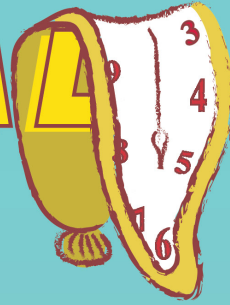


# CRITICAL ACTION NEEDED:



CALLING FOR **PRESIDENTIAL  
LEADERSHIP ON IMMIGRANT JUSTICE**



TEACHING, INTERPRETING  
& CHANGING LAW SINCE 1979



# INTRODUCTION

POLICY  
IMMIGRATION

Critical  
Action  
Needed!

FOR  
ICE

## ACKNOWLEDGMENTS AND ABOUT THE ILRC

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This report is based upon and updates the Immigrant Legal Resource Center's (ILRC) 2023 publication, *Policy Platform for Immigrant Justice: Executive Action the Biden Administration Enact*. The ideas in both reports were developed collaboratively by the ILRC and American Gateways, Uziel Araiza Delgado, Angelica M. Hernandez (member of La Unidad 11 in Houston, Texas), Immigrant Justice Network, Immigrants Rising, Miriam Jaimes (member of ICE Fuera de Austin), Woori Juntos, and Steven Wu.

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**ABOUT:** The ILRC is a national nonprofit 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 civil engagement and social change.

Throughout the Biden administration the Immigrant Legal Resource Center (ILRC) has called on the President to both [restore the systems that offered protection and access to immigration benefits decimated during the Trump years](#) and steer us on [a new path toward dignity and justice](#). The ILRC has repeatedly urged President Biden to reject criminalizing and xenophobic rhetoric and also to dismantle oppressive enforcement, detention, and surveillance systems. While President Biden and his administration have responded to some of our policy demands over the last three years, many remain outstanding and even more pressing today. It is shocking that instead of considering these real legal and policy solutions, the administration chooses to propose legislation that caters to hateful and anti-immigrant rhetoric about the border. There is but one year left in President Biden's term and critical action is needed now. Instead of using precious time and resources to advance a legislative agenda that hurts immigrants and their families, he must embrace presidential leadership and seize the opportunity to enact bold policy solutions guided by values that uphold the dignity of all immigrants.

As detailed below, the critical actions immigrant communities need before this administration ends include ensuring immigration benefits are equitable and accessible for low-income immigrants of color and ending immigration arrests, immigration detention, and deportations.

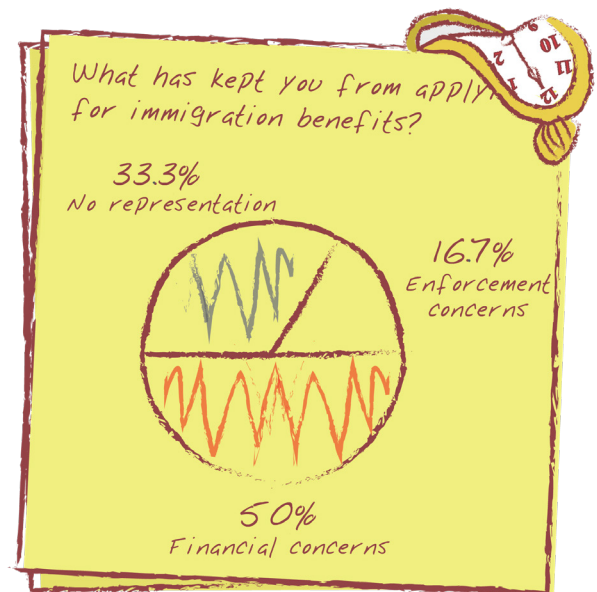


## I: ENSURING IMMIGRATION BENEFITS ARE EQUITABLE AND ACCESSIBLE FOR LOW-INCOME IMMIGRANTS OF COLOR

In its first three years, the Biden administration has taken considerable action to roll back the Trump administration's attempt to destroy United States Citizenship and Immigration Services (USCIS) and transform it into an enforcement agency.

It has revised the agency's mission statement and oriented it back toward the fair and just provision of immigration benefits to support communities. It has pulled back numerous destructive regulations meant to scare and threaten immigrants and has implemented policies and processes that are designed to help people, including using its parole authority in a broad manner; granting longer work authorization validity periods for certain applications including asylum-seekers; implementing deferred action programs for U visa petitioners, Special Immigrant Juvenile status applicants, and immigrant workers; instituting new travel policies for Temporary Protected Status (TPS) holders; and enacting a plethora of sub-regulatory improvements to assist applicants for naturalization, adjustment, and other benefits.

