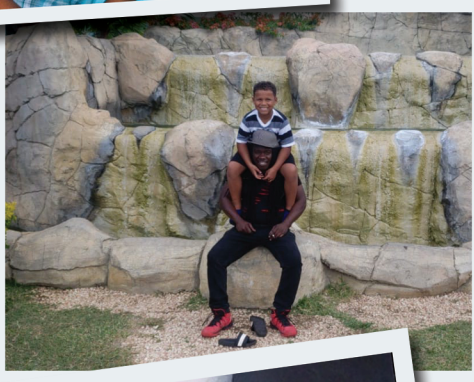




A Chance to Come Home

A Roadmap to Bring Home
the Unjustly Deported



April 2021

**NATIONAL
IMMIGRANT
JUSTICE CENTER**

A HEARTLAND ALLIANCE PROGRAM



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I. Introduction

The transition to a new presidential administration offers an opportunity to reimagine an immigration system that is just and humane, supports family unity and strong communities, and addresses the effects of decades of government discrimination against migrant communities. This transformation requires redress for past harms, including an avenue of relief for those whom the government unjustly deported from the United States. This white paper offers recommendations for the Biden administration to establish a meaningful chance to come home for people who have been forced to leave behind their families, homes, and businesses because of unjust U.S. immigration law and policy.

The scope and severity of U.S. immigration enforcement over decades has stranded abroad many community members who face the prospect of permanent separation from their families in the United States, who in turn unnecessarily struggle in their absence. The government deported Kenault Lawrence and robbed him of the chance to meet his newborn child merely three months prior to a U.S. Supreme Court ruling that the grounds of his deportation were unlawful. Howard Bailey served nearly four years in the U.S. Navy, including two tours in Operation Desert Storm, and received the National Defense Service Medal, but was nonetheless deported based on a first-time marijuana offense. Jean Montrevil was a beloved community leader and immigrant rights advocate in New York before the government deported him to Haiti, based on 30-year-old convictions, in retaliation for his advocacy. Kenault, Howard, Jean, and eight others described in this white paper remain in effective exile, unable to return to their homes absent an unusual act of grace that the U.S. Department of Homeland Security (DHS) has refused to exert in their cases. Although current law includes mechanisms for deported individuals to return home, in practice, these processes and procedures rarely succeed.

The National Immigrant Justice Center (NIJC) calls on the Biden administration to establish and maintain a meaningful process for return for those unjustly deported under prior administrations. This paper outlines a humane and effective manner for doing so that does not overwhelm the U.S. immigration system. Specifically, it recommends creating a centralized Office of Removal Order Review (OROR) within DHS to efficiently and compassionately review applications from those seeking to return to the United States; and delineates four categories of applicants to expedite for review and possible return.

U.S. families and communities who have had people taken by deportation urgently need an effective and meaningful opportunity to bring them home. For children growing up without their parents, single mothers and fathers struggling to cope with the loss of a life partner, and communities robbed of a beloved faith leader or activist, each day that passes is a day too many. Community-based organizations, grassroots campaigns, advocates, and the media echo the call to reunite deported individuals with their loved ones.¹ Building trust between the U.S. government and communities devastated by decades of unjust deportations must begin with a meaningful chance for families and communities to be made whole again.

II. The Case for a Chance To Come Home

The U.S. government deports hundreds of thousands of immigrants each year. The numbers mask the tragedies that play out in the months and years following each deportation. Through deportations, the government is responsible for permanent separation of families, destabilizing and enduring poverty, and incalculable harm to children. All of these harms disproportionately affect Black and Brown immigrant families and communities. Redressing these harms by providing those who have been unjustly deported a chance to come home is a necessary step toward bringing fairness and credibility to the immigration system.

A. Restore family unity, children’s health, and community cohesion

Across the country, hundreds of thousands of American families are coping with the heavy burden of a family member’s deportation.² President Biden endorsed principles of family unity on the campaign trail and in recent executive actions.³ He speaks passionately about doing better to “uphold our laws humanely and preserve the dignity of immigrant families, refugees, and asylum-seekers.”⁴ A process for unjustly deported people to return to the United States is a necessary step to restore dignity to immigrant families and make communities whole.

