



February 18, 2021

## Re: Domestic Human Rights Policies Biden-Harris Administration Must Address in Early 2021

Dear Biden-Harris Administration:

On behalf of Amnesty International and our ten million members, activists, and supporters worldwide, I am writing to share our recommendations for domestic policies your administration should advance in early 2021; we ask for your support in prioritizing and supporting these critical human rights issues.

The list of issues that follows is not exhaustive but are issues that can be immediately tackled by the Administration:

### 1. Restore a Fair Asylum System at the Border and Robust U.S. Refugee Admissions Program

Seeking [asylum](#) and [safety from armed conflict or persecution](#) is a human right. But in recent years people, including families and [children](#), in search of safety all around the world, including along the U.S.-Mexico border, have been [punished for seeking protection](#). Instead of upholding its responsibilities, the U.S. has abdicated its duty to protect refugees, drastically cutting the number of refugees it will accept for resettlement and devising a series of policies to offshore them, criminalize them and those that seek to protect them, and deny them protection altogether. The U.S. government has also sought to cut programs that offer lifesaving and life-preserving humanitarian aid to displaced populations the world over. The U.S. government has a responsibility to step up and be a robust participant in offering protection for refugees and asylum-seekers and lead the way in investing in innovative solutions that protect the human rights of all displaced, persecuted, and at-risk populations.

We are calling on the Biden administration to move with urgency to address the many damaging policies that have been enacted against refugees, migrants, and asylum-seekers, both in the U.S. and around the world, these last years. The U.S. should seek to ease pressure on countries currently hosting the greatest number of refugees by participating in equitable and predictable pathways to protection for refugees, including by expanding access to traditional resettlement, and by facilitating the successful integration of refugees in their host countries or helping to facilitate the conditions for voluntary return to refugees' countries of origin. In addition to expanding resettlement, the U.S. should invest in other admission pathways, including humanitarian programs, family reunification, and a private sponsorship model, and expand community involvement in resettlement by robustly promoting community sponsorship through co-sponsorship programs and private sponsorship.

The Biden administration should restore access to asylum, roll back harmful policies (including, but not limited to, so-called "Title 42" processing and the Migrant Protection Protocols), and importantly, ensure that people who were unable to access protection while any unlawful anti-asylum policies were in place are allowed the chance to seek asylum they never had.

## 2. Curb immigration detention

In recent years, the use of immigration detention has ballooned. Today, tens of thousands of immigrants, including thousands of asylum-seekers and families with children, are held in Department of Homeland Security (DHS) facilities throughout the country while they fight for their right to stay in the United States. Immigration detention serves as a form of punishment against people solely on the basis of their status and penalizes people who are fleeing persecution.

Immigration and Customs Enforcement (ICE) has ample discretion to release all people in immigration detention. Yet, disregarding the cries of detained immigrants, medical experts, and advocates, it has failed to do so. Since the onset of the pandemic, COVID-19 has spread throughout detention facilities: as of September 2020, at least seven people had died after contracting the virus in detention, and over 5,000 detained people thus far have tested positive for the virus.

Experts have estimated that the virus is likely spreading rates much higher than DHS has publicized, a fear which has been borne out in the few facilities where ICE has engaged in mass testing: for example, in August, 90% of people detained at the privately operated ICE facility in Farmville tested positive for COVID-19.

Both people in detention and their lawyers have shared harrowing details of ICE's reckless endangerment of people in its custody, in violation of Centers for Disease Control and Prevention (CDC) standards on the prevention of COVID-19 in places of detention. ICE and its detention facilities have failed to provide detainees with sufficient soap and sanitizer or adequate social distancing. Additionally, ICE has not abided by CDC standards for quarantining and medical isolation, instead "cohorting" people presumed to be positive for the virus, a form of treatment one medical expert has likened to "COVID-19 torture."

As COVID-19 cases increase exponentially across the United States, detained people have launched hunger strikes in multiple ICE immigration detention facilities, demanding to be released, and have often been met with brutal repression by guards and security personnel.

Now, ICE's detention practices are exacerbating a crisis beyond U.S. borders: tens of thousands of people have been deported during the COVID-19 pandemic, including hundreds of people who tested positive after contracting the virus after being detained in unsafe and unsanitary US detention facilities. Deported people have reported facing exposure to the virus, rights-abusing quarantine regimes in their countries of return, and stigma.

This public health crisis presents an opportunity for the United States to reform its practice of needless, costly, and punitive immigration detention, which has caused tremendous human suffering and has caused a crisis of contagion during the pandemic.

