

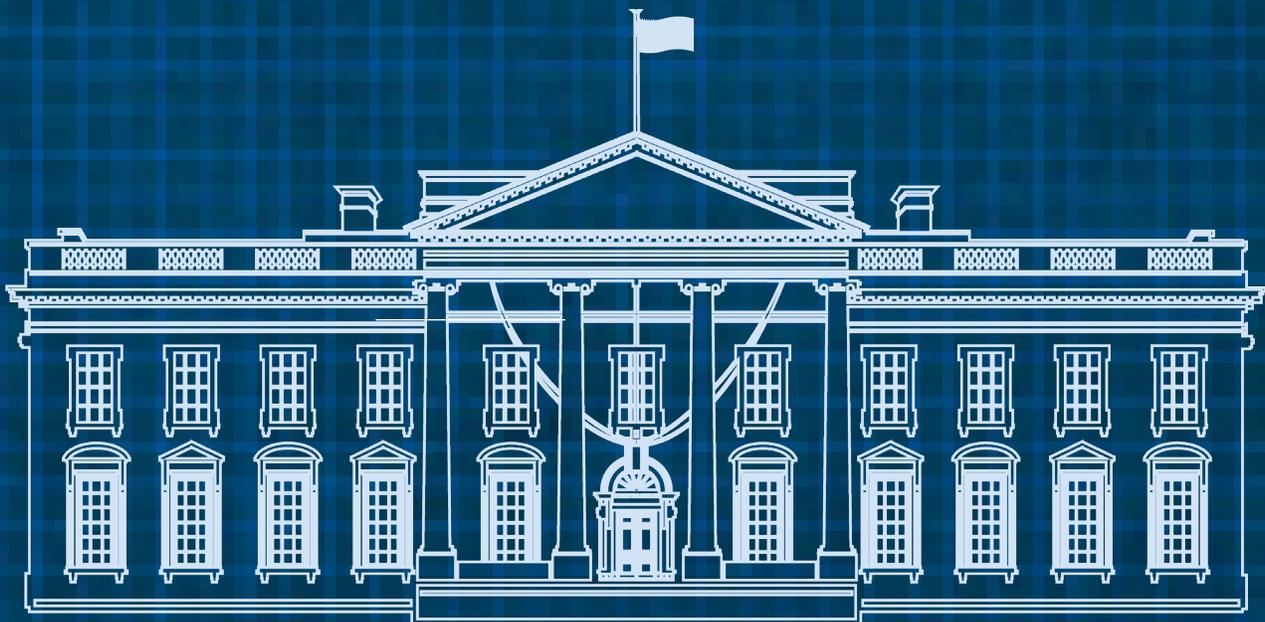


# BLUEPRINT

FOR THE

# NEXT ADMINISTRATION

SEPTEMBER 2020



FULL ELEVATION

# ACKNOWLEDGMENTS & ABOUT THE ILRC

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## **ABOUT THE IMMIGRANT LEGAL RESOURCE CENTER (ILRC)**

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 public to shape effective and just immigration policy and law. Our staff works with grassroots immigrant organizations to promote civic engagement and social change.

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# I. INTRODUCTION

**2020 has proven to be one of the most tumultuous years in recent history.** We have struggled to survive a deadly global pandemic and faced a national reckoning on racial inequity and police brutality. Over the past four years, immigration enforcement tactics have continued to instill fear, and any protection policies have been decimated. Immigrant communities face the constant threat of deportation and essential immigrant workers, such as farmworkers, face inhumane and exploitative working conditions. As we think about immigration policy and the days and months ahead, the only way forward is a new way. While we must restore the complete decay of the system that offered protection and access to immigration benefits, going back to where we were in 2016 is not the solution our communities need. We must reject the notion that certain community members can be treated as disposable and reject conditions allowing for immigrant workers to be undervalued and exploited. Our immigration policies must be guided by values that uphold the dignity of all immigrants and bring us closer to becoming the country we promise to be.

In the Immigrant Legal Resource Center's *Blueprint for the Next Administration*, we identify policies that must immediately be addressed through executive action – we call on the administration to not only restore what has been lost over the past four years but also for a new way forward toward dignity and justice. These recommendations were initially developed by ILRC's policy team and informed by our years of close collaboration with organizations and leaders fighting for immigrant rights and racial justice. We also engaged in consultations about this *Blueprint* with individuals directly impacted by the immigration and criminal legal systems, community-based organizations, and movement leaders. Their recommendations and expert analysis are also included here and a Spanish version of this *Blueprint* is also available.

In this *Blueprint* we will first discuss general immigration policies that must be addressed, then we will discuss policies pertaining to immigrant youth. We will follow with a discussion on specific policies related to naturalization, followed by enforcement and detention policies. We will also discuss policies the Department of Justice (DOJ) must implement and conclude with a list of legislative priorities for the next administration. We welcome dialogue and collaboration with the next administration to realize this vision; the needs of our communities demand immediate action to address and accomplish these goals.

Given the complete decimation of the immigration system originally designed to allow individuals to access immigration benefits and protections, all of the policies identified in the *Blueprint for the Next Administration* are immediate priorities and require urgent action. Before the administration gets to the important work of restoring and reimagining the immigration system, it must commit to a larger set of values to undergird its work over the next four years:

- » Ensure that the agencies tasked with setting immigration policy – the Departments of Homeland Security, Justice, State, and Health and Human Services – are led and staffed by Black people, immigrants, and other people of color and that these individuals can demonstrate a strong record of fighting for racial equity and immigrant justice.
- » Commit to centering the experiences of directly impacted individuals when creating policies pertaining to immigrants. This requires continuous, intentional, and accessible engagement with immigrants at every step of the policy process and a seat at every policy table.
- » Pledge that the administration's policies and practices will support the larger struggle to dismantle systemic racism inherent in both the criminal legal and immigration systems.

# II. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) POLICIES

[Congress originally created USCIS to adjudicate immigration benefits; however, over the past four years, USCIS has morphed into an enforcement agency.](#) The administration must take the immediate steps outlined below to restore USCIS' mission and ensure immigration benefits and protections are accessible.

## A. RESTORE USCIS MISSION

When the Trump administration took office, the USCIS mission statement read:

*USCIS secures America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.*

In 2018, [USCIS excised the word "customer" and phrase "nation of immigrants" from its mission](#), foreshadowing the changes to come. Since then, the agency has decimated its public engagement and customer service function, put in place policies that have ballooned processing times and backlogs, ramped up denaturalization, and tried to collude more with Immigration and Customs Enforcement (ICE) by setting deportation traps for people seeking benefits.

In order for the American public to have renewed trust in seeking immigration benefits and protections, it is crucial that USCIS rewrite its mission to reflect the richness of our immigrant history and return to its primary responsibility of adjudicating immigration benefits and promoting citizenship.

## B. RESTORE IMMIGRATION BENEFITS

### i. Deferred Action for Childhood Arrivals (DACA)

[In June of this year, the United States Supreme Court rejected the Trump administration's 2017 attempt to terminate the DACA program.](#) This administration must ensure that the DACA program is fully restored, and applicants can continue to both file initial applications for DACA protection and renew their status as needed. The administration should also review renewal applications that have been denied since 2017 and restore DACA for recipients that have been deported as a result of such denials.

