

2023

EXECUTIVE ACTION THE BIDEN ADMINISTRATION *MUST ENACT*

**POLICY PLATFORM FOR
IMMIGRANT JUSTICE**



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INTRODUCTION

POLICY PLATFORM FOR

Acknowledgements and About the ILRC

Authors Sameera Hafiz, Nithya Nathan-Pineau and Elizabeth Taufa

Editors and Contributors American Gateways, Uziel Araiza Delgado, Krsna Avila, Rose Cahn, Carolina Canizales, Eric Cohen, Donna De La Cruz, Veronica Garcia, Peggy Gleason, Manuela Gonzalez, Lena Graber, Angelica M. Hernandez (member of La Unidad 11 in Houston, Texas), Immigrants Rising, Miriam Jaimes (member of ICE Fuera de Austin), Alison Kamhi, Lucia Martel Dow, Priscilla Olivarez, Mayra Recendez, Woori Juntos, Steven Wu

Designed By Juan Prieto

Translated into Spanish By Eleazar Valdez (link coming soon)

About The Immigrant Legal Resource Center (ILRC) is a national non-profit resource center that works to improve immigration law and policy, expand the capacity of legal service providers, and advance immigrant rights. With deep expertise in immigration law, including removal defense and the immigration consequences of criminal convictions, the ILRC trains attorneys, paralegals, and community-based advocates who work with immigrants around the country. We inform the media, elected officials, and the public to shape effective and just immigration policy and law. Our staff works with grassroots immigrant organizations to promote civic engagement and social change.

Before President Biden was inaugurated in 2021, the Immigrant Legal Resource Center (ILRC) called on him and his administration to both restore the systems that offered protection and access to immigration benefits that were decimated during the Trump years but also to steer us on a new path toward dignity and justice. The ILRC called on President Biden to reject criminalizing and xenophobic rhetoric but also to go further and dismantle oppressive enforcement, detention and surveillance systems to ensure a path toward racial justice. While President Biden and his administration have responded to some of our policy goals over the last two years, many are outstanding and even more pressing today. As well, the continued mistrust immigrant communities feel toward the immigration system must be addressed. We renew our call to President Biden to seize the opportunity that remains in the final two years of his term to enact bold policy solutions guided by values that uphold the dignity of all immigrants and bring us closer to becoming the country we promise to be.

In ILRC's **A Platform for Immigrant Justice: Executive Action the Biden Administration Must Enact** we outline bold, urgent and necessary policy solutions the Biden administration must enact to ensure immigration benefits are more equitable and accessible and that the work of dismantling the oppressive systems of enforcement, detention and surveillance begins. This platform was informed by our years of close collaboration with organizations and leaders fighting for immigrant rights and racial justice, and our deep expertise in immigration law. In addition, we engaged in consultations with individuals directly impacted by the immigration and criminal legal systems, community-based organizations and movement leaders, as well as conducted digital and targeted polling to inform this platform.

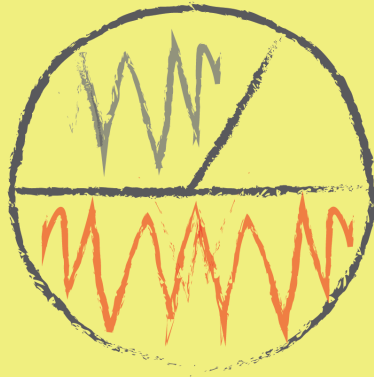


I. ENSURING IMMIGRATION BENEFITS ARE *EQUITABLE* AND ACCESSIBLE FOR *LOW-INCOME* IMMIGRANTS OF COLOR

**POLICY
IMMIGR**

What has kept you from applying for immigration benefits?

