



IMMIGRANT
JUSTICE
NETWORK



Memorandum: Platform for Immigrant Justice

TO: The Biden Administration
From: The Immigrant Justice Network and New Way Forward National Campaign
Date: December 11, 2023

About the Immigrant Justice Network and the New Way Forward National Campaign

The Immigrant Justice Network (IJN) is a leading voice against the criminalization of immigrants in the United States. Grounded in racial justice values, we build power to defend the dignity of immigrants. We fight for a world where our communities are thriving and free from policing, deportation and imprisonment.

IJN comprises nine members: Families for Freedom, Grassroots Leadership, the Immigrant Defense Project (IDP), the Immigrant Legal Resource Center (ILRC), Just Futures Law (JFL), Puente Human Rights Movement, the National Immigration Project (NIPNLG), Southeast Asia Resource Action Center (SEARAC) and the Washington Immigrant Solidarity Network (WAISN). IJN is also guided by the leadership of an Advisory Board, a group of five movement leaders who have worked closely with individuals and have themselves been impacted directly by the systems we seek to dismantle.

The New Way Forward (NWF) Campaign is a multi-faceted campaign with long-term goals to: 1) energize and build a base around inclusive policies that dismantle the architecture of criminalization, detention and deportation; 2) shift the narrative and public discourse around criminalization; 3) build support for these issues among policymakers and advocates across movements; and 4) advance federal policies that address and repeal harsh 1996 immigration laws and decriminalize migration.

IJN works closely with many national, state and local partners to advance the New Way Forward Campaign, including American Friends Service Committee-Colorado, Black Alliance for Just Immigration (BAJI), Black LGBTQIA+ Migrant Project (BLMP), Detention Watch Network (DWN), New Jersey Alliance for Immigrant Justice, Never Again Action, Northern New Jersey Sanctuary Coalition, Pax Christi, Southeast Asian Freedom Network and Woori Juntos.

Together, IJN members and New Way Forward Campaign partner organizations developed this [Platform for Immigrant Justice](#) based on our collective decades of deep experience fighting criminalization and advancing a vision of immigrant justice that centers individuals who have had contact with the criminal legal system. Together, we call on President Biden to take strong action. Immigration policies cannot rely on outcomes from a criminal legal system that is fundamentally unjust, racialized, and built to target Black and Brown people.

Our communities require bold solutions, like [The New Way Forward Act](#) (HR 2374), to root out deep systemic problems of racism and xenophobia infesting the immigration and criminal legal systems. In this platform we have identified important actions President Biden and his administration must immediately take to further these goals.

We urge this administration to implement the following solutions:

- A. Exercise discretion that protects immigrants facing deportation as a result of contact with the criminal legal system from enforcement, retaliation, detention - including indefinite detention - and removal.

This administration must exercise discretion that affirmatively protects immigrants facing deportation as a result of contact with the criminal legal system from Immigration and Customs Enforcement (ICE) arrests, initiation of removal proceedings, retaliation, detention - including mandatory and indefinite detention - denial of status and removal.

Historically, the use of “discretion” by the Department of Homeland Security (DHS) has relied on categories that either explicitly or implicitly harm immigrant community members with criminal legal system contact by excluding them from needed protections. Under this administration, on September 30, 2021, Secretary Mayorkas’s prosecutorial discretion memo laid out factors that ICE should consider when making decisions about detention and deportation. The framework continued the use of “public safety” as an enforcement priority category. 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 United States that ICE often ignores voluminous mitigation factors altogether. For example, we have heard multiple reports from advocates who have submitted lengthy ICE release requests demonstrating such “mitigating” factors as the individual’s status as a victim, lengthy presence in the U.S, and mental health condition, only to receive an immediate denial from ICE, in some cases in less than thirty minutes after submission. It is impossible that ICE actually reviewed and considered the totality of the circumstances and all of the individual’s evidence in such a time frame.

