

Ohio Immigrant Alliance Recommendations to Interagency Task Force on Family Reunification

Actions Needed to Restore, Heal, and Transform

Family Separation: A Broader View

In 2018, ProPublica published an audio recording of tiny children pleading with U.S. border officials, at the moment they were being separated from their parents. Their cries of “Daddy, Daddy!!!” were a primal scream.

The Trump administration was clear about the purpose for causing this pain. “We need to take away children,” no matter how young, former Attorney General Jeff Sessions told U.S. attorneys he needed to help implement the so-called “Zero Tolerance” policy. They were to use children as pawns, “deterrents” to discourage future families from seeking safety in the United States.

The cruelty was the point.

While the national media focused on these crimes against humanity at the southern border, children in homes across Ohio were also crying themselves to sleep. In Cincinnati, Abdul and Solomon, ages 5 and 7, and their mom Neissa collapsed into tears as ICE agents arrested Ibrahima Keita, before he could drive his boys to school. After thirty years in the US, the Trump administration ripped Ibrahima from his family before their very eyes. Their pain may not have been captured on camera, but it is certainly just as real.

Living together in Mali is not an option. Abdul and Solomon are U.S. citizens. One has sickle cell anemia, and his treatments are not available there. Moving to Mali would mean certain death for this child. Also, the U.S. government has issued a Level 4 - Do Not Travel advisory for Mali due to increased violence, kidnappings, and terrorism.

The Trump administration knew all this. Ibrahima’s lawyer made sure they were aware and gave them many opportunities to do the right thing. But still, the Detroit ICE Field

Office put Ibrahima in jail away from his wife and young kids, forced the family into poverty, and deported him to Mali.

The cruelty was the point.

The Trump administration also conducted massive, SWAT-team style immigration raids, arresting nursery and factory workers with helicopters, K-9 units, and semi-automatic weapons. Some of the people arrested had legal work permits. Most had U.S. citizen children or other relatives at home.

In a speech on the House floor, U.S. Representative Marcy Kaptur (D-OH) quoted an Ohio mother who was working at Corso's that day:

I never expected anything like this to happen. When I saw [the ICE agents] coming I ran. And I ran and ran and ran until I hid under a bed of flowers, and I buried myself under the dirt and cried in silence. All I could think about was my kids, I have three. **A lot of us have some children who need us.** My skin itched of the mud stuck to my body, drying.

This mother buried herself alive, waiting for hours until the agents moved on, to keep her family together. For the Trump administration, her family did not matter.

The cruelty was the point.

On December 10, 2021 the Department of Homeland Security and the Interagency Task Force on the Reunification of Families solicited public input on “ways to minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with the law.” This comment is submitted in response to that request.

Through a project called #ReuniteUS, the Ohio Immigrant Alliance interviewed over 250 people who were deported from the United States and wish to return to their families, homes, lives, and jobs here. Many of these individuals were deported after living in the United States for decades. Some fled to other countries before their imminent deportation, in order to avoid the psychological and financial hardships that immigration jail and deportation has on families. Many have U.S. citizen children and spouses who are still in the United States. Several are eligible for legal permanent residency and other forms of immigration status under the law.

Their experiences matter and their families deserve to be made whole. The Biden administration must take a broader view about family separation and its impacts on U.S. children, families, and communities.

Systemic Racism—The Driver of Deportation—And Systemic Reform

The President and executive branch have the authority to decide who may or may not enter the United States and who will be deported—even if an individual has been issued

a deportation order by a judge. This authority is referred to as “prosecutorial discretion,” and it exists in numerous areas of criminal and civil law. (See *scholarship of Professor Shoba Sivaprasad Wadhia, Samuel Weiss Faculty Scholar and Clinical Professor of Law at Penn State Law.*)

The Trump administration made the political choice to deport Ibrahima Keita, to conduct immigration raids that took parents from their kids, and to separate families at the border. Prior administrations made different choices—as in Ibrahima’s case, taking into account factors such as his child’s medical condition and Ibrahima’s long history of contributions in the United States.

Deportation—permanent banishment from one’s home, family, job, and life as they know it—is an extreme consequence for a paperwork problem. It should not be a life sentence, nor should it be a death sentence. Currently, it is often both. If the Biden administration does have different values on immigration than the Trump administration, allowing people like Ibrahima to come home would be a concrete demonstration of this.

