

**Congress of the United States**  
**Washington, DC 20515**

March 29, 2022

The Honorable Merrick B. Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Garland:

Thank you for your commitment to ensuring that our justice system recognizes the rights of all. After four years of dysfunction and destruction, your leadership in restoring fairness and order to our immigration system is invaluable, and we deeply appreciate the steps you have taken to do so thus far, such as reversing Attorney General Jeff Session’s order barring judges from removing “low priority” cases from their dockets and the elimination of case completion quotas as a measure of a judge’s performance.<sup>1</sup> We write today to follow up on two issues we raised in our letter dated June 8, 2021 (attached here for your convenience) and to raise new concerns related to “fast-tracking” cases through the immigration court system.

As you know, the prior administration adopted a number of so-called “fast-tracking” policies, purportedly designed to increase court efficiencies. However, policies designed to speed cases through the system have proven to be ineffective in reducing the case backlog—which now stands at a record 1.5 million cases—while seriously compromising due process. For example, hearing dates for cases designated for expedited adjudication are often accelerated by months and even years, without providing adequate notice to respondents or their attorneys. This is especially difficult for pro se respondents, who are less likely to be aware that their hearing date could change at any time, and who are more likely to be ordered removed in absentia if notice is not timely received or received at all. It is also not uncommon for hearing dates to be rescheduled or cancelled at the last minute. This can result in great hardship to respondents and witnesses who have spent months preparing for court, took time off work to attend the hearing, and may have traveled great distances in the early morning hours to arrive at court on time.

Additionally, while we fully support the need to protect public health, we are concerned about overreliance on virtual hearings and their impact on due process. Virtual hearings can adversely impact credibility findings,<sup>2</sup> the quality of interpreting,<sup>3</sup> and the presentation of

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<sup>1</sup> See *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021); Priscilla Alvarez, *Justice Department Eliminates Trump-era Case Quotas for Immigration Judges*, CNN (Oct. 20, 2021), <https://www.cnn.com/2021/10/20/politics/immigration-judges-quotas/index.html>.

<sup>2</sup> Arnold and Porter, *Reforming the Immigration System*, American Bar Association (March 2019), [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/2019\\_reforming\\_the\\_immigration\\_system\\_volume\\_2.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf).

<sup>3</sup> Laura Abel, *Language Access in Immigration Courts*, Brennan Center for Justice (2011), [https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language\\_Access\\_in\\_Immigration\\_Courts.pdf](https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf).

evidence.<sup>4</sup> A 2017 report commissioned by the Executive Office for Immigration Review (EOIR) concluded that virtual proceedings should be limited to procedural matters precisely because of their propensity to interfere with due process.<sup>5</sup>

Given the negative impact of policies such as this on due process and the integrity of the immigration court system, we urge you to commit the necessary resources to address systemic problems and to specifically take the following actions:

1. **Restore Due Process and Transparency:** Terminate or modify, as appropriate, Trump-era policies that fast-track cases, including the EOIR “no dark court rooms” policy.<sup>6</sup> Ensure that Immigration Adjudication Centers (IAC) are open to the public. To the extent practicable, limit virtual hearings, including those held at IACs, to procedural matters; immediately establish rigorous standards governing the use of virtual technology; and work to return to in-person proceedings for substantive hearings as swiftly as health and safety conditions allow. For all virtual hearings, ensure that there is adequate training in the use of technology and that such technology is sufficient to minimize or eliminate the concerns outlined in the above-referenced 2017 report.
2. **Improve Docket Management Protocols:** Remove cases from the docket that could be addressed using tools such as administrative closure, deferred adjudication, and re-calendar. Two suitable categories of cases that would be appropriate for such actions are cases involving individuals with applications for relief that are pending with U.S. Citizenship and Immigration Services and cases that have been pending in immigration court for more than five years. This would alleviate considerable pressure on the courts and reduce hardships for respondents.

Thank you for your attention to these important matters. We stand ready to work with you to restore the foundational principles of justice, fairness, and transparency to the immigration system, and would appreciate a briefing on these issues at your earliest convenience.

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<sup>4</sup> *Comments on EOIR Operating Polices and Procedures Memoranda and Policy Memoranda*, American Bar Association, <https://www.americanbar.org/content/dam/aba/administrative/govern ment affairs office/aba-comments-on-eoir-policy-memos-5-20-21.pdf>.

<sup>5</sup> Department of Justice, *Legal Case Study*, Executive Office of Immigration Review (Apr. 6, 2017); <https://www.aila.org/casestudy>.

<sup>6</sup> James R. McHenry, *Memorialize Polices to Reduce and Minimize the Impact of Unused Courtrooms and Docket Time*, Office of the Director (March 29, 2019), <https://www.justice.gov/eoir/eoir-policy-manual/OOD1911/download>.

Sincerely,



PRAMILA JAYAPAL  
Member of Congress

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