The Biden administration should live up to its promises to use its discretion in good faith, including to protect community members with criminal legal system contacts. In fact, the administration should go further, flipping the framework itself, and exercising discretion in a manner that *actively accounts* for the harms of the criminal legal system. Discretion implementation will always fall short for impacted communities if the review process itself perpetuates the harms of the racist criminal legal system under the guise of “public safety.” The systemic racism that infects the criminal legal system renders convictions inherently suspect;

they cannot be taken at face value as indicia of dangerousness. Moreover, identifying groups of people as categories or as inherently dangerous dehumanizes them and participates in the same racist logic that underlies the criminal legal system. And, the administration is well aware of the harms inherent in that legal system: in May of 2022, President Biden signed an executive order aimed at advancing effective, accountable policing and strengthening public safety, in order to address “the legacy of systemic racism in our criminal justice system and in our institutions more broadly.”¹ At a time when the United States is undertaking needed reforms to our criminal legal system, it is imperative to account for that system’s flaws in the immigration context as well, especially as it applies to prosecutorial discretion.

Despite ongoing advocacy urging DHS to implement a transparent and accountable review process, we continue to see devastating denials of discretion without explanation. For example, Robert Pantan is a 57-year-old father to three U.S. citizens, and grandfather to nine children, who lived in the U.S. for more than fifty years as a lawful permanent resident after immigrating from Jamaica at age four. He spent thirty years incarcerated for a drug-related conviction because the sentencing judge had little choice but to impose a harsh mandatory sentence of thirty years to life. Today, his sentence would most likely be one-third what he received. In 2021, a federal judge granted him “compassionate release,” citing Mr. Pantan’s exceptional service; work inside the prison; and his remarkable record of good conduct, a clear display of Mr. Pantan’s empathy. The judge concluded that “there can be no doubt that Mr. Pantan has fully rehabilitated himself, and there is no need for further incarceration.” Since his release, Mr. Pantan has continued to devote himself to others, becoming a community leader and youth mentor in Harlem, which has earned him the support of numerous New York and national organizations. Yet, ICE is planning to deport Mr. Pantan on the basis of his decades-old conviction, despite all he has achieved and despite all the people who love and rely on him. ICE’s senseless and unrelenting commitment to his deportation illustrates a fundamental failure of the review process.

Finally, even as this administration expresses interest in mitigating harm to communities impacted by criminalization, we continue to see immigrants left out altogether from gravely needed protections. For example, in October, 2022, we were initially encouraged by the President’s decision to pardon convictions for marijuana possession as a much-needed first step to mitigating the “war on drugs,” only to find that many immigrants were explicitly excluded from these pardons. Furthermore, the administration’s position has remained that pardoned drug offenses remain triggers for deportation. Advocates quickly elevated affirmative measures to protect immigrants and ensure relief from immigration consequences that flow from marijuana convictions to this administration, without response or engagement. We elevate those [demands](#) again now.

B. Stop the entanglement of federal immigration enforcement with localities by stopping the issuance of detainers which rely on biased criminal legal systems, canceling all 287(g) agreements and ending the use of warrant service officer agreements.

The Biden administration must take steps to stop replicating the harms of the criminal legal system in the immigration system. Currently, immigrants face double punishment, as they are subjected to immigration detention after criminal custody, with all the abuses attendant to

¹Exec. Order No. 13895, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 20, 2021); Exec. Order No. 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 88 Fed. Reg. 10825 (Feb. 16, 2023).

incarceration, before being separated from their families and communities indefinitely through deportation. People should not suffer additional punishment just because they were not born in the United States.

