

March 16, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Reform of America's Immigration Enforcement and Judicial Systems

Dear Attorney General Garland,

As leaders of immigrant rights, civil rights, and human rights organizations dedicated to protecting immigrants and asylum-seekers and ensuring a just, humane and accountable immigration system, we congratulate you on your confirmation to lead the Department of Justice (DOJ). We write to request a meeting with you to discuss solutions to the crises in the immigration system that have deeply eroded principles of justice and due process and are causing irreparable harm and suffering for immigrants and their families. Last month, 165 organizations [wrote to the President](#) outlining these solutions. Indeed, reversing the dysfunction, brutality, and inequalities of the enforcement system must be a central priority for the new administration. We were heartened by your pledge during your confirmation hearing to restore integrity to the system and your commitment to pay back this country that protected your family from persecution many years ago.

DOJ plays a critical role in the oversight and management of immigration enforcement and the immigration courts. We believe it is vital for DOJ to issue new department-wide guidance on immigration enforcement designed to ensure the fair, humane, and effective adjudication of immigration cases. In that regard, an important step is the reprioritization of the 1.3 million cases now stuck in the immigration court backlog.¹ Notably, at least 700,000 nonpriority cases could be removed from the court's docket via a leadership-driven review of the court's databases that would greatly increase both fairness and court efficiency.²

The previous administration implemented a politically motivated agenda that turned the immigration courts into a conveyor belt to deportation and all but closed their doors to asylum seekers.³ Former Attorneys General Sessions and Barr made aggressive use of their self-certification powers to assault the asylum system and the integrity of the courts.⁴ They also moved to decertify the immigration judges' union violating their statutory right to union representation. We urge you to restore fundamental authorities to immigration judges to ensure the full and fair consideration of cases and, as a long-term goal, that you support the creation of an independent Article I immigration court system.

One of the great injustices in the immigration enforcement system is the continuing failure of the federal government to guarantee legal counsel for people facing immigration removal proceedings. Legal representation dramatically increases the fairness of legal proceedings and improves court appearance rates and efficiency, yet 70 percent of detained persons face these proceedings without counsel.⁵ We urge you to dramatically expand existing government-funded

legal representation, seek increased appropriations for these programs, and pledge ultimately to ensure all indigent persons receive counsel in removal proceedings.

We are encouraged that DOJ has revoked the prior administration's abhorrent Zero Tolerance policy, which you forcefully denounced as "shameful" in your hearing. What led to the Zero Tolerance policy was the aggressive prosecution of people for unauthorized entry and reentry that has effectively criminalized thousands of people and has delayed or prevented asylum seekers from making claims for protection, in violation of U.S. treaty obligations and due process.⁶ Those policies, as well as Trump-era policies that targeted humanitarian workers, labor organizers, and family members under the harboring and smuggling provision should be reviewed and rescinded.

Systemic change will not happen overnight. But we are confident the new administration can transform the nation by taking immediate steps to implement the President's vision of tolerance and fairness. The Department of Justice will play a crucial role in realizing that vision.

We look forward to your partnership in these vital matters and to meeting with you as soon as your schedule permits. Please contact Greg Chen, Senior Director of Government Relations at the American Immigration Lawyers Association, gchen@aila.org, 202-718-5818.

Sincerely,

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¹ Transactional Records Access Clearinghouse (TRAC), "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>.

² Greg Chen and Peter Markowitz, "Unclogging the Nation's Immigration Court System," *The Hill*, February 1, 2021, <https://thehill.com/opinion/immigration/536794-unclogging-the-nations-immigration-court-system?rl=1>.

³ American Immigration Lawyers Association, "AILA Policy Brief: Why President Biden Needs to Make Immediate Changes to Rehabilitate the Immigration Courts," February 12, 2021, <https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-why-president-biden-needs-to-make>; Greg Chen, "The Urgent Need to Restore Integrity to America's Politicized Immigration Courts," *Just Security*, November 12, 2020, <https://www.justsecurity.org/73337/the-urgent-need-to-restore-independence-to-americas-politicized-immigration-courts/>.

⁴ Migration Policy Institute, *Obscure but Powerful: Shaping U.S. Immigration Policy through Attorney General Referral and Review*, January 2021, <https://www.migrationpolicy.org/research/obscure-powerful-immigration-attorney-general-referral-review>.

⁵ TRAC, "Who Is Represented In Immigration Court?" October 16, 2017 (finding that detained individuals were represented at a rate of about 30 percent from 2015 to 2017), <https://trac.syr.edu/immigration/reports/485/>.

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>. 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>; National Immigrant Justice Center, "A Legacy of Injustice: The U.S. Criminalization of Migration," July 2020, https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-07/NIJC-Legacy-of-Injustice-report_2020-07-22_FINAL.pdf.