

**December 8, 2023**Majority Leader Chuck Schumer  
U.S. Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510Minority Leader Hakeem Jeffries  
U.S. House of Representatives  
Longworth House Office Building 1607  
Washington DC 20510

Dear Majority Leader Schumer and Minority Leader Jeffries,

For more than 50 years, the Southern Poverty Law Center has been a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. Among our issues, we work to protect the rights of immigrants and their children to ensure they are treated with dignity and fairness. We advance policies that discourage a carceral approach to immigration and support a community-based approach to asylum and immigration. And through our litigation team, we provide legal representation and support to immigrants in civil rights cases and on issues of regional and national importance, including efforts to protect the integrity of the U.S. asylum system.

Even in challenging times, America must remain a country that offers safety and freedom to people fleeing persecution or danger. The SPLC Action Fund urges Congress and the White House to reject any supplemental spending deal that compromises these core American values by limiting access to asylum or humanitarian parole, requiring mandatory detention of asylum seekers, expanding expedited removal, or eliminating important safeguards protecting migrant children. Welcoming those seeking refuge is essential to who we are as a country. Current proposals being considered by Congress and the White House would destroy the asylum system we created in the aftermath of World War II and enshrine many of the Trump Administration's worst policies into law. We strongly urge you to reject such proposals.

**Credible Fear Standard**

One of the proposed changes to the U.S. asylum system involves **changing the legal standard for the credible fear process**. The credible fear process is a preliminary screening of someone in expedited removal who is seeking access to the broader asylum system. If a person "passes" the credible fear interview, then they are able to submit an asylum application and have a chance to prove their case to an immigration judge. If a person does not "pass" the credible fear interview, they will be summarily deported, often back to dangerous conditions, without a chance to apply for asylum. SPLC staff regularly work with individuals going through the credible fear process, which generally occurs when a person is in detention. Additionally, given language

barriers, the legal complexities of our asylum laws, and the poor conditions in our immigration detention facilities, people with strong asylum claims routinely “fail” their credible fear interviews under the current standard.

Heightening the credible fear standard will send even more individuals back to harm—violating the principle of non-refoulement and the commitment to protect vulnerable refugees, which the United States spearheaded in the aftermath of World War II. A heightened credible fear standard would also increase the amount of time individuals are detained without the chance of release—many of them in the South, where the SPLC represents clients held in prison-like immigration detention centers in Louisiana, Mississippi, and Georgia. The terrible treatment [and deadly conditions](#)<sup>1</sup> in these privately-run, for-profit detention centers are well-documented, and routinely lead individuals with strong claims to asylum to [give up on their cases](#). Congressional Democrats and the White House should not agree to change the credible fear standard—to do so will guarantee that the United States sends vulnerable migrants with meritorious asylum claims back to harm.

### **Mandatory Detention of People Seeking Asylum**

In light of the inhumane conditions in U.S. immigration detention, an equally devastating Republican proposal would **require detention, without the prospect of release on bond, of all people seeking asylum**. Such a law would be a boon to profit-oriented private prison companies, seriously undermining the Biden-Harris Administration’s [efforts](#) to limit the reach and influence of these companies in addition to its commitment to racial equity. Mandatory detention of asylum seekers would also waste millions of taxpayer funds without any measurable increase in public safety. Much less costly alternatives are readily available to ensure people attend their immigration court proceedings, and [the data show](#) that people seeking asylum overwhelmingly attend their hearings already. Detention of all people seeking asylum, without consideration of individual circumstances, would also further erode our compliance with [international humanitarian law](#), under which detention of people seeking asylum may only occur as a last resort, based on an individualized need. Mandating detention of people seeking asylum writ large would put the United States well out of step with basic human rights norms.

