

IMMIGRATION LAW UNIT TRANSITION PRIORITIES

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Short List

1. DHS: End the use of secure detention for immigrant children.
2. DHS: Stop pursuing the removal of unaccompanied children and special immigrant juveniles:
 - a. Reinstate the [Kim Memo](#), “Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children” (Ted Kim, Acting Chief, Asylum Division, HQRAIO I20/12a (05-28-2013)).
 - b. Allow unaccompanied children to pursue asylum relief before USCIS without threat of removal in immigration court.
 - c. Grant deferred action to SIJS beneficiaries from visa retrogressed countries.
 - d. Withdraw pending SIJS regulations, Docket ID: USCIS-2009-0004, RIN 1615-AB81.
 - e. Withdraw USCIS Administrative Appeals Office (AAO) decisions regarding SIJS eligibility (see [Appendix D](#), below).
3. ICE: Implement the Biden Administration’s new enforcement priorities by exercising prosecutorial discretion, including termination without prejudice and dismissal without prejudice instead of administrative closure, to protect against future administrations’ rollback of administrative closure.
4. ICE: Generously use conditional parole authority and bond authority, regarding whether to not detain in the first instance or to release people already detained.
5. EOIR: Add Board of Immigration Appeals members to offset anti-immigrant hiring by Trump Administration.
6. DHS/DOS/President: Reverse and withdraw the DHS and DOS public charge regulations (Docket IDs: USCIS-2010-0012 and DOS-2019-0035), and related policies, including the Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the U.S. Healthcare System, issued 10-4-2019. The Legal Aid Society is counsel on litigation in progress challenging each of these rules. *See Make the Road NY et al. v. Cuccinelli, et al.*, 19-cv-07993 (S.D.N.Y.); *Make the Road NY et al. v. Pompeo, et al.*, 19-cv-11633 (S.D.N.Y.).

Full List

President

- Withdraw each harmful Executive Order of the last 4 years (see [Appendix A](#), below).
- Grant Deferred Action to recipients of approved Special Immigrant Juvenile Form I-360's from visa-retrogressed countries (El Salvador, Guatemala, Honduras, and Mexico).

Attorney General

- Reverse all of the harmful Attorney General decisions and regulations of the last four years (see [Appendix B](#), below).
- Reinstate the immigration judges' union, which was excluded from the bargaining unit pursuant to 71 FLRA 207 (11-02-2020).
- Add Board of Immigration Appeals members to offset anti-immigrant hiring by Trump Administration.
- Create a duress exception to the material support and persecutor's bar .

Secretary, Department of Homeland Security

- Reverse the various harmful regulations and policies of the last four years (see list in [Appendix C](#), below).
- Fully reinstate DACA, and discontinue legal challenges to DACA.
 - Eliminate "significant misdemeanor" bar for DACA recipients.
- Grant humanitarian parole to all DACA registrants, for purposes of adjustment under INA 245(a).
- Redesignate all current TPS countries.
- Grant Deferred Enforced Departure to prior TPS countries Guinea, Liberia, and Sierra Leone.
- Deem TPS registrants "admitted," for purposes of adjustment under INA 245(a).
- Provide stricter oversight on ICE/CBP detention practice.
- Provide accountability for ICE funding.
 - Detention plummeted during COVID: where did that money go?
 - Return any money taken from USCIS for ICE enforcement.
- Reinstate prosecutorial discretion.
 - For people in proceedings who are receiving PD, consider termination without prejudice and dismissal without prejudice instead of administrative closure to protect against future administrations' rollback of administrative closure.
- Decline to prosecute possession of small amounts of controlled substances, particularly marijuana.

Director, U.S. Citizenship and Immigration Services

- Reverse the various harmful regulations, policies, and decisions of the last four years (see list in [Appendix D](#), below).
- Allow telephonic appearances at USCIS Asylum Offices during pandemic.
- Establish a mechanism to report USCIS Field Office Immigration Service Officers adjudicating naturalization applications who refuse to defer to the opinions of medical

professionals and insert their own biases about disability and mental illness when adjudicating Form N-648 medical certification for disability exceptions.

- Establish a point person at each USCIS Field Office to coordinate homebound interviews and other disability accommodations.
- Reopen walk-in emergency USCIS Infopass appointments for urgent advance parole requests and ADIT (I-551) stamps (after pandemic).
- Establish an expedited FOIA track for requesters filing affirmative immigration applications.
- Dismantle the USCIS Denaturalization Task Force, and conduct *sua sponte* review of any denaturalizations effectuated in the last four years.

