



SPLC Action Fund Statement for the Record for February 11, 2021 Hearing on “The U.S. Immigration System: The Need for Bold Reforms”

The SPLC Action Fund respectfully requests that this statement be made part of the record for the Thursday, February 11, 2021 hearing “The U.S. Immigration System: The Need for Bold Reforms” before the Subcommittee on Immigration and Citizenship of the United States House of Representatives Committee on the Judiciary.

The SPLC Action Fund is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. Along with our partner organization, the Southern Poverty Law Center, the SPLC Action Fund works alongside immigrant communities to advocate for a just, humane, and functional immigration system.

Fairness, freedom, and opportunity should be at the center of our immigration system. Yet for too long, we have had a dysfunctional and punitive immigration system that was only made more chaotic and crueler under the Trump administration. We now have the unprecedented opportunity to rebuild our immigration system to live up to our ideals. To do so, we must do more than just roll back the previous administration’s cruelest policies. Instead, we must reimagine our immigration system, and develop and implement a bold vision that welcomes people seeking safety and opportunity in the United States.

The SPLC Action Fund makes the following recommendations based on our current advocacy priorities. We acknowledge that this list of needed reforms is not exhaustive, and defer to other organizations to address other issues.

Create a Pathway to Citizenship

Most people who do not have immigration status have lived in the United States for longer than a decade and many are part of mixed-status families with spouses, children or other family members who are U.S. citizens.¹ Over two-thirds of people without immigration status work in essential, frontline jobs that have kept our country running during the COVID-19 pandemic.² Undocumented immigrants provide healthcare services, clean medical facilities, help build temporary hospitals, grow our food, and deliver our groceries. Many are business owners and entrepreneurs. They have kept our economy running, our hospitals functioning, and our kitchens

¹ Jens Manuel Krogstad, Jeffrey S. Passel & D’Vera Cohn, 5 Facts About Illegal Immigration in the U.S., Pew Research Center, June 12, 2019, <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/>.

² FWD.us Estimates Show Immigrant Essential Workers are Crucial to America’s COVID-19 Recovery, FWD.us, Dec. 16, 2020, <https://www.fwd.us/news/immigrant-essential-workers/>.

stocked. It is no surprise that majorities of both Republicans and Democrats support a pathway to citizenship for people without current immigration status.³

The SPLC Action Fund supports the pathway to citizenship that would be created by the U.S. Citizenship Act of 2021,⁴ as well as an immediate path to citizenship for DREAMers, current holders of Temporary Protected Status, and farmworkers and other essential workers. Congress must pass legislation to create a roadmap to citizenship for every immigrant who calls this country home without acquiescing to unnecessary, draconian enforcement mechanisms as a trade-off.

End Discriminatory Immigration Policies

Too often, prejudice and fear have guided our immigration policies and led to unjust and discriminatory restrictions on asylum and migration. While the Biden administration has revoked the Trump administration's discriminatory Muslim and African bans, protections must be put in place to stop future administrations from enacting similar discriminatory policies. Congress must pass the No Ban Act to prohibit future presidents from discriminating based on religion and require that any future travel restrictions be based on facts and implemented only if no less severe policy option is available. In addition, Congress and the Biden Administration must review all existing immigration policies to ensure that they are free from discrimination and do not unfairly target people from non-European countries.

Build a Fair and Humane System for People Who are Seeking Protection in the United States

The Trump Administration gutted our asylum system, leaving tens of thousands of people who have fled persecution and violence trapped in unsafe conditions along the southern border. Under the Migrant Protection Protocols, more than 60,000 people seeking asylum have been forced to wait indefinitely in Mexico for their hearings in U.S. immigration court. Many of these individuals are deprived of access to basic needs, creating a humanitarian crisis that is perversely hidden from the American public. Some have been raped, kidnapped, or killed. Thousands of other asylum seekers have been unlawfully turned back at ports of entry by CBP officers on the pretense of insufficient processing capacity. Those who eventually succeed in entering the country have often been deemed ineligible for asylum merely because they transited through third countries en route to the United States.

³ Nicola Narea, Poll: Most Americans Support a Path to Citizenship for Undocumented Immigrants, Vox, Feb. 4, 2021, <https://www.vox.com/policy-and-politics/2021/2/4/22264074/poll-undocumented-immigrants-citizenship-stimulus-biden>.

⁴ President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System, the White House, Jan. 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.

Dinora and her 17-year-old daughter were among those turned away at the border by CBP officers.⁵ They had fled Honduras after being kidnapped and raped by MS-13 gang members. They expected to receive protection in the United States but were instead forced to put their names on a “waitlist” and live under dangerous conditions in a Mexican border town in the hope that their numbers would eventually be called. This is cruel and unacceptable.

