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CLINIC Transition Paper: Restoring the Integrity of the DOJ Recognition and Accreditation Program

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The Catholic Legal Immigration Network, Inc., CLINIC, promotes the dignity and protects the rights of immigrants in partnership with our network of immigration legal services providers. Visit us at cliniclegal.org/transition.

Sadia came to the United States as a refugee in 2012. At the time, forced to flee for safety, she was unable to bring her two boys with her. Once Sadia was resettled, she immediately began working with an accredited representative at Catholic Community Services of Utah to petition for her children to join her in her new country. Today, Sadia and her children are nearing the end of their five-year separation. The case is in its final stages, and she is just waiting for their flights to be booked. Without her accredited representative, Sadia said that being able to see her children again “would not have been possible ... my children would not have been approved. It would be devastating.” If Sadia had the opportunity to speak to members of the administration in charge of the R&A program, she would want them to know that the legal assistance she received at Catholic Community Services of Utah is “an important part of the refugee process.” She said, “There are so many other people in my situation, and these are vital services that people like me who cannot afford to go to a private attorney need ... these services must not be disrupted.” Sadia added that in addition to petitioning for her children, her accredited representative helped her with her permanent residency and then citizenship. Sadia is thankful that she is safe now, but she is waiting for her children. She wants everything for them in their new country, in particular, the education they have missed while seeking safety. She thinks about the upcoming moment at the airport when she will see them again. Without hesitation, Sadia said, “That will be the happiest moment of my life.”

— Sadia Relies on the Recognition and Accreditation Program

Luis first became an accredited representative seven years ago while working as an immigration advocate in Oregon. He explained, “I wanted to become an accredited representative because I saw an opportunity to help my community in a deeper way. I didn’t have the means to go to law school and the accreditation route gave me the opportunity to practice law when I otherwise wouldn’t have.” As a new accredited representative, Luis was able to help young people across Oregon obtain Deferred Action for Childhood Arrivals, or DACA, changing their lives and creating new opportunities for them. Over the years, Luis has helped thousands of people. He said, “Recognition and Accreditation has been around for over 50 years. Its intent is to serve low-income, indigent individuals.... If we were to see R&A disappear, we would be taking away the little due process and access to counsel that the most vulnerable individuals have available to them.” One story stands out in his mind: “A few years ago, I met a woman at a detention center who had suffered a miscarriage while detained. Because of my accreditation, I was able to gain access to the detention center to work closely with her to support her not only in the legal matter, but also as an advocate, raising up her story. Ultimately, I was able to help get her released from detention.” Luis continued, “It is stories like these of people who would not have been able to pay for a private attorney that continues to solidify my belief that R&A is meeting the needs of individuals who are invisible to most of us.” He added that R&A also creates access for people who are immigrants themselves and have gone through processes firsthand to become legal advocates for others. “That kind of representation matters,” he said.

— Luis is an Accredited Representative

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Why recognition and accreditation matters

Recognition and accreditation, or R&A, is a program administered by the Department of Justice, or DOJ, that increases the capacity of non-profit organizations to provide low-cost or free legal services to underserved communities by credentialing “accredited representatives.”¹ Accredited representatives are non-attorneys who have received rigorous training in immigration law and have been approved by the DOJ to provide legal services. Accredited representatives must be affiliated with a nonprofit organization that has been “recognized” by the DOJ as an organization serving low-income clients.² CLINIC’s mission to serve low-income immigrants as well as our Catholic Social Teaching call on us to seek justice and protect the rights of all, particularly those in need. The R&A program is essential to increasing the number of immigrants who have access to affordable legal counsel in order to navigate the complex web of immigration laws and regulations that govern their lawful immigration status.

Number of people impacted

There are currently 750 DOJ Recognized organizations, some with multiple office locations, and 2,051 accredited representatives that work at those organizations.³ Each of those organizations serves hundreds or thousands of immigrants each year.⁴ The need for affordable services far outweighs the ability of the existing immigration attorneys and representatives to meet, and that problem would be compounded if the new administration passes hoped-for measures that would make more immigrants eligible for relief.⁵ Policy changes that impede qualified organizations and representatives from achieving certification decrease the capacity of organizations to fight for just and fair results for their immigrant clients.

The previous administration’s policies and the human consequences

For the R&A program, the most harmful policy enacted under the previous administration was changing the organization of the Executive Office for Immigration Review, or EOIR.⁶ This reorganization was first introduced as an interim final rule⁷ on Aug. 26, 2019, and had immediate disruptive effects on the R&A program. CLINIC strongly opposed the reorganization and submitted a public comment urging its withdrawal.⁸ The director of the Office of Legal Access Programs, or OLAP, who was given the authority to oversee R&A under the program’s regulations,⁹ was deprived of that authority and placed under the direction of the new Office of Policy within EOIR. Due to the change in authority, operations were immediately disrupted and case decisions came to a halt for a period of time. The new Office of Policy was created to carry out the Trump administration’s political agenda.

