



BIDEN-HARRIS ADMINISTRATION: REVIEW OF 2021 IMMIGRATION ENFORCEMENT POLICIES

FIRST YEAR OF ADMINISTRATION BEGINS WITH FAILURE

Despite campaign promises, the Biden-Harris administration has failed to act meaningfully and swiftly to address the harms of the anti-immigrant policies put forth by the Trump administration. President Biden has allowed anti-immigrant narratives to steer enforcement policies, continuing to embrace criminalizing rhetoric that paints immigrants and immigration as a problem and threat. Moreover, the administration has actively pursued harsh policies in expanding detention, continuing 287(g), and giving ICE agents wide discretion to engage in racial profiling.

The Immigrant Legal Resource Center (ILRC) has monitored the Biden-Harris administration’s efforts on various immigration enforcement policies throughout 2021. Here is our review in the following areas:

- Immigration Detention
- Immigration Enforcement Priorities
- 287(g) Agreements
- Continued Partnership with Blatantly Racist and Anti-Immigrant State Programs
- Surveillance
- Title 42
- Deportations
- Treatment of Haitian Immigrants
- Denaturalization

In addition to the policies above, the Biden-Harris administration has continued to frame immigration with criminalizing rhetoric – perpetuating the false and racialized notion that immigrants are threats to public safety and national security, and that immigration is a problem to solve, rather than a benefit to our country and an enduring part of human life. The ILRC rejects this framework and urges the Biden-Harris administration to right its abysmal first year record on enforcement and detention. This requires rejecting the reliance on the criminal legal system – which has been documented throughout our country’s history to be a racist institution – to determine immigration outcomes. The Biden-Harris administration has made some strides in reversing Trump era policies that sought to make immigration benefits such as relief for survivors of gender-based violence and naturalization, inaccessible. We urge the administration to begin the work of dismantling the enforcement and detention systems and focus on actualizing the equitable access of immigration benefits for low-income immigrants of color.

IMMIGRATION DETENTION

- Immigration detention has grown steadily under the Biden-Harris administration, even as the pandemic has continued to spread and new variants keep emerging. Immigration detention has been a ‘[hotbed of infection](#)’ contributing to [increased COVID-19 infections](#) and deaths.

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- The daily number of people in ICE detention has steadily increased since February 2021, from approximately 14,000 to 23,000 people, according to the [most recent data](#) from ICE.
- Years of investigations and reports have continuously revealed the hideous and abusive conditions of this supposedly “civil” prison system, where people have few rights and little due process. [Effective alternatives](#) to immigration are equally well-documented, including releasing people to their communities to attend immigration court on their own.
- Biden continues to partner closely with private prisons to expand immigration detention, despite [campaign promises](#) that he would end the federal government’s reliance on private incarceration.
 - While Biden issued an executive order ending private contracts in the federal criminal space, the order [failed to extend to immigration](#), where private prison companies run the facilities that house [approximately 81%](#) of ICE detainees.
 - The Biden-Harris administration has also continued the Trump administration’s fight against California’s state law banning private prisons, appealing the case to the Ninth Circuit.
- The Biden-Harris administration has increased funding for immigration detention as well as Alternatives To Detention (ATDs).
 - ATDS, also referred to as “e-incarceration”, are [highly restrictive](#), with onerous reporting requirements, making it difficult to maintain a job, and ATD participants experience pain, immobility, stigma, and trauma. Moreover, ATD programs are run by the same private prison companies which run immigration detention facilities.
 - The total number of people subjected to ATD immigration monitoring is enormous, with [136,000 people on ATDs as of October 2021](#).
 - ICE’s budget for alternatives to detention increased in lockstep with its detention budget. From 2006 to 2021, its [ATD budget increased from \\$28 million to \\$475 million and its detention budget increasing from \\$1 billion to \\$2.8 billion](#). This means that instead of e-incarceration replacing traditional immigration detention, more people are instead subjected to detention in some form.

IMMIGRATION ENFORCEMENT PRIORITIES

- After temporarily following the Obama administration’s model in issuing enforcement priorities that limited whom the agency was likely to target for detention and deportation, the Biden-Harris administration pulled back and instructed ICE officers to just use their own judgment. DHS policy gives ICE field agents almost unbridled discretion to follow their own instincts and inclinations, with few real constraints. In fact, ICE agents are encouraged to act as officer, judge, and jury by digging into biased and unverified police reports to determine whether they will grant favorable discretion. This is an agency that runs a racially biased detention system where people are abused, neglected, sexually assaulted, involuntarily sterilized, denied medical treatment, and denigrated in countless ways, and who goes into that system, and how it proceeds, is entrusted to their personal judgment.
- At the same time, the limited direction provided by ICE to its agents is that immigrants should be considered first as potential threats to national security, border security, or public safety, instead of as residents, parents, workers, and community members.