We call on the Biden administration to free people in immigration detention, including all families and children, and end the practice of family detention. Instead of investing in detention, the Biden administration should support community-based case management and support services, including supporting legal representation programs for people who appear in immigration court.

### **3. Prioritize Passing Legislation to End Gun Violence and Providing Critical Funding for Programs Aimed at Ending and Preventing Gun Violence**

The U.S. has both the highest absolute and highest per capita rates of gun ownership in the world, and guns are easily accessible by those likely to misuse them. Killing an average of 109 people each day, gun violence is the second leading cause of death among children and disproportionately affects communities of color. Yet the U.S. has failed to implement even a basic system for the regulation of firearms – with no requirements for universal background checks, licensing, and training for gun purchasers or for registration of guns. Further, it has continually failed to adequately and consistently fund violence prevention and intervention programs that provide life-saving alternatives to communities routinely impacted by gun violence. The U.S. crisis of gun violence impacts a broad range of people domestically, including women, children, communities of color, and students and rates of gun violence and shootings in some cities have increased during COVID-19, as domestic gun sales reach record numbers.

It is time for a change: the crisis of gun violence in the U.S. and failure of the U.S. government to take effective action has resulted in the death of thousands and injuries to even more. This violence is not inevitable. There are actions the administration can take today that could make a meaningful difference. The U.S. has an obligation under international law to safeguard the human rights and individual safety of people living in the country, the right to live, to feel safe and to be free from discrimination. Amnesty International USA believes that the U.S. has a duty to take positive action to address gun violence, especially where models exist that could reduce it while making a long term and lifechanging impact on systemically disenfranchised communities.

Thus, AIUSA asks the Biden-Harris Administration to use their executive power to take bold action to end gun violence by:

- Identify Gun Violence Prevention as a Priority Issue
  - Create an Interagency Task Force or Hub on Gun Violence Prevention responsible for developing and implementing a coordinated, comprehensive plan to address all aspects of gun violence across all federal agencies
  - Appoint a senior-level White House official to coordinate federal efforts to address gun violence
- Address Gun Violence as a Public Health Crisis
  - Create a federal office of violence prevention in the Department of Health and Human Services to support community-based violence intervention programs
  - Provide official guidance encouraging the use of federal grant programs, including Byrne JAG and VOCA funding, for community-based gun violence victim services and eligible violence intervention programs
  - Increase funding to enhance access to trauma-based healthcare
  - Increase federal funding for public health-focused research into gun violence
  - Improve public health information on gun deaths and injuries through funding and improved data collection, data infrastructure, and timeliness of results in order to know the true burden of gun violence in real-time
  - Install a domestic violence specialist at each ATF field office

- Limit gun carrying on federal public lands and preclude the use of “stand your ground” as a defense on federal property
- Create a national voluntary gun buyback pilot program and a national safe storage campaign
- Strengthen the Background Check System for gun purchases, transfers and acquisitions
  - Close the “fire sale loophole” that allows dealers who lose their license to sell guns in their inventory as private sellers
  - Provide additional funding for Fix NICS and to increase capacity at the National Instant Criminal Background Check System
  - Alert state and local law enforcement each time a prohibited person fails a background check—before they find another way to arm themselves
- Enhance Oversight of the Gun Industry
  - Use executive authority to ban ghost guns
  - Issue an annual report providing detailed information about legal violations by gun dealers, distributors, and manufacturers
  - Direct ATF to require that gun dealers perform annual background checks on all employees who may transfer firearms
  - Fully enforce the ban on importation of foreign-made assault weapons that do not have a “sporting purpose”
- Implement Measures to Address Domestic and International Gun Trafficking
  - Reverse the Trump Administration rule shifting oversight of gun exports—including technical data for 3D-printed guns—to the Commerce Department and return firearm exports to the U.S. Munitions List
  - Release an annual report on gun trafficking investigations that includes information about the largest suppliers of crime guns
  - Clarify that the federal budget riders restricting access to certain crime gun trace data (the so-called “Tiahrt Amendments”) do not restrict ATF’s ability to publish or release aggregate data about the source of guns that is critical to stemming trafficking
  - Re-sign the United Nations Arms Trade Treaty
- Focus on Firearm Suicide
  - Track national suicide mortality, by method, on a quarterly and monthly basis using the Vital Statistics Rapid Release program
  - Align suicide prevention training efforts through relevant federal programs to include a focus on lethal means safety
  - Provide funding to support lethal means counseling training for all suicide prevention lifeline staff and volunteers, health care professionals, and health care students
  - Direct DOJ to issue best practices and offer technical assistance to states interested in enacting extreme risk laws, including as it relates to suicide prevention
- Disarm Armed White Supremacists and Protect Peaceful Protests and Voting
  - Address the rise in armed white supremacists and extremists by improving data on hate crimes

