



**Committee on the Judiciary
Subcommittee on Immigration and Citizenship
Subject: “The Biden Border Crisis: Part I”**

February 1, 2023

The National Immigration Project (NIPNLG) submits this letter urging the House of Representatives to change its rhetoric on immigration law, seek humane approaches to noncitizens who are displaced by crises in their home countries, and reject harmful, racist, enforcement-only approaches to immigration, particularly at the border. NIPNLG is a national nonprofit membership organization with individual and organizational members in 46 states. NIPNLG litigates, advocates, provides technical assistance and legal support to our members, and builds bridges across movements to advance and protect the rights of noncitizens. As one of our areas of focus, NIPNLG has long advocated for a humane and compassionate approach to immigration and for a border policy that reflects those values and respects the rights of all people.

Noncitizens Fleeing Harm Should Not Be Used as Political Pawns

Individuals and families who make the extraordinarily difficult decision to flee their homes do so when they have no other choice. While the United States has for decades considered itself “a nation of immigrants”¹ and has offered the Statue of Liberty, with its inscription welcoming the “tired, . . . poor, . . . huddled masses yearning to breathe free,” immigration has become increasingly politicized, often in terms that are overtly racist. For example, Texas has called up its National Guard, and dozens of counties in Texas, even those hundreds of miles from the border have declared that there is “an invasion” against Texas.² The new Speaker of the House apparently included the prioritization of enforcement-only legislation, such as H.R. 29, as he lobbied fellow representatives for support of his bid to become speaker.³ That bill would essentially eliminate the statutory right for those fleeing violence to seek asylum at the border by preventing any undocumented noncitizen from entering the United States, even if they have a

¹ During the prior presidential administration, United States Citizenship and Immigration Services removed this caption from its website. *See*, Richard Gonzalez, “America No Longer a ‘Nation Of Immigrants,’ USCIS Says,” NPR, Feb. 22, 2018, <https://www.npr.org/sections/thetwo-way/2018/02/22/588097749/america-no-longer-a-nation-of-immigrants-uscis-says>.

² Charlotte Scott, “Counties Hundreds of Miles from the Border Say There’s an ‘Invasion,’” SPECTRUM ONE NEWS, Dec. 20, 2022, <https://spectrumlocalnews.com/tx/south-texas-el-paso/politics/2022/12/21/counties-hundreds-of-miles-away-from-the-border-say-there-s-an--invasion->.

³ Marianna Sotomayor and Theodoric Meyer, “Early Rift over Immigration Exposes House GOP’s Tough Path to Consensus,” WASHINGTON POST, Jan. 23, 2023, <https://www.washingtonpost.com/politics/2023/01/23/house-republicans-immigration-legislation/>.

claim for asylum, unless there is available detention bed space to detain them.⁴ Fortunately, that bill is so extreme that it does not have enough support to be brought to the floor.⁵ But the bill underscores the way that legislators have turned immigration into a one-dimensional political issue, rather than approaching it as a nuanced issue where people's lives are at stake.

Border and Entry Restrictions Are Racist in Origin and Continue to Target Primarily Black, Brown, and Indigenous Noncitizens

Many border restrictions, particularly laws that criminalize entry without authorization into the United States, have overtly racist origins.⁶ The congressional record for the 1929 immigration law which criminalized unlawful entry into the United States was designed to address “the Mexican problem” and included language such as, “when an immigrant is accepted by the country, a race element or unit is added into the race stock of the country.”⁷ The 1929 bill, which is still part of the law today, only criminalized those who entered the United States without inspection, who at the time were predominantly Mexican; those who overstayed their visas, who were predominantly European and white, were not subject to any criminal penalty for doing so.⁸

By criminalizing the act of entering the country, “a ‘conventional view’ took hold [within the Immigration and Naturalization Service] ‘that illegal aliens were by definition criminal’ because once ‘the “wetback” starts out by violating a law. . . it is easier and sometimes appears even more necessary for him to break other laws.’”⁹ The recodification of that law in 1952 made no effort to purge it of its racist origins.¹⁰ Instead, it made it easier to prosecute the crimes of unlawful entry and re-entry, “thus exacerbating rather than diminishing their racially discriminatory harm.”¹¹ Today we see this racist legacy play out in policies at the border that dehumanize those who are subjected to enforcement, including: through family separation; needless destruction of personal belongings and documents; failure to provide adequate translation; and failure to screen for asylum and other protections.¹² The criminalization of entry has made it easier for those enforcing the laws to treat noncitizens at the border as less than human and inflict harm against them.¹³

By way of contrast, and highlighting the racist origins of the “border crisis,” the Department of Homeland Security reported nearly 700,000 noncitizens who overstayed lawful entries on visas

⁴ See H.R. 29, <https://www.congress.gov/bill/118th-congress/house-bill/29/text?s=1&r=4>.

⁵ See, Sotomayor, note 3.

⁶ See, *United States v. Palomar-Santiago*, U.S. Supreme Court, amicus brief, March, 2021, https://www.supremecourt.gov/DocketPDF/20/20-437/173626/20210331173526991_20-437%20Amici%20Brief.pdf.

⁷ *Id.* at 16.

⁸ *Id.*

⁹ *Id.* at 21.

¹⁰ *Id.* at 23.

¹¹ *Id.*

¹² See National Immigration Project, *Rooted in Racism: The Human Impact of Migrant Prosecutions*, (Dec. 2021) https://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/pr/2021_21Dec_Rooted-in-Racism-Report.pdf.