### ii. Policies Impacting Survivors of Gender-Based Violence

The Trump administration has undermined access to immigration benefits such as the U visa, T visa, and relief under the Violence Against Women Act (VAWA) and other protections for immigrant survivors, making the threat of deportation a reality for some survivors. Advocates report there has been a sharp increase in the number of women reporting that their partners are threatening them with deportation as part of broader abuse. According to the National Domestic Violence Hotline, 4,565 survivors who called the Hotline in 2018 experienced threats related to immigration status. The Trump administration has made sweeping changes to eligibility interpretations and adjudication processes, narrowing the number of people who are eligible for protection and creating obstacles to obtaining relief, such as denying U visa applications where every blank space does not have either "N/A" or "none" or for other clerical issues which have no bearing on the merits of the application. Moreover, USCIS issued new guidance in June of 2018 that expanded the situations in which it would place applicants in removal proceedings. USCIS announced it would place survivors of domestic violence, survivors of trafficking, and other applicants for humanitarian relief into removal proceedings if their applications were denied, reversing longstanding agency practice and leading to a chilling effect on applications.

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## II. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) POLICIES

The ILRC objects to the numerous ways the Trump administration has undermined Congressional protections for survivors of gender-based violence and urges the administration to rescind these restrictive and burdensome policies.

### iii. Asylum

Since taking office, the Trump administration has used its administrative powers to drastically change asylum law and undercut it as a form of protection. From the Department of Justice (DOJ) to the Department of Homeland Security (DHS), the administration has erected barrier after barrier to ensure that people are unable to meaningfully apply for asylum and have fair adjudications of their cases. These changes have caused immeasurable harm to many communities, including the transgender community. Most recently, in June of 2020, DOJ and DHS jointly issued a proposed rule eviscerating the asylum framework created by Congress and replacing it with one where asylum is an illusory benefit. The ILRC objects to this proposed rule in its entirety and urges the administration to abandon the changes it attempts to make.

Similarly, in December 2019, DHS and DOJ issued a proposed joint rule expanding the criminal bars to asylum and the proposed framework for evaluating convictions or sentences. This proposed rule also violates domestic and international law and, along with the numerous other barriers to asylum the administration has erected, must be rescinded.

With regard to policies at the southern border, the Trump administration's tactics have been particularly devastating for asylum seekers fleeing violence. From the highly-publicized policy of separating children from their parents to the closure of the border under the excuse of the pandemic, the administration has engaged in one human rights violation after another. For example, the Migrant Protection Protocol, better known as the Remain in Mexico Policy, has forced tens of thousands of asylum seekers to remain in dangerous shelters, tent cities, and on the streets where they have been subjected to violence once again. Many asylum seekers have been flown to Guatemala under an Asylum Cooperative Agreement (ACA) and forced to apply for asylum in a country which is itself known to fail to protect its own citizens from violence. Unbelievably, the U.S. has strong-armed Honduras and El Salvador to sign ACAs as well. Relatedly, the Trump administration has issued rules that bar asylum for a person who fails to apply for asylum in a third country through which they have traveled. And before the pandemic, anyone seeking asylum who enters without inspection would not be eligible to apply for release on bond. With the onset of Covid-19, the Trump administration has used the virus as an excuse to end asylum processing at the border, in spite of advice from public health experts that would allow processing to continue while practicing medically-safe strategies to preserve human rights. All of these heinous Trump border initiatives must be reversed.

### iv. Denaturalization

The Trump administration is denaturalizing U.S. citizens at an alarming rate. In previous administrations, denaturalization was initiated in rare circumstances, e.g. for human rights violators. Under Trump, civil denaturalization filings have escalated to three times the number of the last eight administrations, and criminal denaturalizations have risen to an average of 51 per year. This targeting has been organized as a task force and coordinated across agencies, including DHS (ICE, USCIS) and DOJ (Office of Immigration Litigation, US Attorney's offices). People from Bangladesh, India, Haiti, Mexico, Nigeria, and Pakistan have been targeted at high rates, indicating a pattern consistent with the administration's fear-based narrative. U.S. citizens are now fearful that mistakes made years ago on their past applications could be used to target them, take away

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## II. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) POLICIES

their citizenship, and destroy their lives. Lawful permanent residents are scared to pursue citizenship and fully engage civically. The task force must be dismantled and the emphasis on denaturalization must end.

### v. Muslim Ban and Other Discriminatory Bans

Throughout his presidency Trump has enacted sweeping policies to ban individuals from entry into the United States based on illegitimate and discriminatory reasons. This administration should commit to ensuring no immigration policies are founded in harmful stereotypes about race, religion, national origin, or any other protected categories. The administration should immediately rescind the Muslim Ban, asylum ban, refugee ban, Muslim Ban expansion, and African ban.

### vi. Diversity visa

The diversity visa program should be fully restored to allow applicants to apply for the program and complete processing if selected. In addition, applicants selected in 2020 should be given the opportunity to complete their processing and seek admission into the United States, a process that was halted by executive order in 2020.

### vii. Temporary Protected Status (TPS)

The administration should immediately grant Deferred Enforced Departure (DED) to current TPS holders who are in danger of losing their status or who should have been granted TPS but were unable to because of the Trump administration's policies. The administration should ensure that TPS designations or DED determinations are never based on racial bias or other discriminatory rationale.

### viii. H-4 Employment Authorization

In 2016, the Obama administration published a regulation that allowed certain spouses of high-skilled immigrant workers, or H-4 visa holders, to work. Prior to this rule, these spouses had no work permits and were unable to contribute to their families. This barrier disproportionately harmed women of color, who were left with no economic or career opportunities and dependent upon their spouses for their livelihoods and immigration status. The Trump administration is proposing to rescind this rule. These work permits have brought fulfillment and much-needed resources to thousands of immigrant families, and the rescission must not be effectuated.

## C. ENSURE IMMIGRATION BENEFITS ARE ACCESSIBLE

### i. Public Charge

In order to receive a green card, a person must establish that they will not be primarily dependent on public benefits in the future, i.e. a "public charge." On August 14, 2019, DHS published a final rule redefining the term "public charge," making it harder for immigrants to receive green cards. This rule will harm immigrant communities – it will chill the ability of immigrants and their children to seek public benefits for which they are eligible, potentially imperiling their health, and will dissuade and prevent people from applying for and receiving green cards. USCIS should rescind this rule in its entirety.

### ii. Fee waiver

On October 24, 2019, USCIS issued a new fee waiver request form, putting in place unnecessary barriers for low-income immigrants wanting to access immigration benefits. The changes were scheduled to go into effect on December 2, 2019; however, a federal district court judge enjoined the new fee waiver form and policy. USCIS should rescind the form and policy and expand access to fee waivers so that all immigrants who want to access the immigration system can do so without regard to resources or their lack thereof.

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## II. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) POLICIES

### iii. Fee rule

On November 19, 2019, USCIS published a proposed rule that seeks to dramatically increase USCIS application fees, eliminate fee waivers, and transfer millions of dollars to Immigration and Customs Enforcement (ICE) for enforcement purposes. If the proposed changes go into effect, people and their families will be priced out of citizenship, lawful permanent residency, work permits, asylum, DACA, and more. The proposal targets families, children, the elderly, survivors of domestic violence and trafficking, people with disabilities, and individuals from African, Asian, Central and South American, and Muslim-majority nations, as well as the Caribbean and Mexico, particularly those with lower incomes. USCIS must immediately rescind this rule and redo the fee study.

