

September 5, 2024

Lisa O. Monaco  
Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C., 20530

Mary Cheng  
Acting Director  
Executive Office for Immigration Review  
5107 Leesburg Pike  
Falls Church, VA 22041

Sarah Flinn  
Acting Assistant Director, Office of Policy  
Executive Office for Immigration Review  
5107 Leesburg Pike  
Falls Church, VA 22041

**RE: The Office of Legal Access Program’s Processing Times for Recognized Organizations and Accredited Representatives (Forms EOIR-31 and EOIR-31A)**

Dear Deputy Attorney General Monaco, Acting Director Cheng, and Assistant Director Flinn:

We write to alert you to a re-emerging problem with processing times for the Recognition and Accreditation program (R&A) in the Executive Office of Immigration Review’s Office of Legal Access Programs (OLAP). The undersigned organizations are stakeholders in the program, and most are members of the Recognition and Accreditation (R&A) Working Group. We view this program as essential in the provision of high-quality legal services for low-income immigrants and asylum seekers.

We appreciate the resources you brought to the program in late 2022, after organizations first documented significant backlogs in the R&A program.<sup>1</sup> By adequately staffing the R&A program, DOJ was adjudicating applications within 1-3 months on average, and our organizations were able to operate effective R&A programs for most of 2023. However, in recent months, we are seeing processing times for initial applications frequently stretching out to 4-5 months, and with additional delays for multiple requests for additional evidence. We urge you to allocate the necessary resources to the R&A program so that it can return to its important work to screen and adjudicate most applications within 1-3 months. We also reiterate our longstanding interest in regular engagements with the Department to ensure mutual understanding about the goals, expectations and implementation of the R&A application process so that problems can be resolved before they become seriously detrimental.

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<sup>1</sup> Sullivan, K. CLINIC Policy Brief: “*The Severely Under-Resourced R&A Program is an Essential Tool to Meet Growing Needs for Affordable Immigration Legal Services.*” September 2021. Available at: <https://www.cliniclegal.org/resources/federal-administrative-advocacy/policy-brief-severely-under-resourced-ra-program>

## I. Context

The context of the R&A program is well known. Lack of sufficient legal representation is one of the biggest problems in immigration today. As the number of unadjudicated USCIS applications rose to almost **10 million** cases,<sup>2</sup> and with currently more than **3.5 million** cases in the immigration court backlog,<sup>3</sup> government resources, especially at EOIR, are strained. The research demonstrates that “legal counsel not only ensures that immigrants receive meaningful hearings but makes immigration court proceedings more efficient.”<sup>4</sup> That is, when people are represented, they are more likely to be prepared for their appointments and hearings at USCIS and EOIR, and less likely to need more time, which contributes to the backlogs.

While non-citizens have the legal right to representation, DOJ’s own list of pro bono legal service providers,<sup>5</sup> as well as reporting by the Center for Migration Studies,<sup>6</sup> make clear three facts: (1) the demand for immigration legal services exceeds the supply of lawyers; (2) most immigrants cannot afford the cost of private attorneys; and (3) the problem is especially acute in rural areas. The R&A program was established in the 1950s in part to alleviate these problems and it has become a key component in the ecosystem of legal services for immigrants. Notably, it has been adopted by most of the networks of providers, endorsed by the American Bar Association and last year, it was spotlighted as a model of nonlawyer representation in The White House Legal Aid Interagency Roundtable Report.<sup>7</sup>

The main purpose of the R&A program is to increase access to representation before immigration agencies for indigent noncitizens. We understand the R&A program to be an antidote to the Unauthorized Practice of Immigration Law (UPIL), and thus we support DOJ’s work to review Forms EOIR-31 and EOIR-31A to regulate for quality control in representation and to protect immigrants from exploitation.<sup>8</sup>

There are **close to 2,500** accredited representatives and **over 850** recognized organizations currently providing crucial services to immigrant communities across the country.<sup>9</sup> We understand this is slightly above historic rates and represents the growing awareness of this program and the momentum in communities to expand it.

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<sup>2</sup> Congressional Research Service: “U.S. Citizenship and Immigration Services (USCIS): Operations and Issues for Congress,” April 2024, available at: <https://crsreports.congress.gov/product/pdf/R/R48021/2>

<sup>3</sup> See TRAC Immigrations: Tools-Immigration Court Quick Facts, available at: <https://trac.syr.edu/immigration/quickfacts/eoir.html>

<sup>4</sup> National Immigrant Justice Center (NIJC): “Issues: Access To Counsel.” Available at: <https://immigrantjustice.org/issues/access-counsel>

<sup>5</sup> See List of Pro Bono Legal Service Providers, July 2024, Department of Justice.

