

February 4, 2021

The Honorable Joseph Biden  
President of the United States  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

**Re: End Operation Streamline and de-prioritize migration-related prosecutions**

Dear Mr. President:

We, the undersigned organizations, write during a moment of reckoning for a new era of immigration policies grounded in racial equity and compassion. As your administration establishes a new approach, we urge you to quickly uphold your commitment to end mass prosecutions of individuals through practices like Operation Streamline that deny individuals their right to a fair hearing and due process. We also call on your administration to halt all prosecutions for unauthorized entry (8 U.S.C. § 1325) and reentry (8 U.S.C. § 1326) violations, and de-prioritize the use of criminal prosecutions for migration related offenses going forward.

Prosecutions for entering and reentering the U.S. without authorization are rooted in xenophobia<sup>1</sup> and white supremacist ideology,<sup>2</sup> and have grown exponentially over the past two decades.<sup>3</sup> By 2013, under the Obama administration, unauthorized entry prosecutions reached over 60,000 and reentry over 20,000.<sup>4</sup> Through a series of executive actions,<sup>5</sup> the Trump administration further prioritized criminal prosecutions of non-citizens, and §§ 1325 and 1326 prosecutions grew by nearly 50 percent from fiscal years 2017 to 2019.<sup>6</sup> These prosecutions contribute to

---

<sup>1</sup> See John Blake, “When Americans tried to breed a better race: How a genetic fitness ‘crusade’ marches on,” CNN, October 18, 2018, <https://www.cnn.com/2018/10/16/us/eugenics-craze-america-pbs/index.html>. Becky Little, “How Border-Crossing Became a Crime in the United States,” History, July 1, 2019, <https://www.history.com/news/illegal-border-crossing-usa-mexico-section-1325>.

<sup>2</sup> See Kelly Lytle Hernández, *Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*, (UNC Press Books, 2017), at 137. See also Madlin Mekelburg, “Fact-check: When did it become a crime to cross the U.S. border between ports of entry?,” Statesman, July 12, 2019, <https://www.statesman.com/news/20190712/fact-check-when-did-it-become-crime-to-cross-us-border-between-ports-of-entry>.

<sup>3</sup> In 2002, there were 3,000 misdemeanor prosecutions for unauthorized entry and 8,000 felony prosecutions for unauthorized reentry. See Grace Meng, “Turning Migrants into Criminals: The Harmful Impact of US Border Prosecutions,” Human Rights Watch, (May 2013), <https://www.hrw.org/report/2013/05/22/turning-migrants-criminals/harmful-impact-us-border-prosecutions>.

<sup>4</sup> See U.S. Department of Justice, “Department of Justice Prosecuted a Record-Breaking Number of Immigration-Related Cases in Fiscal Year 2019,” October 17, 2019, <https://www.justice.gov/opa/pr/departments-justice-prosecuted-record-breaking-number-immigration-related-cases-fiscal-year>.

<sup>5</sup> See Jesse Franzblau, “A Legacy of Injustice: The U.S. Criminalization of Migration,” National Immigrant Justice Center, July 2020, <https://immigrantjustice.org/research-items/report-legacy-injustice-us-criminalization-migration>.

<sup>6</sup> See U.S. Department of Justice, “Department of Justice Prosecuted a Record-Breaking Number of Immigration-Related Cases in Fiscal Year 2019,” October 17, 2019.

approximately 10 percent of the federal prison population on any given day<sup>7</sup> and make up around 60 percent of all criminal prosecutions in federal courts.<sup>8</sup>

The Department of Homeland Security and Department of Justice are able to prosecute so many §§ 1325 and 1326 cases in part because of a mass prosecution program, “Operation Streamline.”<sup>9</sup> People subject to Streamline frequently are held in pretrial detention because they are denied bail or cannot pay cash bail and have little time to consult with an attorney to understand the charges that have been filed against them, the consequences they will face if they are convicted, or their potential avenues for legal relief, in a legal system that is completely foreign to most defendants.<sup>10</sup>

The January 26 Executive Order to phase out the use of private prison contracts marks a first step towards ending a perverse financial driver behind mass incarceration.<sup>11</sup> We also welcome the Attorney General’s memo issued the same day ending the Trump administration’s Zero-Tolerance directive.<sup>12</sup> However, the EO and memo fall seriously short of your past campaign commitments and our expectations for a new era of immigration policies rooted in justice and dignity.<sup>13</sup> While the order includes privately operated prisons under the DOJ umbrella,<sup>14</sup> it is

---

<sup>7</sup> César Cuauhtémoc García Hernández, *Migrating to Prison: America’s Obsession with Locking Up Immigrants*, (New York: The New Press, 2019), at 83.

