



## **President Biden Should Require Immigration Agencies to Apply the Rule of Lenity to All Decisions**

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The President should issue an executive order requiring all federal immigration agencies to interpret ambiguous statutes and regulations with leniency in favor of the applicant or petitioner.

Immigration law is commonly referred to as “second only to the Internal Revenue Code in complexity.”<sup>[i]</sup> It is a convoluted morass of vague and poorly defined terms, making life-altering decisions hang on the meaning of unfamiliar and ambiguous terms like “moral turpitude” or subjective analyses about an applicant’s “credibility.”<sup>[ii]</sup> In the removal context, courts have dealt with this phenomenon by “construing any lingering ambiguities in deportation statutes in favor of the alien.”<sup>[iii]</sup> The Supreme Court has stated, “since the stakes are considerable for the individual, we will not assume that Congress means to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used.”<sup>[iv]</sup> This interpretative method is referred to as “strict construction” or “the rule of lenity.”<sup>[v]</sup>

While courts have only applied this rule to statutes governing removal and immigration crimes, the stakes are just as considerable in the adjudication of various immigration benefits—denials of which can themselves trigger removals or prevent travel to and residence in the United States, causing permanent separation of Americans from their spouses, children, and parents and career-ending decisions requiring departure from the United States. Since adverse adjudications of petitions and applications requesting immigration benefits routinely render a denied beneficiary “out of status” and thus removable, the rule of lenity should be interpreted by executive order and extended to other immigration statutes and regulations, which, if enforced against particular noncitizens, would similarly lead to their deportation or “exile.”

The president should require all agencies involved in the interpretation or application of immigration statutes and regulations to adopt the rule of lenity for all rulemakings, decisions, and adjudications. The president has the inherent authority under the Constitution to require agencies to follow certain procedures before acting in order to preserve and protect the rule of

law. Prior presidents have used this authority on numerous occasions.<sup>[vi]</sup> In ordering the application of lenity, the president should recognize past, largely unsuccessful efforts to encourage evenhanded and fair adjudications.<sup>[vii]</sup> Thus, there can be no substitute for executive branch oversight and internal agency supervisory review if lenity is to be applied consistently.<sup>[viii]</sup>

Ordering that leniency of interpretation and application be applied by federal immigration authorities to their adjudications in favor of petitioners and applicants requesting immigration benefits would promote the rule of law and protect the rights of immigrants and Americans.

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