Children suffer most. A single deportation negatively affects entire communities, but the harms suffered by the children of deported parents are particularly egregious and painful. Between 2011 and 2013, the most recent period for which data are available, half a million children born in the United States experienced the apprehension, detention, and deportation of at least one parent.⁵ In just the first six months of 2011, the U.S. government removed over 46,000 mothers and fathers of U.S. citizen children.⁶

Research and evidence show that the deportation of a parent has long-lasting, traumatic mental and physical health effects on children, regardless of whether a child remains in the U.S. or accompanies a parent to another country.⁷ Psychologists consider parental deportation to be an “Adverse Childhood Event” (ACE), a category that includes experiences like abuse, domestic violence, parental mental health illness, and neglect.⁸ According



Garfield Kenault Lawrence grew up in the United States, was on his high school wrestling team, and fell in love with his high school sweetheart. Months into her first pregnancy, ICE arrested Kenault on the basis of years-old marijuana-related convictions and deported him to Jamaica. Merely three months after his deportation, the U.S. Supreme Court found that the offense giving rise to his removal did not constitute an “aggravated felony” under federal immigration law. Had ICE started his deportation proceedings just a few months later, he would have been eligible to seek a type of legal relief known as “cancellation of removal.” Kenault’s son has grown up in a single-parent home because of this tragic timing. Read Kenault’s full story in the appendix.

Photo: Kenault’s son visited him in Jamaica prior to the COVID-19 pandemic.

to health experts, when children are exposed to even one ACE, including deportation, “their neurobiology is significantly altered, precisely at the age when brain development is critical to future health.”⁹ Parental deportation also causes “toxic stress accumulation,” which increases the risk of depression, anxiety, isolation, and other behavioral problems in children.¹⁰ A 2017 medical study of Latinx youth found that deportation and detention of a family member increased the risk of suicide as well as increased alcohol and substance abuse among Latinx teenagers and pre-teens.¹¹ ACEs and toxic stress accumulation can also alter a child’s biology, causing changes at the DNA level and increasing the likelihood of physical illnesses including cancer.¹²

Deportation of a parent also negatively affects a child’s access to health care, increases the likelihood of foster care placement, and increases the chances of poor educational outcomes including failing in school or dropping out early due to the financial stresses of losing a parent.¹³ Increased immigration raids in Latinx communities under



Leonel Pinilla was deported to Panama in 2012, torn from his wife and stepson who are both largely confined to their homes because of extreme physical and mental health disorders. Since Leonel’s deportation, the family has endured poverty and food insecurity, with Leonel’s daughters bearing the burden of financial support for their mother, brother, and own young children. Harm affects not only spouses and children but also may extend to the next generation of U.S.-born children. *Read Leonel’s full story in the appendix.*

Photo: Leonel and his daughter

the Obama administration significantly decreased public school attendance rates for undocumented children due to the fear parents felt leaving their homes or entrusting their children to schools where federal authorities could find them.¹⁴

Economic and financial insecurity. Deportation also imposes significant strains on families of deported individuals, often leaving them in financial ruin. One study found that household incomes drop by nearly half after deportation.¹⁵ Deportations exacerbate rates of foreclosure and increase the likelihood of a family dropping below the poverty line.¹⁶ Many U.S. citizen family members who were previously self-sufficient must start relying on public benefits to survive after a deportation.¹⁷

Emotional trauma. In January 2021, *The New York Times* published a powerful montage of photos and quotes from people who had been deported to Mexico after years in the United States — encapsulating how the deportations of over one million Mexicans in the past decade have derailed lives, dreams, and families.¹⁸ In August 2020, *The Atlantic* told the tragic story of Idrissa Camara, who found himself in deportation proceedings and detention in 2018 for a criminal conviction from nearly 10 years prior, for which he had already received significant mental health treatment and successful rehabilitation.¹⁹ Idrissa’s wife, Arri Woodson-Camara, died by suicide after enduring a year of her husband’s immigration detention and prior to his deportation to Guinea. She left a note explaining that she could no longer bear the pain of his immigration case and impending removal.²⁰

Community destabilization. Studies show that immigration detentions and deportations irreparably destabilize communities, triggering housing and financial insecurity and making immigrant community members more fearful of public institutions.²¹ People report being less likely to seek health care; having less trust in local law enforcement and the police, including when they are victims of violence; attending fewer religious services; and not using public parks.²² In other words: deportations disintegrate the social fabric of communities, making people less safe and more isolated.²³ A process that offers a meaningful chance to come home is a critical step toward repairing communities torn apart by unjust deportations.