Despite these gains, the administration has fallen short on a number of fronts. It has preserved many of the harmful asylum regulations promulgated by the Trump administration and in fact, has furthered some of these restrictive policies that curtail access to asylum. Lengthy backlogs for some forms of relief continue to plague the agency and keep people from the benefits to which they are entitled. And applicants continue to face barriers to applying for immigration benefits and relief, including long, confusing forms, excessive requests for evidence (RFEs), and often unaffordable fees. There are many more actions the Biden administration can and must take to fulfill the promises made in its ambitious 2021 executive orders on immigration, most especially



in ensuring communities experience trust in the immigration benefits system.

**A END THE DEPARTMENT OF HOMELAND SECURITY’S (DHS’S) ENFORCEMENT-FORWARD POSTURE THAT CONTRIBUTES TO INEFFICIENT AND UNFAIR ADJUDICATIONS AND THE GROWING BACKLOG.** While enforcement has always been a part of the USCIS adjudications culture, the Trump administration enhanced and weaponized fraud investigations and analysis and embedded it deeply into the DNA of the agency. The effects of these actions persist today. Lengthy forms with redundant or unnecessary questions meant to “catch” immigrants and be used against them in criminal or immigration prosecutions and the unnecessary re-adjudication of already-approved petitions and applications are but two examples of how the agency is actively harming applicants and discouraging eligible individuals from applying for benefits. When adjudicators affirmatively seek out fraud first instead of starting from a neutral adjudication position, the result is not only a chilling effect on applications, but a drain on agency resources which, in part, has led to the long processing times we see today.

In 2024, the Biden administration must take the following actions:

- **STOP RE-ADJUDICATING BENEFITS ALREADY GRANTED:** The practice of re-adjudicating underlying petitions has created an undue burden for applicants and results in inconsistent and unfair adjudications. In addition to the toll on applicants, this practice has contributed to USCIS backlogs, which overall, continue to be lengthy. It makes little sense for the agency to add to this problem with inefficient adjudications that re-evaluate already approved underlying adjudications, as is the case for many naturalization applicants who receive RFEs for documentation related to the underlying permanent residence application. One glaring example is the agency’s inconsistency in inadmissibility waiver practice. USCIS should defer to earlier adjudication decisions and not allow previously waived conduct to result in the denial of subsequent applications. The agency

should look to its own deference policy employed in H-1B adjudications and implement its spirit in other adjudications including U nonimmigrant status adjustment and naturalization.

- **END SOCIAL MEDIA VETTING:** Since 2015, the federal government has increasingly been checking applicants' social media and using information gained through that process to make decisions on cases. What began as a limited program has expanded dramatically across administrations, culminating in the Trump administration's [policy](#) mandating that people seeking visas to enter the United States disclose their social media identifiers and a proposal to collect the same information from people seeking immigration benefits, including adjustment of status, naturalization, and asylum. While the Biden administration retracted [this proposal in 2021](#), visa applicants must still provide this information. Moreover, DHS [recently proposed](#) requiring visa waiver program applicants to disclose their social media handles. The federal government must cease this practice immediately. In addition to privacy and freedom of expression implications, there is [no indication](#) that it is, or has ever been, useful in protecting our safety.
- **END EXTRANEOUS DATA COLLECTION:** USCIS should immediately cease collecting extraneous, redundant, or unnecessary information to evaluate the merits of a claim. Many USCIS forms contain redundant questions, particularly about criminal history, which can lead to inconsistent answers and serve as the basis of a denial. This is particularly insidious as much of the information gleaned from these questions is available through extensive background check processes the agency runs as a matter of course. Additionally, many forms contain questions that are not relevant to every applicant, but the forms still necessitate completion of such information. These practices are pervasive throughout USCIS adjudications. Often, this practice results in needless RFEs which slow the adjudications process and cause a burden on applicants, advocates, and adjudicators alike.