Placing OLAP under the control of a politically-driven body has drastically changed the way that it considers and processes applications for R&A. Whereas the regulations embrace a flexible standard for documenting eligibility for the R&A program,¹⁰ OLAP has been under pressure during the Trump administration to reduce

the flexibility envisioned under the final rule, making the application process more unpredictable and less efficient, which extends processing times and leads to backlogs in processing applications.

These complications and delays undermine the purpose of the program, which is to increase the capacity of nonprofit organizations to provide affordable, quality legal services to immigrants in their community. Organizations with reduced capacity must turn away potential clients that they will not have the resources to serve. Those immigrants must either navigate the complexities of immigration law without legal help, or they may turn to *notarios*. Notarios are unscrupulous, unaccredited non-attorneys who may steal immigrants' money without providing the help promised, or even if they do help the immigrant to file an immigration case, may provide incompetent assistance that can lead to deportation and separation of families.

In order to restore the integrity of the R&A program, the Biden administration should do the following in the first 100 days:

Recommendation 1

Immediately Remove OLAP from the Office of Policy and Restore its Autonomy by Insulating it from any Future Political Influence.

An interim final rule should be issued to reorganize EOIR again. In many aspects, the rule could reverse the changes made by the previous administration; however, in the case of OLAP, restoring the *status quo ante* may not be sufficient to protect it from improper influence. Prior to the reorganization of EOIR, OLAP was housed within the Office of the EOIR Director. OLAP is not likely to have sufficient autonomy or insulation from political influence in that placement, either. The Biden administration should research whether an interim final rule can be used to create a separate directorate within or outside EOIR that would house OLAP and any other programs that ensure access to justice, which must be protected from political influence, and must maintain proper distance from the government offices involved in bringing removal cases against immigrants. If this ideal change cannot be made with immediate effect, then the administration should issue an interim final rule to restore the *status quo ante* to effect some immediate improvement in the program. The administration should then ensure that it has plans to promulgate a new proposed rule as soon as possible that would create the autonomy and insulation that the program needs in order to ensure the availability of affordable, quality legal representation for immigrants.

Recommendation 2

Immediately Rescind the Revised Application Forms (EOIR-31 and EOIR-31A) and Remove Them From the EOIR Website.

The Office of Policy has sought to revise the application forms for recognition and accreditation (Forms EOIR-31 and EOIR-31A) with no stakeholder engagement or meaningful opportunities for input.¹¹ The notice and comment process has been incorrectly administered twice,¹² but the new version of the forms, dated February 2020, have been posted on OIRA's website nonetheless.¹³ The amount of information required in the revised forms is burdensome, goes far beyond the requirements in the regulations, and will make the R&A process significantly more difficult for eligible organizations.¹⁴ In short, the revised forms would subvert the purpose of the R&A program by reducing capacity for charitable immigration legal services.

The February 2020 version of the forms should be immediately removed from the EOIR website and replaced with the previous January 2017 edition. EOIR should halt efforts to promulgate new forms until it engages with stakeholders to study the impact of the changes and whether the changes are in line with the regulations and purpose of the R&A program. In the event that the previous administration has already promulgated the new forms through the notice and comment process, EOIR should allow applicants to continue using the old forms (January 2017 edition) until it engages with stakeholders on how to mitigate the impact of the changes.

Recommendation 3

OLAP's New Directorate Should Ensure that OLAP Implements the R&A Regulations as Written and With Transparency.

Wherever the Biden administration ultimately places OLAP, the director or agency overseeing OLAP in the organizational chart should ensure that OLAP implements the R&A regulations as written without exerting political pressure or influence. Due to the political pressure exerted by the previous administration, OLAP has made the R&A process much more arduous. It has reduced the flexibility in the types of documentation that can be presented as evidence, changed its guidance to applicants in its Frequently Asked Questions to increase the number of factors that may result in an application being denied, and increased the complexity of the application process so that it is more difficult for applicants to complete and takes longer for OLAP to adjudicate. In its new organizational position, OLAP should revise its practices and guidance to match the flexibility built into the R&A regulations, as those regulations were drafted with significant stakeholder participation and feedback. Any changes that counteract the flexibility promised to stakeholders in the final rule of the R&A regulations, and any changes that undermine the ultimate purpose of the R&A program to increase capacity of high-quality legal services at non-profit organizations should be reversed.

Recommendation 4

OLAP Should Engage with Stakeholders and Ensure Transparency.

OLAP and the directorate or agency that houses it should hold frequent and meaningful stakeholder engagements regarding form revisions, efforts to create an online application system and any other proposed changes to the program. The agency should ensure that they also engage with government stakeholders,

including USCIS, to provide interagency education and receive feedback. The Director of OLAP should be given discretion to meet and communicate with the R&A Working Group¹⁵ as he or she sees fit to ensure transparency and to gather feedback about the program's operations from the applicants' perspective to ensure that OLAP's practices do not undermine the purpose of the program to expand capacity. The agency should increase the transparency of how it implements the underlying regulations and how it revises its guidance in the FAQs.