Director, U.S. Immigration and Customs Enforcement

- Direct ICE Offices of Chief Counsel to implement the Biden Administration's new enforcement priorities, by exercising prosecutorial discretion, including termination without prejudice and dismissal without prejudice instead of administrative closure, to protect against future administrations' rollback of administrative closure.
- Add courthouses, probation offices and court mandated programs to the list of sensitive locations where ICE should not engage in enforcement.
- Generously use conditional parole authority and bond authority, whether to not detain in the first instance or to release people already detained.
- Stop pursuing removal of SIJS beneficiaries.

Director, Executive Office for Immigration Review (within Department of Justice)

- Reverse the various harmful rules and policies of the last four years (See [Appendix E](#), below).
- Recognize that relief before USCIS is legal relief and discontinue issuing removal orders or setting filing deadlines in immigration court for individuals with applications for relief pending before USCIS.
- Institute an electronic filing system nationwide.

Secretary, Department of State

- Withdraw the DOS public charge regulations, Docket ID: DOS-2019-0035.
- Reverse the January 2018 public charge-related changes to the Foreign Affairs Manual.

Director, Centers for Disease Control and Prevention

- Revoke CDC order dated 03-20-2020 authorizing CBP to expel undocumented individuals at the Mexican and Canadian borders; on 05-20-2020 was extended indefinitely.

Congress

- See [Appendix F](#) for our legislative wish list.

Appendix A - President

Reverse the following Executive Orders or Presidential Proclamations:

- EO 13767 Border Security and Immigration Enforcement Improvements, issued 01-27-2017.
- EO13768 Enhancing Public Safety in the Interior of the US, issued 01-27-2017.
- EO travel ban from Muslim countries.
- EO Travel ban based on COVID, issued 19, 04-22-2020.
- [EO](#) classifying policy-making federal employees under new Schedule F, which renders them at-will employees; issued 10-21-2020.
- Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, issued 10-04-2019.

Appendix B - Attorney General

- Withdraw the following Attorney General opinions:
 - *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018) limiting continuances.
 - *Matter of Castro Tum*, 27 I&N Dec. 271 (A.G. 2018) limiting administrative closure.
 - *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018) limiting termination.
 - *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) limiting asylum particular social groups (PSG) based on domestic violence etc.
 - *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) limiting asylum PSG based on family unit.
 - *Matter of Negusie*, 28 I&N Dec. 120 (A.G. 2020) eliminating duress exception to persecutor bar to asylum and withholding of removal.
 - *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020), introducing de novo review of asylum to second-guess IJ fact-finding; tightening PSG requirements.
 - *Matter of Thomas & Thompson*, 27 I&N Dec. 674 (A.G. 2019), undermining immigration effect of vacatur of criminal convictions.
 - *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), denying bond hearings for individuals subject to expedited removal.
 - *Matter of Reyes*, 28 I&N Dec. 52 (A.G. 2020), criminal convictions.
 - *Matter of O-F-A-S-*, 28 I&N Dec. 35 (A.G. 2020), Convention Against Torture.
 - *Matter of A-M-R-C-*, 28 I&N Dec. 7 (A.G. 2020) asylum persecutor bars.
 - *Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020) Convention Against Torture.
 - *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019) good moral character.
 - *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018) asylum.
 - *Matter of J-J-G-*, 27 I&N Dec. 808 (BIA 2020) exceptional and extremely unusual hardship standard.
- Withdraw regulations regarding the administrative review procedures of the Board of Immigration Appeals, EOIR Docket No. 159; AG Order No. 4478-2019.

Appendix C - Department of Homeland Security

Withdraw/reverse the following regulations and policies:

- Withdraw the DHS public charge regulations, Docket ID: USCIS-2010-0012.
- Withdraw affidavit of support and sponsor liability regulations, 85 FR 62432, Docket ID: USCIS-2019-0023.
- Withdraw the 11-19-2020 DHS rule on employment authorization for certain aliens with final orders of removal, CIS No. 2653–19; DHS Docket No. USCIS–2019–0024
- Withdraw the USCIS fee increase / fee waiver elimination regulations, 84 FR 62280, Docket ID: USCIS-2019-0010.
- End [Migration Protection Protocols](#) (MPP, or Remain in Mexico).
- End Asylum Cooperative Agreements (ACA) with Guatemala, Honduras, and El Salvador.
- End the use of secure detention for immigrant children.