The federal government has detained asylum seekers in immigration prisons, often denying them humanitarian parole despite the lack of any public safety concerns or risk that they will not appear for their hearings. These practices illegally punish people seeking protection in the U.S. For example, the New Orleans Immigration and Customs Enforcement (ICE) Field Office implemented a blanket parole denial policy that has left thousands of asylum seekers languishing in ICE prisons throughout the Deep South despite having followed asylum procedures at the border and having met the legal criteria for release on parole, pursuant to DHS’s own 2009 Parole Directive. Black asylum seekers also face discriminatory denial of parole at significantly higher rates than white asylum seekers.

If the United States is to live up to its moral and legal obligation to provide refuge and protection to those who need it, we must do better. Congress must take its oversight responsibilities seriously and ensure that DHS treats asylum seekers appropriately and humanely, while holding the agency accountable for any failure to comply with its legal obligations. In addition, appropriations must be shifted away from deterrence-based measures to ensure that people arriving at the U.S. border are welcomed and supported.

End Detention and Implement Humane Cost-Effective, Community-Based Management for Those Who Need It

Each day advocates at the Southern Poverty Law Center and the SPLC’s Southeast Immigrant Freedom Initiative hear reports of abuse by ICE and its private contractors. At the Stewart Detention Center in Lumpkin, Georgia, agents of a private SWAT team tortured a man in a wheelchair by hitting him with 60 pepper-ball bullets. ICE also uses coercive tactics, including threats of violence and direct physical abuse, to force people in restraints to submit to fingerprinting. People who have refused to sign deportation papers have been pepper sprayed to obtain compliance. Black immigrants in detention frequently report disparate treatment, unconscionable abuse and torture.

ICE has also refused to follow basic guidelines to protect the people in its custody from the spread of COVID-19. People in ICE custody do not have enough soap, personal protective equipment or even information about COVID-19 in languages they can understand. With 21 reported deaths in

⁵ SPLC Argues in Court Against “Turnback” Policy that Blocks Immigrants from Seeking Asylum, May 10, 2019, <https://www.splcenter.org/news/2019/05/10/splc-argues-court-against-turnback-policy-blocks-immigrants-seeking-asylum>.

fiscal year 2020, eight of which were caused by COVID-19, fiscal year 2020 saw the highest death toll of people in ICE custody in 15 years.⁶ Thousands of people in ICE custody have been infected.⁷ ICE has also denied tens of thousands of detained immigrants health care and disability accommodations in 158 immigrant prisons across the country.⁸

Holding thousands of immigrants in detention does nothing to fix our broken system. Instead, it is an anti-immigrant tool that must be dismantled. People seeking to build a better life in the United States or who are fleeing violence, persecution, or war, should find refuge—not be thrown into jail. Immigrant detention is a betrayal of the ideals to which we aspire as a country. We cannot purport to be leaders on human rights, freedom, and equality while holding people seeking protection and a better life in cages. It is inhumane, cruel, and a waste of taxpayer dollars. Instead of being separated from family and held in cages, such individuals should be allowed to stay with family or friends in their communities.

Congress must act to close ICE detention facilities and invest in programs that provide access to legal services and other community-based resources for those who need them.

End Local Law Enforcement Involvement with Immigration Enforcement

People who come to the United States are part of our communities, families, and workplaces and should not be unfairly targeted because of the color of the skin or the language they speak. Programs like 287(g) Agreements (named for the section of the Immigration and Nationality Act that authorizes it), the Warrant Service Officer program, and Basic Ordering Agreements, all of which allow or incentivize local law enforcement collaboration with federal immigration enforcement, encourage racial profiling and create intense distrust of local law enforcement among immigrant communities; making the entire community less safe. Information-sharing programs transform a local arrest for even the most minor alleged infraction into the first step in the deportation process. Local and state law enforcement and federal immigration enforcement are two separate undertakings and should remain distinct from one another.

People without immigration status often fear that any police interaction could eventually result in deportation and the life-changing repercussions that stem from it. As a consequence, they avoid interactions with local law enforcement—even when they are victims of or witnesses to crime. According to one study, Mexican immigrants who are undocumented are 61% less likely to say they would report a crime they had witnessed and 43% less likely to report being the victim of a

⁶ Noelle Smart & Adam Garcia, Tracking COVID-19 in Immigration Detention: A Dashboard of ICE Data, the Vera Institute of Justice, <https://www.vera.org/tracking-covid-19-in-immigration-detention>, last reviewed on Feb. 10, 2021.

⁷ Id.