33.3%
No representation



16.7%
Enforcement
concerns

50%
Financial concerns

There have been many positive developments during the first two years of the Biden administration to undo previous efforts to transform the United States Citizenship and Immigration Services (USCIS) into an enforcement agency. These efforts have begun to turn the agency back to its intended mission of fairly adjudicating immigration benefits. Positive changes include the revised USCIS mission statement, automatic extension of certain work authorizations, updates to the USCIS policy manual, deferred action programs for U visa and Special Immigrant Juvenile status applicants, new travel policies for Temporary Protected Status (TPS) holders, improved good moral character guidance for naturalization, new guidance on naturalization for applicants with disabilities, updates to USCIS forms, and extension of COVID flexibilities. However, there is still more work to do and many ways the Biden administration can fulfill the promise of restoring faith in USCIS and the immigration benefits system.

A Shifting USCIS Adjudicatory Culture. While fraud investigations and analysis have been a part of the USCIS adjudications culture for many years, we saw this ethos enhanced and weaponized during the Trump years and the effects of those policy changes persist today. Overall, lengthy forms with redundant or unnecessary questions, mandatory interviews, and the re-adjudication of already-approved petitions and applications are harming applicants and discouraging eligible individuals from applying for benefits. Further, when applications are viewed by affirmatively seeking out fraud first – rather than starting from a neutral adjudication to determine eligibility for the benefit applied for – the result is not only a chilling effect on applications but a drain on agency resources which, in part, has led to the historically long processing times we see today.

There are many actions that the administration and USCIS leadership can take to address the fraud-first mentality and culture of denial at USCIS field offices.

- **Improve Trainings:** USCIS should engage local nonprofits, practitioners and individuals who have gone through the immigration application processes to participate in the training of USCIS officers so that the realities faced by applicants are more readily taken into consideration during the adjudication and interview process. We would welcome the opportunity to participate in training or review of training materials and to connect USCIS with other organizations, practitioners and directly impacted individuals who can provide the same.
- **Prioritize Favorable Consideration of Mitigation Factors:** USCIS should adopt practices and policies that would ensure that mitigation factors are fully considered in any adjudication, including for survivor-based forms of relief.
- **Make Policy Manual Changes:** USCIS should consider some specific changes to the USCIS Policy Manual that will help foster this cultural shift. Some of the changes made by the Trump administration on adjudicatory discretion have been rescinded, but other sections remain and should also be rescinded.¹ These changes have caused applicants with legitimate claims to face severe delays including unnecessary and redundant Requests for Evidence (RFE), Notices of Intent to Deny and denials.

¹ Specifically, USCIS should rescind the discretion sections at 7 USCIS PM A.10 and 1 USCIS PM E.8. ILRC has provided USCIS with suggestions specific to the USCIS Policy Manual including suggested language, available online at <https://www.ilrc.org/ilrc%E2%80%99s-uscis-policy-manual-priorities> and <https://www.ilrc.org/ilrc-uscis-policy-manual-suggestions>.

- **End Extreme Vetting:** USCIS should cease the practice of re-evaluating already approved underlying adjudications, as is the case for naturalization applicants who receive RFEs for documentation related to the underlying permanent residence application. This example of the practice of “extreme vetting” has resulted in undue delays and burden on applicants, even those for which no fraud or misrepresentation has been indicated.
- **End Extraneous Data Collection:** USCIS should stop collecting extraneous information that is not necessary to evaluate the merits of a claim. Such practices – which are pervasive throughout USCIS adjudications – are not only costly and dangerous for applicants but waste agency resources. Often, this practice results in needless RFEs which slow the adjudications process and cause a burden on applicants, advocates, and adjudicators alike. When applications cannot be processed due to needless delays, the backlog grows and trust in the agency is eroded. Concerns about trust have been compounded by a recent Department of Homeland Security (DHS) data breach which resulted in the personal information of over 6000 asylum-seekers becoming publicly accessible.²