- **STOP THE EXPANSION AND USE OF SURVEILLANCE AND DATA SHARING AND ENCOURAGE AGENCY TRANSPARENCY:** USCIS's Fraud Detection and National Security (FDNS) directorate is the steward of many of the agency's vetting systems and the nerve center for fraud officers embedded across the agency. Given its sprawling nature and its ability to impact adjudications, it is imperative that the agency be more transparent with the public about the work of the directorate and the systems they use. The agency 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 its use of ATLAS and other technologies to flag U.S. citizens for denaturalization, a practice that expands immigration enforcement tactics to target U.S. citizens.
- **ADOPT A NEUTRAL ADJUDICATIONS POSTURE:** The administration should direct its officers to practice an adjudications posture that centers neutrality. For example, USCIS should not assume that inconsistent information, particularly from pro se applicants, indicates a lack of credibility or desire to defraud the government. 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. These changes have caused applicants with legitimate claims to face severe delays including unnecessary and redundant RFEs, Notices of Intent to Deny, and denials.
- **IMPLEMENT AND INTERPRET POLICIES GENEROUSLY AND HOLISTICALLY:** USCIS officers should take a holistic approach to adjudications and consider the totality of circumstances, including a trauma-informed and survivor-centered approach, and consideration of mitigating factors and positive equities. For example, USCIS should generally interpret bars more narrowly. Similarly, 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. Advance parole policies should be broadly interpreted.

**B COMMITMENT TO EQUITY.** On his first day in office, President Biden issued an [executive order](#) seeking to use the power of the federal government to advance equity for underserved communities. In it, he promised to advance equity through a systematic approach, aiming to embed “fairness in decision-making processes” and direct executive departments and agencies to “recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.” Given DHS’s wide-ranging mission, it is imperative that the agency fully embody this executive order by reviewing its policies and practices and taking all necessary steps to ensure that immigrants are not subject to discrimination because of race, national origin, economic status, or any other impermissible category.

- **PROTECTIONS FOR THOSE WITHOUT PERMANENT IMMIGRATION STATUS:** The administration must provide protections for all immigrant populations living in the United States with no or tenuous temporary status. Through executive action, prosecutorial discretion, and agency policy changes, the Biden administration must ensure all members of our communities can live and work in the United States with dignity 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.
- **END PATTERNS OF ANTI-BLACKNESS UNDERLYING POLICY DECISIONS:** Anti-Blackness infects every aspect of our immigration system and must be rooted out with intention and urgency. The agency must address anti-



- Blackness in all its forms including in the administration of the diversity visa lottery program, TPS designations, and the disparate treatment of Black immigrants [in detention, in removal proceedings](#), and at the border.
- **ENSURE THAT FEES ARE NOT A BARRIER TO IMMIGRATION BENEFITS AND ALLOW ONLINE FEE WAIVER FILING:** Financial concerns have consistently been identified as the top barrier keeping eligible individuals from applying for immigration benefits. Application fees for immigration benefits are compounded by the cost of 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. While the agency's recently [published final fee rule](#) included many positive changes, more should be done to ensure immigration benefits are affordable. For example, fee waiver thresholds should be expanded to account for the lived reality of low-income immigrants of color and fee reductions should be available for all applications. USCIS should also 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. In addition, the agency should consider creative solutions to ensuring that fees are affordable, including by providing applicants with an option to pay fees in installments over time.
  - **STRENGTHEN AND SUPPORT LABOR-BASED DEFERRED ACTION:** In January 2023, the Biden administration [announced](#) a formal, centralized process through which undocumented workers who are survivors of exploitation and abuse at the hands of unscrupulous employers can request and receive deferred action and work authorization. This policy change creates space for workers to speak out without fear of deportation and gives the federal government time to investigate labor exploitation. This is a welcome development that advocates have been pressing the federal government on for more than a decade. Recently, [DHS announced a process for requesting renewals](#), falling short of advocates' demands. If the goal of the

program is to encourage workers to come forward, DHS should reexamine the onerous process they have established and grant longer periods of deferred action.

- **RESCIND ALL HARMFUL ASYLUM RULES AND RESTORE ACCESS TO PROTECTION:**

The administration's record on asylum is abysmal. The administration's deeply dehumanizing approach to asylees and refugees must be reframed. In addition to allowing numerous Trump-era regulations to remain on the books, it has issued its own damaging policies, including the [Circumvention of Lawful Pathways rule](#), which institutes a process gauntlet that severely limits access to asylum. Most immediately, the administration must urgently take steps to rescind all these rules. In addition, it must dedicate significant resources toward rebuilding the asylum program. Currently, there are over 1 million asylum applications pending before USCIS and over 1 million pending before the immigration courts. These are staggering numbers and the administration must take steps, including streamlining the onerous adjudications process, toward reducing the backlog and ensuring that benefits available are, in fact, accessible.