This administration must work to prevent such inhumane and unfair consequences by taking the following measures:

- **End the Use of Detainers and the Criminal Alien Program:** ICE should end the practice of issuing detainers, which serve as the primary mechanism for transferring immigrants from the criminal system to the immigration detention system. ICE's use of detainers, and its Criminal Alien Program (CAP) overall, which places immigration agents in local jails and in constant contact with local law enforcement, recreate and magnify the harms and racial disparities of the criminal legal system. Over the years various courts have agreed that prolonging custody of an individual solely based on an ICE detainer is unlawful for many reasons.²
- **Terminate the 287(g) Program:** The administration must terminate all 287(g) agreements. These agreements, through different models, deputize local police to engage in immigration enforcement. The 287(g) program is rife with abuse, discrimination and violations of constitutional rights. It is well documented that local officers operating in jurisdictions with 287(g) agreements are prone to engage in racial profiling by targeting individuals they suspect to be immigrants, usually relying on those individuals' races as grounds for suspicion.³ The administration must also terminate the Warrant Service Officer (WSO) program, which is the functional equivalent to the 287(g) program and created by the same statute. WSOs began in 2019 during the Trump administration as a deceptive effort to circumvent local sanctuary policies and results in local jails delegating officers to execute ICE warrants.⁴ These officers have even less training and the program is a dangerous method for getting local jails to hold people unlawfully.⁵

C. Support and respect local policies that end collusion between localities and federal immigration enforcement and stop pressuring localities to reverse course

Like past administrations, the Biden administration has continued to massively expand systems of surveillance⁶ to enlist state and local law enforcement agencies to carry out federal immigration enforcement, targeting specifically immigrants who come in contact with the criminal legal system.⁷ At the same time, DHS has actively undermined local and state efforts to

² KRSNA AVILA & LENA GRABER, IMMIGRANT LEGAL RES. CTR., ICE DETAINERS ARE ILLEGAL - SO WHAT DOES THAT REALLY MEAN? (2020), https://www.ilrc.org/sites/default/files/resources/2019.04_ilrc_287g_national_final.pdf.

³ IMMIGRANT LEGAL RES. CTR., ENDING 287(G) NATIONWIDE (2019), https://www.ilrc.org/sites/default/files/resources/2019.04_ilrc_287g_national_final.pdf.

⁴ Naureen Shah, *The Biden Administration Can Make Us All Safer: End ICE Collaboration Programs*, AM. CIVIL LIBERTIES UNION (Dec. 1, 2020), <https://www.aclu.org/news/immigrants-rights/the-biden-administration-can-make-us-all-safer-end-ice-collaboration-programs>.

⁵ IMMIGRANT LEGAL RES. CTR., WARRANT SERVICE OFFICER PROGRAM A DECEPTIVE NEW MODEL FOR 287(G) (2019), https://www.ilrc.org/sites/default/files/resources/2019.05_ilrc_wso_programs-final2.pdf.

⁶ See, e.g., Johana Bhuiyan, *A US surveillance program tracks nearly 200,000 immigrants. What happens to their data?*, THE GUARDIAN (Mar. 14, 2022, 6:05AM EST), <https://www.theguardian.com/us-news/2022/mar/14/us-immigration-surveillance-isap>.

⁷ See, e.g., NAT'L IMMIGR. PROJECT, THE BIDEN ADMINISTRATION'S TRACK RECORD ON ENFORCEMENT, DETENTION, AND THE CRIMINALIZATION OF IMMIGRANTS OF COLOR (2023), https://nipnlg.org/sites/default/files/2023-05/2023_May-Biden-Report-Card.pdf.

keep immigrant communities intact and to ameliorate the immigration penalties that follow contact with the criminal legal system.⁸ This administration must not impede communities' efforts to undo the harms of the systemically racist criminal legal system. The administration should support, not attack, local efforts to pass laws, ordinances, and policies that limit private prisons, create sanctuary jurisdictions and otherwise seek to address the harms of the criminal legal system.