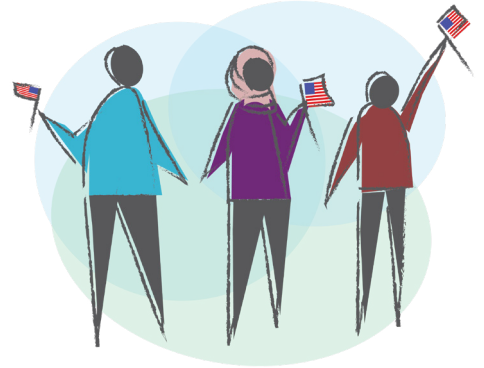
B Continued Commitment to Fair and Respectful USCIS Adjudications. While improvements have been made to many of the harmful policies and practices of the previous administration, the effects of many of those policies linger. The following changes must be implemented to fully shift USCIS back from an enforcement arm of the DHS to a benefits adjudicating agency committed to fairness and respect.

- **Consistency in Inadmissibility Waiver Practice:** USCIS should endeavor to ensure consistency in waiver practice. Specifically, USCIS should defer to earlier adjudication decisions and not allow previously waived conduct to result in the denial of subsequent applications.
- **Narrow Interpretation of Bars:** Generally, USCIS should interpret bars more narrowly. USCIS officers should take a holistic approach to adjudications and consider the totality of circumstances, including a trauma-informed and survivor-centered approach where applicable, and consideration of mitigating factors and positive equities. Additionally, USCIS should interpret the public charge ground of inadmissibility as narrowly as possible to ensure that eligible individuals are not barred from relief. USCIS should affirmatively educate the public on how the public charge ground is applied – this should be done through traditional and digital communications that are language accessible.
- **Recognize State Remedies:** USCIS should recognize state remedies such as expungements, sentence modifications, and other post-conviction relief as mitigating factors when adjudicating applications. Applicants who have received post-conviction relief should generally not be barred from accessing immigration benefits.
- **Automatic Extensions:** USCIS should reduce the need for redundant applications with automatic extensions. All applications where a renewal is timely filed should

² Shawna Chen, *ICE accidentally posted identities of 6,000 asylum seekers to agency website*, Axios (Nov. 30, 2022), <https://www.axios.com/2022/11/30/ice-asylum-seekers-data-breach>.

extend the status or validity of the document in question until a decision is made on the renewal.

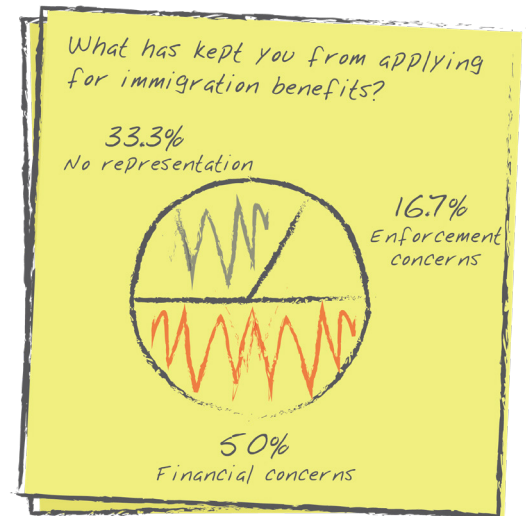
- **Streamline Naturalization:** USCIS should take steps to further streamline the naturalization process to encourage more eligible individuals to naturalize. These changes should include same-day oaths and remote oath ceremonies, shorter interviews and interview waivers, and the reduction of extreme vetting practices.
- **Broad Travel Policies:** USCIS should allow for advance parole or a travel policy that is broadly implemented for applicants with pending applications, including those with pending U and T visa applications.
- **Simultaneous Filings:** USCIS should allow for the simultaneous filing of Employment Authorization documents with petitions for Special Immigrant Juvenile Status to allow for an automatic approval of work authorization if deferred action is granted.
- **Stop Consideration of Delinquency Adjudications:** The delinquency system is designed on principles of child development, acknowledging that young people often act without the ability to consider long-term consequences including immigration consequences of their actions. It is contrary to the purpose of the delinquency system to use a delinquency adjudication to deny a person an immigration benefit. This practice is out of step with the law and the entire purpose of adjudicating youth conduct outside of the adult criminal legal system. USCIS should cease the practice of using their discretion to deny immigration benefits to immigrants with delinquency adjudications.
- **Strengthen Asylum:** The Biden administration must take steps to restore access to asylum. Measures must be taken to ensure that public health laws, like Title 42, are not weaponized against asylum seekers in the future and that draconian deterrence measures like the Migrant Protection Protocols are abandoned for policies that respect the rights of individuals to seek protection in the United States.