- **ENSURE THAT NATURALIZATION IS ACCESSIBLE TO ALL:** USCIS must ensure that naturalization is available to all people who wish to become citizens. While the agency has made strides to achieve this goal through increased outreach and engagement and necessary policy updates, and has made significant improvements to application backlogs and processing times, there is more to be done. For example, the agency should make certain that steps it has taken to [make naturalization more accessible to people with disabilities](#) are fully implemented. In addition, the agency should reduce the length of the [N-400](#) and take care not to ask unnecessary questions that could dissuade people from applying. Furthermore, it should encourage more eligible individuals to naturalize by offering same-day oaths and remote oath ceremonies, shorter interviews and interview waivers, and [other targeted changes to policy](#).

## II: END IMMIGRATION ARRESTS, IMMIGRATION DETENTION, AND DEPORTATIONS

The Biden administration has continued the trend of massively expanding 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. In addition to facing the punishment imposed in the criminal system, many immigrants are then 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. These systems of punishment are grossly unfair and inhumane.

- **BROADLY INTERPRET PROSECUTORIAL DISCRETION:** In 2023, after a protracted court battle, DHS implemented Secretary Mayorkas' 2021 enforcement priorities memo which laid out factors that Immigration and Customs Enforcement (ICE) should consider when making decisions about detention and deportation. The framework continued the use of "public safety" as an enforcement priority category and despite purportedly requiring assessment of the individual's experience, impact on family and

community, and the totality of the facts and circumstances, and despite clear instruction that ICE should not “rely on the fact of conviction or the result of a database search alone,” [advocates and immigrant communities report](#) that, in practice, arrests and convictions alone outweigh all other considerations for prosecutorial discretion. Disturbingly, there is strong evidence from across the country that ICE often ignores voluminous mitigation factors altogether. It is imperative that ICE robustly implement this memo and generally, 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.

- **TERMINATE SECURE COMMUNITIES:** DHS must terminate the Secure Communities program, an anti-immigrant surveillance system that has further cemented discrimination, abuse, and mass deportation as central aspects of the immigration system. 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:** ICE should stop 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 overall, which co-locates 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 and facilitate the outrageous persecution of migrants by state actors such as in Florida and Texas.
- **DISCONTINUE THE 287(G) PROGRAM:** The administration must end all 287(g) agreements. These agreements, through different models, deputize

local police to engage in immigration enforcement. Ending the 287(g) program is especially urgent as states such as Texas and Florida continue enacting laws and policies that expand the state role in federal immigration enforcement.

- **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. For example, DHS should establish a process for those deported under Operation Lone Star to return and be given the opportunity to seek relief.

**B END IMMIGRATION DETENTION.** The Biden administration must take immediate action to end immigration detention. The number of immigrants held in detention since the beginning of the Biden administration has been dramatically trending upward from approximately 15,000 to almost 40,000 individuals per day by the [end of November 2023](#). Conditions in detention facilities are notoriously abusive and inhumane, as regularly documented by both the DHS [Office of Civil Rights and Civil Liberties](#) and the [Inspector General](#). The growth of so-called alternatives to detention has subjected an increasing number of immigrants to surveillance monitoring programs that pose significant restrictions on liberty. In its last year, the Biden administration must immediately take the following actions:

- **CUT DETENTION CENTER CONTRACTS TO BEGIN THE PROCESS OF ENDING IMMIGRATION DETENTION ENTIRELY:** Rather than expanding the number of individuals held in detention, the Biden administration should work toward reducing detention center contracts as a path to phasing out immigration detention entirely. In a [2022 report published by ILRC and our partners](#), we found that the likelihood of immigration arrests increases with detention capacity. While some facilities have been shut down due to effective organizing campaigns in local communities, abusive conditions continue to persist in existing detention facilities.
- **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. In addition, the Biden administration should not subvert organizing efforts that have successfully campaigned for laws ending private prisons, [such as in New Jersey](#), particularly given Biden's stated commitment to ending private prisons.