### **Third-country Transit Ban**

The White House is reportedly signaling it is open to codifying a version of **the Trump Administration’s third-country transit ban** as well. Such a rule would make nearly all non-Mexicans entering the country through our Southern border—the overwhelming majority—presumptively ineligible for asylum in the United States because they traveled through Mexico. It is unconscionable that the Biden-Harris Administration is considering adopting former president Trump’s malicious rule as the law of the land, despite the inadequacies of the Mexican asylum system and the well-known security threats to migrants in that country. Asylum law already takes into account the concept of safe resettlement in a third country; those who genuinely reached safety elsewhere are not eligible for asylum here under existing U.S. law. The proposed third-country transit ban would prevent immigration adjudicators from considering the specifics of each case, instead excluding people from asylum without any prospect of safety elsewhere. As with the proposed heightening of the credible fear standard, a third-country transit ban would arbitrarily cut off meritorious asylum cases before they have a chance to begin, in violation of the

United States' treaty obligations. The human toll of making this extreme anti-asylum policy permanent would be devastating for generations to come.

### **Expansion of Expedited Removal**

The SPLC Action Fund is also deeply concerned about the current proposal to **expand the expedited removal process beyond the border region**—thus adopting yet another Trump Administration anti-immigrant policy. Doing so will cut off any semblance of due process in immigration proceedings for people in the interior by subjecting them to summary removal without any right of judicial review. Expedited removal at the border is already a deeply flawed process—and should not be expanded across the rest of the country. Expedited removal does not work as a deterrence tool. Instead, it merely subjects those who are already here to arrest, detention, and deportation devoid of justice. Expanding the reach of expedited removal will expose communities of color across the country to the specter of immigration raids and unnecessary deportations without judicial oversight. This will make all Americans less safe. Democrats should not be expanding this dangerous tool for exploitation by future, anti-immigrant administrations.

### **Numerical Cap to Asylum Applications**

Lastly, Congress and the White House should firmly reject any proposal to **numerically cap asylum applications**. This proposal makes no logistical sense; there is no clear plan for what happens when the country reaches the cap, and it would create perverse incentives to apply for asylum at the beginning of the fiscal year solely to file an application before the cap is reached. Furthermore, the ability to seek asylum must be available for all who need it and not subject to an arbitrary numerical cap; this should be nonnegotiable for any Democratic administration.

### **Additional Harmful Provisions**

Senate Republicans are also asking for other harmful, **permanent changes to the asylum system and to the President's humanitarian parole authority**. Parole has been used to allow people fleeing war and natural disaster—including Ukrainians and our Afghan allies—to enter the U.S. while their home countries are unlivable. There is no reason to bargain away this important authority.

Additionally, House Republicans have indicated that they want to add to the supplemental funding bill all the provisions of H.R. 2, the "Secure the Border Act of 2023." Among many other things, that bill would **gut protections for people seeking asylum and unaccompanied minors and codify some of the Trump Administration's worst anti-immigrant policies**. H.R. 2 contains some of the most damaging elements of Trump Republicans' extremist anti-immigrant playbook.

The SPLC Action Fund urges Congress and the White House to heed the warnings of affected communities and immigration law experts in rejecting all of these proposals. We remain available to provide consultation and analysis regarding these and any new proposals that would permanently change our immigration laws.

The U.S. immigration system needs reform, but not like this. We should not use individuals seeking asylum, including vulnerable children, as pawns in a wholly unrelated spending negotiation, and we should not adopt sweeping permanent changes in a rushed deal that



does not adequately consider the profound implications for our immigration laws. Compromising on our core humanitarian values would play right into the hands of anti-immigrant Republicans, who openly deploy racist fearmongering to score political points. We should not turn our backs on our longstanding core Democratic and Administrative principles. Ceding to the extreme anti-immigrant demands will set a devastating precedent for future budget negotiations and would open the door for harmful policy changes in exchange for routine funding. Congressional Democrats and the White House must stand firm and reject any attempts to permanently change immigration law through the supplemental spending bill.

Please feel free to reach out to Sakira Cook ([sakira.cook@splcenter.org](mailto:sakira.cook@splcenter.org) or 202-679-0032) or Sarah Rich ([sarah.rich@splcenter.org](mailto:sarah.rich@splcenter.org) or 334-322-8455) if you have any questions.

Sincerely,

A handwritten signature in black ink that reads 'Margaret Huang'.

**Margaret Huang**  
President and CEO  
Southern Poverty Law Center & SPLC  
Action Fund

A handwritten signature in black ink that reads 'Sakira Cook'.

**Sakira Cook**  
Director of Federal Policy  
Southern Poverty Law Center & SPLC  
Action Fund