<sup>6</sup> Kerwin, D., & Millet, E. (2022). Charitable Legal Immigration Programs and the US Undocumented Population: A Study in Access to Justice in an Era of Political Dysfunction. *Journal on Migration and Human Security*, 10(3). <https://doi.org/10.1177/23315024221124924>

<sup>7</sup> DOJ’s Office for Access to Justice, “Legal Aid Interagency Roundtable 2023 Report: Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies.” 2023. Available at: <https://www.justice.gov/d9/2023-12/2023%20Legal%20Aid%20Interagency%20Roundtable%20Report-508.pdf>

<sup>8</sup> NIJC: “Issues: Access To Counsel.”

<sup>9</sup> See Recognized Organizations and Accredited Representatives Roster, June 2024, Department of Justice

## II. Processing Times for R&A Applications

In the last several months, organizations seeking new agency recognition and Recognized Organizations adding new Accredited Representatives are experiencing a disrupting increase in the adjudication times for Forms EOIR-31 and EOIR-31A. Currently, initial recognition and accreditation applications are often taking 5 months to be adjudicated and others are receiving requests for additional evidence after their application has been pending for more than 6 months, further prolonging adjudication and hindering the program's optimal purpose.

For example, CLINIC is aware of at least two instances where an affiliate inquired about the status of an initial recognition and accreditation application after the application had been pending for approximately 5 months. In both instances, they received a request for evidence the next day. One affiliate received two separate requests that day and a third request a few days later. In both cases, none of the information being requested was required by the regulations, requested in OLAP's FAQs, or included in EOIR-31 form instructions. While the applicants responded as quickly as possible, one application was eventually approved after 6 months, and the other is still pending with OLAP.

Slow or prolonged processes can have serious implications.<sup>10</sup> For example, without Accredited Representatives, organizations might be unable to fulfill deliverables under their contracts or grants. Others may have to cancel their programs, refuse services to immigrants seeking representation or be forced to let go of qualified candidates.<sup>11</sup> These examples demonstrate the need for efficient and timely processing of applications. If processing times are not adequately addressed, we know that affordable legal representation will become even more scarce.

The Biden administration has announced new executive actions on immigration that are surging demands on non-profit legal service organizations. For example, the R&A program supports the goals of humanitarian programs such as Parole in Place (PIP) that could benefit approximately 500,000 individuals, employment visas for DACA recipients, and other pathways for legal status. But this cannot happen if R&A applications are not processed efficiently and expeditiously.<sup>12</sup> To operate smoothly, the R&A program requires trained staff who understand the regulatory requirements to accurately review Forms EOIR-31 and EOIR-31A, raise appropriate issues, and work with applicants to resolve them efficiently. DOJ should apply permanent resources for the program and not rely on short-term seconded staff for adjudications or over-burdened EOIR staff who cannot prioritize R&A application review and adjudication. The result of DOJ not hiring and training permanent adjudicators is multiple, unnecessary RFEs, which slows processing times.<sup>13</sup>

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<sup>10</sup> Lieberman, R. Villanova University's Backlog Reduction Plan Congressional Letter. 2022. (On file with author).

<sup>11</sup> *Ibid*

<sup>12</sup> See DHS' Fact Sheet: DHS Announces New Process to Promote the Unite and Stability of Families, *available at*: <https://www.dhs.gov/news/2024/06/17/fact-sheet-dhs-announces-new-process-promote-unity-and-stability-families>

<sup>13</sup> Multiple Remote Engagements with the Office for Legal Access Programs, DOJ (2023)

### III. Proposed Solutions and Next Steps

We remain concerned that DOJ has not articulated a coherent plan to prevent future backlogs and streamline the R&A adjudication process. Recognized organizations, including many of the undersigned, have repeatedly expressed their concerns over the past several years and have not received a concrete response. As DOJ continues to improve and expand the access to legal representation,<sup>14</sup> we remain committed to collaborating and working with OLAP to accomplish our shared goals. **We propose these next steps:**

- Continued engagement between stakeholders and OLAP and EOIR officials to address these processing issues and find common ground to resolve them;
- DOJ should allocate funding for the hiring, training and supervision of sufficient full-time staff at OLAP to adjudicate R&A applications.
- OLAP should publish the number of pending applications and the number of adjudicators working to provide a projected timeline to applicants;
- For transparency purposes, OLAP should hold regular stakeholder meetings providing processing times and other updates, such as notice of changes to the FAQ website ahead of time for practitioners and advocates to plan accordingly;
- EOIR should comply with FOIA requests from stakeholders that are meant to improve understanding of the R&A program.