287(G) AGREEMENTS

- The Biden-Harris administration failed to end the 287(g) program, which Biden’s campaign promised to do and would be a simple policy change to implement (increasing 287(g) was a hallmark of the Trump administration).

- There are 142 active 287(g) agreements across the country:
 - 66 Jail Enforcement
 - 76 Warrant Service Agreements

CONTINUED PARTNERSHIP WITH BLATANTLY RACIST AND ANTI-IMMIGRANT STATE PROGRAMS

- [Operation Lonestar](#) is a border enforcement system created by the state of Texas that targets and criminalizes migrants by arresting, jailing, and prosecuting them for state misdemeanor trespass charges, before handing them to ICE or CBP for deportation. The program is racially motivated and blatantly, intentionally discriminatory. Nonetheless, ICE and CBP continue to collaborate with the Texas Department of Public Safety and the Texas Department of Criminal Justice to apprehend and deport immigrants that have been churned through this sham criminalization program riddled with civil rights abuses.
 - [Letter from Congressmembers demanding DOJ investigation into Operation Lonestar](#)
- In 2019, Florida enacted a regressive anti-immigrant state law that requires local law enforcement to fully support immigration enforcement. Although a federal court [blocked parts of the law for violating the Equal Protection Clause](#) of the US Constitution as being motivated by racial animus, the law requires that all Florida law enforcement agencies endeavor to form contracts with ICE to get reimbursed for detaining immigrants. Florida cannot force ICE to enter a contract, but nonetheless, ICE has agreed to do so in every case, encouraging further racial profiling and abuse across the state.

SURVEILLANCE

- The Biden-Harris administration has continued to increase the use of technology to monitor, surveil, and deport immigrants.
- Biden has failed to end the Secure Communities program, which allows ICE to have instant access to a person’s personal information stored in databases when they are arrested and booked by a local law enforcement agency. (Although various executive orders in the last three administrations have purported to end or reinstate Secure Communities, in truth its underlying machinery has been fully operative without interruption since 2012).
- While Trump focused on implementing a physical wall on the border, the Biden administration has [expanded and continued the use of a digital border wall to exclude immigrants](#). Use of drones, underground sensors, surveillance towers, license plate scanners, facial recognition, location tracking, and phone hacking tools.
- The number of migrants being monitored under a surveillance program launched as an alternative to traditional detention facilities has grown astronomically during the Biden administration. ICE Alternatives to Detention (ATD) programs are currently monitoring 136,026 families and single individuals, according to [data released on October 28, 2021](#).

TITLE 42

- The Biden-Harris administration continues to use Title 42 as an excuse to turn away and expel people at the border, even those fleeing violence and persecution to seek asylum. Initially invoked by the Trump administration to close the border, Title 42 refers to a provision of U.S. health law that allows the government to prevent persons from entering the United States when the government believes that “there is a serious danger of the introduction of (a communicable) disease into the United States.”
- Nearly 1.2 million expulsions have been carried out during the pandemic despite the ports of entry allowing nearly 11 million people to cross monthly

- [“The suffering of families, adults, and children subjected to this policy continues to mount, with at least 7,647 kidnappings and other attacks on people blocked or expelled under Title 42 since President Biden took office.”](#)

DEPORTATIONS

- The government arrested more than 220,000 immigrants in FY 2021, and started deportation proceedings against nearly 300,000 people, a number that experts project will increase to more than 450,000 in FY 2022. These numbers are separate from the more than 1 million expulsions of individuals from the border carried out by CBP.
- The Biden-Harris administration issued the first ever deportation moratorium in January 2021, but it was immediately enjoined by a court, and the administration fully abandoned the effort and did not even file an appeal, nor has it widely employed stays of removal to prevent further family separations.

TREATMENT OF HAITIAN IMMIGRANTS

- In September 2021 Americans were shocked when videos from Del Rio, Texas surfaced showing CBP agents on horseback rounding up Black refugees with lassos. These images were a horrific reminder of our country’s history of slavery and subjugating and mistreating Black people.
- Black asylum seekers – Haitians in particular- have the lowest asylum approval rate among all other groups. They are also more likely to be deported based on their contact with the criminal legal system than other groups.
- Despite the turmoil in Haiti in 2021 – including political upheaval, climate crises and natural disasters as well as the global pandemic – the Biden-Harris administration continued to deport individuals to Haiti. These actions are immoral and demonstrate that the Biden-Harris administration will not break from the racist targeting of Black immigrants of previous administrations.

DENATURALIZATION

- Denaturalization is a process that strips American citizens of their citizenship and has increasingly been used in racialized and criminalizing ways. The Biden-Harris administration rescinded some Trump-era denaturalization policies. However, the administration has failed to address how to restore citizenship to individuals whose lives were destroyed by Trump’s denaturalization tactics and moreover continues to use inconsistent and flawed data to target individuals with a disproportionate impact on Black and Brown immigrants, such as ATLAS and HART.