### iv. Application processing times

Under the Trump administration, application processing times have ballooned, and backlogs lengthened because USCIS made the deliberate decision to focus on enforcement and putting in place policy barriers rather than adjudicating applications. USCIS must return to its Congressionally-mandated mission of customer service and prioritize timely adjudicating applications and petitions instead of spending user fees on efforts like denaturalization – stripping citizenship from Americans, increasing the staffing of the Fraud Detection and National Security Directorate (FDNS), and implementing policies that discourage people from applying for benefits.

### v. Tip Form and Tip Unit

In March 2020, USCIS published a form inviting the public to submit anonymous, unsubstantiated reports of purported fraud about individual immigrants to a newly created USCIS Tip Unit co-located with ICE in Vermont. The publication of this form is yet another dangerous and insidious example of USCIS's transformation from an agency serving immigrants into an enforcement agency working in tandem with Trump's deportation force. Inviting the public to submit unsubstantiated reports of fraud about individual immigrants is a demonstration of deep cynicism about immigrants, and our immigration system, and fulfills the Trump administration's racist agenda of casting immigrants as suspect and criminal. This unit should be disbanded and the form eliminated.

### vi. Marijuana Policy

The administration should remove provisions in the USCIS Policy Manual ("[Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana](#)") and the Foreign Affairs Manual, 9 FAM 302.5-4, that punish individuals who use marijuana or work in the industry in accordance with state laws. These measures disproportionately affect Black, Latinx and other immigrant communities of color.

### vii. Memorandums Regarding Notices to Appear (NTA), Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)

In June of 2018, USCIS issued a policy expanding its authority to issue Notices to Appear (NTAs), the document the government uses to begin a deportation case in immigration court. The new guidance broadened the categories of people USCIS will send to immigration court if their application for immigration relief is denied, even for technical errors, including applicants for survivor-based benefits. Immediately following the issuance of the new guidance, USCIS issued another policy giving adjudicators the freedom to deny immigration applications outright without allowing applicants the opportunity to cure any deficiencies. Previously, if USCIS officials needed more information to make a decision, they would issue a Request for Evidence (RFE) which gave applicants the ability to correct errors or send in more information. This new policy gives USCIS officials the ability to deny applications without asking for more information. Coupled with the new NTA policy, the chances

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## II. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) POLICIES

for a simple error or omission on an application resulting in possible deportation has significantly increased. USCIS should rescind these memos.

### **viii. Discretion in the USCIS Policy Manual**

Changes made in July 2020 to 1 USCIS-PM E.8 and 10 USCIS-PM A.5 of the USCIS Policy Manual, related to discretion must be rescinded in their entirety. These changes impose a secondary adjudication process on dozens of applications requiring adjudicators to multiply the amount of time spent determining eligibility, a move that will grind adjudications to an even slower pace and deny applicants relief for which they would otherwise be eligible.

# III. POLICIES IMPACTING IMMIGRANT YOUTH

Over the past four years, the Trump administration has made startling and inhumane efforts to deny immigration protections to immigrant youth. These policies are based on stereotypes that demonize immigrant youth of color and put forward narrow punitive approaches under the guise of “law and order.” The Trump administration has [used gang labeling to link immigrant youth with criminality](#), which has the destructive and racist echo of the “superpredator” rhetoric deployed against Black youth in earlier decades. The administration’s efforts to jail and deport immigrant youth; surveil immigrant youth particularly from low-income and poor communities; and advance rhetoric based on anti-Black and racist stereotypes must be abandoned. These efforts have been part of a large-scale narrative to criminalize and target Black and immigrant young people.

## A. SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

In 2018, USCIS changed its internal policy for cases in which the applicants for SIJS were over the age of 18 at the time a state juvenile court made factual findings for SIJS, resulting in hundreds of denials of SIJS cases that previously would have been approved, as well as rescissions of previously approved cases. In November 2019, after various class-action lawsuits against USCIS about these denials, USCIS announced that it would no longer deny post-18 SIJS cases on the basis that the juvenile court lacked authority to reunify the youth with a parent. USCIS should not erect additional barriers to SIJS for youth over the age of 18, as federal law clearly allows youth to be eligible to apply for SIJS until the age of 21.

In November 2019, USCIS also [announced additional policy changes](#) to SIJS that will result in fewer children being eligible for this humanitarian path to legal status by heightening the standards for the findings made by state juvenile courts that are a prerequisite to being able to apply for SIJS. USCIS should rescind the policies made through adopted Administrative Appeals Office (AAO) decisions and corresponding changes made to the Policy Manual.

Lastly, in November 2019 USCIS also re-opened the comment period on proposed SIJS regulations that were originally published in 2011. USCIS has not yet finalized these regulations, but any final regulations should [include the suggested changes that the ILRC submitted in both 2011 and 2019](#).

## B. FLORES

In September 2018, DHS and the Department of Health & Human Services (HHS) published proposed *Flores* regulations, intended to supersede the *Flores* Settlement Agreement. The 1997 settlement agreement in *Flores v. Reno* sets national standards for the treatment and placement of minors in immigration custody. The final regulations failed to take into account the thousands of comments the government received, and they were inconsistent with the Settlement Agreement, contrary to its own terms. Accordingly, a federal district court issued a permanent injunction blocking the implementation of the *Flores* regulations in September 2019, but the government appealed that ruling and it is now pending at the Ninth Circuit. DHS and HHS should rescind the *Flores* regulations published in August 2019 and abide by the terms of the *Flores* Settlement Agreement by ensuring that children are held in the least restrictive setting possible and promptly and safely released from custody. Congress should close the existing detention system for children and instead employ community-based placements when necessary, with a preference for unaccompanied children being released to family or community members as expeditiously as possible.

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# III. POLICIES IMPACTING IMMIGRANT YOUTH

## C. LIMITS ON INFORMATION-SHARING BETWEEN ORR AND ICE

In April 2018, sub-agencies of DHS and HHS entered into a Memorandum of Agreement (MOA) that allows information-sharing between their agencies. This agreement involved changes to the sponsorship vetting process run by the Office of Refugee Resettlement (ORR), an agency within HHS. It also created a new requirement for ORR to report information about children to ICE and Customs and Border Protection (CBP). A [survey](#) conducted by the Women’s Refugee Commission and the National Immigrant Justice Center found that, as a result of the MOA, fewer potential sponsors—including parents, legal guardians, and close relatives such as siblings—are coming forward or completing the sponsorship vetting process out of fear that their information will be sent to CBP or ICE for immigration enforcement purposes. This has resulted in more children being detained for longer periods. ORR should terminate the MOA and instead erect an information-sharing barrier with DHS that ensures that information provided by family members and others willing to sponsor children out of immigration detention is not then used against those adults for immigration enforcement purposes, and that children’s private information is never shared with ICE or CBP.

# IV. NATURALIZATION POLICIES

The ability to naturalize is a foundational principle of the U.S. Constitution. For more than 200 years, there has been a recognition of the civic value of naturalization and a steady commitment to maintaining a smooth and efficient process for naturalization. Over the past four years this commitment has been abandoned and this administration should prioritize restoring naturalization to a fair, efficient and prompt process.