¹³ Human Rights Watch, “‘They Treat You Like You Are Worthless’ Internal DHS Reports of Abuses by US Border Officials,” (Oct. 21, 2021) <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>.

in fiscal year 2020.¹⁴ It seems that lawmakers' concerns are not with the number of unauthorized noncitizens in the United States, but rather creating a "crisis" and "invasion" narrative at the border to score political points.

In addition to racist measures at the border, President Trump implemented a near-total ban on visas for noncitizens from several predominantly Muslim countries. While the first two iterations of those bans were struck down in court, the third remained in place until President Biden took office and issued a proclamation ending the ban as one of his first steps after taking office.¹⁵ Among the countries included in the third Muslim ban was Nigeria, a country with no history of terrorist activity on U.S. soil, which was likely included simply because its residents are Black, with former president Trump stating that once Nigerians see America, "they would never 'go back to their huts.'"¹⁶ The harms of the Muslim ban have yet to fully be addressed or reversed by the Biden administration. In short, U.S. immigration law is largely shaped and infected by racism. The U.S. immigration laws need to be rewritten to purge them of this stain.

Congress Should Re-envision Our Immigration Laws

The current U.S. immigration law, last updated in 1996 with the Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA) is in clear need of re-envisioning and reform. However, suggestions by lawmakers that Congress should pass enforcement-only legislation are wrong—we need a humane immigration system that respects individual rights and that does not further contribute to the incarceration crisis in the United States. Calls for detention of noncitizens, such as in the text of H.R. 29, are abusive, unworkable, inhumane, and ineffective.¹⁷ Likewise, human rights organizations have documented the extraordinary violence and harm that has resulted from policies such as Title 42 and the so-called Migrant Protection Protocols (MPP) that force asylum-seekers and other vulnerable noncitizens into dangerous locations in Mexico. Human Rights First has documented "13,480 reports of murder, torture, kidnapping, rape, and other violent attacks" on those subjected to Title 42.¹⁸ Human Rights First similarly documented over 1,500 acts of violence against noncitizens subjected to MPP, even while acknowledging the severe undercounting in that number.¹⁹

¹⁴ U.S. Customs and Border Protection, Fiscal Year 2020 Entry/Exit Overstay Report, at 12-31, (Sep. 30, 2021) https://www.dhs.gov/sites/default/files/2021-12/CBP%20-%20FY%202020%20Entry%20Exit%20Overstay%20Report_0.pdf.

¹⁵ Peniele Ibe, "5 Things to Know About the Muslim Ban," AFSC, (Feb. 1, 2020) <https://afsc.org/news/5-things-know-about-muslim-ban>; President Biden, Proclamation on Ending Discriminatory Bans on Entry to The United States, (Jan. 20, 2021) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states/>.

¹⁶ Janelle Bouie, "The Racism at the Heart of Trump's 'Travel Ban,'" THE NEW YORK TIMES, Feb. 4, 2020, <https://www.nytimes.com/2020/02/04/opinion/trump-travel-ban-nigeria.html>.

¹⁷ See Jordana Signer, "Immigrant Detention Is Expensive, and Alternatives Are Just As Effective," Human Rights Watch, (Nov. 15, 2021) <https://www.hrw.org/news/2021/11/15/immigrant-detention-expensive-and-alternatives-are-just-effective>, (finding that 99% of noncitizen families engaged in intensive case management attended their court dates, with the cost of the program being roughly 1/10th the cost of detention.)

¹⁸ Human Rights First, "Title 42: 'Human Rights Stain, Public Health Farce,'" (Dec. 16, 2022) <https://humanrightsfirst.org/library/title-42-human-rights-stain-public-health-farce/>.

¹⁹ Human Rights First, "Fatally Flawed: 'Remain in Mexico Policy Should Never Be Revived,'" at 3, (Sep. 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/10/FatallyFlawed.pdf>

Although COVID restrictions have been lifted in virtually all other settings, the Biden administration recently expanded Title 42 expulsions to Cubans, Haitians, Nicaraguans and Venezuelans, while providing limited pathways to parole into the United States. Nearly 80 members of Congress sent President Biden a letter condemning this unjustifiable expansion of this purported public health measure, and urging him to not block access to asylum at the border, noting that ““this decision has been driven by the politics of (the) extreme right wing.””²⁰

We urge Congress to set aside the toxic politics of racism and fear, and instead look for lasting solutions on immigration. Congress should act to amend the immigration law to ensure that those from other countries are treated with dignity and fairness. Congress should end mandatory detention; repeal laws that criminalize migration; restore discretionary relief for those with criminal convictions; repeal MPP; end expedited removal and reinstatement of removal; and ensure that all noncitizens receive fair adjudication of their claims to remain in the United States.

Within two decades, all population growth in the United States will be driven by immigration.²¹ Immigration is a part of our country’s past, and a part of our future destiny. It is imperative that Congress works to create an immigration system that serves the needs of our country, not one that punishes noncitizens to score political points.

Conclusion

We thank you for the opportunity to submit this testimony. If you have any further questions about this letter, please contact Sirine Shebaya, Executive Director, sshebaya@nipnl.org or Victoria Neilson, Supervising Attorney, vneilson@nipnl.org.

²⁰ Ariana Figueroa, “Democrats in Congress Condemn Biden Administration Expansion of Title 42,” NEW HAMPSHIRE BULLETIN, Jan. 26, 2023, <https://newhampshirebulletin.com/2023/01/26/democrats-in-congress-condemn-biden-administration-expansion-of-title-42/>.

²¹ Alexandre Tanzi, “Immigration to Drive All US Population Growth Within Two Decades,” BLOOMBERG NEWS, Jan. 24, 2023, <https://www.bloomberg.com/news/articles/2023-01-24/immigration-to-drive-all-us-population-growth-within-two-decades>.