

# United States Senate

April 1, 2022

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20250

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
2801 Nebraska Avenue, NW  
Washington, DC 20528

Dear Attorney General Garland and Secretary Mayorkas,

On May 28, 2021, the Department of Justice (DOJ) and the Department of Homeland Security (DHS) announced a dedicated-docket process to expeditiously make decisions in immigration cases of asylum-seeking families.<sup>1</sup> While we understand the Biden administration’s intended goal was to expedite the significant backlog of immigration cases across the country, this program has instead overwhelmed the participating cities and has raised serious concerns about due process and fairness for applicants. We urge the Administration to halt the dedicated docket in order to review and address the needs of the immigration court system, and ensure that its judicial proceedings are fair and protect vulnerable individuals.

In July 2021, the Boston immigration court was added to the dedicated-docket program and quickly became the largest dedicated-docket city, with more than 20,000 cases — a figure that is growing by hundreds each week.<sup>2</sup> In selecting dedicated-docket court locations, the Biden administration chose those “with established communities of legal services providers.”<sup>3</sup> But more than 130 legal immigration services organizations in designated-docket cities and across the country have expressed to DHS and DOJ that they lack the excess capacity to meet the representation needs of those placed on the dedicated docket.<sup>4</sup>

According to data released in January 2022 by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, nearly 85 percent of asylum seekers on the expedited docket have been forced to navigate complex proceedings in immigration court without legal

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<sup>1</sup> Department of Justice, Office of Public Affairs, *DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings* (May 28, 2021), <https://www.justice.gov/opa/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings>.

<sup>2</sup> Advocacy Group meeting with Immigration and Customs Enforcement (ICE). (February 2022).

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Legal Services Providers Serving Immigration Courts in Ten Cities Named in May 28 Announcement to Hon. Merrick B. Garland, Hon. Alejandro N. Mayorkas, and Hon. Susan Rice (June 21, 2021), [https://www.nwirp.org/uploads/2021/06/Letter\\_to\\_DOJ\\_DHS\\_WH\\_re\\_Dedicated\\_Dockets.pdf](https://www.nwirp.org/uploads/2021/06/Letter_to_DOJ_DHS_WH_re_Dedicated_Dockets.pdf).

representation.<sup>5</sup> Further data from TRAC highlighted that most of the completed dedicated-docket cases ended in deportation — 1,557 out of 1,687 completed cases ended in a removal order. Ninety-four percent of those deported did not have a lawyer.

On top of the alarming data from TRAC, as a result of the dedicated docket, respondents in cases on both the dedicated docket and the regular docket often are ordered to appear virtually for their day in court, appearing by video before judges from outside the designated-docket jurisdiction. There are serious concerns with conducting extensive individual hearings virtually as many nonprofits do not have the capacity to provide their clients with the ability to appear by video. Moreover, outside judges are often unfamiliar with the circuit in which they are presiding, and are therefore less well positioned to adjudicate these cases than judges familiar with the local legal terrain, including the local legal services landscape.

The dedicated docket is siphoning resources, time, and attention from cases not on it, making the backlog worse instead of better. Currently, there are more than 660,000 pending asylum cases outside the dedicated docket, with average processing times of more than four years.<sup>6</sup> The dedicated docket is unfortunately not producing its intended results, but instead exacerbating the immigration court backlog problem. In order to better understand what actions DHS, DOJ, and the Executive Office for Immigration Review (EOIR) are taking to improve functionality of the dedicated-docket program, we ask that you provide written answers to the following questions by April 20, 2022:

1. According to EOIR, the families whose cases are placed on the dedicated docket will be provided with a number of services, including access to information services and possible referral services to facilitate legal representation.<sup>7</sup> Please identify and describe those services and how they address language barriers.
2. The Fifth Amendment entitles noncitizens to due process of law; the Immigration and Nationality Act includes the right to counsel in removal proceedings. But, as noted above, more than 130 providers of pro bono legal immigration services in dedicated-docket cities have told the Administration that they do not have the capacity to meet representation needs; they were already rejecting requests for help in removal proceedings before the program began.<sup>8</sup>

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<sup>5</sup> TRAC Immigration, *Unrepresented Families Seeking Asylum on “Dedicated Docket” Ordered Deported by Immigration Courts* (Jan. 13, 2022), <https://trac.syr.edu/immigration/reports/674/>.

<sup>6</sup> TRAC Immigration, *A Mounting Asylum Backlog and Growing Wait Times* (Dec. 22, 2021), <https://trac.syr.edu/immigration/reports/672/>.

<sup>7</sup> Memo from Jean C. King, Acting Director, EOIR, to All of EOIR, Dedicated Docket (May 28, 2021), <https://www.justice.gov/eoir/book/file/1399361/download>.

<sup>8</sup> Letter from Legal Services Providers Serving Immigration Courts in Ten Cities Named in May 28 Announcement to Hon. Merrick B. Garland, Hon. Alejandro N. Mayorkas, and Hon. Susan Rice (June 21, 2021), [https://www.nwirp.org/uploads/2021/06/Letter\\_to\\_DOJ\\_DHS\\_WH\\_re\\_Dedicated\\_Dockets.pdf](https://www.nwirp.org/uploads/2021/06/Letter_to_DOJ_DHS_WH_re_Dedicated_Dockets.pdf).

- a. Given the data outlined by TRAC, what actions, if any, is the Administration taking to bolster legal aid resources in the dedicated-docket cities it has designated?
  - b. Please provide updated numbers of cases assigned to the dedicated docket, completed cases, how many cases have ended in a removal order, and how many cases had legal representation.
3. The dedicated docket has a stated goal of completing cases under 300 days. In preparing for an immigration proceeding, psychological evaluations, requests for evidence from the origin country, and other external factors sometimes affect the timeline to effectively prepare for an asylum case. How does EOIR/DOJ navigate special circumstances that can delay case preparation?
  4. Taking judges away from their regular docket cases can hamper efforts to reduce the backlog on those dockets. For example, EOIR assigned 3,178 of the dedicated-docket cases to one immigration judge in Boston, Massachusetts, which brought his total number of cases to 6,896 as of September 2021.<sup>9</sup> What actions, if any, is DOJ taking to ensure that the workload of dedicated-docket judges remains manageable? How can DOJ ensure judges will be able to keep up with their regular and dedicated dockets?

We are highly concerned that the dedicated docket is having the unintended consequence of prioritizing expediency over due process and fairness. Citizens, residents, and noncitizens alike should have access to full and fair hearings when they are entitled to them. Until the current shortcomings of the dedicated docket are addressed, the Administration should pause it. DHS, DOJ, and EOIR should focus on ensuring that those seeking humanitarian protection have a reasonable opportunity to do so, with access to government-appointed counsel when they cannot afford private representation.

Thank you in advance for your attention to this matter.

Sincerely,



Edward J. Markey  
United States Senator

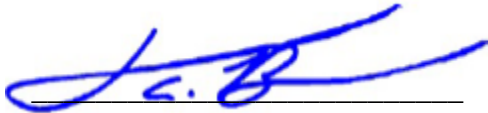


Elizabeth Warren  
United States Senator

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<sup>9</sup> TRAC Immigration, *Immigration Court Struggling to Manage Its Expanding Dedicated Docket of Asylum-Seeking Families* (Sept. 13, 2021), <https://trac.syr.edu/immigration/reports/660/>.

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Cory A. Booker  
United States Senator

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Patty Murray  
United States Senator

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Maria Cantwell  
United States Senator