For example, across the country, states are passing reforms to expunge, dismiss, or vacate criminal convictions so that a past mistake, erroneous conviction or sentence, or conviction for conduct that is no longer unlawful 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 these record clearance efforts, ICE under the auspices of the administration has routinely refused to recognize relief through such reforms.⁹ ICE should instead honor local and state law reforms that seek to undo the unjust impact of their criminal systems, both in its internal and external policies and statements.

D. End contracts with and the use of for-profit immigration jails

On the campaign trail, President Biden promised to end the use of private prisons for immigration detention, stating that “the federal government should not use private facilities for any detention, including detention of undocumented immigrants.”¹⁰ In January 2021, his administration issued an executive order phasing out contracts for privately operated Department of Justice (DOJ) prisons, but notably failed to include ICE detention. In some cases, this actually led to *expansion* of ICE’s network of privately operated facilities as the agency took over expiring DOJ prison contracts.¹¹ The administration has also recently actively supported efforts by private prison giant CoreCivic to maintain its contract at the Elizabeth Detention Center in New Jersey, ignoring countless calls by advocates and directly impacted individuals for closure of the facility.¹² Three years into his administration, President Biden’s promise remains unfulfilled and the insidious profit motive of the private prison industry continues to drive the mass caging of immigrants.

⁸ See, e.g., Dep’t of Homeland Sec., Secretary Mayorkas Delivers Remarks at the U.S. Conference of Mayors (Jan. 20, 2022), <https://www.dhs.gov/news/2022/01/20/secretary-mayorkas-delivers-remarks-us-conference-mayors>.

⁹ See, e.g., ANDREW WACHTENHEIM & ROSE CAHN, IMMIGRANT LEGAL RES. CTR., USING AND DEFENDING CALIFORNIA PENAL CODE § 1473.7 IN IMMIGRATION PROCEEDINGS (2020), https://www.ilrc.org/sites/default/files/resources/using_and_defending_california_penal_code_1473.7_vacatur_in_immigration_proceedings_sample_memorandum_of_law_and_table_of_bia_cases.pdf (explaining that ICE attorneys refuse to recognize vacatur under a California criminal justice reform law, a practice that has continued under the current administration); see also *infra*, Section XX, for further discussion of this practice.

¹⁰ SETAREH GHANDEHARI, BOB LIBAL & PRIYA SREENIVASAN, DET. WATCH NETWORK, PROJECT S., BROKEN PROMISES: LIMITS OF BIDEN’S EXECUTIVE ORDER ON PRIVATE PRISONS (2021), https://www.detentionwatchnetwork.org/sites/default/files/reports/Broken%20Promises_DWN%20and%20Project%20South.pdf.

¹¹ SETAREH GHANDEHARI, LENA GRABER, HILLARY LI, GRISEL RUIZ & STACY SUH, DET. WATCH NETWORK, IMMIGRANT LEGAL RES. CTR., CARCERAL CAROUSEL (2023), https://www.ilrc.org/sites/default/files/2023-05/Carceral%20Carousel%20%282023%29_1.pdf.

¹² DET. WATCH NETWORK, *Activists Turn Up Pressure on President Biden Following Court Decision Betraying New Jersey Detention Ban* (Aug. 29, 2023), <https://www.detentionwatchnetwork.org/pressroom/releases/2023/activists-turn-pressure-president-biden-following-court-decision-betraying>.

As of July 2023, ICE is funded to detain, on average, 34,000 immigrants each day, and **roughly 90%** of them are held in detention facilities owned or operated by private prison companies.¹³ This outsized reliance on private prison corporations has allowed ICE to expand a carceral system that is rife with human rights abuses, has led to numerous deaths of immigrants in custody, and is racist and unnecessary. The conditions and abuses in ICE detention have been called “barbaric” by DHS’s own Office of Civil Rights and Civil Liberties.¹⁴ The financial incentives inherent in privately-run facilities also encourage the use of both contract requirements to increase the number of immigrants detained and cost-cutting measures that further deteriorate conditions. The Biden administration must prioritize people over profit and fulfill its promise to end the use of private, for-profit immigration jails by extending its January 2021 executive order to include immigration detention.