<sup>8</sup> “Prosecutions for 2020,” Transactional Records Access Clearinghouse (TRAC), Syracuse University, report generated May 2020, <https://tracfed.syr.edu/results/9x705ed667de5d.html>. See also Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2020,” Prison Policy Initiative, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html>. Thousands of people are also held in pre-trial and transferred by U.S. Marshals to and from ICE and CBP custody before and after completion of their criminal proceedings. See also U.S. Marshals Service, FY 2020 Performance Budget President’s Budget, Federal Prisoner Detention Appropriation (Washington, DC: Department of Justice, March 2019), <https://www.justice.gov/jmd/page/file/1144161/download>.

<sup>9</sup> The Ninth Circuit Court of Appeals is currently considering a legal challenge against Streamline based on the discriminatory treatment, inhumane conditions, and trauma people suffer as part of their prosecution. See, *United States v. Ayala-Bello et al.* (S.D. Cal. Feb. 28, 2019), rev’d and remanded, (9th Cir. November 27, 2019).

<sup>10</sup> Joanna Jacobbi Lydgate, “Assembly-Line Justice: A Review of Operation Streamline,” *California Law Review*, Vol. 98 (April 2010), <https://www.semanticscholar.org/paper/Assembly-Line-Justice%3A-A-Review-of-Operation-Lydgate/6574fbd8e8edafa5d94b73bbc0780f33aee7001b>. See also Ingrid V. Eagly, “The Movement to Decriminalize Decriminalize Border Crossing,” *Boston College Law Review*, Vol. 61, Issue 6, Article 2, June 26, 2020, <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3899&context=bclr>.

<sup>11</sup> White House Executive Order, “Reforming our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities,” January 26, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities>.

<sup>12</sup> Office of the Attorney General, Memo for All Federal Prosecutors from the Acting Attorney General, “Rescinding the Zero-Tolerance Policy for Offenses Under 8 U.S.C. § 1325(a),” U.S. Department of Justice, January 26, 2021, <https://www.justice.gov/ag/page/file/1360706/download>.

<sup>13</sup> The Biden-Sanders Unity Task Force Recommendations included calls to: ensure respect for the facts and circumstances of individual cases and end indiscriminate prosecutions, including of asylum seekers, end mass prosecutions of individuals who cross the border without regard to the facts and circumstances of their cases, through practices like Operation Streamline. See “Moving Biden Toward Community Demands: Unity Task Force Releases Recs,” Mijente, July 8, 2020, <https://mijente.net/2020/07/moving-biden-toward-community-demands-unity-task-force-releases-recs>.

<sup>14</sup> As such, we expect the Executive Order to cover U.S. Marshals Service (USMS) facilities, many of which hold people on behalf of ICE and hold thousands of people transferred after being referred for 1325 & 1326 prosecutions. For more on USMS facilities that detain people on behalf of ICE, see, *i.e.*, U.S. Department of Homeland Security,

critical that the administration extend this order to DHS to include all ICE detention. Moreover, the rescission of the Zero-Tolerance directive does not end mass prosecutions under Operation Streamline and preserves the de facto prosecutorial practice of prioritizing entry and reentry prosecutions.

The undersigned organizations call on President Biden to urgently enact the following policy changes within the first 100 days of his administration:

- **End mass prosecutions:** Immediately end Operation Streamline and any other programs that facilitate large-scale prosecutions and therefore undercut due process rights and other constitutional protections.
- **Suspend unauthorized entry and reentry prosecutions:** Halt unauthorized entry and reentry prosecutions under 8 U.S.C. §§ 1325 and 1326 recognizing that immigrants already are subject to a harsh civil immigration system and work with Congress to repeal these statutes.
- **Rescind existing prosecutorial guidance and de-prioritize prosecutions:** Revoke the April 2017 Attorney General memorandum on criminal immigration enforcement and issue new prosecutorial guidance de-prioritizing such prosecutions.<sup>15</sup>
- **Terminate DHS contracts with private prisons:** Issue guidance to extend the January 26 order on private prisons covers private facilities run by DHS.