## A. ENSURE ACCESSIBILITY OF NATURALIZATION

### i. Reduce Cost Prohibitive Naturalization Fees

The cost of naturalization today is the highest in U.S. history and among the highest in the world. Fee increases are neither necessary nor helpful for decreasing processing times and backlogs as cost increases lead to decreased applications, which in turn depress revenue. Higher fees also shift the composition of who naturalizes and have a racially disparate impact. Cost prohibitive fees lower the overall rate of naturalization which result in many eligible immigrants losing the stability, financial security as well as opportunities for civic engagement which come with naturalization. Along with restoring and expanding the accessibility of fee waivers and reduced or sliding scale options, the administration must work to reduce the fees associated with naturalization to ensure it is not cost prohibitive.

### ii. Improve Processing Times and Clear Backlogs

Over the past four years, the Trump administration has not prioritized the resources necessary to reduce backlogs resulting in skyrocketing processing times. Processing times for naturalization applications at every USCIS field office should return to the pre-2017 standard of four to six months. To address this urgent problem, the next administration should redistribute the naturalization caseload across field offices while at the same time ensuring applicants are not negatively impacted by having to travel farther to appear for their interviews.

USCIS should also end in-person interview requirements for employment-based green cards and for relatives of refugees and asylees, freeing up more resources for naturalization interviews. The shift toward an in-person interview requirement in these cases in 2017 lengthened processing delays by diverting resources to focus on interviews that are unnecessary and wasteful.

Additionally, USCIS should hire more permanent and temporary employees to process naturalization applications and assist with administrative tasks; work toward a goal of completing naturalization interviews within thirty minutes; streamline naturalization applications so irrelevant questions outside the scope of the application are not asked; and open up new naturalization offices in busy USCIS districts.

### iii. Reduce Extreme Vetting in Immigration Benefits Adjudications, Including Naturalization

During the Trump administration, applicants for naturalization have been [increasingly viewed by USCIS adjudicators with suspicion](#). Screening for immigration benefits, including naturalization, has become unreasonable and it has become [more difficult, more time intensive, and more burdensome to apply](#). In addition to the systemic barriers erected to seeking immigration benefits and citizenship, this type of unreasonable vetting has resulted in applicants feeling fearful, anxious and concerned about the fate of their applications and security in the communities of which they are a part. USCIS must ensure that applicants for immigration benefits and citizenship will be treated respectfully and with dignity, and that unreasonable vetting does not continue to chill immigrants from seeking citizenship.

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# IV. NATURALIZATION POLICIES

The administration must also return to exercising positive discretion when evaluating good moral character for naturalization purposes, and they must engage in a test which balances the positive equities with any factors, or a totality of circumstances approach to the adjudication.

This administration must encourage lawful permanent residents to apply for naturalization instead of causing residents to be fearful of the naturalization process. Thus, this administration must refrain from placing anyone in removal proceedings based on information they obtained while adjudicating one's naturalization process.

## **iv. Actively Promote Naturalization**

Additionally, this administration must build on the [Stand Stronger](#) effort initiated under the Obama administration to engage in significant multi-lingual marketing, advertising, and outreach campaign to encourage people to apply for naturalization. The US [lags behind other countries](#) including Canada in immigrant integration. USCIS should proactively begin encouraging permanent residents to prepare for naturalization from the time they get their green card. Travel through ports of entry also provides an opportunity to encourage eligible permanent residents to apply for naturalization.

## **v. Citizenship and Integration Grant Program**

This administration must continue to fund and increase the funding for the USCIS Citizenship and Integration Grant Program, which grants funding to community based organizations.

## **vi. Establishment of a National Office of Citizenship and New Americans within the Office of the President**

This administration should establish a National Office of Citizenship and New Americans to lead and coordinate naturalization and immigrant integration across the federal Government and with state and local entities.

## **vii. Technology and Accessibility of the Naturalization Process**

USCIS must ensure that efforts to digitize the naturalization process do not make it inaccessible. For applicants unable to submit applications and documentation online, a paper option must be preserved. Efforts to encourage online applications must include a process for submitting fee waivers online.

In addition, the administration must make available remote or virtual oaths for applicants who have completed the naturalization process but are not able to participate in in-person oath ceremonies. If a public health emergency renders in-person interviews unsafe, remote naturalization interviews must be made available as an option, although not made mandatory so as not to disadvantage applicants with low tech literacy.

## **viii. Reengage With Community Advocates**

This administration should return to engagement with community advocates who represent applicants and who, in the past, have appreciated open channels of communications with USCIS personnel at local and national levels, through which helpful information and recommendations were shared.

## **B. IMPROVE NATURALIZATION ADJUDICATIONS**

### **i. N-648 Medical Certification for Disability Exceptions**

Adjudication of the N-648 must accord with the purpose and intent of the underlying statute and regulations, which are designed to allow applicants with physical, mental, and developmental disabilities to qualify for naturalization. This administration should reverse actual and proposed N-648 changes. Any effort to lengthen

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## IV. NATURALIZATION POLICIES

the application form or make applying more onerous must be reversed. Any conditions that go beyond the statutory requirements for demonstrating eligibility for a disability waiver must be eliminated.

### ii. Good Moral Character

This administration must not give undue weight to conduct that a naturalization applicant engaged in before the five or three year statutory period for good moral character as part of the USCIS' adjudication process.

The administration should eliminate the provision of the USCIS policy manual that allows for two driving under the influence (DUI) convictions to be considered a conditional bar for good moral character (see Vol 12, Chapter 5, K 1) and overturn *Matter Castillo-Perez* (A.G. 2019). Both the policy manual provision and *Matter of Castillo-Perez* create a new rebuttable presumption that a naturalization applicant who has been convicted of two or more DUIs during the statutory period for naturalization lacks good moral character. This rebuttable presumption must be eliminated from the policy manual and from any good moral character adjudication.

### iii. Green Card Renewal and Naturalization

This administration must allow any naturalization applicant to apply for naturalization regardless of when or if their green card has expired or will soon expire. The green card renewal application and a naturalization application must be completely separate, and should not affect each other.

### iv. Completion of the N-400 Application

This administration must continue to move forward with the adjudication of all naturalization applications, even if the applicant has left some questions blank, written "unknown" as their answer, and/or answered some questions with "None," "N/A," or "Not Applicable." N-400 applications must not be denied merely because of any of these types of answers or clerical mistakes. All such answers can be clarified during the interview.

# V. ACQUISITION AND DERIVATION OF CITIZENSHIP

## A. REDUCE RESIDENCE REQUIREMENTS FOR ACQUIRING CITIZENSHIP THROUGH UNWED PARENTS

U.S. citizen parents must meet certain criteria to pass citizenship automatically to their children born abroad, including certain continuous residence or physical presence requirements. In 2017, the Supreme Court held that requiring different periods of continuous residence or physical presence based on whether the claim for citizenship was through an unwed U.S. citizen father compared with an unwed U.S. citizen mother violated the Equal Protection Clause of the U.S. Constitution. *Sessions v. Morales-Santana*, 137 S.Ct.1678 (2017). Thus, for children born on or after June 12, 2017, the physical presence requirements for claims through an unwed U.S. citizen mother are lengthened to five years to match the physical requirements for claims through an unwed U.S. citizen father. USCIS should re-visit this issue and explore options to reduce the continuous residence requirement for both unwed mothers and fathers to the more generous requirement of 1 year of residence, previously applicable to claims through unwed U.S. citizen mothers.