⁸ *Fraihat, et al. v. US Immigration and Customs Enforcement, et al.*, <https://www.splcenter.org/seeking-justice/case-docket/fraihat-et-al-v-us-immigration-andcustoms-enforcement-et-al>.

crime if they know that local law enforcement is working with ICE.⁹ Similarly, in a 2012 study, 44% of Latinx people—regardless of their immigration status—reported being less likely to contact police officers if they were victims of a crime because they feared that they would be asked about their own or someone else’s immigration status.¹⁰ The number of people who said they would not report a crime increased to 70% among people who were undocumented. Collaboration between local law enforcement and federal immigration enforcement makes immigrant communities, and the local community in general, more vulnerable and prevents law enforcement from investigating and solving crimes.

Investigations by the U.S. Department of Justice (DOJ) have found that sheriff’s offices participating in 287(g) programs illegally engage in racial profiling. Not only did deputies and staff in the Maricopa County Sheriff’s Office in Arizona racially profile Latinx people, but they would also unlawfully stop, detain and arrest Latinx people and retaliate against “individuals who complain[ed] about or criticized[d]” the sheriff’s office.¹¹ In North Carolina’s Alamance County, DOJ found “reasonable cause to believe [the sheriff’s office] engages in a pattern or practice of unconstitutional policing. Specifically, we find that ACSO [Alamance County Sheriff’s Office] – through the actions of its deputies, supervisors, and command staff – unlawfully targets, stops, detains, and arrests Latinos.”¹²

Our immigrant friends, neighbors, colleagues, and family members should not have to fear that simply going to work or school, or interacting with a local police officer or sheriff’s deputy, could result in detention and deportation proceedings. Congress must repeal the 287(g) program entirely and prohibit state and local law enforcement officers from performing the functions of immigration officers. Congress must also repeal various sections of the U.S. Code to end cooperation between state and local law enforcement agencies and federal immigration enforcement, including 8 U.S.C. § 1252c, 8 U.S.C. § 1373, and 8 U.S.C. § 1644. Further, Congress should defund any DHS programs that pay county sheriffs to hold people on detainers pursuant to Basic Ordering Agreements. Congress should also repeal 8 U.S.C. § 1103(a)(11), which authorizes the Attorney General to enter into cooperative agreements with states and localities to detain immigrants in removal proceedings, and should bar information-sharing between state and local law enforcement and federal immigration enforcement.

⁹ Tom K. Wong, Sanctuary Cities Don’t ‘Breed Crime’, Washington Post, April 24, 2018, <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/>.

¹⁰ Laura Muñoz Lopez, How 287(g) Agreements Harm Public Safety, Center for American Progress, May 18, 2018, <https://www.americanprogress.org/issues/immigration/news/2018/05/08/450439/287g-agreements-harm-public-safety/>.

¹¹ U.S. Department of Justice, Civil Rights Division, United States Investigation of the Maricopa County Sheriff’s Office, Dec/ 15, 2011, https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

¹² U.S. Department of Justice, Civil Rights Division, United States Investigation of the Alamance County Sheriff’s Office, Sept. 18, 2012, <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>.

Ensure that ICE and CBP are Accountable to the People

Both ICE and CBP have been allowed to act outside the law with virtually no accountability. At the same time, the budget for these agencies has increased dramatically. The annual budget for the Border Patrol rose from \$363 million in 1993 to nearly \$4.9 billion for FY 2020 — a 10-fold increase. Congress must use its oversight authority to ensure accountability for ICE and CBP leadership and personnel. These agencies cannot be allowed to remain unchecked as they commit abuses and deprive people of their rights with impunity.

Since ICE and CBP's relatively recent establishment in 2003, the government has authorized the dramatic expansion of their role in the U.S. immigration system. The Trump administration further expanded these agencies and weaponized them to advance a politicized anti-immigrant agenda. But the well-documented mass cruelty committed by ICE and CBP is not simply limited to the whims of revolving political leaders.

The everyday operations of these agencies — including apprehensions, detention, and deportations, and most recently, expulsions — are in accordance with the stated policies and practices of ICE and CBP. The government has vested ever-increasing authority with these agencies to conduct draconian enforcement activity to address what is, at its core, a humanitarian issue.

Congress should reverse this misguided approach and rein in the broad purview of these agencies. Funding for ICE and CBP should be significantly reduced. Those funds should be redirected to community programs that support immigrants and their families and assist in the transition to living in the United States. Funding alternatives to expensive operations like ICE detention, such as case management and similar programs, will save taxpayers' dollars while respecting the human rights of immigrants and asylum seekers. This will also help create an immigration system that is both functional and grounded in human dignity.

