra Day O'Connor College of Law
Elizabeth Jordan, University of Denver Sturm College of Law
Gabriela Kahrl, University of Maryland Carey Law School, Chacon Center for Immigrant Justice
Dr. Matthew Lister, Bond University Faculty of Law
Lynn Marcus, University of Arizona James E. Rogers College of Law
Jennifer Moore, University of New Mexico School of Law
Craig B. Mousin, Depaul University College of Law
Marie Sayaka Nelson, Michigan State University College of Law
Carrie Rosenbaum, Chapman Fowler School of Law
Anne Schaufele, UDC David A. Clarke School of Law, Immigration and Human Rights Clinic
Maureen A. Sweeney, University of Maryland Carey School of Law
Jonathan Weinberg, Wayne State University

cc: The Honorable Ur M. Jaddou, Director, U.S. Citizenship and Immigration Services
The Honorable David L. Neal, Director, Executive Office for Immigration Review



**U.S. Citizenship
and Immigration
Services**

May 30, 2024

Robyn Barnard
Director, Refugee Advocacy
Human Rights First
1120 20th Street, NW
Washington, DC 20036

Dear Ms. Barnard:

Thank you for your March 13, 2024 letter to the Department of Homeland Security (DHS). I am responding on behalf of the Department.

We acknowledge your request for DHS and the Department of Justice to rescind, propose, or finalize a series of asylum-related regulations. As you noted, President Biden issued Executive Order 14010 on February 2, 2021, to restore and enhance asylum processing at the Southwest Border.

We appreciate your request that DHS finalize several regulations on the Administration's regulatory agenda. Any updates will be announced via the Unified Agenda¹ or rulemaking notices in the Federal Register. You are welcome to submit comments on any future rules published in the Federal Register using the procedures outlined in the proposed rule, or at www.regulations.gov. We appreciate your input.

Additionally, your letter also urges DHS to issue an interim final rule that authorizes a renewed 540-day, or longer, automatic work authorization extension period for immigrants who apply to renew their Employment Authorization Document (EAD). It references the Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants temporary final rule (TFR), 87 FR 26614 (May 4, 2022). On April 8, 2024, DHS published a TFR to extend the automatic extension period applicable to expiring EADs for certain renewal applicants. See 89 FR 24628.

The TFR applies to two categories of EAD renewal applicants: (1) applicants who timely and properly filed their Form I-765 applications on or after Oct. 27, 2023, if their applications were or are still pending on or after April 8, 2024; and (2) applicants who file their Form I-765 applications during the 540-day period beginning on or after April 8, 2024 and ending September

¹ See <https://www.federalregister.gov/documents/2024/02/09/2024-00454/unified-agenda-of-federal-regulatory-and-deregulatory-actions>.

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30, 2025. The TFR will increase the automatic extension period from up to 180 days to up to 540 days from the expiration date stated on their EADs. DHS is taking these steps to help prevent certain renewal applicants from experiencing a lapse in their employment authorization and documentation and to stabilize the continuity of operations for U.S. employers.

Thank you again for your letter and interest in these regulatory actions. Please share this response with the other organizations that cosigned your letter. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a horizontal line extending to the right.

Ur M. Jaddou
Director