

October 8, 2020

The Honorable Lindsey Graham
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
U.S. Senate Committee on the Judiciary
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein,

The 50 undersigned organizations strongly urge you to oppose the nomination of Amy Coney Barrett to the Supreme Court given the indisputable adverse impact her decisions would have on immigrant communities. From instituting multiple iterations of asylum bans targeting Muslim-majority and African countries, to forcibly separating families at the border, and allowing for dangerous and unsanitary conditions to proliferate in detention centers, leading to the deadliest year on record for migrants in detention,¹ this administration has pushed forward an unrelenting agenda of hatred and xenophobia against immigrant communities since inauguration. Given her abysmal record against immigrants,² it is clear that Barrett would uphold the Trump administration's anti-immigrant policies should she be on the Court.

Through her rulings in the Seventh Circuit Court of Appeals, Barrett has made her hostility toward immigrants evident. In her dissent in *Cook County v. Wolf*, which led the court to temporarily bar the administration from implementing the public charge rule, Barrett wrote that the administration's interpretation of the relevant law was not "unreasonable," while the majority countered that her argument failed to take into account the immigrants who would bear the brunt of the rule.³ Separately, Barrett agreed with the Board of Immigration Appeals in denying asylum to two different Salvadorans seeking asylum and relief under the Convention Against Torture in *Alvarenga-Flores v. Sessions* and *Herrera-Garcia v. Barr*, ruling that their persecution claims were "speculative" and not "credible" despite the traumatic nature of what the asylum seekers claimed.⁴

Additional rulings against immigrants that raise significant concerns about the effects that Barrett's position on the Court would have, include Barrett's deciding vote in *Lopez Ramos v. Barr*, which led to the immediate deportation of a Mexican immigrant who had been a lawful permanent resident for three decades and who was denied the opportunity to argue in court that his deportation violated his rights as the son of a naturalized citizen.⁵ Additionally, Barrett wrote

¹ Catherine E. Shoichet, "The death toll in ICE custody is the highest it's been in 15 years," CNN, September 30, 2020, <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html>.

² Nicole Narea, "Amy Coney Barrett has a years-long record of ruling against immigrants," Vox, September 26, 2020, <https://www.vox.com/21457360/amy-coney-barrett-immigration-record-trump-supreme-court>.

³ Joan Biskupic, "Amy Coney Barrett, a proven conservative with a compelling personal story," CNN, September 26, 2020, <https://www.cnn.com/2020/09/21/politics/amy-coney-barrett-supreme-court/index.html>.

⁴ Nicole Narea, "Amy Coney Barrett has a years-long record of ruling against immigrants," Vox, September 26, 2020, <https://www.vox.com/21457360/amy-coney-barrett-immigration-record-trump-supreme-court>.

⁵ Ibid.

an opinion in *Yafai v. Pompeo*, dismissing the case of a U.S. citizen who claimed that his due process rights were violated when a consular official denied his spouse a visa based on unsubstantiated and contradicted allegations of wrongdoing.⁶ These rulings shed light on the positions on immigration that Barrett would take should she be confirmed.

Should Barrett be confirmed to serve on the Court, the future of Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), and the Flores settlement will be in certain jeopardy. This summer, the Supreme Court ruled in favor of over 600,000 DACA recipients, protecting them from deportation and finding that the administration's attempt to terminate the program was unlawful. Subsequently, Chad Wolf, who is unlawfully serving as the Acting Secretary of DHS, issued a memo ending the program as we know it by rejecting new applications and curbing protections for existing recipients from two years to only one.⁷ Challenges to these moves could reach the Supreme Court, especially since both a GAO report and a federal judge in Maryland⁸ found that Wolf was illegitimately appointed to his position.⁹ Another DACA case, *Texas v. Nielsen*, which concerns the constitutionality of the program itself, could reach the Supreme Court as well.

On TPS, the 9th Circuit Court of Appeals sided with the Trump administration to end the program,¹⁰ threatening more than 300,000 people with deportation. The case could be brought before the Supreme Court for a final decision. If the case reaches a court with Barrett on the bench, the administration could end the program, upending the lives of TPS holders and their families, including 270,000 American citizen children.¹¹ The future of the *Flores* Settlement, which sets important, baseline standards of care for children in detention is also at stake. The U.S. Court of Appeals for the Ninth Circuit heard arguments on May 19th, 2020 in the government's appeal of the court's decision to block¹² the implementation of a rule¹³ that

⁶ Paul Gordon, "Trump Judges Affirm Misguided Visa-Denial Decision by Amy Coney Barrett," People for the American Way, June 14, 2019, https://www.pfaw.org/blog-posts/trump-judges-affirm-misguided-visa-denial-decision-byamy-coney-barrett/?link_id=19&can_id=c5ecf99bd92e40e9132812e37bfe8d6c&source=email-amy-coney-barrett-fact-sheet&email_referrer=email_937337&email_subject=amy-coney-barrett-fact-sheet.