## B. ALLOW DERIVATION WHERE CHILD IS “RESIDING PERMANENTLY”

Prior to the Child Citizenship Act, a child could derive citizenship if, among other criteria, the child was under eighteen and was residing in the United States after a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized or if the child began to reside permanently in the United States thereafter while under the age of eighteen. USCIS should adopt the Second Circuit’s finding that a child may derive citizenship if both parents naturalized while the child was still under eighteen years old and unmarried even if the child was not a lawful permanent resident. *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013). The Second Circuit found that “reside permanently” could include “something lesser,” such as application for lawful permanent resident status. The Second Circuit’s reasoning could allow many more people to derive citizenship automatically by relaxing the residence requirement.

# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

When Trump took office in 2017, he inherited a well-oiled deportation machine. During the Obama administration, DHS expanded massive systems of surveillance and entrenched machinery to enlist state and local law enforcement agencies in federal immigration enforcement, in particular targeting immigrants who come into contact with the criminal legal system. The Obama administration used that machinery to deport [more than 5 million people](#), shattering families and throwing thousands of children into the child welfare system when their parents were deported. The next administration must not repeat the past. As a growing awareness takes hold of our political leaders and policy makers of how these systems harm and destabilize Black and immigrant communities, we urge this administration to forge a new path forward. While we expect this administration to restore due process, we demand more. The ILRC supports the demands of our communities to defund police and the abolition of ICE and immigration detention. These are the principles that must guide the administration moving forward.

## A. END IMMIGRATION ARRESTS, IMMIGRATION DETENTION, AND DEPORTATIONS

Given the destructive impact of policing, surveillance, and immigration enforcement on Black communities and communities of color, the ILRC calls on the administration to end immigration arrests, end immigration detention, and stop deportations. It is past time to dispense with pernicious surveillance, arrests, raids, shackles, and incarceration. Below we offer the administration must immediately take to achieve this larger goal.

## B. ENFORCEMENT TACTICS

### i. Stop the Use of Expedited Removal

Expedited removal confers broad authority to DHS officers to carry out rapid administrative removals of undocumented individuals who have not been present in the United States for two years prior to their encounter with an immigration enforcement agent. The process is deeply flawed and lacks any review by the immigration court or other third party adjudicator.

Due process and procedural defects are rampant in expedited removal cases. The result is a process where immigrants are detained and deported quickly, and do not have a meaningful opportunity to consult attorneys, family members, collect evidence, or even understand their legal rights to present a defense against deportation. The burden is on the immigrant to present evidence to prove they are not subject to expedited removal. The speed of the process, ensuing isolation, and communication barriers presented by immigration detention mean that many people do not have this evidence readily available to combat this rapid process. Expedited removal also fails to address the needs of immigrants making claims for asylum due to clear flaws in the credible fear process in consistency and application of relevant legal standards. There are very few exceptions that allow for the reopening or examination of an expedited removal order, and once an immigrant has been deported under an expedited removal order it is nearly impossible to return to the United States if a procedural defect is discovered after the fact.

The administration should cease the use of expedited removal as a form of administrative deportations and ensure that immigrants receive a meaningful opportunity to present a defense to deportation. Most immediately, the administration should rescind Section 11c of Executive Order 137367 which directs the expanded use of expedited removal and the proposed DHS regulation expanding the implementation of expedited removal to the interior of the country.

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# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

## ii. Stop Raids

Immigration raids create trauma and fear. During the Trump administration, repeated rounds of raids have left immigrant communities facing constant fear of everyday activities like taking their children to school. While the administration justifies the raids by claiming that the [people who have been arrested have committed crimes](#) in the United States, they have failed to supply data to support this assertion. The ILRC rejects the notion the immigrants who have had contact with the criminal legal system or convictions should be the target of raids or similar traumatic enforcement tactics.

With the deployment of [BORTAC](#) units, a heavily armed specialized component of CBP to the interior of the country, we have seen the increased use of surveillance and militarized force against the immigrant community. Large scale raids like the largest raid in US history carried out on August 7, 2019 in Morton, [Mississippi](#) tear apart families and entire towns. In this raid, 680 adults were arrested at their workplace, and within a matter of hours, an entire community was devastated. Children were left without caretakers, and the emotional and financial consequences of these families being torn apart remain visible in the [community](#). Municipalities also must expend resources in the aftermath of these enforcement actions, resources they may have budgeted for other needs of local residents. The government should cease using ICE raids as an enforcement tactic.

## iii. End Dragnet Enforcement Programs like Secure Communities, 287(g), and the Criminal Alien Program

Immigration enforcement programs that entangle the state criminal legal system with the federal immigration system have torn apart immigrant communities. Under the Secure Communities program, initiated in 2008, whenever an individual is arrested and booked into a local jail for any reason, even if they were wrongly arrested, their fingerprints are electronically run through federal immigration databases. The result is that our entire nation is a surveillance state where the federal government is checking everyone's status, and in particular, that the discretionary and biased actions of any law enforcement officer can trigger this machinery. Secure Communities has also been shown to encourage pretextual arrests based on racial profiling. The automated fingerprint sharing created under Secure Communities is not required by law and should simply be terminated.

Section 287(g) of the Immigration and Nationality Act authorizes federal immigration authorities to deputize local law enforcement officials to engage in the enforcement of federal immigration law. The 287(g) program requires a memorandum of agreement between the local agency and ICE. [The ILRC maintains a map of localities with current 287\(g\) agreements](#). The 287(g) program generates widespread fear, political division, and invites discriminatory policing. The program should simply be ended and the current agreements terminated.

The Criminal Alien Program involves ICE agents working in and with local, state, and federal jails and prisons to find and deport immigrants. Under this program, ICE agents work within local jails and state and federal prisons to obtain information from jail officials, access personal information regarding detainees, interrogate detainees, and issue detainers. Increased ICE presence in local jails has resulted in discriminatory policing, pretextual arrests, and cases of unlawful detention across the country. ICE should stop the practice of deploying agents to operate within jails or obtaining access to state and local jail databases.

These programs encourage local law enforcement officers to arrest people for suspected violations of federal civil immigration law which is not and should never be their role. They also suffer from poor data reporting

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# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

which makes oversight nearly impossible. ICE is behind on the data reporting required by Congress for these programs, and most departments have not successfully tracked all the measures Congress required. These programs result in civil rights violations, unlawful detentions, and wasteful spending of municipal resources. Secure Communities, 287(g), and the Criminal Alien programs should be terminated.

## **iv. Detainers**

A detainer is a request from ICE to a local law enforcement agency to hold an individual who is suspected of being subject to removal under federal immigration laws and transfer them to ICE custody. Transfers from local custody to ICE encourage discriminatory policing, sow fear in immigrant communities, and undermine local government. ICE should stop using detainers and withdraw from its routine exploitation of the criminal legal system in order to conduct immigration enforcement. Moreover, ICE has abused its use of detainers beyond the limits of immigration law and the constitution by asking local law enforcement to detain people who should be released.

## **v. End Partnerships with Jurisdictions with Anti-Immigrant Laws and Policies**

Spurred by racial animus, multiple states and localities have passed anti-immigrant laws and policies, which give state and local law enforcement agencies a license for racial profiling. For example, state law in Texas requires that local and state law enforcement agencies honor immigration detainers, despite the multitude of federal court decisions regarding the illegality of detainers. The state law also prohibits localities from promulgating policies that have any limiting effect on immigration enforcement, thereby giving federal immigration enforcement authorities wide latitude to co-opt local resources for federal purposes and continue to target immigrant communities. DHS should never partner with states that have such harmful laws and/or with law enforcement jurisdictions that have records of racial profiling or discriminatory policing practices. The administration should continue to explore legal challenges to these state laws.

