

February 1, 2021

The Honorable Joseph Biden
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20500

RE: Department of Justice Reform of Immigration Courts and Enforcement Priorities

Dear Mr. President,

We the undersigned 165 immigration, civil rights, and human rights organizations, are heartened by actions you announced in the opening days of your administration to reform the immigration system. After four relentless years of punitive and inhumane policies designed to exclude, imprison and expel immigrants, nothing less than bold leadership is needed to implement a new vision for the nation. We write to call your attention to vital reforms that must be undertaken to ensure the Department of Justice (DOJ) effectively implements your plan to establish fairness and integrity in the immigration courts and the enforcement system. This letter provides additional recommendations to supplement a letter sent on January 18 by many of the undersigned organizations regarding immigration enforcement.¹

While the Department of Homeland Security (DHS) runs much of the immigration system, key reforms planned at DHS are far more likely to achieve success if DOJ plays an active leadership role. DOJ oversees the immigration courts, which are in a state of crisis due to the deeply damaging policies of the Trump administration. The previous administration implemented a politically motivated agenda designed to turn the immigration courts into a conveyor belt for enforcement by accelerating deportations. Court decisions were expedited by truncating due process, resulting in unjust orders of removal that separated families and deported people to unsafe, life-threatening circumstances. The systemic harm caused by the previous administration is indisputable: in 2020, immigration courts denied 72 percent of all asylum cases, a historic record in denial rates and an increase of about 20 percent compared to both the Obama and Bush administrations.²

Ironically the Trump administration's efforts to short circuit due process have not reduced the case backlog, which currently exceeds 1.3 million cases, having more than doubled in the past four years.³ The backlog has resulted in severe delays: The average wait time for an immigration court hearing is now over 1,600 days, with a quarter of immigrants waiting over five years.

Notably, many of the 1.3 million cases should not even be taking up precious time on the courts' docket because they should not be priorities for enforcement. Hundreds of thousands of these cases are over five years old or are eligible for legal relief that can and should be reviewed not by the courts but by another agency, U.S. Citizenship and Immigration Services (USCIS). This

observation leads to one of our chief recommendations: We urge the Attorney General to conduct a review of cases on the docket to systematically remove those that are not enforcement priorities. By our estimate at least 600,000 cases in the categories mentioned above as well as others are suitable to be removed from the courts' calendar, thereby improving both efficiency and fairness. These nonpriority cases can be quickly identified at headquarters through a search of the court database without the need for case-by-case review.

These actions should be accompanied by reforms to ensure the integrity and independence of the immigration courts. In just one term, the Trump administration has laid bare the structural weakness of America's immigration courts as a judicial body that is subservient to a prosecutorial agency.⁴ In recent years, the Justice Department has exercised its power to the maximal extent, stripping immigration judges of power to administratively close cases and other fundamental authorities and rapidly appointing judges, to bend the courts toward political ends. We urge the Attorney General to restore these fundamental authorities to immigration judges, rescind policies that compel the courts to rush to judgment at the expense of due process, and undo Attorney General certified opinions that grossly mis-interpreted asylum and other immigration laws.⁵

We also urge you to support the creation of an immigration court system that is independent of the Department of Justice. Recognizing that legal representation dramatically increases the fairness of legal proceedings and improves court appearance rates and efficiency, we urge you to call for the dramatic expansion of government-funded legal representation programs with the goal of guaranteeing counsel to all people facing removal who cannot afford it.

We are encouraged that DOJ has revoked the prior administration's abhorrent Zero Tolerance policy. In addition, the Attorney General should issue new prosecutorial guidance to suspend all prosecutions for illegal entry and reentry, which criminalize the act of crossing the border. These prosecutions, which made up 57 percent of all federal criminal cases in 2017 and 2018,⁶ not only led to family separation but also delayed or prevented asylum seekers from making a claim for protection, in violation of U.S. treaty obligations and due process.⁷

To ensure the success of your immigration agenda, we recommend the following urgent actions:

Enforcement priorities and immigration court docket prioritization

- DOJ should issue new department-wide guidance on the priorities for immigration enforcement aligned with the one issued by the Department of Homeland Security (DHS) on January 20, 2021 and designed to ensure the fair, humane and effective enforcement of immigration laws.
- During the 100-day pause on deportations, or for the next 100 days if the policy remains temporarily halted by the federal courts, DOJ should conduct a database-driven review of the pending 1.3 million immigration court cases and systematically remove from the docket nonpriority cases, unless deferral would prejudice the parties, including: 1) cases pending for over five years; 2) cases eligible for relief that can be adjudicated by USCIS; 3) cases previously closed under the Obama administration; and 4) cases in which the grounds for removability are based on drug-use offenses.

- Until the “re-docketing” of case is completed, DOJ should suspend immigration court removal proceedings except in certain categories of cases, such as cases in which the respondent could be prejudiced or when requested by the respondent.

