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The White House
1600 Pennsylvania Ave. NW
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June 2, 2021

RE: Pardon Process Must Also Include Immigration

We are organizations dedicated to immigrant rights and criminal justice, including organizations with special expertise on the intersection of the criminal and immigration systems. We welcome the news that President Biden will soon begin exercising his clemency and pardon powers, and that he will do so with a particular focus on racial equity.¹ Immigration, too, is a racial justice issue, and one we hope President Biden will not lose sight of as he exercises these crucial powers.

We write to urge President Biden to consider immigration consequences while exercising his power in two ways: first, by pardoning immigrants with deportable convictions in order to spare them from removal; and second, by ensuring that those who receive clemency also receive an exercise of discretion to ensure that clemency is not rendered meaningless through immigration detention and/or deportation.

The same “tough on crime” policies that increased the racial disparities in the criminal legal system and that led to mass incarceration *also* resulted in the passage of draconian laws that mandate detention and deportation for people convicted of a wide range of criminal conduct.²

¹ Kenneth P. Vogel and Annie Karni, “Biden is Developing a Pardon Process With a Focus on Racial Justice,” *The New York Times* (May 17, 2021), <https://www.nytimes.com/2021/05/17/us/politics/biden-pardons-racial-justice.html?referringSource=articleShare>.

² Patrisia Macías-Rojas, *Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 6 J. MIGR. HUM. SECUR. 1, 1-3 (2018).

Immigrants are often doubly punished by the criminal legal system -- first with whatever sentence results from their conviction and second with detention and deportation by ICE.³ Especially Black and Brown immigrants suffer as they are over-policed, charged and sentenced more harshly,⁴ and then, if they are noncitizens, subject to permanent separation from their homes and loved ones. Indeed, Black immigrants make up only 5.4% of the undocumented population in the United States, but make up 20.3% of immigrants facing removal on the basis of a criminal conviction.⁵

The President must not repeat the tragic errors of prior criminal justice reforms. In 2015, when the U.S. Sentencing Commission revised the guidelines for certain drug crimes, nearly 6,000 people were released early as a result.⁶ Of those people, **nearly 20%** were noncitizens whom BOP transferred directly to ICE custody and placed in removal proceedings.⁷ ICE detention continues the cruel carceral conditions of prison,⁸ and deportation can deprive people of “all that makes life worth living.”⁹ An act of mercy that leads to ICE custody is no mercy at all.

Currently, BOP has nearly 25,000 noncitizens in its custody, comprising about 17% of BOP’s total population.¹⁰ In addition, many immigrants with old federal convictions who have been released back to their communities are still subject to deportation. President Biden should protect both groups of people by exercising his pardon power to undo convictions that will trigger detention and deportation and by ensuring that clemency recipients are provided protection from ICE detention and removal. People who merit a pardon or clemency surely also merit an exercise of prosecutorial discretion that will spare them exile.

We further urge that the Department of Justice allow people residing outside of the U.S. to seek pardons. Currently, people who have been deported are told they cannot even *apply* for a pardon, even if a pardon is the only relief that would allow them to return home. The Department of Justice must not deny people the opportunity to undo the harms of racist criminal laws just because they have also suffered the penalty of racist immigration laws.

³ Seth Freed Wessler, “Double Punishment,” *Color Lines* (Oct. 20, 2009), <https://www.colorlines.com/articles/double-punishment>.

⁴ See “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System,” The Sentencing Project, April 19, 2018, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

⁵ Juliana Morgan-Trostle, Kexin Zhang, and Carl Lipscombe, “The State of Black Immigrants Part II: Black Immigrants in the Mass Criminalization System,” *Black Alliance for Just Immigration*, Jan. 22, 2021, <http://baji.org/wp-content/uploads/2020/03/sobi-fullreport-jan22.pdf>.

⁶ Justin George, “First Step offers prison release, then possible deportation, for noncitizens,” *ABA Journal* (Jun. 19, 2019), <https://www.abajournal.com/news/article/first-step-offers-release-for-some-prisonersbut-not-noncitizens>.

⁷ *Id.*

⁸ Emily Ryo, *Fostering Legal Cynicism through Immigration Detention*, 90 *SOUTH. CALIF. LAW REV.* 101, 126-136 (2017) (examining survey responses from immigrants who had experienced both prison and ICE custody).

⁹ *Bridges v. Wixon*, 326 U.S. 135, 147 (1945).

¹⁰ Statistics - Inmate Citizenship, Bureau of Prisons, May 15, 2021, https://www.bop.gov/about/statistics/statistics_inmate_citizenship.jsp.

President Biden must not forget immigration and its insidious entanglement with the criminal legal system as he embarks on this important project of racial equity. The President has the unique power to undo the consequences of some of the worst of this country's past mistakes with respect to both its criminal *and* its immigration laws. President Biden can use his power to free people and keep families together regardless of their citizenship status.

We would welcome the opportunity to discuss this; please contact Sirine Shebaya at sirine@nipnlq.org, Nana Gyamfi at nana@baji.org, and Heidi Altman at haltman@heartlandalliance.org.

