

## RESTORE FAIRNESS AND DUE PROCESS

### THE LACK OF A FAIR, EFFICIENT SYSTEM THAT RESPECTS DUE PROCESS IS HURTING AMERICA

For well over a decade but especially since 9/11, our country has undermined the established tradition of treating everyone fairly under the law. Overly aggressive enforcement practices have failed to make our nation any safer, created extreme hardship for many individuals and families, and diminished America's moral standing in the international community. At the same time, reactionary laws and policies against immigrants deny basic due process to millions of people who live in the U.S. In its zeal to penalize undocumented immigrants, our government has turned a blind eye to the basic tenets of due process that underpin American society. The immigration court system suffers from chronic overload. Judicial review in immigration cases has been severely curtailed. An overall lack of independence and competence has greatly eroded public confidence in the system. The longer we allow harsh, inequitable, un-American treatment to prevail in our immigration system, the more difficult it will be to restore the system's integrity and legitimacy.

### THE CRISIS IS IMMEDIATE

Inadequate due process protections in our current law and a failure by the federal government to guarantee due process protections during its ramped up enforcement efforts have led to the following crisis:

- The Department of Homeland Security (DHS) has made immigration enforcement a top priority. It has increased its detention and removal operations without ensuring that due process and humane standards of treatment are guaranteed for all individuals impacted by these efforts.
- Long-time residents are subject to deportation even when they have strong ties to the community, pay taxes, and desperately want to become full-fledged members of our society.
- Judges often have no ability to weigh the individual circumstances of the case. Low-level immigration officials often act as judge and jury, and the federal courts have been denied the power to review most agency decisions.
- The absence of due process has resulted in thousand of non-citizens being subject to unnecessary and often inhumane detention. The \$2 billion detention system is a behemoth network of several hundred federal, state and local prisons and privately contracted facilities that is not regulated by legally enforceable standards. Immigrants have died in detention due to poor medical care, and thousands are subject daily to substandard conditions or abusive treatment.
- Moreover, U.S. citizens, the mentally ill, children and other vulnerable individuals who should not be in ICE custody have been mistakenly detained.

## **HOW CONGRESS AND DHS CAN RESTORE DUE PROCESS AND ENSURE FAIRNESS**

- Congress should restore fairness and flexibility to our system by authorizing immigration judges and officials to exercise discretion in considering the individual circumstances of each case.
- Congress should ensure that detention conditions are humane and safe by enacting detention standards legally enforceable against any facility used to hold immigration detainees for short or long-term periods.
- Congress should establish criteria to ensure that detention is reserved for those individuals who are a flight risk or a risk to public safety.
- DHS should make detention decisions on a case-by-case basis to eliminate unnecessary hardship. To ensure that detention is not used to separate American families needlessly, ICE should utilize cost-saving community-based alternatives to detention programs that require immigrants to show up for their court proceedings.
- ICE agents should respect due process and other Constitutional protections in all immigration enforcement activities.