- **INVEST IN NON-PUNITIVE AND NON-SURVEILLANCE ALTERNATIVES INSTEAD OF FUNDING IMMIGRATION DETENTION:** The Biden administration should invest in alternatives to detention that do not include carceral solutions such as ankle bracelets or surveillance-based tracking systems. The use of ankle monitors has exploded under this administration, with the average length of time spent in alternatives going from [348 days in FY 22 to 549 days in FY23](#). Such systems inhibit freedom of movement and can be physically and emotionally painful for immigrants subject to them. Instead, the administration should focus on models that provide community-based support to immigrants as they navigate the immigration system, partnering with non-governmental organizations financially and otherwise.
- **END THE FAMILY EXPEDITED REMOVAL MANAGEMENT PROGRAM:** In May 2023, ICE announced that it would start placing families apprehended at the southern border who are in the credible fear process into a newly created program called [Family Expedited Removal Management](#). The program places heads of household on ankle monitors and subjects families to expedited asylum adjudications, including fast track removal if they are not successful in making their case, often within 30 days. Forcing vulnerable people to find attorneys and win successful asylum claims in a carceral setting after they so recently arrive in the United States is unfair and a miscarriage of justice.



**B INCLUDE IMMIGRANTS IN ALL CRIMINAL LEGAL SYSTEM REFORMS.** President Biden made criminal legal system reform a centerpiece of his campaign, and when he took office, he issued executive orders and proclamations on accountable criminal justice practices, ending private prisons, and marijuana reform. Unfortunately, these reforms have excluded immigrants. For example, while 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, the announcement explicitly only included legal permanent residents, excluding immigrants of all other status and undocumented people with federal convictions for cannabis possession. Similarly, when he issued the [executive order barring private prisons](#), he excluded ICE’s detention system, further allowing the private prison industry continued unfettered access to immigrant bodies. The administration should be a leader in taking executive action to eradicate systemic racism in the criminal legal system and ensure immigrants are neither purposefully nor unintentionally excluded.

- **DESCHEDULE CANNABIS:** The administration should direct the Secretary of Health & Human Services (HHS) and the Attorney General to begin the process of [descheduling cannabis](#). Descheduling would ensure that possession would no longer be a crime for federal purposes, including immigration. In 2023, HHS [recommended](#) that the Drug Enforcement Administration reschedule cannabis from a Schedule I drug to Schedule III, but this recommendation must be rejected as marijuana would still be considered a federally-controlled substance and all the same penalties would remain for immigration purposes.
- **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 U.S. citizens.
- **END THE FEDERAL USE OF PRIVATE PRISONS INCLUDING IMMIGRATION DETENTION:** Immediately after taking office, Biden issued an executive order ending the government’s reliance on private prisons. However, he excluded ICE’s sprawling civil detention system used exclusively for immigrants. While states like California have outlawed private prison systems, including immigration detention, on their own, the Department of Justice (DOJ) has sued them. The administration must immediately cease this practice and instead use their resources to hold accountable rogue states like Texas who continue to flout federal law in order to harm immigrants.
  - **STOP CONSIDERATION OF DELINQUENCY ADJUDICATIONS IN DISCRETIONARY DETERMINATIONS:** The nation’s juvenile justice systems were founded based on principles of child development, acknowledging that young people often act without the ability to consider long-term consequences of their actions. Juvenile justice systems are civil in nature and accordingly many state laws forbid the consideration of juvenile delinquency adjudications as “crimes” or youth adjudicated as delinquent as “criminals.” The practice of denying people immigration benefits based on juvenile adjudications 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 its discretion to deny immigration benefits to immigrants based on juvenile delinquency adjudications, consistent with case law that does not consider juvenile adjudications to be convictions for immigration purposes.
  - **CLARIFY AND EXPAND PRESIDENTIAL PROCLAMATION ON CANNABIS PARDONS AND END DEPORTATIONS FOR CANNABIS-RELATED OFFENSES:** The administration must ensure that the implementation of the proclamation is inclusive of immigrants by clarifying and expanding the language to ensure that all immigrants can benefit. The administration should stop initiating deportation proceedings and denying immigration benefits to individuals because of cannabis related convictions or conduct.

- **END PENALTIES AGAINST IMMIGRANTS WHO WORK IN THE CANNABIS INDUSTRY:** Immigrants who are employed in the multi-billion-dollar cannabis industry are deemed to be “drug traffickers” for immigration purposes – one of the most severe bars in immigration law. No civil or criminal penalties for “drug trafficking” fall on the executives of these corporations, or even any of the U.S. citizen employees; the only enforcement targets are immigrant workers. The federal government should cease pursuing these destructive and illogical penalties.