### IV. Conclusion

We know that DOJ sees the value of the R&A program as a low-cost, high-impact tool to increase immigrant representation. Many of the undersigned organizations have worked hand-in-hand with OLAP for years and we view the recent delays and obstacles as an aberration in the 50+ year history of the R&A program. In urging DOJ to provide sufficient resources for the R&A program, we are also inviting EOIR to work with stakeholders to use all the tools available so the program can best succeed in accordance with the regulations and with a cognizance of the changing environments in our communities. DOJ should be proud of the historic role the R&A program has played, and it should continue to invest in it to support both immigrant justice and recent executive actions increasing lawful pathways for immigrants seeking permanent status. That starts with staffing to enable the adjudication of Forms EOIR-31 and 31A within three months on average and allowing our organizations to serve our communities most effectively.

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<sup>14</sup> See List of Pro Bono Legal Service Providers, available at: <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>

Please reach out to **Pedro Aleman-Perfecto**, Policy Advocate at CLINIC, at [paleman@cliniclegal.org](mailto:paleman@cliniclegal.org) to schedule a meeting with us to discuss our experience and recommendations. We look forward to working with you. Thank you.

**Sincerely,**

**National**

Alianza Americas

CASA

Catholic Legal Immigration Network, Inc. (CLINIC)

Coalition for Humane Immigrant Rights (CHIRLA)

Immigrant Connection Nation

Immigrant Legal Resource Center

International Rescue Committee

Labor Council for Latin American Advancement (LCLAA)

LULAC-IL Council #5296

NALEO Education Fund

National Immigrant Justice Center

National Immigration Law Center

National Partnership for New Americans

Strategic Initiative for Migrants and Refugees at Villanova University

UFW Foundation

UnidosUS

World Relief

## **State**

Al Otro Lado, Inc.

Catholic Charities Hawaii

Chinese for Affirmative Action

Director of Immigration Legal Services

Farmworker and Landscaper Advocacy Project

GEMS

HIAS Pennsylvania

Illinois Coalition for Immigrant and Refugee Rights

Illinois Migrant Council

Immigrant ARC

Immigrant Defenders Law Center

Immigrant Law Center of Minnesota

Immigrant Legal Advocacy Project

Immigration Center for Women and Children

Immigration Counseling Service (ICS)

Iowa Migrant Movement for Justice

Just Neighbors

Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)

Mexican American Opportunity Foundation

Michigan Immigrant Rights Center

New York Immigration Coalition

Northern Illinois Justice for Our Neighbors

Oasis Legal Services

Pars Equality Center

Syrian Community Network

Tennessee Justice for Our Neighbors

The Legal Clinic

The Resurrection Project

**Local**

Access California Services

AKWAABA QC

Ascend Justice

Asian Law Alliance

Ayuda

Binational Institute of Human Development

Building One Community - The Center for Immigrant Opportunity

CARECEN

Carolina Immigrant Alliance

Catholic Charities CYO of The Archdiocese of San Francisco

Catholic Charities Eastern Washington

Catholic Charities of Acadiana

Catholic Charities of the Diocese of Stockton

Catholic Charities of Tompkins/Tioga

Catholic Charities of Yolo-Solano

Catholic Charities of San Bernardino & Riverside Counties

Central American Resource Center - CARECEN- of California

Centro La Familia Advocacy Services, Inc.

Centro Legal de la Raza

Centro Romero

Chinese Information and Service Center

COFEM

Community Action Board of Santa Cruz County, Inc.

Community Center for Immigrants

Congregation Beit Simchat Torah

El Rescate

Emerald Isle Immigration Center

Esperanza Legal Assistance Center

Estrella del Paso (Formerly Diocesan Migrant and Refugee Services Inc)

Family Action Network Movement

Indo American Center

International Institute of Los Angeles

Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties

Korean Resource Center

La Maestra Community Health Centers

Libreria Del Pueblo

Long Island Immigration Clinic/Sisters of St. Joseph

Loyola Law School Immigrant Justice Clinic

LUCHA Ministries, Inc. Immigration Legal Services Program

Mi Casa

North Suburban Legal Aid

Northern Alliance for Immigrants



Northern Illinois Justice for Our Neighbors

Opening Doors International Services, Inc.

Partners for Our Communities

Pomona Economic Opportunity Center

Project Citizenship

Sacramento Food Bank & Family Services

San Francisco Labor Council / WE RISE SF

Seattle Office of Immigrant & Refugee Affairs

Spanish Community Center

Santa Barbara County Immigrant Legal Defense Center