B. Support racial justice by redressing harms against Black and Brown immigrants

In the wake of the widely publicized deaths of Black men and women at the hands of local law enforcement agencies, communities and organizations across the nation are calling for the United States to reckon with its history and patterns of racial injustice. President Biden spoke explicitly on the campaign trail about the discrimination and disparities that permeate government systems and institutions.²⁴ Black and Brown communities nationwide heard these words and showed up in support of President Biden at election time.²⁵ In his first week in office, the president issued an “Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” requiring a comprehensive approach to advancing equity for people of color and historically marginalized communities. He specifically ordered executive departments and agencies to redress inequities in their policies and programs.²⁶ Ensuring a meaningful chance to come home is essential to fulfilling the administration’s promise of addressing racial injustice.

The harms caused to families and communities by unjust deportations are nearly exclusively borne by Black and Brown immigrants. The immigration system’s historic reliance on criminal arrests and convictions to inform decisions about whom to detain and deport imports the racial disparities and biases of the criminal legal system directly into the immigration system.²⁷ Decades of over-policing and surveillance of Black and Brown communities and institutionalized racial biases have resulted in the disproportionate representation of Black and Brown people in the criminal legal system and therefore amongst the populations most vulnerable to deportation.²⁸ As a result, although only seven percent of undocumented immigrants are Black, they make up 20 percent of those facing deportation on criminal grounds.²⁹ This overrepresentation is largely a result of increases in immigration arrests and deportations for minor and non-violent offenses, for which Black and Brown individuals are disproportionately and unjustly targeted.³⁰ Studies also show that Latinx



Howard Bailey moved to the U.S. in his teens as a lawful permanent resident. He joined the Navy after high school and served for nearly four years, including two tours in Operation Desert Storm. Howard was awarded the National Defense Service Medal and honorably discharged. In 1995, shortly after his return from the Persian Gulf, Howard was convicted of a first-time marijuana offense. With Virginia’s strict mandatory minimum sentencing laws, Howard did not have many options. He pled guilty without knowing the devastating immigration consequences that would result from this decision. After completing his sentence, Howard returned to his family and worked hard to rebuild his life. He devoted himself to his wife and two children, started two small businesses, and employed seven people. In 2005 Howard applied to become a U.S. citizen, and disclosed his old offense. In 2010, his application was denied. One morning, ICE agents handcuffed and detained him at his home in front of his wife and children. After two years in immigration detention, Howard was deported to a country he had not seen in 24 years. Read Howard’s full story in the appendix.

people represent over 90 percent of immigrants facing deportation in detention.³¹ The overrepresentation of Latinx people among those deported has decimated Latinx communities and undermined their political and economic power.³²

The racial disparities amongst those deported from the United States in recent decades is largely a result of legislation passed at the height of the War on Drugs and the government’s reliance on punitive immigration policies that disproportionately impact Black and Brown immigrants.³³ Just

as the criminal justice reform movement seeks to redress the injustices of the War on Drugs era and its harm to Black and Brown communities, the movement for immigrant justice demands a meaningful chance for those who have been unjustly deported to return home to mitigate the harms of the detention and deportation systems.

C. Bring accountability, credibility and fairness to the U.S. immigration system

After four years of particularly brutal enforcement policies, creating a meaningful chance for people to return home will demonstrate the U.S. government's accountability for past injustices and improve credibility and fairness in the U.S. immigration system.

Although numerous mechanisms exist under current law for individuals to return to the U.S. subsequent to a deportation, there are too many procedural, bureaucratic, and practical hurdles for most individuals to be able to pursue these mechanisms and vindicate their rights on their own. Additionally, even though the government has extensive authority to reopen cases, grant parole and relief, and take other steps to enable people who have been unjustly deported to come home, current processes are insufficient to adequately adjudicate requests for return.