Immigration court leadership and personnel

- DOJ should install new EOIR leadership to replace the previous administration’s politically motivated leadership and conduct a review of all personnel decisions made during the Trump administration to correct any decisions that were not consistent with the law or acceptable norms. The new EOIR director should set standards of judicial conduct to require impartiality and require additional training of judges to minimize improper biases.

Fair and independent courts

- DOJ should rescind opinions certified by the Attorney General, regulations, and other policies that are contrary to law, the principles of due process and judicial independence. In particular, DOJ must restore the authority to order administrative closure, termination continuances, and other powers stripped of immigration judges. DOJ should rescind the Attorney General opinions that undermine asylum law and that contribute to the unjust and unnecessary detention and criminalization of immigrants. DOJ should also halt efforts to decertify the judges’ union, the National Association of Immigration Judges.
- DOJ should eliminate all counterproductive policies that put pressure on trial and appellate judges to expedite cases at the expense of due process, such as case-completion quotas. DOJ should develop and implement a transparent process for individuals to file complaints against judges, without fear of retaliation,
- President Biden should announce his support for the creation of an independent immigration court system separate from DOJ.

Legal representation

DOJ and DHS should announce a commitment to guarantee legal counsel for every person facing removal if they cannot afford it and take immediate steps to expand legal representation programs for vulnerable populations. These departments should facilitate meaningful, zealous legal representation by all attorneys and accredited representatives, including remote representation when required to ensure safety during the COVID-19 pandemic.

Federal prosecutions

The Attorney General should issue new policies regarding prosecutions for immigration-related offenses:

- DOJ should halt illegal entry and reentry prosecutions (under 8 U.S.C. 1325 and 1326).
- DOJ should revoke the 2017 policy calling for maximal prosecutions under the smuggling statute (8 U.S.C. 1324) and issue new policy specifying that humanitarian related work is not subject to prosecution and that family members and others not motivated by profit, will not be criminally prosecuted. DOJ should also bar the targeting of individuals engaged in humanitarian relief work, labor organizing activity, or political or legal advocacy.

We appreciate your continued leadership and partnership in these matters. Contact Greg Chen at the American Immigration Lawyers Association, gchen@aila.org, with any questions.

Sincerely,

Advocates for Human Rights
African Communities Together
African Public Affairs Committee
African Services Committee
African Services Committee Inc
Aldea - The People's Justice Center
Alianza Americas
Alliance for Justice
Alliance San Diego
Alliance4Action Immigration Action Group
American Immigration Council
American Immigration Lawyers Association
American Organization for Immigrants
Americans for Immigrant Justice
America's Voice
Arkansas United
Asian Americans Advancing Justice | AAJC
Asian Pacific Institute on Gender-Based Violence
ASISTA
Asylum Seeker Advocacy Project (ASAP)
Attorney; Founding Director, Project New Opportunity
Austin Region Justice for Our Neighbors
Bellevue Program for Survivors of Torture
Bend the Arc Jewish Action
Black Alliance for Just Immigration (BAJI)
Bridges Faith Initiative
Capital Area Immigrants' Rights Coalition
Capital District Border Watch
Catholic Legal Immigration Network, Inc.
Catholic Legal Services, Archdiocese of Miami
catholic migration services, Inc.
Center for Gender & Refugee Studies
Center for Victims of Torture
Center Global
Central American Legal Assistance
Central American Resource Center (CARECEN-LA)
Central Washington Justice For Our Neighbors
Children's Legal Center
Church World Service
Clerics of St. Viator (Viatorians)
Cleveland Jobs with Justice

Coalición Mexicana
Coalition for Humane Immigrant Rights (CHIRLA)
Community Change
Deportation Defense Clinic at Hofstra Law School
Detention Watch Network
Disciples Refugee & Immigration Ministries
Don't Separate Families
El Colectivo NC
Empowering Pacific Islander Communities (EPIC)
End Streamline Coalition
Fair Immigration Reform Movement (FIRM)
Faith in Action
Families Belong Together
Fayetteville Justice for Our Neighbors
First Unitarian Universalist Society of San Francisco
Florence Immigrant & Refugee Rights Project
Foreign-born Information and Referral Network
Georgia Asylum and Immigration Network (GAIN)
Grassroots Leadership
Haitian Bridge Alliance "The Bridge"
Her Justice, Inc.
HIAS
Holy Spirit Missionary Sisters, USA-JPIC
Hope Border Institute
Human Rights First
Human Rights Initiative of North Texas
Humane Borders, Inc.
ICE Fuera de Austin
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Allies of Marshalltown
Immigrant ARC
Immigrant Justice Corps
Immigrant Justice Idaho
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
Immigrant Legal Center of Boulder County
Immigrant Legal Defense
Immigration Center for Women and Children
Immigration Equality
Immigration Hub
Institute for Justice & Democracy in Haiti (IJDH)
International Federation of Professional and Technical Engineers (IFPTE)
International Refugee Assistance Project
International Rescue Committee
InterReligious Task Force on Central America
ISLA: Immigration Services and Legal Advocacy