C Commitment to Equity. USCIS must demonstrate a commitment to racial justice and ensure immigrants are not subject to discrimination because of race, national origin, economic status, or any other impermissible category.

- **End Patterns of Anti-Blackness Underlying Policy Decisions:** The pattern of anti-blackness most recently demonstrated in the agency’s TPS designations must be addressed and rooted out. As an example, Cameroon was designated for TPS after a years-long campaign based on the ongoing conflict in the country. In contrast, the agency expeditiously announced TPS for nationals of Ukraine just a few weeks after conflict erupted there. The situation in both countries warranted TPS designation, but the administration moved much faster to address the needs of Ukrainian nationals over Cameroonian nationals. USCIS should have acted expeditiously in both situations.

- **Fairness and Equity in Parole Programs:** Parole programs have been designated for nationals of certain countries but not others; nationals of all countries should be given serious and meaningful consideration. The disparate treatment nationals from Ukraine, Venezuela and Afghanistan received in the policies and practices of the parole programs for their nationals and the lack of programs for nationals of other countries offends values of racial justice to which this administration must aspire.³ The administration must do more to address the needs of migrants and asylum seekers and establish programs that equally protect all groups regardless of country of origin.
- **No Fee Increases:** In digital and community polling recently conducted by the ILRC, financial concerns were identified as the top barrier keeping individuals from applying for immigration benefits. Application fees for immigration benefits are compounded by the cost for legal representation, for which low-cost or free options are rare or non-existent in many parts of the country. USCIS must take steps to reduce the burden on individuals and make immigration benefits more accessible, particularly for low-income immigrants of color. Specifically, USCIS should not raise application fees for immigration benefits. Passing on the costs of bureaucratic inefficiencies to applicants and holding hostage their ability to access the benefits for which they are eligible is grossly unfair and USCIS should explore revenue-raising strategies outside of fee increases.
- **Make Fee Waivers and Fee Reductions More Accessible and Address Processing Delays:** Fee waiver thresholds should be expanded to account for the reality of low-income immigrants of color and fee reductions should be available for all applications. Additionally, USCIS should prioritize the fee waiver request form for online processing to ensure that the advantages of online filing are not reserved only for those with financial means. USCIS should also find creative solutions to ensure that application fees are not an insurmountable barrier to eligible applicants including providing applicants with an option to pay fees in installments over time. Finally, USCIS must address the delay in processing times for applications with fee waivers and the significant delays in receipt notices for applicants who file with a fee waiver, as opposed to almost no delay at all if the fee is paid. Receipt delays as long as nine months have created problems for applicants who have lost employment as a result of these delays.
- **Protections for Those Without Permanent Immigration Status:** The administration must provide protections for all immigrant populations living in the United States with no



³ See Camilo Montoya-Galvez, *5 states account for half of 123,962 requests to sponsor Ukrainian refugees in U.S.*, CBS News, (Sept. 13, 2022), <https://www.cbsnews.com/news/ukrainian-refugees-sponsors-5-states-applications/>; Sources estimate that over 180,000 Venezuelans have sought protection in the U.S. in 2022. See Muzzafar Chishtii and Kathleen Bush-Joseph, *Amid Record Venezuelan Arrivals, Biden Administration Embraces Border Expulsion Policy*, Migration Policy Institute, (Oct. 27, 2022), <https://www.migrationpolicy.org/article/venezuelan-expulsions-policy-biden>; Najib Amiry and Dhruv Mehrotra, *The US Has Approved Only 123 Afghan Humanitarian Parole Applications in the Last Year*, Reveal, (Aug. 19, 2022), <https://revealnews.org/article/the-us-has-approved-only-123-afghan-humanitarian-parole-applications-in-the-last-year/>; and Priscilla Alvarez, *Biden administration pivoting to long-term strategy to assist Afghans*, CNN (Sept. 1, 2022), <https://www.cnn.com/2022/09/01/politics/afghan-resettlement/index.html>.