However, models exist in other parts of the U.S. legal system which the current administration can look to in order to create a new system to address the myriad ways in which existing mechanisms are insufficient, inaccessible, and wholly inadequate. The government can use its extensive power and authority to eliminate the hurdles to bringing the unjustly deported home by reopening cases and granting parole and relief.

Creating a centralized process to review unjust deportations would mirror nationwide trends among prosecutors' offices in the criminal legal system to create Conviction Integrity Units, which



*Claudio Rojas lived in the United States since 2000 with his wife and his two DACA-recipient children, one of whom is now a lawful permanent resident. In 2012, ICE detained Claudio outside his home. While Claudio was in ICE custody in a detention center, he worked with immigrant rights' activists to shed light on its workings, a role captured in *The Infiltrators*. After months of advocacy, he was released on an order of supervision, requiring him to report to ICE for regular check-ins and permitting him to live and work to support his family in Miramar, Florida. Claudio was a victim of labor trafficking and applied for a T visa, a visa available for victims of trafficking. Claudio's visa application and a Department of Labor investigation were pending when he was detained again in 2019, after the Sundance Institute contacted ICE to request Claudio's presence at the premiere of *The Infiltrators*. Claudio is now 55 years old and living in Argentina, far from his family. Read Claudio's full story in the appendix.*

remedy misconduct or unjust decisions made by criminal prosecutors.³⁴ DHS ICE attorneys and immigration judges, like criminal prosecutors, are incentivized to “win” or resolve cases quickly — which in practice often means securing a deportation at the expense of a fair adjudication.³⁵ A system to provide unjustly deported immigrants a meaningful chance for return would help remedy harms and offer accountability within the immigration system, similarly to how Conviction Integrity Units have offered a chance for justice and accountability for the wrongfully convicted.³⁶

III. Current Procedures for Reversing Unjust Deportations Are Insufficient

The current processes available to return unjustly deported individuals are rarely accessible, more often offering only false promises. In many instances, deported individuals lack knowledge that these processes even exist.

A. Complicated and costly procedures

Some deported individuals may be able to challenge their final removal orders after deportation by filing an appeal in federal court known as a petition for review, but they may only seek review within a limited window of time. This process is typically protracted, slow, and only available to people who can find an attorney in the U.S. to continue litigating the appeal on their behalf. As in immigration court proceedings, there is no right to appointed counsel on appellate review of a removal order. Due to the significant deference federal courts give to decisions made by immigration judges and the Board of Immigration Appeals (BIA), winning an appeal of a removal order in federal court is rare.

Another post-removal option is to file a motion to reopen, asking an immigration judge to reopen a case to review the final removal order. However, individuals must file these motions within 90 days of receiving the removal order, and pay an accompanying fee.³⁷ Deported individuals who are adjusting to a precarious existence in a new country often do not have the time nor the financial resources to file these motions from abroad.³⁸ Although there are exceptions to this 90-day period, those are rarely granted.³⁹

People for whom more than 90 days have elapsed since receiving their removal order, or who have previously filed a rejected motion to reopen, must additionally convince DHS to join their motion to reopen.⁴⁰ These individuals must send a written “request for joinder” to the local ICE Office of the Principal Legal Advisor (OPLA) along with other documents asking that DHS agree to reopen the case. Presently, ICE OPLA has no formal policy regarding when to join such motions, and often does not even respond to requests — particularly

for unrepresented individuals. When a response does come back, it is most frequently a denial, even in the most straightforward and unjust cases.