- Use existing resources and civil rights laws to prosecute white supremacists and armed extremists
- Expand the use of policies that disrupt firearm access by hate-driven people, such as extreme risk protection orders

#### 4. Reform Policing

In May 2020, the world came to know of George Floyd, but excessive force against and killings of Black people by law enforcement are as old as policing in the U.S. itself. Black people comprise about 13% of the US population, yet the Mapping Police Violence estimates that in 2020, Black people make up 28% of those killed by law enforcement. The video of the last moments of Mr. Floyd’s life, uttering a familiar refrain “I can’t breathe” woke up people around the world, and sparked possibly the largest protest movement in U.S. history and spurred Congress to advance policing reforms, including the George Floyd Justice in Policing Act (JPA, H.R. 7120), passed the House on June 25, 2020.

A provision of the George Floyd Justice in Policing Act, the PEACE Act, HR 4359 in the 116<sup>th</sup> Congress, would create a national standard, limiting the use of force by federal law enforcement to only when necessary and reserve deadly force for as a last resort. This is more closely in line with international law and standards for the use of force and firearms by law enforcement. The bill also would call on the Attorney General to condition federal funding to states and localities so that states enact substantially similar laws on the use of force by law enforcement. This administration campaigned, in support of [“a national standard on use of force and conditioning federal funds for police departments on adoption of that standard”](#). We look forward to working with this administration on not only executive action to issue guidelines to federal law enforcement on the use of force but also ensuring the passage of the PEACE Act in the 117<sup>th</sup> Congress.

Last summer, it became apparent that law enforcement’s use of military-grade equipment has the potential to escalate violence. In just a 10-day period between the end of May and the beginning of June, [Amnesty International documented 125 incidents of police violence across 40 states and the District of Columbia](#) including dozens of instances where police deployed impact munitions and tear gas against largely peaceful protestors. The Department of Defense (DOD) 1033 Program, which facilitates the transfer of controlled surplus military grade equipment to state, local and tribal law enforcement, has resulted in the transfer of approximately \$7.4 billion worth of surplus military equipment since its creation in 1990. These programs have equipped law enforcement agencies with military-grade equipment such as armored vehicles, military-style assault rifles, and explosives, and has funded the creation of special tactical teams for drug investigations. [Two studies](#) released in the summer of 2020 show that the transfer of military equipment has not served to reduce crime or increase officer safety and in [2017 federal government oversight report](#) found that the program could not prevent fraudulent applications from acquiring weapons of war from the program.

We hope to the Biden-Harris Administration address the urgent matter of militarized policing. We urge this administration to go beyond a promise to reinstate the Obama-era executive order 13688 to prohibit the transfer of controlled military weapons through the 1033 program and instead issue an executive order placing a full moratorium on the 1033 Program and signal your support for Congress to end the program altogether. Further the administration should reinstate the Law Enforcement Permanent Working Group (PWG) work to continue dialogue among federal agencies providing military excess non-military equipment and establish a new program for the transfer of that equipment to nonprofits and state and local governments,

Additionally, with regard to policing we urge this administration to:

- Rescind the Sessions memoranda [limiting the use of pattern or practice investigations](#).
- Ensure that the Death in Custody Reporting Act is fully implanted and enforced by the Department of Justice.
- End Operation Legend and [Operation Relentless Pursuit](#) by suspending all grant funding designated to those programs.

## 5. End Violence Against Native American and Alaska Native Women

Rape and violence are committed against Native women in the United States with [almost total impunity](#). While the available data does not accurately portray the extent of sexual violence against Native American and Alaska Native women, the U.S. Department of Justice's [own statistics](#) indicate that Native American and Alaska Native women are more than two and a half times more likely to be raped or sexually assaulted than women in the United States in general and that 86% of the reported crimes are committed by non-Native men. At least one in three Native women will be raped during her lifetime, and survivors face significant barriers to securing justice following rape or sexual violence, including inadequate police response, inadequate health and forensic services, and a [lack of prosecutions](#).