Jane Skelley Carroll, Attorney at Law
Japanese American Citizens League
Just Futures Law
Just Neighbors
Justice for Migrant Families WNY
Justice For Our Neighbors North Central Texas
Kathryn O. Greenberg Immigration Justice Clinic at Cardozo School of Law
La Resistencia
Latin America Working Group (LAWG)
Lawyers for Good Government (L4GG)
Leadership Conference on Civil and Human Rights
Legal Aid Society (New York)
LGBT - Freedom and Asylum Network
Louisiana Advocates for Immigrants in Detention
Make the Road Nevada
Make the Road New York
Migrant and Immigrant Community Action Project
Migrant Center for Human Rights
Migration Scholar Collaborative (MiSC)
Mijente
Minnesota Interfaith Coalition on Immigration
Mississippi Center for Justice
Mobilization for Justice, Inc.
National Council of Asian Pacific Americans-NCAPA
National Domestic Workers Alliance
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
National Justice for Our Neighbors
National Korean American Service & Education Consortium (NAKASEC)
National Lawyers Guild San Antonio
National Network for Immigrant & Refugee Rights
National Organization for Women of NYS
Network Lobby for Catholic Social Justice
New England Justice for Our Neighbors
New Mexico Immigrant Law Center
New Sanctuary Coalition
New York Immigration Coalition
New York Justice for Our Neighbors, Inc.
New York Law School Asylum Clinic
North Carolina Justice Center
Northern Illinois Justice for Our Neighbors
Northwest Immigrant Rights Project
Partnerships for Trauma Recovery
Poder Latinx
RAICES

Refugee and Immigrant Center for Education and Legal Services (RAICES)
RefugeeOne
Refusing to Forget
Resurrection Project
Rocky Mountain Immigrant Advocacy Network
San Antonio Region Justice For Our Neighbors
Sanctuary for Families
Sant La, Haitian Neighborhood Center
South Asian Americans Leading Together (SAALT)
Southern Border Communities Coalition
Southern Poverty Law Center
Southside Presbyterian Church, Tucson, Arizona
St. Francis in the Foothills
St. George's Episcopal Church
St. Louis Inter-Faith Committee on Latin America (IFCLA)
St. Mark's Presbyterian Church
STRANGERS NO LONGER (Michigan)
Streefland Law Firm
TASSC (Torture Abolition & Survivors' Support Coalition) International
Tennessee Justice for Our Neighbors
Texas Impact
UndocuBlack Network
Unitarian Universalist Service Committee
United Stateless
United We Dream
University of the District of Columbia School of Law Immigration & Human Rights Clinic
VECINA
Welcoming the Stranger
Wind of the Spirit Immigrant Resource Center
Witness at the Border
Women's Refugee Commission
Young Center for Immigrant Children's Rights

¹ Letter to President-Elect Biden, "Executive Action to Transform Interior Immigration Enforcement," January 18, 2021, [FINAL-organizational-sign-on-re-enforcement-reforms-1.18.21.pdf](https://www.communitychangeaction.org/files/2021/01/FINAL-organizational-sign-on-re-enforcement-reforms-1.18.21.pdf) ([communitychangeaction.org](https://www.communitychangeaction.org)).

² Transactional Records Access Clearinghouse, "Asylum Denial Rates Continue to Climb," October 28, 2020, <https://trac.syr.edu/immigration/reports/630/>.

³ See Transactional Records Access Clearinghouse, "The State of the Immigration Courts: Trump Leaves Biden 1.3 Million Case Backlog in Immigration Courts," January 19, 2021, <https://trac.syr.edu/immigration/reports/637/#f1>.

⁴ American Immigration Lawyers Association, "AILA Policy Brief: Restoring Integrity and Independence to America's Immigration Courts," January 24, 2020, <https://www.aila.org/duprocess#PDF>.

⁵ Human Rights First, Fact Sheet "Central Americans Were Increasingly Winning Asylum Before President Trump Took Office," January 2019, [HRF Fact Sheet \(humanrightsfirst.org\)](https://www.humanrightsfirst.org/files/2019/01/HRF-Fact-Sheet-Central-Americans-Were-Increasingly-Winning-Asylum-Before-President-Trump-Took-Office-2019.pdf)

⁶ Justice Strategies and Grassroots Leadership, "'Zero Tolerance' policy greatly accelerates immigrant criminalization through end of 2018," March 18, 2019, <https://justicestrategies.org/sites/default/files/publications/Zero%20Tolerance%E2%80%9D%20accelerates%20immigrant%20criminalization%20through%202018.pdf>.

⁷ Human Rights First, “Punishing Refugees and Migrants: The Trump Administration’s Misuse of Criminal Prosecutions,” January 18, 2018, <https://www.humanrightsfirst.org/resource/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions>.