

Restore Fairness and Due Process to Our Immigration System

Issue: Current reactionary laws against immigrants go too far and deny basic due process to millions of people who live in the U.S. Inadequate due process protections in our current law and a failure by the federal government to guarantee due process protections have led to the following crisis:

- Low-level immigration officials act as judge and jury, and the federal courts have been denied the power to review most agency decisions.
- Long-time residents with strong ties to the community who pay taxes are subject to deportation and judges have little ability to weigh the individual circumstances of the case.
- U.S. citizens, the mentally ill, children and other vulnerable individuals who should not be in ICE custody have been mistakenly detained.
- ICE officials have entered private homes in some residential raids without a warrant and questioned individuals about their immigration status.
- Mothers responsible for caring for their small children have been detained and transferred to detention facilities thousands of miles away from their families and attorneys, making it difficult to defend themselves in court.

Long-term relief: Restoring basic due process protections must be among our government's paramount priorities. When we let the government deny due process for some in our nation, all of our freedoms are at risk. Moreover, when our immigration system fails to reflect core values of fairness and transparency, it undermines respect for the rule of law. AILA believes that our laws must embody the following principles:

1. Provide a safety valve by giving judges the discretion to evaluate the circumstances in individual cases. Current law strips immigration judges of the discretion they should have to evaluate cases on an individual basis and grant relief to deserving immigrants and their families. Immigration judges don't have the discretion to consider the facts of a case, the length of time the person has lived in the U.S., or the individual's contributions to the community. Judges should have the authority to consider all the facts of a case before making a decision to deport a legal resident or undocumented immigrant, and they should have the discretion to grant relief in deserving cases.

2. Don't put the law in the hands of agency clerks: empower federal judges to review agency decisions. The decision to deport is momentous, especially for refugees fleeing persecution and for those legal immigrants who have lived most of their lives in this country. Under current law, the federal courts have been stripped of their jurisdiction to review most deportation and agency decisions. Important issues of fairness and justice are at stake, and we should ensure that there is adequate judicial review of immigration orders and decisions. Our judicial system is one of checks and balances, and immigrants deserve their day in court.

3. Immigrants should have a fair day in court and immigration appeals should receive the attention they require. Currently, immigration judges are under pressure to make difficult, life altering decisions from the bench with little or no staff and overflowing dockets, resulting in sloppy, sometimes arbitrary decisions. Immigration judges' decisions are

frequently affirmed without opinion by a single Board of Immigration Appeals member, thus depriving noncitizens of redress when those decisions are not supported by the law or facts in a case. The Board of Immigration Appeals (BIA) must have a sufficient number of judges to do its job fairly and efficiently and the BIA should end its practice of issuing one or two-sentence summary opinions. The immigration court system should be reformed to promote independence, fairness and accountability.

4. The detention of individuals is an extraordinary power that should only be used in extraordinary circumstances. Current law requires Immigration and Customs Enforcement (ICE) to put immigrants in jail even when they pose no danger to the community or flight risk. AILA supports reforms that would require the Attorney General to release an immigrant from detention if he or she does not pose a danger to the community and is likely to appear for any scheduled proceeding. 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. We need to focus enforcement operations on people who mean to do us harm, not legal permanent residents who have jobs and families here, contribute to their communities, and share the same security concerns as the rest of us. Most importantly, Congress should ensure that detention conditions are humane and safe- too many detainees have died in detention as a result of inadequate medical care and poor treatment.

5. Give the government the discretion to recognize immigrants' strong ties to their American families and communities. Under current law, the “three and ten year bars” and the “permanent bar” prevent U.S. citizens, lawful permanent residents and employers from successfully sponsoring many qualified immigrants for permanent residence. Because of these provisions in our immigration law, we are not fully utilizing our current legal immigration system. Congress should provide discretionary relief and allow DHS to consider factors such as the immigrant’s length of residence in the United States; history of employment and business ties; family ties in the United States; military service; community contributions; any adverse impact on U.S. employers or the local community; or other national or local interests in the event of the immigrant’s deportation from the U.S.

6. Make the punishment fit the crime. In America, the punishment should fit the crime. Not allowing judges to consider the circumstances of a case violates this principle and does not solve the problem of undocumented immigration. In many cases, our current laws require the deportation of long-term residents based on minor crimes and judges are given little to no discretion to forego their deportation. We need to allow judges to consider the circumstances of each individual case including the severity of the crime and decide what is best for that situation.

7. Don’t change the rules in the middle of the game. Currently, thousands of legal immigrants face removal for offenses that occurred many years ago, some of which were not offenses that would result in deportation at the time they occurred. Making laws retroactive is unconstitutional in criminal law, and Congress should eliminate retroactive laws in the immigration context as well.

8. ICE raids should respect due process and other Constitutional protections. In recent months, immigrant communities have reported the use of warrantless raids by ICE, racial profiling during ICE operations and situations in which detainees have been transferred far from their legal counsel and their families following a raid. Congress should ensure that individuals encountered during raids are treated fairly through enhanced training

requirements and internal guidance about the use of warrants and interrogation techniques and codification of procedures related to the treatment of detainees. Most importantly, ICE should ensure that the rights of immigrant workers are protected, and that appropriate attention is paid to the safety and welfare of children and their families.

9. Any national employment eligibility verification system should respect due

process: Members of Congress are currently proposing mandatory verification systems that are based on deeply flawed databases containing erroneous information, resulting in an unacceptably high number of false positive "hits" when put into use. The U.S. should not mandate implementation of an employment-eligibility verification system without requiring the government to meet accuracy benchmarks prior to implementation or without providing safeguards for workers and employers. Mandating an eligibility verification program without providing a path to legal status for undocumented workers will only intensify our current crisis.

While we believe a long-term solution is vital, Congress should take immediate steps to provide short term relief:

- Only through a realistic, long-term solution for the undocumented population living in the U.S., and targeted, effective enforcement of realistic laws will we gain control over our immigration system. In the interim, we should strenuously avoid half-baked measures that will do lasting damage to our country such as the SAVE Act.
- We should enact a short-term package that provides immediate relief to businesses and communities that currently have no safety valve to allow deserving immigrants to remain in our country. Judges and agency officials should be given the discretion to evaluate the facts of each individual case.
- Congress should ensure that individuals encountered through raids and those placed in detention are treated humanely through codification of standards on interrogation and detention conditions.

Current Legislation: Several bills have been introduced this Congress to help restore due process to our system and while we welcome these efforts, these bills provide much-needed relief for too few people. AILA supports these bills as first steps toward a solution:

The Families First Immigration Enforcement Act (S. 2074/H.R. 3980), introduced by Sen. John Kerry (D-MA) in the Senate and Rep. Hilda Solis (D-CA) in the House, would require ICE to afford access to state social service agencies to screen and interview detainees following a raid. Where it is determined that an individual has humanitarian grounds for release, ICE would be required to prioritize that individual for detention in the local area. ICE would be required to provide a toll free number for families to use after a raid to determine the location of their loved ones.

The Child Citizen Protection Act (H.R. 1176) introduced by Congressman Jose Serrano (D-NY), Jerrold Nadler (D-NY), Gary Ackerman (D-NY), and Ed Towns (D-NY), would allow an immigration judge to consider the best interest of U.S. citizen children before deporting a parent.