ASYLUM SEEKER ADVOCACY PROJECT

POLICY PRIORITIES

The Asylum Seeker Advocacy Project (ASAP) sees a future where the United States welcomes individuals fleeing violence. We work alongside our members – thousands of asylum seekers – to make this vision a reality. Our model has three components: online community support, emergency legal aid, and nationwide systemic reform. We work with individuals who have come to the United States seeking asylum, regardless of where they are now located.

Since our founding, ASAP has provided legal assistance to asylum seekers in the U.S. on urgent timelines. We have done so without geographic restriction, and without meeting most of our clients or members face to face. Our services and community have spread by word of mouth, allowing us to reach thousands of asylum seekers on both sides of the Mexico-U.S. border. Today, ASAP has thousands of members spanning 50 states and the District of Columbia, whose collective voice sets the organizations' goals and priorities. ASAP continues to focus on proposing creative solutions to problems identified as most critical to address systemically by our clients and members.

Below, we outline recommendations, some of which could be immediately implemented by the Executive Office of Immigration Review (EOIR) at the Department of Justice (DOJ) and the Department of Homeland Security (DHS). The last section outlines a blueprint for how the executive branch can seek to redress the harms experienced by separated families, including recommendations to support the creation of new programs, some of which would require congressional action.

IN ABSENTIA REMOVAL ORDERS & NOTICE OF HEARINGS

Asylum seekers and immigrants are often denied an opportunity to present their claims before an immigration judge, receiving deportation orders without ever setting foot in court. Practitioners and news outlets have reported that *in absentia* removal orders often occur for reasons beyond an immigrant's control, including hearing notices sent to incorrect addresses; notices arriving on the day of or after the hearing date; notices including nonexistent or inaccurate dates (e.g. Sept. 31, placeholder dates, or weekend dates); the failure of U.S. Immigration and Customs Enforcement (ICE) to share updated addresses with immigration courts; confusion between ICE check-ins and immigration court hearings; and emergencies such as illness or childbirth. Backlogs mean immigration courts cannot keep up with logging changes of address, increasing the likelihood that a hearing notice is sent to the wrong address. We believe EOIR can and should:

- Eliminate the immigration judge quota system and reduce the number of master calendar hearings that each immigration judge is expected to complete per day, allowing more time for immigration judges to assess whether *in absentia* removal orders are warranted.
- Instruct immigration judges to avoid *in absentia* removal orders when possible, including by reviewing the file to assess the accuracy of the hearing notice address and by asking ICE trial attorneys whether respondents have complied with other enforcement requirements (e.g. attending ICE check-in, updating address with ICE).
- Suspend issuance of *in absentia* removal orders during COVID-19 pandemic.

- Create a process that allows individuals to contact the immigration court to reschedule hearings or request to appear by phone in case of illness or emergency.
- Rescind Board of Immigration Appeals (BIA) decisions that undermine the Supreme Court's holding in *Pereira*, requiring that a Notice to Appear in immigration court specify both the time and place of the hearing, including *Matter of Bermudez-Cota* (8/31/2018), *Matter of Mendoza-Hernandez and Matter of Capula-Cortes* (5/1/2019), and *Matter of Pena-Mejia* (5/22/2019), and issue related guidance for immigration judges adjudicating motions to reopen and motions to terminate.

E-FILING AND IMMIGRATION COURT MODERNIZATION

The COVID-19 pandemic made clear that the immigration courts and BIA must modernize to enable e-filing and allow remote appearance and testimony when appropriate. In April 2020, the National Association of Immigration Judges cited the EOIR's paper filing systems as a major impediment to immigration judges continuing their work during the pandemic. The limited accommodations EOIR provided during the early period of the pandemic — some of which have been rescinded — made it clear that the government has the capacity to move forward with e-filing, but still needs to take substantial steps to create a modern and accessibly immigrant justice system.

In contrast, many federal and state court systems have proactively created e-filing and electronic case management systems that have increased court efficiency and access and have allowed their systems to weather significant challenges, including the vast growth of court dockets. More than 20 years ago, the U.S. federal court system began using the PACER and CM/ECF systems, which now store over 500 million legal filings and enable attorneys, *pro se* litigants, and others to access case files. E-filing and electronic case management systems have led court systems to save both time and money. The U.S. Government Accountability Office has recognized the efficiency gains that would stem from a functional EOIR e-filing and electronic case management system.

