

April 15, 2021

Hon. Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Hon. Alejandro N. Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Dear Attorney General Garland and Secretary Mayorkas:

In the wake of recent reports that the Biden administration is considering systemic asylum reforms, we write to urge steps to create a welcoming, effective, and timely asylum system that enhances – and does not sacrifice – due process and compliance with U.S. refugee law and treaty obligations. Many of our undersigned non-profit organizations and legal clinics have extensive experience in the provision of legal representation and other assistance to asylum seekers with pending cases.

We reiterate our [urgent recommendations](#) to end the misuse of Title 42, on the basis of which the U.S. government is expelling asylum seekers to danger in violation of U.S. refugee law. Leading public health experts have repeatedly explained that the policy “[has no scientific basis as a public health measure](#).” Its continued implementation prevents those waiting at ports of entry from seeking asylum, precipitates needless family separations, and particularly harms African and [Haitian](#) asylum seekers who are disparately impacted by this illegal policy.

We urge the U.S. government to immediately restore meaningful access to asylum and that U.S. agencies take steps to create a fairer, trauma-informed asylum system that treats people seeking protection in the United States humanely. This strengthened system should, at a minimum:

- **Boost legal representation and legal orientation presentation capacities**, injecting them as early as possible into the process. The Biden administration should call for and support the dramatic expansion of government-funded [legal representation](#) programs with the goal of guaranteeing counsel to all people facing removal who cannot afford it – and take immediate steps to encourage expanded legal representation for vulnerable populations, including asylum seekers whose cases originate at the border. Recent studies have confirmed that legal representation also leads to near [universal](#) immigration court attendance.
- **Expand the use of initial asylum office interviews**. The administration should refer asylum seekers for full asylum interviews with U.S. Citizenship and Immigration Services (USCIS) asylum officers in their destination locations, ramping up asylum office staffing to fully adjudicate asylum requests, which will result in quicker initial decisions and reduce the number of individuals ultimately referred to immigration court hearings. These full asylum office adjudications should not be conducted within the expedited removal process, which would limit due process. Instead, asylum office interviews can be scheduled for asylum seekers who are referred from the border to immigration court proceedings after those proceedings are terminated. Asylum office capacity to conduct these interviews must be enhanced by modernizing interview scheduling and filing systems and reducing asylum

office backlogs, including through elimination of the use of expedited removal and creation of an application route for cancellation of removal cases.

- **Eliminate the use of [expedited removal](#)**, which redeploys and diverts asylum office staff, triggering and exacerbating asylum office backlogs – practices that accelerated under the Trump administration. Expedited processing hinges on unfair expectations that asylum seekers, who are often detained, unrepresented, separated from loved ones, physically and mentally exhausted from their journeys to the United States, and suffering [memory loss](#) due to trauma, can immediately and fully articulate their requests for protection. Its use raises serious due process [concerns](#) and risks return of refugees to persecution and torture.
- **Reverse Trump administration rules, rulings, and policies.** To ensure cases move effectively through the adjudication system (whether a USCIS asylum officer interview or immigration court proceedings), without triggering otherwise unnecessary delays and appeals, the Departments of Homeland Security and Justice should take swift action to reverse Trump-era [rules, rulings and policies](#) that prevent refugees from obtaining asylum, separate families, and undermine integration while creating additional administrative inefficiencies. These include the [third-country transit asylum ban](#), [asylum entry ban](#), [“death to asylum” rule](#), [public health bars](#), and [work authorization deprivations](#) that are preventing asylum seekers from supporting themselves and their families. Asylum seekers subjected to these and other policies, including the Migrant Protection Protocols, asylum cooperative agreements, Prompt Asylum Claim Review, and Humanitarian Asylum Review Process, must be provided access to parole and other [redress processes](#). In addition, the Attorney General should vacate [rulings](#), including *Matter of A-B-*, *Matter of A-C-A-A-*, and *Matter of L-E-A-*, that undermine protections for refugees.¹
- **Ensure asylum protections are consistent with U.S. law and treaty commitments.** We welcome the administration’s proposal to [eliminate](#) the filing deadline ban that bars refugees from U.S. asylum protection. The administration and executive agencies should also move ahead swiftly to conduct the reviews directed under the President’s February 2, 2021 [executive order](#) and issue regulations ensuring protection for refugees, including on particular social group, domestic-violence, and gang-violence claims, consistent with U.S. and international law. The Attorney General should take steps to issue new asylum rulings under the correct legal standards.
- **Provide prompt adjudications without sacrificing due process.** Instead of counterproductive [“rocket-dockets”](#) or other [rushed](#) proceedings that prevent asylum seekers and [unaccompanied children](#) from securing counsel or gathering evidence to support their cases, we urge timely adjudications but that ensure sufficient time to prepare. People seeking protection in the United States should be able to schedule hearings and interviews without delays caused by a lack of available hearing dates or interview slots.
- **Upgrade the immigration courts.** While simultaneously working with Congress to enact legislation making the courts [independent](#), the administration should implement [safeguards](#)