Appendix D - USCIS

- Reverse USCIS [NTA referral policy](#) USCIS PM-602-0050.1 (06-28-2018).
- Reverse USCIS [RFE and NOID policy](#) USCIS PM-602-0163 (07-13-2018).
- Reverse USCIS policy regarding [applying discretion](#), USCIS PA-2020-10 (07-15-2020)
- Reverse USCIS blank space policy, requiring N/A in each blank space.
- Reverse USCIS pencil-only policy for name and A# on the back of passport photos.
- Reverse the policy regarding asylum applications by unaccompanied alien children(UAC) by reinstating the USCIS Kim Memo, “Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children,” Ted Kim, Acting Chief, Asylum Division, HQRAIO I20/12a (06-24-2013)
- Reverse each asylum regulation of the last four years.
 - Procedures for Asylum and Bars to Asylum Eligibility, 85 FR 67202.
 - Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264.
 - Asylum Application, Interview, and Employment Authorization for Applicants, 85 FR 38532.
- Withdraw pending SIJS regulations, Docket ID: USCIS-2009-0004, RIN 1615-AB81.
- Withdraw USCIS Administrative Appeals Office (AAO) decisions:
 - *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019) (regarding USCIS consent authority regarding SIJS petitions).
 - *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019) (regarding juvenile court dependency, for SIJS eligibility).
 - *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019) (regarding juvenile court dependency, for SIJS eligibility).
- Revoke [USCIS PM-602-0179 \(08-20-2020\)](#) and the underlying AAO adopted decision *Matter of Z-R-Z-C-*, and reinstate policy of recognizing temporary protected status (TPS) advance parole entry as sufficing for INA 245(a) adjustment.

Appendix E - EOIR Policies to Reverse

- Withdraw the [rule on appellate procedures and admin closure](#) 85 FR 52491.
- Withdraw the 11-30-2020 EOIR memo on “Enhanced Case Flow Processing in Removal Proceedings,” EOIR PM 21-05.
- Withdraw the 11-27-2020 EOIR rule on good cause for continuances, EOIR 19–0410; Dir. Order No. 02–2021.
- Withdraw the 11-27-2020 EOIR rule on motions to reopen and reconsider, effect of departure bar, and stays of removal, EOIR Docket No. 18–0503; Dir. Order No. 01–2021.
- Withdraw the EOIR fee increase regulations, 85 FR 11866, EOIR Docket No. 18-0101, A.G. Order No. 4641-2020.
- Withdraw the 10-21-2020 EOIR asylum criminal bars regulation, EOIR Docket No. 18-0002, A.G. Order No. 4873-2020.
- Withdraw the 10-01-2018 EOIR performance metrics for immigration judges (case completion quotas).
- Reinstate and fully fund the Legal Orientation Project for detained immigrants.
- Reinstate liaison meetings between EOIR and legal service providers.
- Reinstate the juvenile dockets and share dockets details with legal service providers, as in the past.

Appendix F - Congress

In the event the Democrats control the Senate, and legislative solutions become possible:

- Establish a right to counsel for immigrants, and provide funding for such counsel.
- Establish an independent Article I or Article III immigration court.
- Eliminate the one-year filing deadline for asylum.
- Pass comprehensive immigration reform, to create a pathway to citizenship for the 11.5M undocumented individuals in the country.
- Pass the [New Way Forward Act \(HR 5383\)](#).
- Pass the DREAM Act.
- Pass the STEM Act.
- Pass the AgJOBS bill.
- Discontinue use of SAVE.
- Extend the VAWA statute for 10 years.
- Eliminate the 3 and 10 year bars related to unlawful presence, INA 212(a)(9)(B).
- Eliminate the permanent bar, INA 212(a)(9)(C).
- Develop a mechanism to apply for Non-LPR cancellation affirmatively or to develop an equivalent affirmative status/application.
- Reduce hardship standard for nonLPR COR and waivers to just plain hardship, and include hardship to the applicant themselves.
- Increase nonLPR COR cap to 20,000 per year.
- Authorize enough U visas to eliminate the backlog, and then increase the yearly quota to 20,000.
- Allow SIJS beneficiaries to petition for the non-offending parent.
- Create specific visa category (with sufficient visa numbers) for SIJS beneficiaries or remove SIJS adjustments from EB4.
- Create a broad exception to the entry without inspection inadmissibility ground for all family-based adjustments (basically INA 245(i) relief without the \$1,000 penalty).
- Eliminate expedited removal.
- Defund private prisons holding immigrant detainees.