status or tenuous temporary status. There are many avenues through executive action and agency policy changes that the Biden administration can take to ensure those living and working in the US are able to do so with authorization and without fear of removal, detention or other immigration enforcement. Current litigation has resulted in uncertainty for Deferred Action for Childhood Arrivals (DACA) recipients and TPS and Deferred Enforced Departure (DED) holders, such that executive action to protect these individuals is also needed.

II. END IMMIGRATION ARRESTS, IMMIGRANT DETENTION, AND DEPORTATIONS



Over the past administrations and during the Biden administration, DHS has massively expanded systems of surveillance to enlist state and local law enforcement agencies in federal immigration enforcement, in particular targeting immigrants who come in contact with the criminal legal system. At the same time, DHS has actively undermined local and state efforts to keep immigrant communities intact and to eliminate the immigration penalties that follow contact with the criminal legal system. It is well-documented how these systems harm and destabilize Black and immigrant communities. Given the destructive impact of policing, criminalization, surveillance and immigration enforcement, the administration must begin dismantling these systems..

A Separating Immigration from the Criminal Legal System. The Biden administration must take steps to stop replicating the harms of the criminal legal system in the immigration system. This structure currently serves as an additional layer of punishment for immigrants who have contact with the criminal legal system. In addition to facing the punishment imposed in the criminal system, they are funneled into the detention and deportation machine where they face additional incarceration and abuse before being separated from their families and communities indefinitely through deportation. This system of double punishment is grossly unfair and inhumane.

- **Terminate Secure Communities:** DHS must terminate the Secure Communities program, which is an anti-immigrant surveillance system that has further cemented discrimination, abuse, and mass deportation as central aspects of the immigration system. Under Secure Communities, every person taken into custody anywhere in the country is put under an immigration check, regardless of the basis for their arrest or detention. Secure Communities enables every police officer in the country to trigger potential immigration enforcement against someone merely by using their local arrest authority, whether the arrest is pretextual or not.
- **End the Use of Detainers and the Criminal Alien Program:** Immigration and Customs Enforcement (ICE) should end the practice of issuing detainers, which serve as the primary mechanism for transferring immigrants from the criminal system to the immigration detention system. ICE's use of detainers, and its Criminal Alien Program (CAP) overall, which places immigration agents in local jails and in constant contact with local law enforcement, reinforce the same discrimination and abuse as the Secure Communities program. These immigration operations recreate and magnify the harms and racial disparities of the criminal legal system.
- **Stop Expansion and Use of Surveillance and Data Sharing:** The Biden administration must reverse course on the wanton expansion of surveillance and data sharing that DHS has been building. These programs and technologies are designed to ensure that a person who was criminalized in the past will be specifically targeted and excluded from benefits in the future. For example, DHS should end the use of ATLAS and other technologies that among other things flag U.S. citizens for denaturalization, a practice that expands immigration enforcement tactics to target US citizens.
- **Terminate the 287(g) Program:** The administration must terminate all 287(g) agreements. These agreements, through different models, deputize local police to

engage in immigration enforcement. These actions are especially urgent since a response to the administration's failure to address the entanglement of the criminal and immigration systems has been the enactment of state laws and policies that expand the state role in federal immigration enforcement. In May 2017, SB 4 was signed into law in Texas, becoming the country's most regressive anti-immigrant state law. SB 4 orders local officials in Texas to be actively involved in immigration enforcement and punishes any locality for failure to assist ICE. Predictably, other states have followed suit. Most recently, Florida passed a law, SB 1808, that takes effect in January 2023. This law mandates local law enforcement to enter into written agreements with ICE to engage in immigration enforcement. If this law is allowed to take effect, it will only serve as a model policy for other anti-immigrant state legislatures and governors seeking to criminalize immigrant communities.

