



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

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

March 18, 2024

**Re: Ten Recommendations for Executive Action and Regulations on Immigration**

Dear President Biden:

On your first day as president, you called for an immigration system that will “[restore humanity](#) and American values.” In the past three years, you have devoted tremendous energy to accomplishing this vision. Your Administration has significantly improved the entire immigration system which spans multiple federal agencies and whose proper functioning is vital to the country’s prosperity. As the world has experienced unprecedented refugee flows, you scaled up federal agency resources to manage the increased numbers of people arriving at the U.S. southern border.

Even with these considerable investments, much work remains: many people live in and contribute to this country but have not been able to obtain legal or permanent status. They are essential to our country’s social and economic well-being and should be protected. American employers continue to face major obstacles in bringing foreign workers to this country on temporary or permanent bases. Families are separated or live in instability because the system lacks adequate legal pathways or is backlogged by delays and other bureaucracy. Finally, many of your predecessor’s harmful policies are still in effect or enjoined by federal courts and should be fully undone before the end of this term.

While the American Immigration Lawyers Association (AILA) has expressed disagreement with some of the policies of your Administration, particularly inadequate protections for asylum seekers, we stand ready to work with you. In this last year of your first term, AILA urges you to continue ongoing efforts to ensure the U.S. immigration system advances the interests of American families, communities, and businesses. We recognize that Congress must ultimately bear the responsibility for passing new immigration laws and spending bills to fund the system. Their gridlock is appalling and unacceptable. Until Congress can act, we look to you for leadership and call upon you to use every possible tool at your disposal to make the immigration system work for America. Toward that end, AILA offers these ten recommendations:

**1. Grant relief for those in temporary or undocumented legal status (DHS).**

We urge you to use your legal authority to the greatest extent possible to protect people who live in and contribute to this country, often for years if not decades, but still do not have a secure,

enduring legal status. There are several options at your disposal. In particular, AILA urges you to protect the spouses of U.S. citizens of which there are an [estimated 1.3 million](#) living in the country. You could grant them parole on a case-by-case basis as your Administration has done with programs for Ukraine, Afghanistan, Cuba, Haiti, Nicaragua, and Venezuela. Granting them parole-in-place and enabling them to apply for work permits would provide immediate relief to millions of mixed-status families in our communities and allow them to live without the fear of deportation. It is [estimated](#) that such a program would add \$16 billion to the U.S. economy and \$5 billion in taxes per year. In addition to parole, you could also protect undocumented spouses of U.S. citizens by allowing them to obtain work permits while applying for green cards. Their ability to work will also benefit the local economies and communities where they live. Finally, you should designate or redesignate temporary protected status (TPS) for several countries that currently qualify for such protection under federal law due to ongoing armed conflict, natural disaster, or other conditions that make it unsafe for their nationals to return.

## **2. Provide relief to individuals in the immigrant visa backlogs by issuing the adjustment of status regulation (DHS/USCIS).**

Foreign nationals stuck in immigrant visa backlogs and impacted by processing delays frequently face hardships when applying for permanent status. These challenges impact their economic stability, family unity, and ability to maintain lawful status while they await their green card. While the only true remedy to this problem is congressional action, DHS has proposed a regulation that will help alleviate some of the burdens by improving the processing of visas and issuance of green cards to eligible people.

The proposed regulation will reduce and streamline processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas. The rule will help family-based applicants, employment-based applicants, special immigrants like religious workers, and individuals with TPS status. AILA supports the regulation as it will provide significant relief to individuals waiting in lengthy backlogs and provide certainty to minor children of applicants that they will not lose eligibility due to backlogs. The proposed rule should be immediately prioritized for publication as it will potentially reduce border pressure by providing relief to those languishing in legal pathways.

