

June 21, 2021

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

Hon. Alejandro N. Mayorkas  
Secretary  
Department of Homeland Security  
2707 Martin Luther King Jr. Avenue, SE  
Washington, DC 20528

Hon. Susan Rice  
Director, Domestic Policy Council  
1600 Pennsylvania Ave. NW  
Washington, DC 20500

Dear Attorney General Garland, Secretary Mayorkas and Director Rice,

We are writing regarding the joint announcement on May 28, 2021, by the Department of Justice (DOJ) and the Department of Homeland Security (DHS) expressing your agencies' intent to create a "dedicated docket process" for certain asylum seekers in ten cities around the country.<sup>1</sup> The undersigned are providers of legal immigration services in those cities as well as allied organizations, and we wish to express our strong opposition to this announcement and the process it unveiled. We urge you to abandon this proposal before its implementation begins, or at a minimum delay implementation until you can take the steps outlined below to ensure that the families undergoing this process have guaranteed access to legal representation and to a restored and enhanced asylum system.

We first want to express that our communities stand ready to welcome and support asylum seekers, as we have been doing for decades. To the extent that this proposal represents a shift away from current and past practices that have focused on detaining families and individuals seeking protection, we fully support the end of those practices. We also reaffirm our call for the Administration to end its use of Title 42 restrictions which is preventing those seeking protection from being able to pursue asylum as they are entitled to do under our immigration laws. Asylum

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<sup>1</sup> U.S. Department of Justice, "DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings," May 28, 2021, available at <https://www.justice.gov/opa/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings>; see also Executive Office for Immigration Review, Policy Memorandum 21-23, "Dedicated Docket," May 27, 2021, available at: <https://www.justice.gov/eoir/book/file/1399361/download>.

seekers should be welcomed with dignity and provided a meaningful opportunity to seek humanitarian protection while residing in our cities and other communities around the country.

We also share your concern regarding the backlog in the immigration adjudication systems; the tremendous delays cause our clients and their loved ones to live with uncertainty for years, an outcome desirable for no one. However, those adjudication systems remain badly broken. Because of Trump-era decisions and policies, access to justice remains compromised across the board. While we applaud Attorney General Garland's decision to overturn the prior Administration's rulings in *Matter of A-B-* and *Matter of L-E-A-*, no one should be subjected to expedited adjudications until all of the Trump-era policies and practices undermining the asylum process are reversed.

We are especially concerned that the "dedicated docket process" announced on May 28 is premised on the faulty assumption that the ten cities selected for this proposal have excess or spare capacity to provide legal representation on a pro bono basis to a large number of families seeking asylum and facing removal proceedings. The announcement implies that the ten cities were identified as having "established communities of legal services providers" and because those legal services providers will help facilitate referrals of "families to pro bono legal service providers for possible representation." However, no one from DOJ or DHS made any meaningful attempt to contact legal providers in these cities in advance of the announcement. If DOJ or DHS had, we would have conveyed unequivocally that the capacity to provide pro bono legal services in each of these cities is already unable to keep up with the demand for legal services from people facing removal hearings and unable to secure representation from the private bar. We would also have conveyed that Legal Orientation Program (LOP) or Immigration Court Helpdesk (ICH) programs, although important resources for the *pro se* population, are insufficient measures in this context; what your Administration should urgently be pursuing are methods to ensure full legal representation.

Yet the reality on the ground is that legal providers in each of these ten cities are already under-funded and must reject a large number of requests for pro bono legal representation from non-citizens facing removal proceedings. In fact, according to data from the Executive Office for Immigration Review (EOIR) analyzed by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, as of the end of May 2021, there were 143,532 unrepresented individuals with pending removal cases in the immigration courts located in the ten cities named in the May 28 announcement.<sup>2</sup> Given that the "dedicated docket process" does not entail any federal resources to help supplement the existing capacity of the legal services providers in

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<sup>2</sup> According to TRAC's analysis of EOIR data, these are the numbers of cases that are pending before the relevant immigration court that are coded as not having representation: Denver - 4,778; Detroit - 1,703; El Paso - 9,545; Los Angeles - 13,647; Miami - 38,555; Newark - 26,851; New York City - 20,816; San Diego - 6,849; San Francisco - 15,190; Seattle - 5,598. See Transactional Records Access Clearinghouse, Syracuse University, "State and County Details on Deportation Proceedings in Immigration Court," available at: <https://trac.syr.edu/phptools/immigration/nta/>. It should be noted that these numbers capture primarily individuals in the non-detained dockets of these immigration courts. In many of these cities, nonprofit legal services providers are also trying to provide assistance to individuals in immigration detention, the large majority of whom are facing removal hearings without legal representation.