Alternatively, individuals may be able to return post-deportation by applying for lawful status from abroad through their family members at a U.S. embassy or consulate. Consular processing, however, can take years and sometimes decades. The process does not remedy past legal errors in a deportation case and only offers a slim hope of future status. A consular officer has tremendous discretion to decide a visa application and there is no appeal or review process for denials.⁴¹

B. Structural barriers

Two immigration regulations commonly referred to as “departure bars” lead immigration judges or the BIA to mistakenly believe they are precluded from reviewing final removals for any individual who has already been deported.⁴² Departure bars are regulatory provisions that prohibit individuals from pursuing motions to reopen after leaving the country. However, all but one federal circuit court have invalidated these bars for certain kinds of motions to reopen.⁴³

Furthermore, even when a federal or immigration court vacates an individual’s underlying deportation order, the U.S. government offers little support in the facilitation of their actual return home. For example, ICE Enforcement and Removal Operations (ERO) offers procedures to facilitate return, but only for individuals who prevail on a petition for review, not on a motion to reopen. The ERO procedures also lack clarity, accessibility, and efficiency.⁴⁴ For example, the travel documents required for an individual’s return usually expire after one week, making it nearly impossible for many individuals to return to the United States.

The U.S. government has a particular history of opacity regarding the facilitation of return home for individuals wrongly removed, as the government itself admitted in the aftermath of the U.S. Supreme Court Case in *Nken v. Holder*.⁴⁵ In *Nken*, the government falsely represented to the Supreme Court that it had a policy and practice of facilitating return home of those who won their appeals to overturn a removal order in federal court.⁴⁶ However, three years later, the government filed a letter of correction stating that it had misled the Court and that no such policy or practice existed.⁴⁷ This debacle resulted in the ICE ERO guidance that exists today, a directive that is largely ambiguous as to when and how ICE will facilitate return after an individual successfully appeals their removal order.⁴⁸

C. Overwhelmed and punitive decision makers

Current processes and procedures for return depend primarily on decisions of immigration judges or ICE officers who work in an already overwhelmed system — making such requests a low priority. ICE officers also operate in a culture oriented toward deportation rather than ensuring justice and legal relief.

Due to these ineffective and complex procedures that are stacked against immigrants, unjustly deported individuals have been fighting for years, and sometimes decades, to return to their homes in the United States and reunite with family and community. The Biden administration can take executive action to create a meaningful mechanism to offer a chance to come home and ensure that the punitive culture that permeates ICE does not influence those who adjudicate requests to return home.

D. Need for efficiency

A centralized and meaningful process for considering applications to return home as proposed below would also streamline requests from removed individuals, ensure fairness and consistency in adjudications, reduce the burden on individual ICE attorneys and the immigration courts in which they operate, and orient DHS toward bringing home a larger number of unjustly removed individuals.⁴⁹

The backlog of removal cases in immigration court now surpasses one million cases. Under the process outlined below, a central and independent office would take on responsibility for most adjudications of applications to return home, relieving immigration courts of the burden of reviewing motions to reopen and granting relief. The process also would allow deported individuals to have their requests adjudicated more quickly by paper, without needing an in-person hearing. Currently, in the experience of NIJC and other legal service providers, deported individuals almost never receive responses to the procedural requests to return home. A centralized and independent office will ensure a response and a significantly faster adjudication of cases.

A centralized office will also alleviate disparities in decision-making that currently exist across ICE field offices considering requests from deported individuals to reopen immigration cases. Whether an individual should be reunited with their family should not depend on which ICE field office director happens to have jurisdiction of an individual's case.

IV. Recommendations

A. Establish an Office of Removal Order Review

To facilitate a meaningful chance to come home, we urge the Biden administration to create an Office of Removal Order Review (OROR) — a centralized office devoted specifically to the task of reviewing final orders of removal and stipulating to relief when appropriate, including statutory forms of relief to removal such as cancellation of removal and asylum, as well as alternative options for relief such as termination, administrative closure, and grants of deferred action.

The OROR would accept and review applications from deported individuals who seek to return home and ensure that ICE ERO effectively facilitates return of individuals whose applications are granted.⁵⁰ The office would be an independent entity under the supervision of the secretary of Homeland Security, not the director of ICE.

Individuals seeking return would send all paperwork to OROR and, in most cases, the office

would adjudicate the entire request and send final paperwork to the appropriate immigration court merely for final processing. Only in a small set of cases would the immigration court hold a hearing on relief. In other words, OROR would be responsible for most of the work to ensure individuals return home, thereby eliminating procedural hurdles and delays that usually arise in dealing with OPLA and the backlogged immigration courts.