¹ Please note that signatory Center for Gender and Refugee Studies is counsel of record in *Matter of A-B-* and *Matter of A-C-A-A-*; signatory Catholic Legal Immigration Network Inc. is counsel of record in *Matter of L-E-A-*.

against [politicized](#) hiring and interference, terminate policies that pressure judges to rush cases and deny asylum, restore immigration judge authority to manage dockets, [improve](#) hearing [efficiencies](#) through use of pre-hearing conferences and stipulations, and reduce court backlogs – including by restoring judicial discretion through the use of administrative closure and termination of cases that can be better resolved through USCIS petitions, grants of Temporary Protected Status, or referral to the asylum office.

- **Launch an innovative humanitarian reception system**, including (1) reorient border processing to swiftly and humanely transit asylum seekers and children from Customs and Border Protection custody to shelters or reception locations while permitting access for members of Congress, attorneys, UNHCR, NGOs, and human rights monitors; (2) avoid use of costly, inhumane, and [unnecessary](#) immigration detention by using legal authority, including parole, to release asylum seekers to live with family and community while their cases are pending; and (3) invest in appropriate, community-based support along the U.S. border and in cities around the United States to ensure that adults and families in the immigration process are received with dignity, able to transit to their destination locations, and can successfully navigate their immigration cases. It is essential that the reception process and other services are available in the language asylum seekers speak best, including Indigenous languages. Training in cross-cultural communication and trauma-informed interviewing are key.

The government should end the use of inappropriate Immigration and Customs Enforcement “alternatives to detention” programs that rely heavily on electronic surveillance, particularly harmful and expensive ankle bracelet monitors, and explore Office of Refugee Resettlement pilot programs to ensure experienced community-based organizations are contracted to provide services, including connection to legal counsel.

The reception system should ensure that asylum seekers receive prompt work authorization so that they can support themselves and their families while their cases are being decided and that [children](#) are protected, guaranteed fair opportunities to seek relief, and that relevant agency policies and procedures consider the best interests of the child in every decision.

The steps outlined above - and more detailed recommendations which we will be happy to share - will lead to increased efficiencies and more accurate decisions. While we strongly urge steps to enable prompt decisions, we would be greatly concerned about any efforts to restrict adjudications to asylum office interviews or otherwise sacrifice due process – such as access to immigration court hearings following referral from the asylum office or judicial review by federal courts of appeal – to send a deterrent message or speed cases through the system. It is time to reject the failed paradigms of the past and the notion that punitive policies aimed at blocking asylum seekers from the country or from fair hearings are the answer.

We firmly believe the asylum system can – and must – be timely, effective, and fair. As the administration considers changes to the U.S. asylum system, it is critical that our organizations – many with decades of experience working with asylum seekers and ensuring U.S. compliance with U.S. refugee law and treaty commitments – are consulted. We would appreciate the opportunity to meet with your agencies to discuss our suggestions.

Sincerely,

Groups

Adelante Pro Bono Project
Aldea - The People's Justice Center
Al Otro Lado
American Immigration Lawyers Association
Amnesty International USA
Asian Americans Advancing Justice - Atlanta
Asian Pacific Institute on Gender-Based Violence
Asylum Seeker Advocacy Project (ASAP)
Bellevue Program for Survivors of Torture
Boston College Legal Services LAB Immigration Clinic
Boston University School of Law, Immigrants' Rights and Human Trafficking Program
Bridges Faith Initiative
Capital Area Immigrants' Rights (CAIR) Coalition
Casa del Migrante en Tijuana A.C.
Casa Ruby
Catholic Charities of Southern New Mexico
Center for Gender & Refugee Studies
Center for Victims of Torture
Church World Service
Catholic Legal Immigration Network, Inc.
Comunidad Maya Pixan Ixim
Connecticut Institute for Refugees and Immigrants
Detention Watch Network
Disciples Refugee & Immigration Ministries
El Refugio
Emory Global Health Institute
First Focus on Children
Florence Immigrant & Refugee Rights Project
Freedom Network USA
Georgia Asylum and Immigration Network (GAIN)
Haitian Bridge Alliance
Harvard Immigration and Refugee Clinical Program
HIAS
Human Rights First
Human Rights Initiative of North Texas
Immigration Equality
Innovation Law Lab
Inspiritus
Instituto para las Mujeres en la Migración, AC (IMUMI)
International Rescue Committee
Jesuit Refugee Service/USA
Kids In Need of Defense (KIND)
Latin America Working Group (LAWG)
Migrant Center for Human Rights