these regions, this will mean that the implementation of the proposal will result in providers having to either reject even more requests for assistance for the existing removal cases or reject all of the new cases resulting from this expedited docket. The end result will be that even more people will face removal hearings without legal representation. In sum, the implementation of the proposed dedicated dockets stands as a troubling departure from the Biden Administration's stated commitment to increase access to legal representation.<sup>3</sup>

This is not the only reason, however, that we urge you to reject this proposal. Both the Obama and Trump Administrations attempted to implement similar "rocket dockets" that sought to rush the cases of asylum seekers through the overburdened immigration court system.<sup>4</sup> And both attempts accomplished little more than to undermine due process for individuals seeking humanitarian protection and exacerbate dysfunctions within the immigration court system. Moreover, the Trump Administration implemented a range of troubling changes that make it more difficult for asylum seekers to qualify for humanitarian protections. Fully undoing those changes and broadening opportunities to seek protection should take precedence before forcing even more people to go through an asylum process that was gutted by the prior Administration.

Finally, it is our understanding that those placed on the dedicated dockets will automatically be subjected to a surveillance-based Alternative to Detention program, an alarming course of action for a population studies have shown to have near 100% rates of compliance when provided information and counsel.

We urge you to rescind the proposed "dedicated docket process" announced on May 28 and to instead work to develop solutions that are centered on ensuring that those seeking humanitarian protection have a meaningful opportunity to do so. At the very least, we ask you to delay implementation of this proposal until there is adequate funding available to ensure every family selected for the dedicated dockets has access to government-appointed counsel and until asylum protections rolled back under the Trump Administration are fully restored. More broadly, we urge you to work toward ensuring that all non-citizens facing removal hearings have access to government-appointed counsel when they cannot afford private representation.

Respectfully,

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<sup>3</sup> See The White House, "Memorandum on Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Roundtable," May 18, 2021, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/18/memorandum-on-restoring-the-department-of-justices-access-to-justice-function-and-reinvigorating-the-white-house-legal-aid-interagency-roundtable/>.

<sup>4</sup> See, e.g., Jayashri Srikantiah, Lisa Weissman-Ward, "The Immigration 'Rocket Docket': Understanding the Due Process Implications," August 15, 2014, available at <https://law.stanford.edu/2014/08/15/the-immigration-rocket-docket-understanding-the-due-process-implications/>; Sarah Pierce, "As the Trump Administration Seeks to Remove Families, Due-Process Questions over Rocket Dockets Abound," July 2019, available at <https://www.migrationpolicy.org/news/due-process-questions-rocket-dockets-family-migrants>.

## **Legal Services Providers Serving Immigration Courts in Ten Cities Named in May 28 Announcement**

### Denver

Colorado Asylum Center  
Rocky Mountain Immigrant Advocacy Network

### Detroit

Adrian Dominican Sisters Immigration Assistance  
Law Office of N.J. Saleh  
Michigan Immigrant Rights Center  
University of Detroit Mercy Immigration Law Clinic  
Wayne State Asylum & Immigration Law Clinic

### El Paso

Beckett Law Firm, P.C.  
Catholic Charities of Southern New Mexico  
Diocesan Migrant & Refugee Services, Inc.  
Immigrant Justice Corps  
Las Américas Immigrant Advocacy Center  
Miles Immigration Law

### Los Angeles

Al Otro Lado  
California Rural Legal Assistance Foundation  
Central American Resource Center - CARECEN- of California  
Coalition for Humane Immigrant Rights (CHIRLA)  
Esperanza Immigrant Rights Project  
Human Rights First  
Immigrant Defenders Law Center  
Immigrant Legal Defense  
Immigration Center for Women and Children  
Kids in Need of Defense  
Los Angeles Center for Law and Justice  
Public Counsel  
Public Law Center  
San Joaquin College of Law - New American Legal Clinic  
Solidarity - Camino Immigration Services  
Young Center for Immigrant Children's Rights

## Miami

Americans for Immigrant Justice  
Catholic Legal Services, Archdiocese of Miami  
Florida Legal Services, Inc.  
Immigrant Justice Corps

