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Hon. Nancy Pelosi

February 20, 2024

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Dear Attorney General Garland and Secretary Mayorkas,

The Immigrant Legal Resource Center (ILRC) writes today to request that the departments work with haste to finalize several regulations on the administration’s regulatory agenda. The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC, since 2017, leads and coordinates a collaborative of immigrant rights organizations focused on immigration regulations. The group meets regularly to share information and strategies for regulatory advocacy related to immigration and to coordinate efforts to eliminate barriers to immigration benefits and advocate for equitable immigration systems across the U.S. government.

We are grateful that priorities like regulations on public charge and Deferred Action for Childhood Arrivals (DACA) were swiftly addressed at the beginning of the term and we strongly request that the administration use that same urgent energy to address remaining regulatory priorities that will advance a more just immigration agenda. The administration has a duty to promulgate regulations and should efficiently use the remaining time of this administration to advance the Unified Regulatory Agenda.

In addition, we urge the administration to not waste additional resources on harmful regulations that would curtail access to protection for those seeking safety.

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Precious administrative resources have already been squandered on issuing rules that establish extraordinary hurdles for asylum seekers, instead of using that time and effort on immigration regulations that would advance a constructive immigration agenda and fulfill President Biden's promises on immigration. Rushing bad rules to publication only serves to strengthen and uplift the dehumanizing narrative about people seeking refuge at our border. We strongly feel the administration's attempt to rewrite and "litigation-proof" dangerous Trump-era asylum regulations, as with the [Circumvention of Lawful Pathways rule](#), is the wrong course. This should not be the legacy on immigration policy of the administration. We call on the administration to resist the temptation to double-down on this failed strategy, especially in light of the direction the administration took with regard to recent Congressional negotiations on immigration.

Less than one year remains in the administration's term, and it is crucial that regulations cementing hard-fought protections for immigrants and their families be proposed, finalized, and take effect and that the remaining vestiges of Trump's harmful regulatory agenda be rescinded as soon as possible.

Joint DHS-DOJ Regulations That Must be Rescinded

The final months of the Trump administration saw a flurry of joint Department of Justice (DOJ) and Department of Homeland Security (DHS) final rules issued speedily, overriding a flood of comments in opposition, including those from the ILRC. Many of these remain on the books, and some are tied up in litigation. The administration has made promises to rescind these rules, both in several iterations of the [Unified Regulatory Agenda](#) as well as in [Executive Order 14010](#), issued at the beginning of the administration. The administration must move quickly to take immediate action on the following:

1. **Security Bars and Processing rescission:** On December 23, 2020, less than a month before President Biden took office, the Trump administration issued a [final rule](#) classifying emergency public health concerns related to a communicable disease as a danger to the security of the United States and, among other things, making individuals who were physically present in a country in which such a communicable disease was prevalent ineligible for asylum. Commenters overwhelmingly opposed the rule and immediately after taking office, the Biden administration stayed the rule with a 60-day delayed effective date. Since then, instead of taking steps to rescind the rule, the administration has stayed it three more times, with the [last delayed effective date expiring on December 31, 2024](#). It is unacceptable that a rule with such severe deficiencies, including a blatant disregard for due process, has not yet been rescinded. The rescission rule, repackaged as a notice for proposed rulemaking entitled [Asylum Eligibility and Public Health](#), has already been [cleared](#) by the Office of Information and Regulatory Affairs and must be proposed and finalized without delay.
2. **Remaining Trump-era asylum regulations:** During its tenure, the Trump administration issued a number of regulations that created the infrastructure to severely limit asylum seekers' access to protection. The Biden administration must immediately rescind each of the following rules to permanently dismantle this regulatory architecture:
 - a. **Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review:** On December 11, 2020, the Trump administration issued a [final rule](#) that cruelly reimagined asylum processing procedures, bypassing the overwhelming opposition by commenters, including that of the [ILRC](#) as well as the [Immigrant Justice Network](#). While litigation has so far prevented this rule from going into effect and sections of the rule have been rescinded in other regulatory actions, the remainder of the rule remains enshrined in code and litigation is stayed only as a

result of the administration's [stated intention to publish a new rule](#). It is imperative that the administration immediately rescind the remaining provisions in this regulation and wipe it completely off the books.