Mississippi Center for Justice
National Council of Jewish Women
National Immigrant Justice Center
National Immigration Law Center
National Network for Immigrant & Refugee Rights
National Network of Arab American Communities (NNAAC)
NETWORK Lobby for Catholic Social Justice
New Sanctuary Movement of Atlanta
Physicians for Human Rights
Project Blueprint
Project Lifeline
Raksha, Inc
RAICES
Refugees International
Rocky Mountain Immigrant Advocacy Network
Safe Passage Project
Southern Border Communities Coalition
Southern Center for Human Rights
Southwest Good Samaritan Ministries
SPLC Action Fund
Sur Legal Collaborative
Tahirih Justice Center
The Advocates for Human Rights
The Right to Immigration Institute
UndocuBlack Network
Union for Reform Judaism
UNITED SIKHS; INTERNATIONAL
University of Maryland Chacón Center for Immigrant Justice
U.S. Committee for Refugees and Immigrants (USCRI)
VECINA
Witness at the Border
Women's Refugee Commission

Professors*

Alan Hyde, Distinguished Professor, Rutgers Law School
Amelia S. McGowan, Adjunct Clinical Supervising Attorney, Mississippi College School of Law
Amy Zeidan, Emory University School of Medicine, Department of Emergency Medicine,
Georgia Human Rights Clinic
Anjum Gupta, Professor of Law and Director of the Immigrant Rights Clinic, Rutgers Law
School
Anna Welch, Sam L. Cohen Refugee and Human Rights Clinical Professor, University of Maine
School of Law
Dabney P. Evans, PhD, MPH, Emory University, Rollins School of Public Health
Deborah M. Weissman, Reef C. Ivey II Distinguished Professor of Law, University of North
Carolina School of Law
Doug Smith, Lecturer in Legal Studies, Brandeis University

Elissa Steglich, Co-Director & Clinical Professor, Immigration Clinic, The University of Texas School of Law

Elizabeth Keyes, Associate Professor of Law, University of Baltimore School of Law

Elora Mukherjee, Jerome L. Greene Clinical Professor of Law & Director, Immigrants' Rights Clinic, Columbia Law School

Enid Trucios-Haynes, Professor, Brandeis School of Law, University of Louisville

Erica B. Schommer, Clinical Professor of Law, St. Mary's University School of Law

Geoffrey A. Hoffman, Clinical Professor & Director, Immigration Clinic University of Houston Law Center

Ingrid Eagly, Professor of Law, UCLA School of Law

Jon Bauer, Clinical Professor of Law and Richard D. Tulisano '69 Scholar in Human Rights, University of Connecticut School of Law

Irene Scharf, Professor, University of Massachusetts School of Law

Jennifer Moore, Professor of Law, University of New Mexico School of Law

Joanne Gottesman, Clinical Professor of Law, Rutgers Law School

Jonathan Weinberg, Professor, Wayne State University Law School

Kaci Bishop, Clinical Professor of Law and Director of the Immigration Clinic, The University of North Carolina School of Law

Karen Musalo, Bank of America Chair in International Law, U.C. Hastings College of Law

Kate Jastram, Lecturer, U.C. Berkeley School of Law

Katie Herbert Meyer, Assistant Professor of Practice & Director, Washington University Immigration Law Clinic

Krista Kshatriya, Lecturer in International Studies, University of California, San Diego

Lenni Benson, Distinguished Chair in Immigration and Human Rights Law, New York Law School

Lindsay M. Harris, Director & Associate Professor, Immigration and Human Rights Clinic, University of the District of Columbia David A. Clarke School of Law

M. Isabel Medina, Ferris Family Distinguished Professor of Law, Loyola University New Orleans College of Law

Madeline Hsu, Professor, The University of Texas at Austin

Margaret Taylor, Professor of Law, Wake Forest University School of Law

María Mercedes Pabón, Professor of Law, Loyola University New Orleans

Matthew Boaz, Visiting Assistant Director, Immigrant Rights Clinic - Washington and Lee School of Law

Maureen Sweeney, Professor, University of Maryland Carey School of Law

Sarah Dávila-Ruhaak, Assistant Professor, International Human Rights Clinic, University of Illinois at Chicago Law School

Sarah H. Paoletti, Practice Professor of Law and Director, Transnational Legal Clinic, University of Pennsylvania Carey Law School

Sarah Plastino, Adjunct Professor of Law, University of Denver Sturm College of Law

Stacy Caplow, Associate Dean of Experiential Education & Professor of Law, Brooklyn Law School

Valeria Gomez, William R. Davis Clinical Teaching Fellow, University of Connecticut School of Law

*Institutional affiliation for identification purposes only.