## Newark

American Friends Service Committee, Immigrant Rights Program  
Human Rights First  
Immigrant Justice Corps  
Kids in Need of Defense  
Legal Services of New Jersey  
Morris County Organization for Hispanic Affairs

## New York City

Asylum Seeker Advocacy Project (ASAP)  
Human Rights First  
Immigrant Justice Corps  
Justice For Our Neighbors  
Kids in Need of Defense  
UnLocal  
Young Center for Immigrant Children's Rights

## San Diego

Al Otro Lado  
Immigrant Defenders Law Center  
UURISE - Unitarian Universalist Refugee & Immigrant Services & Education

## San Francisco

California Rural Legal Assistance Foundation  
Central American Resource Center of Northern California  
Centro Legal de la Raza  
Community Legal Services in East Palo Alto  
Dolores Street Community Services  
Human Agenda / CLARO  
Immigrant Legal Defense  
Immigrant Legal Resource Center  
Immigration Center for Women and Children  
Immigration Institute of the Bay Area

Kids in Need of Defense  
Latin Advocacy Network - LATINAN  
Law Office of Peggy J. Bristol  
Mustard Seed Immigration Law Project  
Open Immigration Legal Services  
Pangea Legal Services  
San Joaquin College of Law - New American Legal Clinic  
Tahirih Justice Center  
University of San Francisco Immigration & Deportation Defense Clinic

### Seattle

Central Washington Justice For Our Neighbors  
Colectiva Legal del Pueblo  
Entre Hermanos  
Kids in Need of Defense  
Law Office of Shara Svendsen PLLC  
Kitsap Immigrant Assistance Center  
Northwest Immigrant Rights Project  
Washington Defender Association's Immigration Project  
The West African Community Council

### **Allied Organizations**

The Advocates for Human Rights  
Aldea - The People's Justice Center  
American Friends Service Committee  
American Immigration Lawyers Association  
Apostle Immigrant Services  
Ascentria Community Services, Inc., Immigration Legal Assistance Program  
Asian Pacific Institute on Gender-Based Violence  
ASISTA  
Asylum Program of Arizona  
Bridges Faith Initiative  
Capital Area Immigrants' Rights Coalition  
Capital District Women's Bar Association Legal Project, Inc.  
Catholic Legal Immigration Network, Inc.  
Center for Gender & Refugee Studies  
Centro de Trabajadores Unidos: United Workers' Center  
Church Council of Greater Seattle  
Church World Service  
Coalition for Our Immigrant Neighbors  
Community Visions  
Congregation Beth Shalom, Seattle, WA

Doctors for Camp Closure  
Freedom For Immigrants  
HIAS Pennsylvania  
Immigrant Justice Idaho  
Immigrant Legal Advocacy Project  
Immigration Advocates Network  
Immigration/Race Justice Group  
Immigration Resource Center of San Gabriel Valley  
Innovation Law Lab  
Japanese American Citizens League  
Jewish Voice for Peace, Tacoma, WA  
Legal Aid Justice Center  
LIFT, Local Immigrant Family Treasury  
Long Beach Immigrant Rights Coalition  
Louisiana Advocates for immigrants in detention  
Loyola New Orleans College of Law Stuart H. Smith Law Clinic and Center for Social Justice  
Lustgarten Global PLC  
Lutheran Immigration and Refugee Service  
Maryland Against ICE Detention  
MCC EC Florida  
Mid-South Immigration Advocates  
Mississippi Center for Justice  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project  
National Network for Immigrant & Refugee Rights  
National Partnership for New Americans  
NETWORK Lobby For Catholic Social Justice  
New York Immigration Coalition  
Orange County Justice Fund  
Pacific County Immigrant Support  
Pennsylvania Immigration Resource Center  
Prisoners' Legal Services of New York  
Pueblo Unido PDX  
Puentes  
RAICES  
Sanctuary DMV  
Save the Children Action Network  
SB County Immigrant Legal Defense Center  
SEIU 775  
St. Mark's Episcopal Cathedral  
Strengthening Sanctuary Alliance  
Survivors of Torture, International  
Tulane Immigrant Rights Clinic

UFCW21  
Van Der Hout, LLP  
Willmoth Immigration Law, LLC  
Wind of the Spirit Immigrant Resource Center  
Witness at the Border  
Women's Refugee Commission

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