E. End cooperation with anti-immigrant state laws or policies that criminalize and target immigrants, such as Operation Lone Star in Texas and SB1718 in Florida

For more than two years, Texas has funneled billions of dollars into Operation Lone Star, a program under which the state has installed miles of razor wire;¹⁵ strung deadly buoys in the Rio Grande;¹⁶ and encouraged Texas state police to deny people water in extreme heat,¹⁷ to push people back into the Rio Grande,¹⁸ and to engage in a widespread campaign of racially discriminatory arrests in order to “deter” immigration.¹⁹ Over 30 people have died in high speed

¹³ AM. CIVIL LIBERTIES UNION, *Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years into the Biden Administration* (Aug. 7, 2023), <https://www.aclu.org/documents/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration>.

¹⁴ Tom Dreisbach, *Government's Own Experts Found 'Barbaric' and 'Negligent' Conditions in ICE Detention*, NPR (Aug. 16, 2023, 5:01AM EST), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions>.

¹⁵ Ken Molestina & Lexi Salazar, *Buoys, Razor Wire and More: A Look at The Border Barriers in Place to Deter Illegal Migration*, CBS TEX. (July 24, 2023, 10:11AM CST), <https://www.cbsnews.com/texas/news/buoys-razor-wire-and-more-a-look-at-the-border-barriers-in-place-to-deter-illegal-migration/>.

¹⁶ Aarón Torres, Alfredo Corchado & Todd Gillman, *20-year-old From Honduras is One of Two Dead on or Near Texas' Anti-Migrant Border Buoys*, DALLAS MORNING NEWS, <https://www.dallasnews.com/news/politics/2023/08/02/dead-person-found-in-texas-anti-migrant-buoys-that-mexico-and-justice-dept-want-removed/> (Aug. 4, 2023, 1:05 PM GMT); Acacia Coronado, *Texas Trooper's Accounts of Bloodied and Fainting Migrants on US-Mexico Border Unleashes Criticism*, AP NEWS (July 18, 2023, 2:12PM PST), <https://apnews.com/article/texas-border-razor-wire-fainting-7aa811baf2708b89a0316804c3f2e35e>.

¹⁷ Rosa Flores & Sara Weisfeldt, *2 Pregnant Migrants Claim Texas National Guard Soldiers Denied Them Water*, CNN (July 21, 2023, 12:24 AM EST), <https://edition.cnn.com/2023/07/21/us/pregnant-migrants-denied-water-texas/index.html>.

¹⁸ Rachel Clarke, Ashley Killough & Sarah Mood, *Texas Troopers Told to Push Back Migrants Into Rio Grande, Report Says*, CBS (July 18, 2023, 4:05 PM CST), <https://www.cbsnews.com/texas/news/report-texas-troopers-told-to-push-migrants-into-rio-grande-river-ordered-not-to-give-water/>.

¹⁹ Letter from Am. Civil Liberties Union Tex. et al., to Merrick Garland, U.S. Att’y Gen. (Dec. 15, 2021), https://www.aclutx.org/sites/default/files/fields_documents/102_ngo_support_ltr_for_title_vi_operation_lone_star_complaint_final.pdf; Email from Am. Civil Liberties Tex. et al., to Merrick Garland, U.S. Att’y Gen. (Feb. 23, 2022), https://www.aclutx.org/sites/default/files/operation_lone_star_title_vi_supplemental_complaint.pdf.

chases Operation Lone Star officers have irresponsibly engaged in,²⁰ and thousands of people have been jailed in horrible conditions without access to counsel.²¹ Nevertheless, DHS has failed to explicitly condemn Operation Lone Star and in fact tacitly permits the use of federal funds to secure its objectives, as CBP continues to “collude” with Texas law enforcement and detain and deport people after they are arrested as part of the program.²² **DHS must end all cooperation with Operation Lone Star and refuse to take immigration enforcement action against people arrested under the program.**