The backdrop of these deportations is the system itself—a set of laws and structures that work chaotically, unfairly, and exactly as it was designed. Immigration laws and administrative agencies were created on a foundation of white supremacy. The goal was not to provide a fair hearing and process for people to become U.S. residents and citizens, but to present the illusion of fairness, while keeping poor people and people of color from accessing power.

Today’s U.S. immigration laws and practices are based on a white supremacist agenda that goes back over a century. For example, in 1929 Congress made unauthorized entry/re-entry into the United States a crime. This was a compromise between Nativists who did not want people from Mexico to come into the country at all, believing they would “dilute the racial purity” of the United States, and agribusiness representatives who wanted people from Mexico to work here but not have rights.

The “compromise” gave authorities a tool to hold over workers’ heads: if you want to work and earn money here, do it without complaint. Otherwise, you may be charged with a crime and sent to federal prison, instead of back to your families. A businessman from Texas said bluntly: “If we could not control the Mexicans and they would take this country it would be better to keep them out, but we can and do control them.”

The Reagan administration turbocharged today’s mass immigration jail network as a response to the exodus of Black men from Haiti and Cuba seeking asylum. Rather than recognizing and treating them as people in need of protection, they were depicted as dangerous—the image reinforced by their incarceration. The U.S. government was well aware that this “could create an appearance of ‘concentration camps’ filled largely by blacks,” did it anyway, and got away with it. This successful gaslighting of the American people led to the massive network of immigration jails funded by taxpayers today.

This is not a system designed for humanitarian protection. It is a system designed for coercion and control; and one that has sent thousands of people back to the persecutors and dangers they ran from.

Most of the people interviewed by the Ohio Immigrant Alliance as part of the #ReuniteUS project are Black people who fled horrific abuses. They came to the United States because they thought this would be a safe place. Their original asylum cases were denied years and even decades ago, not because they do not qualify for asylum. Institutional racism is to blame.

The U.S. Immigration Court system is not an independent judicial body that provides “checks and balances” on actions taken by the political (executive and legislative) branches. U.S. Immigration Courts, Immigration Judges, and even the Board of Immigration Appeals are all directed, overseen, managed, and funded by the U.S. Department of Justice. Many Immigration Judges have no training or background in immigration law. This is a farcical “court” structure where judges are overseen by political appointees and due process is nothing but a dream.

The people whose cases we reviewed at the Ohio Immigrant Alliance were denied asylum due to arcane and arbitrary rules like the one year asylum filing deadline; mistakes made by corrupt or incompetent “legal” advisers; lack of interpreters in their true native languages; and the catch-all for asylum denials: “credibility determinations.” Credibility is a subjective standard informed by a judge’s personal background, not training or legal requirements.

In U.S. Immigration Courts, mainly white, Western-educated people of Judeo-Christian backgrounds make character judgements about people from diverse religious, cultural, social, linguistic, educational, financial, and literacy backgrounds. Some decisions are made based on ignorance and bias.

If a person does not give graphic detail about his torture and break down crying, a judge may decide he is “not credible” and deny his request for asylum. This is because the person is not exhibiting trauma the way this U.S. immigration judge, with no psychological training, expects him to. If he fails to look the judge in the eye, or doesn’t give specific names, dates, and sensory details about the most traumatic moments of his life in an intimidating courtroom—or worse yet, through a remote video screen from a county jail—he may be called “aloof” or “evasive” and again deemed “not credible.”

Judges have even denied asylum to refugees when their abuse was acknowledged and “credibility” affirmed, but their torture fell short of permanent physical or psychological damage. Again, this judgment is being made by a person with no medical training. Despite the life and death nature of these cases, huge deference is given to the original judges’ credibility assessments on appeal.

This is not a system designed for humanitarian protection. If we want to protect the values we claim, this system has to be discarded and redone.

But stacking the deck against immigrants battling for their lives in U.S. Immigration Court was not enough for the architects of immigration law and policy. They added several indignities to further encourage people to “give up” and “go home”—indignities that still haunt deported people and their families today.

Immigration cases are about civil law compliance and enforcement. But the system makes broad use of tools from the criminal system when it suits the state—such as incarceration—and ignores them when they suit the individual—such as access to counsel and the right to appear in court in person, rather than through a jailhouse video feed.

Many of the people we interviewed spent months and even years in U.S. immigration jail while challenging their civil cases. Typically, these were rural county jails not equipped for long-term detention, far from people’s families, lawyers, and the Immigration Court itself.

Again, this is not by accident. The system is working exactly as designed.