The laws used to prosecute entry and reentry violations were first enacted with a white supremacist animus, and continue to have a discriminatory impact on Black and Latinx communities.<sup>16</sup> Such prosecutions bring together the civil and criminal immigration legal systems in ways that exacerbate racial and ethnic discrimination,<sup>17</sup> shuttling people between the criminal and immigration systems, where racial profiling and discrimination are common to both.<sup>18</sup>

---

Office of the Inspector General, “ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards,” OIG-19-18, January 29, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

<sup>15</sup> Furthermore, the DOJ’s January 29, 2021 memo reestablishes the 2010 Holder memorandum, which explicitly affirms the Streamline program, as the governing prosecution policy. See Office of the Attorney General, Memo for All Federal Prosecutors from the Acting Attorney General, “Interim Guidance on Prosecutorial Discretion, Charging, and Sentencing,” U.S. Department of Justice, January 29, 2021, <https://www.justice.gov/ag/page/file/1362411/download>.

<sup>16</sup> The white supremacist history and discriminatory nature of prosecutions for unauthorized migration is currently being addressed in the U.S. justice system. See *U.S. v. Bernal-Sanchez*, Case No. 20-mj-20169 (S.D. Cal. Aug. 31, 2020) (Dkt 46).

<sup>17</sup> Latinx immigrants, led by Mexicans and Central Americans, have made up more than 90 percent of all people imprisoned for unauthorized entry and reentry, for example. See e.g., Mark A. Motivans, U.S. Department of Justice, Bureau of Justice Statistics, “Immigration Offenders In The Federal Justice System, 2010,” July 18, 2012, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4392>.

<sup>18</sup> See, e.g., “The Truth about ICE and CBP,” United We Dream (February 2019), <https://unitedwedream.org/wp-content/uploads/2019/02/TheTruthICECBP-02052019-v3.pdf>. See also Kelly Lytle Hernández, *Amnesty or Abolition: Felons, Illegals, and the Case for a New Abolition Movement*, Urban Research Network, (December 2011) [https://urbanresearchnetwork.org/wp-content/uploads/2014/07/Amnesty-or-Abolition\\_Dec-2011\\_BOOM.pdf](https://urbanresearchnetwork.org/wp-content/uploads/2014/07/Amnesty-or-Abolition_Dec-2011_BOOM.pdf).

The deeply racist and white supremacist origins of these laws designed nearly a century ago should not form the basis for any legitimate government policy today. Ending assembly-line programs and de-prioritizing such prosecutions is an essential step toward ending systemic injustices, reducing mass incarceration, and protecting fundamental human rights.

To discuss this matter further, please contact [jacinta@mijente.net](mailto:jacinta@mijente.net).

Signed,

All of Us or None Central Illinois  
350.org  
A New PATH (Parents for Addiction Treatment & Healing)  
Adelante  
Advancement Project, National Office  
Advocate Visitors with Immigrants in Detention (AVID)  
Advocating Opportunity  
African Bureau for Immigration and Social Affairs  
Al Otro Lado  
Aldea - The People's Justice Center  
Alianza Americas  
Alliance San Diego  
Alliance4Action Immigration Action Group  
American Civil Liberties Union of Arizona  
American Friends Service Committee  
Arizona Palestine Solidarity Alliance  
Asian Americans Advancing Justice - Asian Law Caucus  
Asian Americans Advancing Justice (AAJC)  
Black and Brown United in Action  
Black Immigrant Collective (BIC)  
BORDER ANGELS  
BorderLinks  
Border Patrol Victims Network  
Boston Immigration Justice Accompaniment Network (BIJAN)  
Broward for Progress  
California Immigrant Youth Justice Alliance  
Capital Area Immigrants' Rights Coalition  
Catholic Legal Immigration Network, Inc.  
Center for Constitutional Rights  
Center for Gender & Refugee Studies  
Center for Popular Democracy  
Center for Victims of Torture  
Centro de Trabajadores Unidos (IWP)  
Chicago Community and Workers' Rights  
Chula Vista Partners in Courage  
Church World Service  
Cleveland Jobs with Justice