- **End Partnerships with Jurisdictions with Anti-Immigrant Laws and Policies and End Cooperation with Operation Lone Star in Texas:** Anti-immigrant governors have also used the administration's silence on interior immigration enforcement to proliferate hateful programs deploying state resources to arrest immigrants and further militarize the border. A prime example of this is Operation Lone Star in Texas. Governor Greg Abbott declared a state of emergency and has deployed Texas Department of Public Safety officers to arrest immigrants for criminal trespass. These immigrants have faced state criminal proceedings devoid of due process and have been funneled into the immigration system through cooperation with Customs and Border Protection (CBP) and ICE after Texas has arrested and attempted to prosecute them. This program could easily be replicated in other states. The administration must take strong and definite action against the involvement of local law enforcement in immigration or border enforcement to ensure these wasteful, racist programs do not continue to harm immigrants of color.
- **Broadly Interpret Prosecutorial Discretion:** DHS should broadly exercise prosecutorial discretion in favor of individuals as it makes decisions on enforcement actions and deportation proceedings. The favorable use of prosecutorial discretion can have many important and positive impacts for individuals and their families. ICE should also robustly interpret the current discretion policies that are in place.
- **Provide Paths for People Previously Deported to Return Home:** DHS should build upon its current efforts to create meaningful paths for individuals who were previously deported to return home to the US.



B End Immigration Detention. The Biden administration must take immediate action to end immigration detention. Unfortunately, the number of immigrants held in detention since the beginning of the Biden administration has been trending upward from approximately 15,000 to 25,000 individuals per day by the end of September 2022.⁴ Conditions in detention facilities

⁴ See TRAC Immigration, *Immigration Detention Quick Facts*, <https://trac.syr.edu/immigration/quickfacts/#:-:text=Immigration%20and%20Customs%20Enforcement%20held,as%20of%20September%2025%2C%202022.&text=16%2C664%20out%20of%2025%2C134%E2%80%94or,minor%20offenses%2C%20including%20traffic%20violations> (last visited Nov. 17, 2022).

are notoriously abusive and inhumane. In addition, the administration has used public health laws as a justification to deny community organizations visitation access to monitor these conditions. There has also been a troubling increase in the number of immigrants subject to surveillance monitoring programs marketed as alternatives to detention but still posing significant restrictions on liberty.⁵

- **Cut Detention Center Contracts to Begin Process of Ending Immigration Detention Entirely:** Rather than expanding the number of individuals held in detention, the Biden administration should work toward cutting down detention center contracts as a path to phasing out immigration detention entirely. In a recent report published by ILRC and our partners, we found that the likelihood of immigration arrests increases with detention capacity.⁶ Though some facilities have been shut down due to effective organizing campaigns in local communities, abusive conditions continue to persist in existing detention facilities.⁷
- **Terminate All Contracts with Private Prison Companies:** Another important step toward cutting all detention contracts would be the termination of all contracts with private prison companies that hold immigrants in detention. The administration has already taken the step to initiate the termination of contracts with for-profit prison companies in the federal criminal legal system, it is only logical that this should extend to the immigration system. No company should profit from the incarceration of people in ICE custody or the criminal legal system.
- **Cut Funding for Immigration Detention and Instead Invest in Non-Punitive and Non-Surveillance Alternatives:** Instead of immigration detention, the Biden administration should significantly cut ICE's funding for detention and invest in alternatives. These alternatives should not include carceral solutions such as ankle bracelets or surveillance-based tracking systems, rather they should focus on models that provide community-based support to immigrants as they navigate the immigration system. Partnerships with and investments to non-governmental organizations are crucial to developing these alternatives.