## **3. Expand and make permanent the stateside nonimmigrant visa renewal program (DOS).**

On January 29, 2024, the Department of State (DOS) launched a pilot program for stateside visa renewal. It is in effect until April 1, 2024, but has a very limited application. Expansion and extension of the program will significantly reduce consular processing delays, enhance efficiency in processing, and create more certainty for applicants. DOS should expand and make permanent the ability to renew visas domestically for all nonimmigrant categories. 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. Modernize the high-skill temporary worker H-1B visa program (DHS/USCIS).**

Since its creation, the H-1B visa program has offered an indispensable method for American businesses to obtain temporary high-skilled foreign workers. Our country [hosts](#) more than one million international college students each year. However, our laws place an artificial cap of 85,000 H-1B visas annually. It is inefficient and irresponsible to retain only a small fraction of these graduates and push the remaining talent to [other countries](#) if they don't have an alternative method to staying in the United States. It is essential for our ability to compete successfully in the global economy that we retain access to this talent. To accomplish this, the Administration should finalize the H-1B Modernization proposed rule (88 FR 72870) for which the formal comment period ended on December 22, 2023. This rule will update and modernize the H-1B system and enable businesses to draw upon talent in areas critical to national interests. It will also address harmful changes proposed by the Trump Administration that would have imposed extreme measures on H-1B visas, restricted access to foreign workers, and ultimately bring harm to the U.S. economy. The rule will also protect and help U.S. workers to make sure the job market remains competitive. The Administration should address commenter concerns, specifically related to the definition of specialty occupation and finalize the rule this year to ensure stability in the program and make it harder for a future Administration to impose restrictions on this critical avenue for talent.

#### **5. Ensure fair immigration bond hearings for people who are detained (DHS/ICE and DOJ/EOIR).**

The U.S. immigration system frequently detains immigrants awaiting their removal proceedings unnecessarily and sometimes for prolonged periods of over six months. When they ask to be released, detained immigrants face a system stacked against them. Many individuals do not get a hearing before a judge if they get a hearing at all. Those who are eligible for a hearing must meet a high burden proof and often without the benefit of counsel. The Department of Justice (DOJ) and DHS should issue regulations that provide arriving asylum seekers with a custody hearing before a judge and establish practices that ensure due process, including requiring the government to show that continued detention is justified and requiring consideration of an individual's ability to pay the required bond. Currently, many people cannot afford to pay the bonds set by ICE officers or immigration judges because they are not required to consider the person's ability to pay. For example, ICE's February 2024 [bond average](#) amount was \$7,070 -- which only 4.3 percent of immigrants were able to post. DOJ and DHS have proposed a regulation in their fall 2023 regulatory priorities, which would address this issue. Better bond procedures would avoid the use of detention when it's not required and reduce the need for ICE to maintain and pay for high detention [capacity](#).

#### **6. Improve procedures and ensure fair hearings in immigration court (DOJ/EOIR).**

The Trump Administration implemented radical changes that compromised the immigration courts' ability to ensure fairness and impartiality in immigration cases. To address these harms and make other needed procedural changes to improve court operations, in September 2023, DOJ proposed a regulation that restores EOIR's ability to review a fully developed record and make reasoned decisions based on that record while returning the ability to respondents to make an effective appeal. The proposed rule returns procedural protections that were eliminated by the

December 2020 Trump final rule entitled Appellate Procedures and Decisional Finality in Immigration Proceedings. This rule would also allow respondents time to brief issues raised by opposing counsel and adjudicators to reopen cases in the interest of justice. It would also restore the authority to immigration judges to administratively close cases, an important tool that enables judges to manage their dockets efficiently. AILA urges you to finalize the DOJ rule to help reduce the courts' backlogs and enable judges to manage their caseloads adeptly and justly.