Coalición de Derechos Humanos  
Coalition for Humane Immigrant Rights (CHIRLA)  
Colibri Center for Human Rights  
Colorado Jobs with Justice  
Community Counseling and Education Center  
Community Justice Exchange  
Connecticut Shoreline Indivisible  
Defending Rights & Dissent  
Detention Watch Network  
Drug Policy Alliance  
End Streamline Coalition  
Familia: Trans Queer Liberation Movement  
Families for Freedom  
Florence Immigrant & Refugee Rights Project  
For the People  
Freedom for Immigrants  
Freedom Network USA  
Frontera de Cristo  
Georgia Latino Alliance for Human Rights (GLAHR)  
Grassroots Leadership  
Haitian Bridge Alliance  
Hamden Action Now  
Homie UP  
Human Rights First  
Human Rights Initiative of North Texas  
Human Rights Watch  
Humane Borders, Inc.  
Illinois Coalition for Immigrant and Refugee Rights  
Immigrant Defense Project  
Immigrant Legal Advocacy Project  
Immigrant Legal Resource Center (ILRC)  
Indivisible  
Innovation Behavioral Health Solutions, LLC  
Jobs With Justice  
Juntos  
Just Futures Law  
Justice Strategies  
Kasa Healing  
Kino Border Initiative  
Latinx Therapists Action Network  
Leadership Conference of Women Religious  
Louisiana Advocates for Immigrants in Detention  
Make the Road Nevada  
Make the Road New Jersey  
Make the Road New York  
Make the Road PA

McMaster University & Washington State University (emeritus)  
Migrant Center for Human Rights  
Migration Scholar Collaborative (MiSC)  
Mijente  
Minnesota Interfaith Coalition on Immigration  
Mississippi Center for Justice  
National Association of Criminal Defense Lawyers  
National Association of Social Workers  
National Association of Social Workers - Texas Chapter  
North Carolina Justice Center  
National Employment Law Project  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project of the National Lawyers Guild (NIPNLG)  
National Network for Immigrant & Refugee Rights  
National Korean American Service & Education Consortium (NAKASEC)  
NETWORK Lobby for Catholic Social Justice  
New Beginnings Reentry Services, Inc  
New Jersey Alliance For Immigrant Justice  
New Orleans Workers' Center for Racial Justice  
New Sanctuary Network Tulsa  
New York Immigration Coalition  
NM CAFE  
NYU Immigrant Rights Clinic  
Organized Communities Against Deportation (OCAD)  
Pedro Arrupe Jesuit Institute  
Pennsylvania Immigration and Citizenship Coalition  
Private Corrections Working Group  
Project On Government Oversight  
Project South  
Puente Human Rights Movement  
Revolve Impact  
San Diego Immigrant Rights Consortium  
Showing Up for Racial Justice  
Siembra NC  
South Asian Americans Leading Together (SAALT)  
South Bay People Power  
South Texas Human Rights Center  
Southeast Immigrant Rights Network  
Southern Border Communities Coalition  
Southern California Immigration Project  
Southern Poverty Law Center  
Southside Presbyterian Church, Tucson, AZ  
Southside Worker Center  
St. Mark's Presbyterian Church  
StoptheDrugWar.org

The Advocates for Human Rights  
The Bail Project  
The Good Shepherd United Church of Christ  
The Green Valley/Sahuarita Samaritans  
The Resurrection Project  
The Sentencing Project  
TN Immigrant and Refugee Rights Coalition  
UDC Law Immigration and Human Rights Clinic  
UndocuBlack Network  
Unidad Latina en Accion  
Unidad Latina en Acción Connecticut  
Union for Reform Judaism  
Unitarian Universalist Association  
Unitarian Universalist Service Committee  
United We Dream  
Universidad Popular  
UnLocal  
VECINA  
Win Without War  
Witness at the Border  
Worth Rises  
Young Center for Immigrant Children's Rights