While EOIR first identified e-filing as a goal in 2001 and has made more recent plans to modernize, EOIR's ambitions and reality continue to fall short of existing federal and state systems. For example, the EOIR Courts & Appeals System (ECAS) initiative severely restricts the types of legal filings that attorneys may e-file and does not permit *pro se* respondents to access the system at all. On March 31, 2020, EOIR announced that it had created a temporary, email-based e-filing system for the BIA and immigration courts that is far more accessible and comprehensive than ECAS in scope. Unfortunately, however, EOIR has begun to curtail or eliminate these e-filing options. For public safety and increased efficiency, EOIR should continue to operate these temporary systems until a long-term case management and e-filing system has been developed that is functional, comprehensive, and accessible to both legal staff and *pro se* litigants. We believe EOIR can and should:

- Create an advisory committee of stakeholders to weigh in on e-filing, including former government officials, private and non-profit attorneys, individuals with a tech background, and those who have gone through the immigration court system.
- Develop a functional and secure electronic filing system similar to federal and state court systems, such as PACER, that is accessible to lawyers and *pro se* litigants. This system would exist in parallel to a paper filing system.

- Create a centralized online mechanism for individuals to file Form EOIR-33—which allows individuals to change their address with the court—with the immigration courts and provide service to ICE's Office of the Principal Legal Advisor (OPLA). This would be similar to what U.S. Citizenship and Immigration Service (USCIS) currently offers, which is an online option for change of address.
- Encourage immigration judges to grant requests for remote testimony in support of noncitizens' cases, including respondents and witnesses, as well as requests for remote appearance by attorneys.

WORK AUTHORIZATION FOR ASYLUM SEEKERS

For thousands of asylum seekers, receiving a work permit allows them to contribute to their local communities and begin their lives in the United States. The government should ensure that asylum seekers can successfully apply for work authorization upon filing an asylum application in order to work, receive social security numbers, more easily pay taxes, and access health insurance where possible. As immigration court backlogs and COVID-19 have caused years-long delays, having work authorization while an asylum case is pending is more important than ever.

Recently, the government promulgated three new rules to delay or eliminate asylum seekers' ability to work legally while their cases are pending. These three rules: (1) delay the ability of asylum seekers to apply for work authorization until their asylum applications have been pending for 365 days and make most asylum seekers ineligible for work authorization entirely, including all those who crossed the Mexico-U.S. border outside of a port of entry; (2) eliminate the right of asylum seekers to have their work permit application processed within 30 days; and (3) charge asylum seekers for the first time in history for filing an initial work authorization application.

ASAP challenged the first two rules in federal litigation and won a major victory restricting the application of most of their provisions to its members. Litigation brought by other advocates has also temporarily enjoined the third rule. While these victories have resulted in temporary relief to many asylum seekers, permanent policy solutions are necessary to restore and improve asylum seekers' access to work authorization. Towards these ends, ASAP believes DHS can and should:

- Ensure asylum seekers are eligible to apply for work authorization, are not required to pay fees for their initial application and are able to have their applications processed within 30 days. This could be done by issuing new NPRMs on these issues, and/or potentially enter into settlements or stipulations in litigation to restore Obama-era regulations.
- Create an e-filing system for work authorization applications so applicants can upload completed forms and supporting documents or submit a paper filing.
- Shift back to the pre-Oct. 12, 2017 version of Form I-765 for work authorization. (The Oct. 12, 2017 version significantly elongated the form, making it harder for asylum seekers to complete the form without an attorney.)
- Translate the Form I-765 and its instructions into Spanish and explore translation into other languages. (The Form I-765 is among the most commonly used forms at USCIS.)

REDRESS FOR SEPARATED FAMILIES

Over the last four years, thousands of families have been separated after arriving at the U.S. southern border. Family separation has not been limited to the "zero tolerance" policy implemented from May to June 2018; it has occurred at the border on a wide scale – both intentionally and inadvertently – and continues today. Separations cause irreparable harm to families and must stop. The threat of prolonged separation also coerced many asylum seekers into abandoning their asylum claims. Parents who were deported should be allowed to return to the U.S. to reunite with their children. Reunited families still live with trauma while fighting their immigration cases and should be accommodated. We believe a new administration must work to provide redress for the harm inflicted on asylum seekers by government officials. A new administration should:

- Create a form of parole for deported parents and guardians to come to the United States to reunite with their children from whom they were separated at the border.
- Encourage ICE to stipulate to grants of asylum in immigration court where appropriate for separated families, which could come in the form of guidance to ICE OPLA attorneys. This would ensure that when there is a prima facie case for asylum, the family can avoid a protracted legal process, which is often more complicated because of the separation, with some members of the family in affirmative proceedings and others in defensive proceedings.
- Create a process for expungement of criminal convictions for illegal entry or reentry and reversal of deportation orders that occurred as part of family separation.
- Work with Congress to create a victims' compensation fund for asylum-seeking families who were separated at the border similar to the Office of Redress Administration, which was created in the wake of Japanese American internment, and convene a taskforce to determine how to reach families and distribute funds.