- b. **Asylum Cooperative Agreements:** In November 2019, the Trump administration issued an [interim final rule](#) implementing agreements signed with El Salvador, Guatemala, and Honduras, that would allow the U.S. to send asylum seekers to these countries and bar them from applying for protection in the U.S. In February 2021, the Biden administration [suspended and terminated these agreements](#), but did not take steps to rescind the regulatory framework allowing these agreements—and future similar agreements—to have effect. DHS and DOJ should propose and finalize a rule erasing this regulatory language from federal code.
- c. **Procedures for Asylum and Bars to Asylum Eligibility:** On October 20, 2020, the Trump administration issued a [final rule](#) that sets out wide-ranging and excessively harsh bars to applying for, and bases to terminate a grant of asylum, [over the objection of commenters including the ILRC](#). While the regulation has been enjoined and is not in effect at this time, it is vital that the Biden administration immediately rescind this regulation in order to remove all remaining traces of Trump-era code from the books.

DHS Regulations That Must Immediately be Proposed and Finalized

Over four years, the Trump administration worked hard to try and decimate U.S. Citizenship and Immigration Services (USCIS) and undermine its credibility. While backlogs, growth in receipts, and an increase in humanitarian processing have challenged agency resources, USCIS continues to search for ways to efficiently and fairly process a large volume of cases. The administration should be commended for the January 31, 2024, publication of the [final Fee Schedule rule](#) recognizing that efficient processes have allowed the agency to limit fee increases and provide fee exemptions for certain populations, providing more access to immigration benefits. Proposing and finalizing the following regulations, both listed in the Unified Regulatory Agenda, would do even more to delivering on President Biden's promise to identify barriers that impede access to immigration benefits and remove them, as enshrined in [Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans](#).

1. **Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits:** In several iterations of the Unified Regulatory Agenda, DHS has signaled that it will [propose a rule updating adjustment of status regulations](#) to align them more closely with today's needs. Among other things, the rule will update procedures for religious workers and other immigrants and codify policy governing Temporary Protected Status holders' ability to travel. These regulations are urgently needed, and DHS must immediately propose and finalize this rule. The public needs to be given access to it for comment and it must be swiftly finalized and allowed to take effect in order to preserve hard-won policy gains.
2. **Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status:** The administration has signaled in the Unified Regulatory Agenda that it will [propose a rule updating the regulations governing the U-visa](#). These regulations have not been updated for over 15 years and are outdated. The proposed rule would clarify and update eligibility, procedural, and filing requirements for U-visas and adjustment of status for U-visa holders. Most importantly, the rule would codify policy allowing applicants who have been waiting in the years-long backlog due to statutory caps the ability to live and work lawfully in the U.S. while they await their decision. This policy is vital to helping

survivors of domestic violence, sexual assault, and other forms of violence achieve stability and independence for themselves and their families.

DOJ Regulations That Must Immediately Be Finalized

1. **Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure:** On September 8, 2023, [DOJ proposed a rule modifying and rescinding a Trump-era regulation](#) that limited the authority immigration judges and members of the Board of Immigration Appeals had over their dockets. The notice and comment period for the rule concluded on November 7, 2023, and DOJ must publish a final rule as soon as possible, after considering public comments, including [those of the ILRC](#). This rule is important not only because it rescinds a rule that severely undermined due process, but also as an administrative tool that will have significant impacts on both the agency and the public in an era where immigration court backlogs continue to balloon as resources remain scarce.
2. **Procedures for Asylum and Withholding of Removal:** On December 16, 2020, [DOJ finalized a rule](#) imposing significant procedural barriers for asylum claims, including, but not limited to, heightened requirements for submitting a completed application and harsher consequences for filing an incomplete application, and restrictions on the type of evidence that immigration judges may rely upon. While the rule has been preliminarily enjoined in litigation, it has yet to be proposed for rescission, [as promised in the Unified Regulatory Agenda](#).

While the Departments have taken some positive steps in the regulatory space, there is much unfinished business from the Presidential Executive Orders calling on the agencies to study and consider repealing harmful regulations as well as repeat entries in the Unified Regulatory Agenda promising to finalize these regulations. In the last year of the term, the administration must focus its efforts on making concrete the many hard-won policies that help immigrant communities and benefit the American public at-large, and erase from the books the remnants of harmful Trump-era policies.

Sincerely,

Sameera Hafiz
Policy Director
Immigrant Legal Resource Center

Cc: Neera Tanden, Director, Domestic Policy Council