Texas has only doubled down on its anti-immigrant policy agenda with two new laws, SB 4 and SB 3, which would newly and unconstitutionally criminalize under state law crossing into Texas from a foreign country, and give Governor Abbott an additional \$1.5 billion for deadly Operation Lone Star initiatives respectively.²³ But Texas is not alone in erecting anti-immigrant and unconstitutional legal apparatuses that harm immigrants: Florida’s recently passed law, SB 1718, goes to absurd and extreme lengths to criminalize immigrants, including by deeming felony “human smuggling” any transportation of any person who “entered the United States in violation of law and has not been inspected by the Federal Government since,” by requiring hospitals to ask questions about people’s status before administering care, by providing funding to transport immigrants out of Florida, and by imposing mandatory E-Verify.²⁴ **DHS must not encourage Florida and other states to make immigrants pawns in their sick political games, but must instead disavow these laws and prohibit any collusion with Florida authorities for the purposes of immigration enforcement.**

F. End anti-immigrant litigation positions and reset structures within immigration law decisions to incorporate a presumption against deportation

For many years, DHS and DOJ have taken litigation positions that not only stretch the bounds of already-harsh immigration law to maximize deportations, but are also simply wrong on the law. Attorneys General in the last administration in particular abused their power to issue precedent opinions that are binding on immigration courts to weaponize the criminal legal system against immigrants. Many of these positions further entrench dependence on state and federal criminal systems that target Black immigrants and immigrants of color; undermine state court systems and criminal legal system reform; and make it more difficult for immigrants to fight their deportation cases, exacerbating mass deportations. The Biden administration must

²⁰ Tanvi Varma, *Records: Operation Lone Star Resulting in Increases as High as 1,000% in Minor Citations for Drivers in Starr County*, KRGV (Aug. 5, 2021, 7:39 PM), <https://www.krgv.com/news/records-operation-lone-star-resulting-in-increases-as-high-as-1-000-in-minor-citations-for-drivers-in-starr-county/>; Suzanne Gamboa & Joe Murphy, *In Texas, Resentment Builds as Border Crackdown Ensnarers Local Drivers*, NBC NEWS (Aug. 21, 2022, 2:00 AM PST) <https://www.nbcnews.com/news/latino/texas-lone-star-latinos-citations-border-abbott-rcna42022>

²¹ Jolie McCullough, *Migrants Arrested by Texas in Border Crackdown are Being Imprisoned for Weeks Without Legal Help or Formal Charges*, TEX. TRIBUNE (Sep. 27, 2021, 5:00 AM CST), <https://www.texastribune.org/2021/09/27/texas-border-migrants-jail/>.

²² See Email from Am. Civil Liberties Union Tex., to Alejandro Mayorkas, Sec’y Dep’t of Homeland Sec. (Dec. 2, 2022), https://static.texastribune.org/media/files/c7b90d91cada0fd9268a2cb7e78b357a/ACLUTX_DHS_Complaint_OLS.pdf.

²³ See AM. CIVIL LIBERTIES UNION OF TEX., *ACLU of Texas Condemns Unconstitutional Anti-Immigrant Bills* (Nov. 14, 2023, 9:35 PM), <https://www.aclu.org/press-releases/aclu-tx-condemns-unconstitutional-anti-immigrant-bills#:~:text=S.B.%204%20allows%20local%20and,person's%20deportation%20without%20due%20process>.

²⁴ Fla. S.B. 1718 (2023).

undo unfair and unauthorized Attorney General decisions and withdraw its deportation-maximizing litigation positions.