Sincerely,

ACLU Foundation of Northern California
ACLU Immigrants' Rights Project
ACLU of San Diego & Imperial Counties
ACLU of Southern California
Activated Massachusetts African Community
Adelante Alabama Worker Center
Advancement Project, National Office
Advancing Justice - Asian Law Caucus
Advocate Visitors with Immigrants in Detention (AVID) in the Chihuahuan Desert
African American Ministers In Action
African Communities Together
African Diaspora for Good Governance
Alianza Americas
Allies of Knoxville's Immigrant Neighbors (AKIN)
Alternative Chance
American Friends Service Committee
American Friends Service Committee, Colorado
Amnesty International USA
API RISE
Asian & Pacific Islander American Health Forum
Asian Americans Advancing Justice-Atlanta
Asian Pacific Institute on Gender-Based Violence
Asian Prisoner Support Committee
Asylum Seeker Advocacy Project (ASAP)
Bend the Arc: Jewish Action
Black Alliance for Just Immigration
Black Immigrant Collective (BIC)
Boulder County Sanctuary Coalition
Boulder Valley Unitarian Universalist Fellowship
Brooklyn Community Bail Fund (BCBF)
Brooklyn Defender Services
CA S.T.O.P. Coalition

California Collaborative for Immigrant Justice (CCIJ)
Capital Area Immigrants' Rights Coalition
Caribbean Community in Philadelphia
Carolina Migrant Network
Catholic Legal Immigration Network, Inc.
Center for Constitutional Rights
Center for Empowering Refugees and Immigrants
Center for Law and Social Policy (CLASP)
Center for Popular Democracy
Centro Legal de la Raza
Chicago Drug Users' Union
Church World Service
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Colectiva Legal del Pueblo
Colorado Immigrant Rights Coalition
Colorado Jobs with Justice
Columbia Law School Immigrants' Rights Clinic
Communities United for Restorative Youth Justice
Community Healers
Community Justice Exchange
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Connecticut Shoreline Indivisible
Conversations with Friends
Corazon Latino
Desert Support for Asylum Seekers
Detention Watch Network
Drug Policy Alliance
East Yard Communities for Environmental Justice
Elkind Alterman Harston PC
Ella Baker Center for Human Rights
Equal Justice Society
Fair Chance Project/Families United to End LWOP
Faith In Action
Families for Freedom
Florence Immigrant & Refugee Rights Project
Grassroots Leadership
Haitian Bridge Alliance
Heather Wise Attorney at Law
Hispanic Federation
Hispanics in Philanthropy
Holy Trinity Lutheran AMMPARO
Human Rights Initiative of North Texas
Human Rights Watch

Illinois Coalition for Immigrant and Refugee Rights
Immigrant Action Alliance
Immigrant Defenders Law Center
Immigrant Defense Project
Immigrant Justice Network
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
Immigrant Legal Defense
Immigrant Legal Resource Center (ILRC)
Immigration Equality
Indivisible
Innovation Law Lab
Interfaith Community for Detained Immigrants
Interfaith Movement for Human Integrity
International Refugee Assistance Project (IRAP)
Jewish Activists for Immigration Justice of Western MA
Justice Roundtable
Justice Strategies
Kids in Need of Defense
Koreatown Popular Assembly
La Resistencia
LatinoJustice PRLDEF
Law Office of Sally Yoakum
LCLAA
Legal Action Center
Legal Aid Justice Center
Legal Services For Prisoners With Children
Long Beach Immigrant Rights Coalition
Louisiana Advocates for Immigrants in Detention (LA-Aid)
Make the Road New York
Memphis United Methodist Immigrant Relief
Migration Scholar Collaborative (MiSC)
Minnesota Interfaith Coalition on Immigration
Monsoon Asians & Pacific Islanders in Solidarity
Multicultural AIDS Coalition
Muslim Advocates
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Social Workers
National Council of Churches
National Council on Alcoholism and Drug Dependence- Maryland Chapter
National Day Laborer Organizing Network (NDLON)
National Education Association
National HIRE Network
National Immigrant Justice Center

National Immigration Law Center
National Immigration Project (NIPNLG)
National Network for Immigrant & Refugee Rights
National Partnership for New Americans (NPNA)
Neighbors Link
New Mexico Immigrant Law Center
New Sanctuary Coalition
New Sanctuary Movement of Atlanta
New York Immigration Coalition
NorCal Resist
North Carolina Justice Center
Northwest Immigrant Rights Project
NYU Immigrant Rights Clinic
Oak Grove Church of God
Ohio Immigrant Alliance
One America
Operation Restoration
Orange County Rapid Response Network
Oregon Justice Resource Center
Pennsylvania Immigration and Citizenship Coalition
Poder Latinx
Prisoners' Legal Services of New York
Public Counsel
Pueblo Unido PDX
Puente Human Rights Movement
Race Forward
RAICES
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network
San Bernardino Community Service Center
Santa Clara County Public Defender's Office
Shut Down Etowah
Sikh American Legal Defense and Education Fund (SALDEF)
Sisters of Mercy of the Americas Justice Team
South Asian Americans Leading Together
Southeast Asia Resource Action Center (SEARAC)
SPLC Action Fund
Still Waters Anti-trafficking Program
StoptheDrugWar.org
Students for Sensible Drug Policy
Texas Civil Rights Project
The Bronx Defenders
The Leadership Conference on Civil and Human Rights

The Legal Aid Society (New York)
The Public Defenders' Coalition for Immigrant Justice
The Sentencing Project
The Taifa Group
Treatment Action Group
Tzedek Association
UC Davis Immigration Law Clinic
UndocuBlack Network
UnidosUS
Union de Vecinos Eastside Local of Los Angeles Tenant's Union
Unitarian Universalist Association
Unitarian Universalist Service Committee
Unitarian Universalists for Social Justice
United We Dream
UnLocal
VECINA
Vera Institute of Justice
VIDAS Legal Services (North Bay)
Washington Defender Association
Welcoming America
Women Watch Afrika, Inc.
Young Center for Immigrant Children's Rights
Youth Justice Coalition

CC:

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