⁷ Jorge Loweree, "What You Need to Know About the Partial DACA Rescission Memo," Immigration Impact, July 28, 2020, <https://immigrationimpact.com/2020/07/28/daca-rescission-memo/#.X3dTuC2z1QI>.

⁸ Hamed Aleaziz, "A Judge Has Temporarily Blocked Trump From Raising Fees For Asylum-Seekers And Citizens," Buzzfeed News, September 29, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/judge-blocks-higher-immigration-fees>.

⁹ Michael D. Shear, "Top Homeland Security Officials Are Serving Illegally, G.A.O. Says," The New York Times, August 14, 2020, <https://www.nytimes.com/2020/08/14/us/politics/homeland-security-illegal-gao.html>.

¹⁰ Josh Gerstein, "Appeals court OKs Trump plan to end protected immigration status for 4 countries," Politico, September 14, 2020, <https://www.politico.com/news/2020/09/14/court-trump-protected-immigration-414520>.

¹¹ Nicole Prchal Svajlenka, and Tom Jawetz, "A Demographic Profile of TPS Holders Providing Essential Services During the Coronavirus Crisis," Center for American Progress, April 14, 2020, [https://www.americanprogress.org/issues/immigration/news/2020/04/14/483167/demographic-profile\(tpsholders-providing-essential-services-coronavirus-crisis/](https://www.americanprogress.org/issues/immigration/news/2020/04/14/483167/demographic-profile(tpsholders-providing-essential-services-coronavirus-crisis/).

¹² Miriam Jordan, "Judge Blocks Trump Administration Plan to Detain Migrant Children," The New York Times, September 27, 2019, <https://www.nytimes.com/2019/09/27/us/migrant-children-flores-court.html>.

¹³ Philip Wogin, "3 Reasons Why the New *Flores* Rule Does Not Pass Legal Muster," Center for American Progress, August 22, 2019,

undercuts the *Flores* settlement. Once it renders its decision, the Supreme Court could ultimately be asked to weigh in. From her record so far, we have more than enough reason to believe that Barrett would not hesitate to side with the administration in its attempts to dismantle existing protections for immigrants and enable the implementation of hateful policies that target and threaten the well-being of immigrants.

A vote in favor of Amy Coney Barrett's nomination to the Supreme Court is a vote against immigrant communities and a vote against marginalized communities across the country. Barrett, adding to the conservative majority on the Supreme Court, would further enable the court to erode the rights and protections of the most vulnerable among us. We implore you to consider the long-term consequences on these communities as a result of Barrett's position on the Court and urge you to vote no on her nomination.

Sincerely,

Adhikaar
America's Voice
American Federation of Teachers (AFT)
Asian American Advocacy Fund
Bend the Arc: Jewish Action
Black LGBTQIA+ Migrant Project
California Immigrant Policy Center
Center for Law and Social Policy (CLASP)
Center for Popular Democracy Action
Church World Service
Coalition for Humane Immigrant Rights (CHIRLA)
Coalition on Human Needs
Dreamer Fund
Empowering Pacific Islander Communities (EPIC)
Farmworker Justice
First Focus Campaign for Children
Haitian Bridge Alliance
Hands Across the River
Hispanic Federation
Immigration Hub
Lawyers for Good Government
League of Conservation Voters
Madrean Archipelago Wildlife Center

MomsRising
MoveOn
National Asian Pacific American Women's Forum (NAPAWF)
National Council of Asian Pacific Americans
National Council of Jewish Women
National Education Association
National Equality Action Team (NEAT)
National Immigrant Justice Center (NIJC)
National Immigration Law Center
National Korean American Service & Education Consortium (NAKASEC)
National Partnership for New Americans
NETWORK Lobby for Catholic Social Justice
New York Immigration Coalition
North Carolina Justice Center
Ohio Immigrant Alliance
Progressive Leadership Alliance of Nevada
RAICES
Service Employees International Union (SEIU)
Services, Immigrant Rights & Education Network (SIREN)
SPLC Action Fund
The Children's Partnership
Transgender Law Center
UndocuBlack
Union for Reform Judaism
United Church of Christ Justice and Witness Ministries
United We Dream
Wind of the Spirit Immigrant Resource Center