- *Support and honor state criminal system and sentencing reforms by recognizing all state procedural devices that eliminate or modify prior convictions and sentences.* As touched upon above, state and federal governments have a range of procedural devices to eliminate prior convictions and sentences, and to ameliorate their impact. However, the current framework used by the administration does not give effect to many orders that vacate a conviction or modify, alter or clarify sentences.²⁵ DHS also continues to interpret immigration law as limiting the impact of pardons for certain removal grounds, such as drug offenses. Even in some states that have enacted criminal system reforms, such as decriminalizing marijuana or changing sentencing structures, people face deportation or bars to getting status based on old dispositions that literally no longer exist, or on old laws that have since been replaced.²⁶ The administration has persistently failed to correct this. It should adjust its position on this issue and honor all procedural mechanisms (including vacatur, expungements, resentencing orders, and pardons) as effective for eliminating a “conviction” or sentence under immigration law and no longer triggering grounds of deportability, inadmissibility, or relief ineligibility.
- *Reset structures within DHS and DOJ to create a fairer system and guard against future abuse by Attorneys Generals.* This should include viewing all questions of statutory interpretation through the rule of lenity and the presumption against deportation. In addition, DOJ should recognize that its current interpretations of law have a disparate impact on Black and Brown communities, and should construe ambiguous statutes to avoid such unconstitutional application.
- *Stop abusing technicalities in the Immigration and Nationality Act to effectuate orders of removal that are defective, or whose legal basis has been eliminated.* In the last 20 years, the Supreme Court has issued many decisions that reverse the government’s interpretation of immigration law.²⁷ Often, these decisions have eliminated the legal basis for removal orders or created eligibility for relief that was not previously available under the agency’s erroneous litigation position. However, DHS has typically refused to facilitate the reopening of old orders of removal or the return of people who were deported. Once the basis of a removal order has been eliminated, by a change in statute, caselaw, or facts of the individual case, DHS should facilitate reopening and terminating the case (or enabling the individual to apply for relief), and assist the individual with returning to the United States.

²⁵ *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999) (regarding vacated convictions); *Matter of Thomas & Matter of Thompson*, 27 I&N Dec. 674 (A.G. 2019) (regarding sentence modifications).

²⁶ *Khan v. Att’y Gen.*, 979 F.3d 193 (3d Cir. 2020) (marijuana conviction vacated after decriminalization); *Velasquez-Rios v. Barr*, 979 F.3d 690 (9th Cir. 2020) (maximum possible sentence reduced to 364 days after legislative sentencing reform); *Zaragoza v. Garland*, 52 F.4th 1006 (7th Cir. 2022) (state court modified sentence).

²⁷ See e.g., *INS v. St. Cyr*, 533 U.S. 289 (2001) (retroactivity of law eliminating waiver); *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (driving under the influence); *Lopez v. Gonzales*, 549 U.S. 47 (2006) (drug offenses); *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010) (second drug possession offense); *Moncrieffe v. Holder*, 569 U.S. 184 (2013) (marijuana possession); *Mellouli v. Lynch*, 575 U.S. 798 (2015) (drug paraphernalia); *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (burglary).

G. End federal criminal prosecutions under overtly racist laws that were used as the basis for family separation and continue to funnel migrants into the federal criminal legal system

Over the past two decades, unauthorized entry and re-entry prosecutions have become the most commonly prosecuted federal crimes. Passed into law over a century ago with overtly white supremacist goals and rhetoric²⁸, their current impact continues to be directed disproportionately at Latinx people. In keeping with their racist origins and application, these laws cruelly punish immigrants and fuel the mass incarceration of Black and Brown people; waste government resources; destroy families; hurt communities; and deprive migrants seeking to come to the United States of vital protections.²⁹

Soon after taking office, the Biden Administration rightfully and formally rescinded Trump Administration's policy of "Zero Tolerance," which required the DOJ to prosecute every case of illegal entry referred by DHS.³⁰ However, despite this policy change, and to our great disappointment, prosecutions for both unauthorized entry and re-entry have increased in the two years since President Biden took office.³¹ The laws that criminalize entry and re-entry have an explicitly racist history, are applied in a discriminatory manner, harm people seeking safety and to return to their families, provide no benefit to anyone, and are undertaken at great expense.³²

Ending migrant prosecutions would be a significant step forward in achieving the Biden administration's twin stated goals of advancing racial justice and creating more humane immigration policies.