Noncitizens in states and localities with anti-immigrant laws and policies face the brutal reality that any interaction with law enforcement could lead to detention and deportation. Law enforcement agencies in these locations also fail to report accurate data about arrests and use of resources, making it impossible to hold these agencies accountable for racial profiling and entanglement with ICE. The federal government should cease funding state and local law enforcement agencies carrying out laws designed to marginalize and harm the immigrant community and terminate all grant programs that incentivize local law enforcement entanglement with ICE.

## **vi. End Attacks on Sanctuary Jurisdictions**

Sanctuary policies are implemented by states and localities to disentangle local government from federal immigration enforcement. Most sanctuary jurisdictions have been won through hard-fought organizing campaigns led by immigrants directly impacted by the criminal and immigration systems. Unfortunately, the Trump administration has devoted substantial resources to attempt to dismantle sanctuary policies. In addition to legal attacks, the administration has deployed BORTAC to jurisdictions with sanctuary policies and engaged in harmful rhetoric designed to paint sanctuary jurisdictions as lawless. The administration should stop the pursuit of lawsuits focused on invalidating sanctuary laws and end attempts to place funding restrictions on states on the basis that they have sanctuary jurisdictions.

Rather than placing funding restrictions on states that have sanctuary jurisdictions, the administration should consider how to reallocate law enforcement grants to fund social services that help communities thrive and be healthy.

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# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

## vii. Defund ICE and CBP

Under the Trump administration, funding for DHS has ballooned to unprecedented amounts. In the appropriations bills for fiscal year 2020, the budget for ICE grew to \$8.4 billion and the budget for CBP grew to \$17.4 billion. These budget amounts are unprecedented, and the most troubling aspect of the budget growth is that Congress did not implement transfer restrictions to keep appropriated funds from being transferred to different accounts. This is a particular concern, because key functions of DHS such as the adjudication of applications for immigration benefits have been deprioritized while funding has been directed to projects such as border wall construction. ICE has also used this inflated budget to increase the number of people held in ICE custody to a historic high of 55,000 in August of 2019. This was possible because of the lack of transfer restrictions even though Congress only directed an average of 45,000 in their FY19 appropriations. In 2020, USCIS announced they needed a bailout of 1.2 billion dollars in order to continue the functions of the agency and avoiding a widespread furlough. DHS has demonstrated a pattern of abuses and lack of accountability for the spending of appropriated funds. The budgets must be reduced and defunded, and agencies must be required to provide accurate reporting of how and why they spend these funds.

## viii. Sensitive Locations

Over the past four years, there has been a dramatic shift in ICE's attitude towards enforcement actions in sensitive locations, such as schools, hospitals, places of worship, and social services agencies. ICE has engaged in enforcement actions in public places such as hospitals, places of worship, and community centers providing services such as food assistance or other social services. ICE has also implemented the practice of entering courthouses to arrest undocumented community members when they appear in court. ICE should be directed to cease all enforcement actions in sensitive locations, including courthouses.

The practice of ICE ambushing and arresting undocumented people appearing in state court is extremely troublesome. In fact, a federal judge in New York [ruled](#) that ICE's practice of arresting undocumented people in and near courthouses is unlawful. These types of arrests have a chilling effect on immigrants filing cases for custody or child support because they would be required to appear in court to pursue these types of civil suits. Courthouses have become a symbol in the Trump administration's battle against the immigrant community and jurisdictions which seek to implement sanctuary policies. These arrests should be stopped and ICE should no longer be permitted to arrest undocumented community members in or near courthouses.

ICE has also interfered with members of the immigrant community as they seek to go about their everyday lives. Immigrant community members are afraid to access necessary health care, send their children to school, or practice their faith for fear of being arrested by ICE. These arrests must stop, and ICE's own sensitive locations memo should be implemented as a regulation designed to limit ICE enforcement actions.

## ix. Broadly Interpret Prosecutorial Discretion and Stop Deportations

The Trump administration has waged a campaign of fear and panic against the immigrant community. They have engaged in widespread surveillance and interior enforcement sweeping up some immigrant families and separating mixed immigration status families. At the same time, the administration has made it nearly impossible for immigrants to present a defense to deportation. New policies and regulations implemented by the administration have dismantled procedural protections, made it nearly impossible to seek asylum, created unprecedented backlogs at USCIS, and turned every component of the government that interacts with immigrants into mechanisms for enforcement. As a first step to rectify some of the damage done, deportations

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# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

should be stopped. Once the moratorium on deportations has been implemented, there should be a review of all current cases of immigrants in removal proceedings. Immigrants should be released from detention, and for those immigrants who do not have a defense to deportation under current law, DHS should withdraw notices to appear and file motions to terminate. Deportations since 2017, should be reviewed and individuals unjustly deported should be afforded opportunities to return to the US. These are important steps forward to undo the harm done by the Trump administration's racist and xenophobic policies.

## C. SURVEILLANCE TACTICS

### i. Automated License Plate Reader Data

Automated License Plate Reader (ALPR) technology refers to high-speed cameras that take pictures of passing cars. ALPR cameras capture multiple images of license plates passing by the camera, along with the time, date, and location of the plate. Cameras can be in fixed or mobile locations, like public street poles or police cars. The images and location data are uploaded to a database or cloud system. Agencies with access to the database can run searches to learn when and where a vehicle has been seen by an ALPR camera to track individuals down. Vigilant Solutions, LLC is the leading company selling ALPR technology to local governments and private companies throughout the country.

In January 2018, ICE entered into a \$6.1 million contract with Thomson Reuters to provide a platform that can directly access the Vigilant Solutions, LLC cloud system from participating agencies around the country in order to find a person of interest. This contract is set to expire September 2020.

We urge the administration to terminate the contract with Thomson Reuters. Moreover, we are also aware that ICE had begun efforts to use ALPR technology themselves instead of relying on the ALPR data of other entities across the country, but there is a lack of transparency to understand how many cameras they have and how much data they have obtained.

The administration should terminate the use of ALPR technology now and in the future. In addition, ICE should be fully transparent on how they have used ALPR already and make the policies surrounding the use and maintenance of this data publicly available. Such transparency is instrumental to assess whether ICE's current use of ALPR technology runs afoul with privacy laws.

### ii. End ICE Access to State Driver License Databases

ICE has access to driver's license information collected from the Department of Motor Vehicles (DMV) from states and third-party brokers who collect this information from the DMV. This is troubling because the information collected from the DMV and shared with ICE is done without the consent of persons who apply for driver's license and identification cards, especially in states that allow persons regardless of immigration status to obtain these cards.

The administration should immediately discontinue the practice of accessing driver's license information. The administration should also make publicly available the scope of which states and third-party brokers are sharing DMV collected information with ICE, what that information consists of, how ICE uses this information, and what the policies are in accessing and maintaining this information.

### iii. Facial Recognition Technology

In early 2020, advocates discovered that ICE was using facial recognition technology to search through photo

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# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

images captured by the DMV. ICE uses facial recognition technology, which is technology that recognizes and identifies human faces through facial measurements, to compare them to images that DHS has captured of persons over the years.