The federal government uses incarceration to coerce people into accepting deportation, rather than continuing to fight their cases from jail. Being detained makes it infinitely harder to find and pay a competent lawyer, and gather documents and evidence needed in immigration cases. Incarceration is extremely expensive and emotionally taxing for families. It takes breadwinners out of homes and adds new costs like price-gouging phone and video calls, commissary accounts, and additional legal expenses, because lawyers’ costs increase when the person is detained and harder to access. Incarceration adds mental and physical stress to the lives of spouses, children, and detained people, who may never fully recover from these experiences.

In Ohio, immigrants are 10 times more likely to win their cases if they have a lawyer. This means that people who have a right to remain here under the law are losing their cases and being deported, only because they are detained and/or do not have a lawyer to help them.

On top of the procedural and financial hurdles created by incarceration, the government uses physical and psychological abuse against individuals seeking protection. Bayong Brown Bayong and Ahmed Adem were physically assaulted by Corrections Officers supervised by ICE in the Butler County Jail. ICE and their jailers denied Goura Ndiaye medical treatment for his necrotic hip for months before deporting him in shackles, his hip bone detached from his body. The Morrow County Jail became 100% COVID positive after it refused to institute basic prevention measures. Oscar Lopez Acosta died just days after being released from so-called “civil detention” there.

In mass deportation charter flights, men and women are shackled at their wrists, waists, and feet for hours, even when trying to eat or use the restroom. Some are tied up in “The WRAP” restraints and forced to endure hour after hour in stress positions, barely

able to breathe. After deportation, many have had to flee to other countries because they cannot live safely in their countries of deportation.

By jailing people who are requesting asylum, making it nearly impossible for them to prove their cases, and using various physical, financial, and mental coercions to get them to agree to deportation, the U.S. has criminalized the status of being a refugee. This despite the fact the United States committed to protecting refugees after our failure to do so during the Holocaust.

All this to say that there are many reasons that asylum is denied, but few have to do with the actual merits of the case. Deportation is an extreme consequence for losing an asylum case, and the U.S. government has deported many refugees to arrest and even murder. The consequences for life and families are profound.

Recommendations to Restore, Heal, and Transform

The Biden administration's decision to create the current Task Force to remedy the impacts of the prior administration's family separation policy at the U.S./Mexico border is important. It was one of the first decisions made by this administration upon taking office, showing an appropriate acceptance of the role of governance. The current U.S. government has both the opportunity and responsibility to admit mistakes made in the past, ensure transparency and accountability, and enact justice for those who were harmed.

The same opportunity and responsibility exists for the Biden administration to allow families separated from within the United States to reunite and heal. This includes—but must not be limited to—deportations carried out by the Trump administration. While that administration may have given the policy a name, prior administrations also took a “zero tolerance” approach to immigration that U.S. families are grappling with to this day.

The Ohio Immigrant Alliance recommends the following actions:

Expand the Definition of Separated Families

Executive Order 14011 established the Interagency Task Force on the Reunification of Families, and sought “recommendations regarding the possible exercise of parole under section 212(d)(5)(A) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(d)(5)(A)), or the issuance of visas or other immigration benefits, as appropriate and consistent with applicable law.”

The Biden administration must include all separated families in its reunification plans, regardless of where the separation occurred.

Enhance and Expand Existing Return Policies

In July 2021, the Biden administration announced a program to facilitate return for some U.S. military veterans and their families. Secretary Mayorkas said: “The Department of Homeland Security recognizes the profound commitment and sacrifice that service members and their families have made to the United States of America. Together with our partner the Department of Veterans Affairs, we are committed to bringing back military service members, veterans, and their immediate family members who were unjustly removed and ensuring they receive the benefits to which they may be entitled.”

This is a good first step, but must be evaluated and improved upon. Veterans and veterans’ organizations must be engaged in reviewing the current program and identifying areas of improvement.

Return options should be expanded for other individuals, including but not limited to those with U.S. citizen relatives, those who are stateless, and those who are living in unstable and violent situations because of their deportation.

ICE’s legacy directive on “Facilitating Return for Certain Lawfully Removed Aliens” and additional guidance should be revised to allow people whose final orders of removal are or could be vacated, based on their reinstated lawful permanent residence or other status, or through use of humanitarian parole, to return to the U.S. DHS should initiate a regulatory process to make these changes permanent.