**D END ABBOTT’S REIGN OF TERROR AGAINST IMMIGRANTS IN TEXAS.** Over the last decade, the state of Texas has issued a string of punishing policies meant to threaten and intimidate immigrant communities. In addition to erecting physical barriers at the southern border, it has enacted several state laws further entangling local law enforcement with the immigration enforcement apparatus and has wasted billions on [Operation Lone Star](#), which has criminalized approximately 10,000 migrants and border residents. [The ILRC has been at the forefront](#) of fighting back against these policies, and calls on the Biden administration to, in the last year of its term, use its executive power to support immigrant communities in Texas in the following ways:

- **END PARTNERSHIPS WITH JURISDICTIONS WITH ANTI-IMMIGRANT LAWS AND POLICIES AND END COOPERATION WITH OPERATION LONE STAR IN TEXAS:**  
As part of Operation Lone Star, Texas Governor Greg Abbott declared a “state of emergency” and has deployed Texas Department of Public Safety (DPS) officers to arrest immigrants for supposed 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. The administration must take strong and definitive action against the involvement of local law enforcement in immigration or border enforcement to ensure these wasteful, racist

programs do not continue to harm Black immigrants and immigrants of color. Specifically, DHS must end CBP's collaboration with Operation Lone Star and remove all buoys, concertina wire, and DPS troopers from the border.

- **HOLD TEXAS LEGALLY ACCOUNTABLE:** DOJ should file a lawsuit against Texas for interfering with its federal enforcement authority by deploying Operation Lone Star. DOJ's Civil Rights Division should open formal investigations into Operation Lone Star and recommend that the federal government stop funding certain agencies, like DPS. DOJ should also send investigators and legal observers to key Lone Star localities and investigate the egregious action and human rights violations, including [pretextual traffic stops, deadly vehicle pursuits](#), and family separations initiated by DPS.
- **USE EXECUTIVE AUTHORITY BROADLY AND CREATIVELY TO HELP IMMIGRANT COMMUNITIES IN TEXAS:** The Biden administration should take immediate administrative action to provide relief to Texas families. First, DHS should offer immigration relief to all migrants arrested and prosecuted under Operation Lone Star and immediately reunite families who have been separated under the program. Second, the Department of Defense should nationalize the Texas Guard and remove them from the program. Third, the Department of Treasury should conclude its investigation on Governor Abbott's [misuse of federal COVID funds](#) for Operation Lone Star and sue the state for misuse of funds.

**E ENSURE JUST OUTCOMES FOR ALL IMMIGRANTS.** Over its four year term, the Trump administration weaponized DOJ to significantly alter immigration law by allowing the Attorney General to self-refer and overrule Board of Immigration Appeals (BIA) court decisions (called “certification”) and institute a number of extreme and harmful policies. To date, Attorney General Garland has rescinded only a handful of these decisions. In its last year, the Attorney General must use his executive power to rescind all harmful decisions put in place by the Trump administration

and issue decisions that help immigrant communities and their families. The Attorney General must also end prosecutions for immigration violations:

- **OVERTURN HARMFUL DECISIONS ISSUED UNDER THE TRUMP ADMINISTRATION:** During the Trump administration, the Attorney General issued certified 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 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 U.S. 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 or one erroneous conviction does not create lifetime barriers to employment, housing, and, for immigrants, the opportunity to remain in their communities in the United States. Despite widespread and bipartisan consensus around the importance of record clearance, the federal government has relentlessly attacked such efforts, arguing that even a conviction vacated for legal error should still make a longtime permanent resident deportable. The DOJ should respect state actions that erase criminal convictions and conduct.
- **END PROSECUTIONS FOR IMMIGRATION VIOLATIONS:** Prosecutions for

immigration violations drive mass incarceration and target individuals seeking safety, freedom and opportunity. Under the Biden administration, DOJ prosecutions for unlawful entry have exploded. In FY21, DOJ charged [261](#) people with unlawful entry and in FY23, that number shot up to 5,777, while charges for unlawful reentry continue to hover around [14,000](#). DOJ should end these cruel prosecutions immediately. The administration should instead work alongside border communities to identify their challenges and address their needs.

## CONCLUSION

President Biden has less than one year left to make good on the promises outlined in his ambitious executive orders on immigration and take the critical actions immigrant communities need. He must take bold action to protect the millions of people who struggle with uncertainty and barriers without access to permanent immigration status, strengthen the immigration benefits system so that people have real access to benefits, and dismantle the growing immigration enforcement system. He must reconsider actions he has taken to curtail asylum access for those seeking protection and meet the challenge of increased global migration with compassionate solutions, working hand in hand with impacted communities. His leadership on immigrant and racial justice is needed now more than ever. We ask for President Biden to use his executive authority to take these critical actions and join us in forging a new way forward.