Ensure Fair Access to the Courts

Under a functional immigration court system, immigrants would receive full and fair hearings before impartial judges who apply the law equitably and make decisions based on the facts before them. Unfortunately, this does not currently happen because the structure of our immigration court system is fundamentally flawed. As a result, life-and-death decisions by immigration judges often have more to do with the luck of the draw than with the rule of law. In order to create a fair and just immigration system that is consistent with our values, Congress should:

- Establish independent Article I immigration courts outside the Attorney General's unilateral control that will ensure impartial case-by-case adjudication free of political pressure by the Attorney General;

- Require that immigration judge hiring be based exclusively on merit and free of political influence;
- Adequately fund and staff the courts to ensure that record-keeping is modern and accessible, cases are heard within a reasonable period of time, adequate interpretation is available in all cases, and the backlog of cases is addressed promptly;
- Repeal, in part, 8 USC 1252 to enable meaningful judicial review of all factual and legal questions to decrease deference to the Department of Justice and ensure that systemic immigration court dysfunction is efficiently reviewable and remediable in Art. III courts;
- Establish congressional oversight mechanisms by which decisions in the new courts can be periodically surveyed to ensure consistency with governing law.
- Provide adequate funding for legal representation for indigent immigrants in removal proceedings — as well as for all unaccompanied children. Legal representation is a hallmark of our court system, yet immigrants, including young children, often do not have access to lawyers. Without representation, meritorious cases may be denied merely because the person did not understand the system. Legal representation is necessary for immigrants to get the fair and impartial hearings that they deserve and that are required by law.

Protect immigrant workers and end exploitative labor practices

Throughout the South, immigrant workers play an essential role in our economy. They process poultry, meat, and seafood; they harvest produce; they pack and ship food and other goods. Southern states have ignored the basic protections and benefits needed to provide dignity and safety in the workplace. The COVID-19 pandemic has only highlighted the meager protections available to workers in the South generally, and immigrants specifically. Immigration reform must include protections for immigrant workers.

Under the nation's largest low-wage guest worker programs (J-1, H-2B, and H-2A), U.S. employers recruit more than 300,000 foreign workers each year to perform temporary, low-skill labor in farming, forestry, seafood-processing, landscaping, tourism, construction, and other labor-intensive industries. But far from being treated like “guests” in the United States, they're systematically exploited and abused by labor recruiters and employers. To obtain their jobs, guest workers frequently must pay exorbitant fees to unscrupulous labor recruiters, leaving them deeply in debt and susceptible to abuse. Many are routinely cheated out of wages, forced to live in squalid conditions, subjected to labor trafficking, denied proper medical care or compensation for injuries, or held virtually captive by employers and labor brokers who confiscate their visas and identity documents.

Arkansas-based Lowry Farms — a large farm labor contractor that employs guest workers at sugarcane farms in Louisiana — has breached its contract and violated the Fair Labor Standards Act, according to a lawsuit by the Southern Poverty Law Center. Under federal laws, Lowry was

required to ensure that guest workers had access to water and shade, received fair wages, and were protected from fraud and misrepresentation.¹³ It failed on all counts and exploited guest workers, many of whom had to borrow money before leaving Mexico to pay for their work visas, hotels, food, and transportation to the work site.

In addition, agricultural and domestic workers, many of whom are immigrants, are currently excluded from the protections in the Fair Labor Standards Act and the National Labor Relations Act. This discrimination is not simply a historical event — the law continues to discriminate against Black, Brown, and immigrant communities.

To protect immigrant workers, Congress should:

- Extend the Migrant and Seasonal Agricultural Worker Protection Act to include guest workers. This act is the primary federal employment law that protects seasonal laborers and farmworkers. Its protections currently do not apply to H-2A workers;
- Pass the Protect Our Workers from Exploitation and Retaliation Act (POWER Act S. 2929/H.R.5225). This legislation would provide immigration relief and protections from immigration enforcement to immigrant workers who report unsafe or unfair labor practices;
- Pass the Fairness for Farmworkers Act (H.R. 1080/S. 385) to ensure farmworkers receive basic minimum wage and overtime pay protections; and
- Pass the Domestic Worker Bill of Rights (H.R. 3760/S. 2112) which would create a basic set of labor protections for domestic work.

Our immigrant neighbors play a vital role in the economic, social, cultural, and political life in the Southeast, where the SPLC Action Fund primarily works, and across the United States. People in the Southeast come from all over the world—Latin America, Africa, the Caribbean, Asia and Europe—adding to the vibrancy of our communities and revitalizing rural areas that were in decline. They should be able to live their lives free from fear and have the same freedom, liberty, and opportunity that those who were born in the United States enjoy. Congress must radically reimagine the way the United States addresses immigration to meet the needs of current migration patterns so that people coming to this country have a fair opportunity to build a better life for themselves.

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¹³ Liz Vinson, SPLC Sues Farm Labor Contractor for Underpaying H-2A Guest Workers and Threatening to Deport Them for Speaking Out, Southern Poverty Law Center, August 14, 2020, <https://www.splcenter.org/news/2020/08/14/splc-sues-farm-labor-contractor-underpaying-h-2a-guest-workers-and-threatening-deport-them>