End Use of Departure Bars and Deportations During Legal Proceedings

DHS must stop applying unfair departure bars to reopening and reconsideration of deportation orders, and begin the process of repealing them. DHS should also refrain from deporting people with a pending motion for sua sponte reopening of removal proceedings, and those who have pending legal proceedings before the agency or in federal court.

Support Motions to Reopen Immigration Cases

DHS and DOJ should support reopening of removal orders predicated on anti-asylum policies and subjective credibility determinations. People should be allowed to reopen their cases and return to the United States to seek immigration relief they qualify for, such as asylum, or adjustment of status based on marriage to a U.S. citizen.

Invoke Redress for Victims of Retaliation

People deported due to illegal enforcement actions and raids should be granted parole to return to the United States and pursue immigration relief they qualify for under the law, including U and T visas, non-LPR cancellation, and Deferred Action.

Office of Removal Order Review

DHS should create an Office of Removal Order Review that allows people to seek review of their cases. It would allow people to be considered for forbearance from removal, discretionary waivers, and return to the United States under parole or other status. *(For more, see this paper from the [National Immigrant Justice Center](#).)*

Other Actions in the Interest of Equity

The U.S. government has other obligations to make individuals and families whole. This includes directing the Social Security Administration to assist deported individuals in accessing retirement benefits they earned while working in the United States. People who were deported to countries that do not recognize them as citizens should be brought back to the United States and issued U.S. travel and work documents.

Redirect Budgetary Requests

The Biden administration should redirect appropriations requests from immigration detention and deportation toward policies and practices that promote family unity and recognize the inherent dignity of all people. This includes ending contracts with the companies that facilitate mass, inhumane charter flight deportations, whether by providing the planes or providing undignified restraints. Instead, money should be directed towards hiring officers to adjudicate consular petitions, waivers, parole requests, and other applications for return; the administrative functions needed to facilitate travel and access to social security benefits; and the other recommendations outlined previously.

Rewrite U.S. Immigration Laws, Systems, and Processes Based on Humanitarian Values, Not White Supremacy

In a report for the Center for American Progress, Peter L. Markowitz, Professor of Law at the Benjamin N. Cardozo School of Law [proposed a new architecture](#) for the immigration enforcement system that is more humane, functional, and cost-effective. This scheme is based on the goal of compliance with the law—which is supposed to be the aim of civil legal structures, no matter the topic, rather than punishment rooted in supremacy. He writes:

Just as the goal of criminal justice systems is to reduce crime rates, not to maximize incarceration, policymakers must judge the effectiveness of America's immigration enforcement system on the ultimate measure that matters: compliance with immigration law. By that measure, while ICE's heavy-handed tactics have succeeded in terrorizing communities and dividing the nation, they have failed as a law enforcement strategy. Thus, anyone who cares about fiscal responsibility or effective law enforcement—not simply those who care about immigrant communities—should be eager to rethink the United States' immigration enforcement strategy.

Fairer laws, proportionate consequences, access to counsel, and an independent immigration court should replace punishment-based tactics that were written to achieve white supremacist goals.

Some changes require congressional action, but many do not. Markowitz writes:

The Biden administration could unilaterally put in place key aspects of these recommendations, including: implementing the intent to initiate protocol, establishing prosecutorial discretion guidance that deprioritizes cases involving lawful permanent residents or where a statute of limitations would bar enforcement, winding down the immigration detention system, and scaling up access to counsel programs. Such executive actions would blunt the gratuitous human suffering of unnecessary detentions and deportations, while also laying the groundwork for eventual legislative reform. Critically, implementing such executive policies... would allow President Joe Biden an opportunity to articulate to the American people a new vision for immigration enforcement that is not only less costly and brutal but also more effective and, in so doing, he could begin to build the national consensus needed to eventually overhaul the nation's immigration laws.

These changes require Presidential leadership, but they are achievable. A first step toward systemic immigration reform is affirming that people who were deported by the current—hopefully “old” system—deserve to come home.

Replace Cruelty With Compassion, Harm With Healing

The bottom line is this: families should not be destabilized and dissolved because the U.S. government has the power to do so.

The cruelty should never be the point.

Facilitating the return of people who were deported would be an act of love, grace, and dignity for these families, individuals, and communities. It would be the first step in a line of fundamental reforms needed to rewrite immigration laws and policies to match our stated values, and support the wellbeing of our communities and families.

In doing so, the Biden administration would replace cruelty with compassion; harm with healing. Rather than forgotten, families would be restored as we work toward systemic reform.