Recommendation 5

OLAP Should be Fully Staffed and Provided with Resources to Reduce its Backlog.

OLAP has been chronically under-staffed, a situation that has worsened considerably under the Office of Policy and further exacerbated case processing backlogs. At the time of this writing, OLAP is adjudicating recognition applications filed in January 2020, an 11-month backlog that prevents many organizations from opening their doors for immigration legal services.

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To learn more about CLINIC's Administrative Advocacy Priorities, please visit:
cliniclegal.org/advocacy.

Endnotes:

¹ 8 C.F.R. 1292.12.

² 8 C.F.R. 1292.11.

³ See *Recognized Organizations and Accredited Representatives Roster*, DEPARTMENT OF JUSTICE, justice.gov/eoir/page/file/942301/download (report updated on 11/9/2020); *Accredited Representatives Roster*, DEPARTMENT OF JUSTICE, justice.gov/eoir/page/file/942311/download (report updated on 11/9/2020).

⁴ Rough estimate based on CLINIC's survey of its own affiliates who represent approximately 35% of the roster of accredited organizations.

⁵ Sandhya Dirks, *With or Without Overhaul, Immigration Lawyers in Short Supply*, NPR (Apr. 29, 2013), npr.org/2013/04/29/179019214/with-or-without-reform-immigration-lawyers-in-short-supply.

⁶ Organization of the Executive Office for Immigration Review, 85 Fed. Reg. 69465 (Final Rule), available at govinfo.gov/content/pkg/FR-2020-11-03/pdf/2020-23210.pdf.

⁷ Organization of the Executive Office for Immigration Review, 84 Fed. Reg. 44537 (Interim Final Rule), available at [govinfo.gov/content/pkg/FR-2019-08-26/pdf/2019-18196.pdf](https://www.govinfo.gov/content/pkg/FR-2019-08-26/pdf/2019-18196.pdf).

⁸ Letter from Anna Gallagher, Exec. Dir., Catholic Legal Immigration Network, Inc. to Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review (Oct. 17, 2019), available at [cliniclegal.org/resources/federal-administrative-advocacy/clinic-submits-comment-opposing-eoirs-reorganization](https://www.cliniclegal.org/resources/federal-administrative-advocacy/clinic-submits-comment-opposing-eoirs-reorganization).

⁹ Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92346 (Final Rule), available at [govinfo.gov/content/pkg/FR-2016-12-19/pdf/2016-29726.pdf](https://www.govinfo.gov/content/pkg/FR-2016-12-19/pdf/2016-29726.pdf).

¹⁰ See *id.* at 92351 (“The flexible approach adopted by the rule allows organizations to meet the knowledge and experience requirements in a number of ways, and it is currently used by the Department in the recognition and accreditation process.”)

¹¹ See Letter from Anna M. Gallagher, Exec. Dir., Catholic Legal Immigration Network, and Jennifer Foy, Vice Pres. for U.S. Programs, World Relief to Office of Management and Budget and Lauren Alder Reid, Asst. Dir., Office of Policy, Executive Office for Immigration Review (May 19, 2020), available at [cliniclegal.org/resources/federal-administrative-advocacy/clinic-and-world-relief-call-eoir-rescind-new-ra-forms](https://www.cliniclegal.org/resources/federal-administrative-advocacy/clinic-and-world-relief-call-eoir-rescind-new-ra-forms) (requesting that EOIR withdraw the published forms due to serious deficiencies in the notice and comment process).

¹² See *id.*

¹³ Executive Office for Immigration Review, *Form EOIR-31* (Feb. 2020), available at [justice.gov/eoir/page/file/1276426/download](https://www.justice.gov/eoir/page/file/1276426/download); Executive Office for Immigration Review, *Form EOIR-31A* (Feb. 2020), available at [justice.gov/eoir/page/file/1276431/download](https://www.justice.gov/eoir/page/file/1276431/download).

¹⁴ See Letter from Anna Gallagher, Exec. Dir., Catholic Legal Immigration Network, Inc., to Lauren Alder Reid, Asst. Dir., Office of Policy, Executive Office for Immigration Review (Sept. 1, 2020), available at [cliniclegal.org/file-download/download/public/4819](https://www.cliniclegal.org/file-download/download/public/4819) (detailing CLINIC’s objections to the changes to forms EOIR-31 and EOIR-31A).

¹⁵ CLINIC leads the R&A Working Group, which is comprised of organizations and networks that frequently use the R&A program. Its goal is to ensure common understanding of R&A procedures and best practices, and to engage in outreach to OLAP, the office that administers the R&A program, to exchange information helpful to program administrators and to the stakeholders.