

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
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<https://oversight.house.gov>

March 19, 2021

Mr. Robert Fairweather
Acting Director
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Acting Director Fairweather:

I write to urge you to freeze and repeal regulations issued at the end of the Trump Administration that violate the rights of federal prisoners, LGBTQ+ individuals, and asylum-seekers and do not comply with the requirements of the Congressional Review Act (CRA).

Under the CRA, a federal regulation does not take legal effect until it has been submitted to both Chambers of Congress and has been published in the *Federal Register*.¹ The Trump Administration issued a number of regulations in its final months that it published in the *Federal Register* but failed to submit to one or both Houses of Congress. Under federal law, those regulations have never taken legal effect.

On January 20, 2021, President Biden, following recent practice, issued a Regulatory Freeze Memorandum to place a hold on all regulations that had not taken effect as of that date, allowing relevant federal agencies the opportunity to reconsider the underlying policies.² This regulatory review should include regulations that have not become law under the CRA.

The Subcommittee is particularly concerned about regulations that permit the use of firing squads and electrocutions to execute federal prisoners; allow the federal government to fund organizations that discriminate against LGBTQ+ people; and strip asylum-seekers of basic procedural protections.

¹ 5 U.S.C. § 801.

² Memorandum from Ronald A. Klain to Heads of Executive Departments and Agencies, *Regulatory Freeze Pending Review* (Jan. 20, 2021) (online at www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/).

Illegal Regulations to Freeze and Repeal

In 2020 and 2021, after a 17-year hiatus in federal executions, the Trump Administration oversaw the executions of 13 federal prisoners—more than half of whom were Black or Native American—over just six months.³ This unconscionable killing spree quadrupled the number of federal executions since the death penalty was reinstated in 1988.⁴ All of those executions were conducted via lethal injection.

In 2020, the Trump Administration issued a rule that permits executions by firing squads and electrocution, a shocking backslide enacted presumably to ensure executions can continue even if companies refuse to provide lethal injection drugs.⁵ The Trump Administration never sent this regulation to the House or Senate, as required by the CRA, and it has therefore not taken legal effect.⁶

In addition, the Trump Administration issued a final rule on Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities that allows religious organizations that receive federal funding to discriminate against people based on their religious preferences, sexual orientation, and gender identity.⁷ More than one in three LGBTQ+ Americans and more than three in five transgender Americans faced discrimination of some kind in the past year.⁸ This illegal regulation enables government-sanctioned discrimination, threatening the rights of an already vulnerable community. The Trump Administration never sent this regulation to the Senate, as required by the CRA.⁹

The Trump Administration also finalized a trio of rules that make it harder for immigrants to obtain asylum. The Procedures for Asylum and Bars to Asylum Eligibility rule adds seven additional bars to eligibility for asylum, making it exponentially more difficult for deserving

³ *U.S. Executes Dustin Higgs for Role in 3 1996 Murders*, New York Times (Jan. 16, 2021) (online at www.nytimes.com/2021/01/16/us/politics/dustin-higgs-executed.html).

⁴ Federal Bureau of Prisons, *Historical Information* (online at www.bop.gov/about/history/federal_executions.jsp) (accessed Mar. 17, 2021).

⁵ Department of Justice, *Manner of Federal Executions*, 85 Fed. Reg. 75846 (Nov. 27, 2020) (final rule).

⁶ *Rolling Back the Clock on Trump's Last-Minute Regulatory Rollbacks*, Public Citizen (Mar. 1, 2021) (online at www.citizen.org/article/rolling-back-the-clock/).

⁷ Department of Education, Department of Homeland Security, Department of Agriculture, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Veterans Affairs, and Department of Health and Human Services, *Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities*, 85 Fed. Reg. 82037 (Dec. 17, 2020) (final rule).

⁸ Center for American Progress, *The State of the LGBTQ Community in 2020* (Oct. 2020) (online at www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/).

⁹ *Rolling Back the Clock on Trump's Last-Minute Regulatory Rollbacks*, Public Citizen (Mar. 1, 2021) (online at www.citizen.org/article/rolling-back-the-clock/).

asylum-seekers to receive protection in the United States.¹⁰ The Trump Administration never sent this regulation to the House, as required by the CRA.¹¹

Another rule, *Appellate Procedures and Decisional Finality in Immigration Proceedings and Administrative Closure*, removes procedural protections for migrants, denying these migrants a fair chance at appealing adverse determinations.¹² Finally, the *Procedures for Asylum and Withholding of Removal* rule creates an onerous 15-day filing deadline for asylum applications for immigrants in asylum-only proceedings, removing procedural protections for asylum-seekers by making it nearly impossible for them to obtain legal counsel within the required timeframe. This rule would also require immigration judges to decide upon most asylum applications within just 180 days, which further blocks asylum-seekers from fully developing their claims.¹³ These two rules complied with the CRA, but became effective after January 20, 2021, and are therefore also subject to President Biden's freeze memorandum.¹⁴

Subcommittee Request

Each of these regulations should be frozen and repealed pursuant to the President's January 20, 2021, memorandum. In addition, I urge you to conduct a thorough review of all regulations from the Trump Administration that did not comply with the CRA's requirements and refer them to the relevant agencies for reconsideration.

I request that the Office of Management and Budget provide my Subcommittee with a list of all regulations that did not comply with the CRA or are otherwise eligible to be frozen under the President's memorandum, no later than Friday, April 2, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Thank you for your attention to this matter.

¹⁰ Department of Homeland Security and Executive Office for Immigration Review, *Procedures for Asylum and Bars to Asylum Eligibility*, 85 Fed. Reg. 67202 (Oct. 21, 2020) (final rule).

¹¹ *Rolling Back the Clock on Trump's Last-Minute Regulatory Rollbacks*, Public Citizen (Mar. 1, 2021) (online at www.citizen.org/article/rolling-back-the-clock/).

¹² Department of Homeland Security and Executive Office for Immigration Review, *Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure*, 85 Fed. Reg. 81588 (Dec. 16, 2020) (final rule).

¹³ Department of Homeland Security and Executive Office for Immigration Review, *Procedures for Asylum and Withholding of Removal*, 85 FR 81698 (Dec. 16, 2020) (final rule).

¹⁴ *Rolling Back the Clock on Trump's Last-Minute Regulatory Rollbacks*, Public Citizen (Mar. 1, 2021) (online at www.citizen.org/article/rolling-back-the-clock/).

Mr. Robert Fairweather
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Sincerely,

A handwritten signature in blue ink that reads "Jamie Raskin". The signature is written in a cursive style and is positioned above a horizontal line.

Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties

Enclosure

cc: The Honorable Pete Sessions, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.