C Take Steps to Address the Disproportionate Impact of Drug Law Enforcement on Immigrant Communities. The administration recognized that federal laws on cannabis are unjust and have resulted in severe penalties for cannabis-related conduct that has been legalized by states. To address this inconsistency, the administration issued a presidential proclamation in October 2022 pardoning all U.S. Citizens and certain legal permanent residents with convictions for the federal offense of simple possession of cannabis.⁸ The announcement was explicit to only include legal permanent residents, excluding immigrants of all other

⁵ See, TRAC Immigration, *Over 180,000 Immigrants Now Monitored by ICE's Alternatives to Detention Program*, <https://trac.syr.edu/immigration/reports/678/> (last visited Nov. 17, 2022).

⁶ See ILRC, CERES Policy Research, Detention Watch Network, *If You Build It, ICE Will Fill It: The Link Between Detention Capacity and ICE Arrests*, (2022), https://www.ilrc.org/sites/default/files/resources/if_they_build_it_ice_will_fill_it_report_2022.pdf.

⁷ See Roger Uvalle, *Immigration activists claim human and civil rights violations by ICE*, KGNS (Oct. 13, 2022), <https://www.kgns.tv/2022/10/13/immigration-activists-claim-human-civ-il-rights-violations-by-ice/>.

⁸ A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana, Oct. 6, 2022, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana/#:~:text=Biden%20Jr.%2C%20do%20hereby%20grant,currentlly%20codified%20at%201%20U.S.C.>

status and undocumented people with federal convictions for cannabis possession. The administration should be a leader in taking executive action to reform systemic racism in the criminal legal system for all Black and Brown communities and ensure immigrants are neither purposefully nor unintentionally excluded from them.

- **Clarify and Expand Presidential Proclamation on Cannabis Pardons:** There are several steps the administration must take to ensure the implementation of the proclamation is inclusive of immigrants. First, the announcement should be clarified and expanded to make sure that all immigrants can benefit.
- **Deschedule Cannabis:** The administration should ensure the Secretary of Health and Human Services and the Attorney General work together to begin the process of descheduling cannabis.
- **Clarify that State Remedies Eliminate Immigration Consequences:** The administration must make a clear statement that all state or federal record clearance, including pardons, dismissals, expungements, and vacatur conclusively eliminate the immigration consequences of cannabis convictions. Immigrants should not face detention or deportation for cannabis related conduct, especially conduct that has been cleared from their records that has already been pardoned for all US citizens.
- **End Deportation Charges for Cannabis Related Offenses:** The U.S. should stop initiating deportation proceedings and denying immigration benefits to individuals because of cannabis related convictions or conduct.

D **Ensure Just Outcomes for All Immigrants.** The Attorney General and the Department of Justice (DOJ) play a significant role in the fair administration and application of immigration law in immigration courts. The Attorney General must act to reverse the harm inflicted during the previous administration's anti-immigrant policies and precedential decisions. Also, the Attorney General must end prosecutions for immigration violations.

- **Overturn Harmful Decisions Issued Under the Trump Administration:** During the Trump administration, the Attorney General issued decisions overturning decades of legal precedent and creating unjust outcomes for immigrants. At the bare minimum, these decisions can, and should, be overturned with case law restored. For example, DOJ should vacate the opinions issued in *Matter of Castillo-Perez* and *Matter of Thomas & Thompson*. In *Matter of Castillo-Perez*, the Attorney General adopted an unprecedented and unsupported legal standard that individuals with two or more convictions for driving under the influence would be presumed to lack good moral character, a prerequisite for many types of immigration relief. This reversed decades of established Board of Immigration Appeals (BIA) precedent. Similarly, in *Matter of Thomas & Thompson* the Attorney General said the federal government could ignore state sentence modifications, undermining state efforts to help ameliorate the immigration consequences of state crimes. The administration should also overturn *Matter of Zhang* and reinstate a knowledge requirement for any negative immigration consequences related to a false claim of US citizenship.
- **Respect State Record Clearance Actions:** Across the country, states are passing reforms to expunge, dismiss, or vacate criminal convictions so that one past mistake