The administration should immediately end the use of facial recognition technology. In addition, ICE should be fully transparent so the public can understand not just the extent of their use of facial recognition technology on the photo images from state DMVs, but also on other databases, including DHS' own databases. We know that facial recognition technology is plagued with problems in improperly misidentifying and discriminating against people of color more often than white persons.

## iv. Social Media Information

In 2015, USCIS began piloting the use of automated social media screening tools (e.g. algorithms) to assess derogatory information posted online to try to predict potential national security threats, and in 2016 ICE piloted a similar program using its own automated tool to screen social media information from nonimmigrant visa applicants. In 2017, however, DHS' Office of Inspector General wrote a report recommending that DHS halt plans to expand social media background checks because the pilot programs lacked adequate ways to measure their effectiveness.

Similarly, in 2017 ICE proposed its "Extreme Vetting Initiative" to create an automated algorithm that would actively monitor social media accounts of visa applicants and holders from various countries categorized as Muslim, evaluate a person's "probability of becoming a positively contributing member of society as well as their ability to contribute to national interests." Although in 2018, ICE publicly announced that its focus "shifted from a technology-based contract to a labor contract," it remains unclear what this means and whether other aspects of the program remain.

It is clear that ICE has shown interest in pursuing an algorithm that would help them screen through the massive amounts of social media data, but it is not clear how it is proceeding with this. This practice should be ended immediately.

## D. DISMANTLING IMMIGRATION DETENTION

### i. End Immigration Detention

The administration should institute a moratorium on all detention expansion, close all facilities, and assess community-based alternatives to detention. The administration should also ensure an independent investigation of each and every death in detention since 2017. Immigration detention is harmful and entirely unnecessary, and this administration should take steps to reduce and abolish this practice. The modern-day detention system has only existed since the 1980s and similar to criminal incarceration, the United States incarcerates people in immigration proceedings at rates unparalleled by any other country. An initial step for the administration is to halt the growth of immigration detention, in all of its forms, whether government-run or private. Additionally, a series of facilities have remained open despite routinely failing conditions inspections. These facilities should close without plans to open replacement facilities. Finally, in addition to exercising discretion and choosing not to detain individuals, the administration should assess community-based alternatives to detention, which have proven to be both effective and result in extreme cost savings.

The administration should end the practice of family detention, meaning incarcerating entire families together. Instead, these families should not be incarcerated at all.

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# VI. ENFORCEMENT, SURVEILLANCE AND DETENTION POLICIES AND PRACTICES

The administration must also end private detention and hold private contractors accountable for human rights violations. ICE has increasingly contracted with for-profit companies to meet the constant growth. Private companies are not subject to public oversight and accountability requirements implemented by Congress. The private companies have a horrific record of detainee abuse, medical neglect, and failure to maintain appropriate conditions. This profit motive should be eliminated from the immigration detention system and this administration should take a global stance against immigration detention.

In addition to the abuses in the system, ICE has also evaded federal contracting law to push through contracts favoring private companies. In California and Texas, ICE manipulated the private detention center contract process. In California, this evasive tactic was designed to secure long term contracts for private prison companies before a California bill banning private prisons could go into effect. ICE issued a request for proposals for facilities that were turnkey ready with only a two week bidding period. This corrupt process meant that only the corporations with existing facilities operating in the state of California were able to comply with the terms of the request and submit bids for the contract.

The private corporations managing ICE detention centers have a history of human rights abuses and now they are profiting from corrupt contracting practices. These companies should not be rewarded for putting profit over human lives, and the administration should end all contracts with private companies and pursue action to hold contractors accountable for past violations.

## ii. Make Detention Standards Regulatory

Immigrants facing deportation from the United States should benefit from a presumption of liberty rather than being subjected to long-term detention. Private companies profit from locking up immigrants and subjecting them to medical neglect and abuse. The first step the administration should take is to defund ICE's growing detention system and invest in alternatives to detention in order to disrupt the implementation of the so-called detention bed mandate created by Congress.

Immigration detention should not be used as a default as is currently the practice. No person should be detained indefinitely in inhumane conditions. Any facility used to hold immigrants for the limited purpose of effectuating a deportation should be governed by regulations implementing ICE's own guidance on minimum conditions. This implementation must be evaluated using measurable outcomes, which if unmet would result in a loss of funding for ICE.

Any facility used to house or hold immigrants should be subject to public oversight on conditions. Human rights abuses against transgender and LGBTQ detainees must be addressed and ICE must ensure individuals are recognized with their proper names and pronouns and that mental health services are accessible.

ICE detention has been a horrific large-scale system of abuse and neglect that has traumatized hundreds of thousands of immigrants and it should be completely dismantled and defunded.

## VII. DOJ POLICY CHANGES

During the Trump administration, the Attorney General has used their power to further a racist and anti-immigrant agenda by creating a multitude of barriers for immigrants to access relief. Many of these barriers have been realized through erroneous interpretations or applications of existing law. The ILRC recommends vacating all decisions issued by the Attorney General during the Trump administration, such as *Matter of Castillo-Perez* and *Matter of Thomas & Thompson* and restore previous Board of Immigration Appeals (BIA) precedent. The Attorney General should never use their authority to overrule a court's previous decision in these ways.

### **A. ELIMINATE DOUBLE PUNISHMENT UNDER *MATTER OF CASTILLO-PEREZ* AND *MATTER OF THOMAS & THOMPSON***

The DHS [memo](#) implementing *Matter of Castillo-Perez* (A.G. 2019) and *Matter of Thomas and Thompson* (A.G. 2019) should be rescinded, and these decisions should be vacated to restore previous BIA precedent. These decisions were issued by Attorney General Barr with clear animus against the immigrants and advocates who have expanded paths to relief through legal innovation well within the bounds of immigration law.

For immigrants in removal proceedings, cancellation of removal provides a defense to deportation for those who demonstrate significant ties to the community, a long period of residence in the US and good moral character. In the Attorney General's decision in *Matter of Castillo-Perez*, he bulldozed decades of BIA precedent and stated that two convictions for driving under the influence would create a presumption against a good moral character finding for a person seeking cancellation of removal. There is no other instance (precedent, memo, regulation, law or court case) in good moral character findings where DHS or DOJ can use any activity to create a presumption against good moral character. This is unprecedented and unfair. Immigrants in the United States face discriminatory policing practices and are more likely to be stopped and charged with infractions such as driving under the influence. This administration should restore precedent.

Immigrants often face detention and deportation due to interaction with the criminal legal system. In many states, advocates have been successful in seeking post-conviction relief to vacate previous convictions as a strategy to combat the criminalization of immigrants. In *Matter of Thomas and Thompson*, the Attorney General said that immigrants who face deportation due to interaction with the criminal legal system cannot benefit from post-conviction relief intended to mitigate immigration consequences. The administration should restore precedent that would eliminate the double punishment currently inflicted by the criminal legal system and immigration system under this opinion.

In addition, the administration should overturn *Matter of Zhang* and reinstate a knowledge requirement for any negative immigration consequences of a false claim to United States citizenship.

### **B. RESTORE BIA PRECEDENT IN *MATTER OF A-B-* AND *MATTER OF L-E-A***

Two decisions by Trump's Attorneys General are among the numerous actions taken by the administration to thwart asylum seekers. In *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), Attorney General Jeff Sessions reversed BIA precedent that had recognized that survivors of domestic violence could qualify for asylum. The Sessions decision threatens the viability of asylum claims by domestic violence survivors and others who have faced persecution by private actors. Similarly, in *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019), Attorney General William Barr overturned BIA precedent making it difficult to qualify for asylum based on family-based "particular social group" claims. Both of these decisions must be reversed by the administration and prior BIA precedent should be restored.