The federal government's steady erosion of tribal authority and chronic underfunding of law enforcement agencies and health service providers compounds the failure to protect Native women from sexual violence. Tribal prosecutors cannot prosecute crimes committed by non-Native perpetrators. Tribal courts are also prohibited from passing custodial sentences that are in keeping with the seriousness of the crimes of rape or other forms of sexual violence. As a direct result of passage of the Tribal Law and Order Act, the maximum prison sentence tribal courts can now impose for any crimes, including rape, is three years, up from the previous maximum of one year. In comparison, the average prison sentence for rape handed down by state or federal courts is between eight years and eight months and 12 years and 10 months respectively.

Tribal law enforcement agencies are also chronically under-funded – federal and state governments provide significantly fewer resources for law enforcement on tribal land than are provided for comparable non-Native communities. The lack of appropriate training in all police forces — federal, state and tribal — also undermines survivors' right to justice. Survivors of sexual violence are not guaranteed access to adequate and timely [sexual assault forensic examinations](#). As a consequence, Native women are [denied justice](#). And the perpetrators are going unpunished.

The Biden Administration should:

- Develop a comprehensive, cross-agency plan of action to stop violence against Indigenous women in consultation with Tribal nations and Indigenous women in particular.
- Require Indian Health Service to fully implement its sexual assault protocols, provide survivors access to adequate and timely sexual assault forensic exams (rape kits), and track services provided.
- Create standardized guidelines for responding to cases of missing and murdered Native Americans and Alaska Natives, in consultations with Tribal governments, which will include

guidance on inter-jurisdictional cooperation among tribes and federal, state, and local law enforcement.

- Ensure the full implementation, funding and resources for the Tribal Law and Order Act;
- Work in collaboration with Native American and Alaska Native women to obtain a clear and accurate understanding about the prevalence and nature of sexual violence against Indigenous women.
- Ensure that American Indian and Alaska Native women have access to adequate and timely sexual assault forensic examinations without charge to the survivor, holding a hearing to investigate why Indian Health Service has not fully implemented their sexual assault protocols required by the Tribal Law and Order Act.
- Provide resources to Indian tribes for additional criminal justice and victim services to respond to crimes of sexual violence against Native American and Alaska Native women.

## **7. End the Federal Death Penalty**

The death penalty is a punishment that is error-prone, racially biased, and arbitrary; it carries irrevocable consequences and is incompatible with human rights. The US remains just one of 20 countries in the world that actively executes people. There is a growing consensus against the death penalty in the United States. Twenty-two states and Washington, DC, have repealed the death penalty as a sentencing option, and three states, California, Pennsylvania, and Oregon, have gubernatorial moratoria prohibiting executions. An additional 12 states have not carried out an execution in at least 10 years. Virginia is among the states that has carried out the most executions in US history, and in January both legislative houses voted to abolish the death penalty.

Despite this progress, the Trump Administration resumed executions for the first time in 17 years, in the midst of a global pandemic, executing 13 people on federal death row. In 2019, the Department of Justice (DOJ) issued a new lethal injection protocol, and with it, five federal execution dates were originally set to take place between 2019 and 2020. Between July 2020 and January 2021 Trump Administration carried out three times more federal executions than had been carried out by the federal government in the prior six decades.

These executions bore the same pattern of unfixable errors we see with the use of the death penalty nationwide. As uplifted in Justice Sotomayor's dissent in *United States v Higgs*, "the Court has allowed the United States to execute thirteen people in six months under a statutory scheme and regulatory protocol that have received inadequate scrutiny, without resolving the serious claims the condemned individuals raised." In some cases, the Government sought emergency relief to lift stays of execution before lower courts had a chance to a chance to meaningfully determine if the executions before them were legal. Both domestic and international law prohibit the execution of a person with intellectual disability and yet the Government worked with deliberate speed implement the death penalty in at least two of the thirteen executions where such claims were raised.

This administration committed to working with Congress to [eliminate the federal death penalty and incentivizing states to follow](#) suit. While this is welcome, we also encourage the Biden-Harris Administration to use its authority to:

- Commute or reduce the sentences of all people currently under a federal sentence of death.
- Rescind the lethal injection protocol; rescind the “Manner of Execution” regulation that took effect in December 2020; rescind internal DOJ guidelines on litigating death row cases that took effect in December 2020.
- Establish clear executive guidelines that prohibit federal prosecutors from seeking the death penalty.
- Deauthorization all pending death penalty trial cases.
- Issue a federal moratorium on federal executions.
- Dismantle the federal death chamber at FCC Terre Haute.

Amnesty International’s experts stand ready to provide briefings on any issues outlined above. Should you have any questions, please do not hesitate to contact me at (202) 281-0017 or [jlin@aiusa.org](mailto:jlin@aiusa.org).

Sincerely,



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