**7. Ensure victims of domestic violence and gang violence are eligible for asylum (DHS and DOJ).**

In 2018, then-Attorney General Sessions issued *Matter of A-B-* with the goal of excluding highly compelling domestic violence and gang violence cases from asylum protection under the “particular social group” category. Attorney General Garland rescinded *A-B-*, but the law remains unclear on the definition of a “particular social group.” As a result, many asylum seekers are unfairly denied asylum due to asylum officers, immigration judges, and federal courts of appeal reaching inconsistent results and creating a contradictory patchwork of decisions. Currently under consideration is a regulation that could lead to fairer adjudications and greater efficiency by clarifying and explaining the correct legal standard for interpreting this key element of many asylum cases. AILA urges you to finalize this regulation which would also improve efficiency within the immigration system by decreasing unnecessary referrals from USCIS to the immigration courts due to different particular social group interpretations across the country.<sup>1</sup>

**8. Rescind the Trump regulation “Procedures for Asylum and Bars to Asylum Eligibility” (DHS and DOJ).**

In 2020, the Trump Administration issued a regulation that penalized people who would otherwise qualify for asylum for actions that are often a direct consequence of fleeing persecution, such as using false documents or entering the country illegally. The currently enjoined Trump-era rule imposed a punitive, harsh consequence on asylum seekers by barring them from asylum. These acts should not automatically block asylum seekers who have a well-founded fear of persecution and torture abroad from receiving life-saving protection, particularly when those offenses are often necessary to save their lives and their family members. AILA urges you to rescind this regulation. Importantly, the regulation conflicts with the statute and was promulgated without complying with APA requirements.<sup>2</sup> Finally, rescinding this and other enjoined regulations will provide important clarity for practitioners and adjudicators, including federal judges that continue to mistakenly cite to portions of enjoined regulations.<sup>3</sup>

**9. Revisions to the List of Schedule A Shortage Occupations (DOL).**

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<sup>1</sup> See AILA, *High Stakes Asylum* (June 14, 2023) <https://www.aila.org/library/high-stakes-asylum-how-long-an-asylum-case-takes>.

<sup>2</sup> See *Pangea Legal Servs. et. al. v. U.S. Dep't of Homeland Sec.*, 20-cv-07721-SI (N.D. Cal. 2020).

<sup>3</sup> 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/>.

As part of the President’s Artificial Intelligence Executive Order, the Department of Labor (DOL) was ordered to issue a Request for Public Input (RFI) on the list of Schedule A occupations that do not have to go through the DOL labor certification process when seeking permanent residency, with the goals of updating how occupations are determined and including more shortage occupations, particularly in the area of STEM occupations. The RFI was published on December 15, 2023, and the comment deadline was extended to May 13, 2024. The modernization of Schedule A occupations and methodology is long overdue as it will streamline labor market testing and reduce processing delays at DOL by enabling it to focus its adjudications on occupations for which U.S. workers may be available. AILA is part of a Schedule A Coalition that recently sent a letter to the Administration seeking this change. Given the timeline inherent in developing and publishing an NPRM and Final Rule, the Administration must prioritize this rule.

**10. Renew a recently expired regulation to ensure the timely renewal of work authorization (DHS/USCIS).**

Many people risk of losing their eligibility to work due only to the fact that USCIS continues to experience lengthy processing times to review employment authorization applications. Processing times for applicants based on a pending adjustment of status application are over nine months and for those applying based on a renewal for asylum applications are over 16 months. AILA urges the Administration to renew the [Temporary Final Rule \(TFR\)](#) providing an automatic work authorization renewal for 540 days (which expired on October 26, 2023) to ensure there is no gap in employment authorization for individuals who have previously been authorized. The urgent extension of this rule is imperative as people could lose their work authorization as soon as April 24, 2024. The rule is pending final review at the Office of Information and Regulatory Affairs. We urge the Administration to publish it as soon as possible.

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](mailto:Gchen@aila.org) or Shev Dalal-Dheini at [Sdalal-dheini@aila.org](mailto:Sdalal-dheini@aila.org).

Sincerely,



Benjamin Johnson  
Executive Director



Farshad Owji  
President

cc: Alejandro Mayorkas, Secretary Homeland Security  
Anthony Blinken, Secretary of State  
Julie Su, Acting Secretary of Labor  
Merrick Garland, Attorney General