H. Allow individuals who were previously deported because of contacts with the criminal legal system an opportunity to return home to the United States to their families and communities

The United States' immigration enforcement regime destroys families, communities, and the economy. The tragic yet avoidable consequences of deportation include: broken families—tens of thousands of United States citizen children with a parent who is detained or deported every year, leaving thousands of children in foster care; income and tax revenue loss—after an immigration arrest, family income drops 70% on average; and increased risk of mental health consequences for children, including depression, anxiety, and post-traumatic stress disorder.³³ For those long-time residents of our communities who are stuck abroad and permanently exiled

²⁸ See, e.g., Brief for Professors Kelly Lytle Hernández, et. al. as Amici Curiae Supporting Respondent, *United States v. Palomar-Santiago*, 593 U.S. ___, 141 S. Ct. 1615 (May 24, 2021) (No. 20-437).

²⁹ See NAT'L LAWS. GUILD, NAT'L IMMIGR. PROJECT, ROOTED IN RACISM: THE HUMAN IMPACT OF MIGRANT PROSECUTIONS (2021), https://nipnl.org/PDFs/practitioners/practice_advisories/pr/2021_21Dec_Rooted-in-Racism-Report.pdf.

³⁰ Memorandum from Acting Att'y Gen. Monty Wilkinson to All Federal Prosecutors, Rescinding the Zero-Tolerance Policy for Offenses Under 8 U.S.C. § 1325(a) (Jan. 26, 2021), https://www.justice.gov/d9/2022-12/acting_ag_memo-rescinding_the_zero-tolerance_policy_for_offenses_dated_1-26-2021.pdf.

³¹ TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE, *Immigration Prosecutions for June 2023* (Aug. 22, 2023), <https://trac.syr.edu/tracreports/bulletins/immigration/monthlyjun23/fil/> (with graph showing increased prosecutions from 2021 to 2023).

³² See Brief for Professors Kelly Lytle Hernández, et. al., *supra* note 28.

³³ AM. IMMIGR. COUNCIL, U.S. CITIZEN CHILDREN IMPACTED BY IMMIGRATION ENFORCEMENT (2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf.

from their loved ones, the opportunity to come home has been elusive for too long. Moreover, many can show the Administration compelling records of rehabilitation.

The United States can embark on this process through use of humanitarian parole (INA § 212(d)(5)(A)). We urge you to establish criteria for the exercise of favorable discretion for requests for humanitarian parole in cases of individuals who have been deported based on criminal convictions or arrests. Any such criteria should require an examination of the totality of the individual's circumstances, emphasize the importance of a person's community and family ties to the United States and include a presumption in favor of family reunification.

III. Conclusion

In conclusion, we very much look forward to engaging with you on our Platform for Immigrant Justice and ensuring you have the opportunity to hear from individuals directly impacted by these policies as you shape your solutions. If you have any questions please contact Caitlin Bellis at caitlin@nipnl.org, Sameera Hafiz at shafiz@ilrc.org, Benita Jain at benita@immdefense.org or Hillary Li at hli@detentionwatchnetwork.org.

Sincerely,

American Friends Service Committee, Colorado
Asian Americans Advancing Justice | AAJC
Detention Watch Network
Families for Freedom
First Friends of New Jersey & New York
Grassroots Leadership
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defense Project
Immigrant Justice Network
Immigrant Legal Resource Center
Just Futures Law
National Immigrant Justice Center
National Immigration Project
Never Again Action
Services, Immigrant Rights and Education Network
Southeast Asian Resource Action Center (SEARAC)
Woori Juntos