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# VII. DOJ POLICY CHANGES

## C. REMOVAL DEFENSE

Under the Trump administration, the Attorney General and the Executive Office of Immigration Review (EOIR) have created procedural roadblocks for immigrants seeking protection and presenting a defense against deportation. In many instances, immigrants are applying for a visa or status that requires USCIS to adjudicate their application. In order to allow for sufficient time for those cases to be reviewed and adjudicated, it has been common practice for immigrants to seek continuances, administrative closure (removal of a case from an active docket), and even termination of removal proceedings to allow USCIS to adjudicate their applications for relief.

Under the Trump administration, Attorney General decisions in *Matter of L-A-B-R*, *Matter of Castro-Tum*, and *Matter of S-O-G- & F-D-B* have made it nearly impossible to seek continuances, administrative closure, and termination of proceedings. These decisions place impossibly high legal standards, and the burden is entirely on the immigrant to try to meet these new standards. At the same time, EOIR issued a policy memo ordering judges to strictly limit their use of status dockets which would allow cases waiting for decisions from DHS to be in a quasi-inactive status, as well as instituted case completion quotas which undermine the fairness and impartiality of immigration judges.

The combined effect of these legal and policy changes is that immigrants facing removal proceedings might receive a deportation order due to DHS delay in adjudicating their application for a visa or other status. To dismantle these policies and eliminate the possibility for unjust outcomes, EOIR should issue a new policy memo on status dockets, rescind case completion quotas, and clarify that continuances, administrative closure, and even termination are to be granted in cases where applications are pending before DHS.

## D. EOIR REORGANIZATION AND DOJ RECOGNITION AND ACCREDITATION PROGRAMS

In August 2019, DOJ published an interim final rule reorganizing EOIR. This reorganization has a detrimental impact on the capacity-building goal of legal access programs and the delegation of BIA decision-making power to the EOIR director is an unlawful delegation of powers that undermines the authority of the BIA. This rule must be rescinded in its entirety.

In addition, the administration must preserve EOIR's Office of Legal Access Programs (OLAP)'s Recognition and Accreditation Programs (R & A Programs), which offer legal services to low-income immigrants through offices with qualified non-lawyer accredited representatives that perform legal representation before USCIS and EOIR. These programs have helped millions of lawful permanent residents with the naturalization process, family petitions, and humanitarian applications to USCIS.

## E. ENSURE NEUTRAL HIRING PROCESSES FOR IMMIGRATION JUDGES AND REMOVE ANY JUDGES WITH WHITE SUPREMACIST AND ANTI-IMMIGRANT TIES

The U.S. immigration court system suffers severe structural problems, which prevent it from issuing just decisions and treating immigrants fairly. Much of this dysfunction is rooted in the conflict of interest among immigration judges, who should be impartial adjudicators. The Trump administration has stacked the immigration courts with judges who have explicit anti-immigrant views. The immigration courts are overseen by the Attorney General. For years we have seen immigration courts become politicized and weaponized against immigrants. Recently, the corps of immigration judges has grown to its largest size yet, over 400 judges. The vast majority of these judges are former ICE attorneys, have clear anti-immigrant track records, and some even have ties to white supremacist

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## VII. DOJ POLICY CHANGES

groups. This administration should ensure neutral hiring and appointment processes for all levels of staff within the immigration courts, and remove any judges currently on the bench who have demonstrated white supremacist ties and anti-immigrant views.

### **F. DENATURALIZATION**

In February of 2020, DOJ announced the creation of a dedicated section to prosecute denaturalization cases. DHS has failed to provide the public with transparency on how this section was created and appears part of a larger concerted effort to use a once-rare tool to strip many Americans of their citizenship. This section should be disbanded.

# VIII. LEGISLATION

As the administration considers its legislative priorities, it must commit to ensuring any legislation signed by the President is inclusive and broad. No legislation designed to benefit immigrants should treat some sub-groups of immigrants as disposable or unworthy of protection. Similarly, immigration legislation should seek to dismantle the enforcement and detention systems.

## A. THE NEW WAY FORWARD ACT

The administration should prioritize the passage of [The New Way Forward Act](#), HR 5383. The New Way Forward act, first introduced in the 116th Congressional Session, would end mandatory detention; end automatic deportation for people who have had contact with the criminal legal system and end summary deportation proceedings; end practices of local police entangling in immigration enforcement and the increased over-policing of communities of color; end laws and policies that create automatic pipelines to deportation through the criminal legal system by removing distorted legal labels in immigration laws; and decriminalize migration by repealing illegal entry and reentry laws. In addition, the New Way Forward Act would create an opportunity for individuals who have been unjustly deported, like many members of Southeast Asian communities, to return to the United States.

## B. THE REUNITING FAMILIES ACT

There are nearly 4 million people in the family immigration backlog waiting years, and sometimes even decades, to reunite with their family members in the US. The Reuniting Families Act would reunite these families by undoing bureaucratic hurdles that keep families apart. The Reuniting Families Act would also repeal the harmful three and ten year bars.

## C. NATURALIZATION LEGISLATION

The administration should prioritize legislation that promotes access to naturalization for eligible permanent residents and removes affordability barriers, including the Citizenship Affordability Act (H.R. 3328/S. 1862), which stabilizes fees for naturalization, preserves fee waivers, and provides reduced fee options, as well as legislation that would reverse and redress proposed fee schedule changes; the Case Backlog and Transparency Act, H.R. 5971, which strengthens existing reporting requirements and requires USCIS and the Government Accountability Office (GAO) to evaluate the factors causing the backlog and provide potential solutions into reducing the backlog; the New Deal for New Americans Act (H.R. 4928/S 3470), which creates a National Office of New Americans, includes grants for legal assistance and integration-related programs and a foundation to collect and hold Citizenship and Integration Grants underwriting, implements additional English and civics test waivers and automatic voter registration for newly sworn-in Americans, and reinvigorates the refugee program; and provisions pertaining to remote naturalization oaths in the COVID-19 legislative package (HEROES Act H.R. 6800). The administration should support legislation that incorporates provisions of the New American Success Act, H.R. 3201 in the 114th Congress, that would have expanded integration-supporting grant programs, created a fund to hold money to underwrite grant programs, and expanded English/civics test exemptions.

## D. THE MORE ACT

Current federal law and policy on marijuana disproportionately harm Black, Latinx and other immigrant communities of color. The administration should push aggressively for the passage of the Marijuana Opportunity Reinvestment and Expungement Act (MORE) Act, HR 3884. The MORE Act would remove marijuana from the federal schedules so that it would no longer cause immigrants to be deported, excluded or denied naturalization for using marijuana or lawfully working in the cannabis industry, and will help ensure Black people and communities of color – the targets of the drug wars, benefit from the changes.

## IX. CONCLUSION

In conclusion, the past four years have given us many new policies and disruptions to fight against. Additionally, it has given us time to reflect further on creating policies that uphold the dignity of immigrant communities. We look forward to sitting at the policy table with this administration, alongside our colleagues who have been directly impacted by the criminal legal system, immigration enforcement, and immigration detention, to get to work and forge a new way forward.



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