A centralized office would significantly increase the efficiency and speed of reviewing such applications without burdening immigration courts. Additionally, by relying on the set of factors described below to evaluate each application, the office would operate differently from other agencies within DHS — shifting from a punitive culture focused on detention and deportation to one with a more equitable and inclusive ethos for immigrant families and communities.

B. Define factors for review of applications

As the OROR reviews each application, it should use a set of defined factors to determine whether to join the motion to reopen and grant relief. The factors should include the following:

1. Whether deportation resulted in separation from the individual's child, partner, spouse, parent, or other close relative, and the resulting hardships on those individuals
2. Whether the person is facing harm or hardship in their country of deportation (including widespread violence, severe poverty, or lack of access to needed mental or physical health-care)
3. Whether the deportation was in retaliation for the individual's exercise of constitutionally protected rights in the United States

4. Whether the circumstances of detention and deportation violated the individual's constitutional rights
5. The length of time the individual resided in the United States prior to deportation
6. Other evidence of family ties or established livelihood in the United States

These factors take into account many of the harms experienced by deported individuals seeking to return home, and would appropriately orient the OROR toward a mission of reuniting families and righting unjust deportations. Any immediate denials of applications should include a written decision with discussion of these factors and require supervisory review.

C. Create an accessible and efficient application and adjudication process

Through the OROR we encourage the administration to make the most expansive use of existing mechanisms in current law and regulation to provide unjustly deported individuals an accessible and more efficient process to return home. The procedures proposed here in no way should interfere with any other existing processes that benefit those seeking to return home.

Through the OROR, deported individuals would still prepare a motion to reopen their final order of removal as they do now, but would begin their application process by submitting their motion to OROR rather than a specific immigration court. Applications would include the motion and any additional paperwork supporting relief. The office would consider joining in the motion on behalf of DHS and stipulating to the relief requested. Unlike court motions, individuals seeking return would submit applications online without a fee.

In reviewing each application, OROR would rely on a set of factors as recommended above to ensure the harms and injustices experienced by those unjustly deported are given proper weight. Ideally, DHS leadership would encourage OROR adjudicators to approach cases with an inclination to exercise their discretion to ensure family and community unity. Adjudicators should be encouraged and incentivized to grant applications whenever possible.

OROR adjudicators would have a menu of options to facilitate the return and reunification of unjustly deported individuals with their family or commu-

nity. In many cases, OROR's decision to join a motion to reopen would waive the 90-day deadline or other procedural obstacles to reopening. The OROR process also would allow for the person's prior lawful status to be restored either through termination of the removal proceeding or through a grant of statutory relief. In an overwhelming majority of cases, OROR should be able to adjudicate on paper its decision to join in the motion to reopen and to stipulate to relief, avoiding the need for a contested hearing in immigration court. In some cases, where statutory relief is not available, OROR could join in the motion to reopen and grant deferred action. At any point in its process and with any case, OROR could also utilize its regulatory authority to allow the applicant to enter the U.S. prior to full adjudication of the application, through humanitarian parole as discussed below.⁵¹

Critically, DHS must ensure that people who do not have legal counsel and have limited access to technology are able to access this process. The opportunity to seek return and the process required to do so should be announced publicly and advertised by DHS on a public-facing website. Instructions should clarify that OROR adjudicators will not require procedural perfection and will consider applications that are prepared by unrepresented applicants with an eye toward leniency. Finally, to ensure that this new office is timely and transparent in its adjudication process, it should set target goals regarding how many applications it will review each month, and also report the number of applicants reviewed and granted return each month via a public-facing website.

Humanitarian parole

Humanitarian parole is a critical tool to help bring unjustly deported individuals home as soon as possible. Described in section 212(d)(5) of the Immigration Nationality Act, humanitarian parole gives the DHS secretary discretionary authority to return individuals to the United States on a case-by-case basis for a broad range of reasons regardless of the individual's status or other barriers to entry that would typically apply.⁵² Humanitarian parole should be broadly considered and used for applicants seeking to return through the proposed OROR process. However, DHS must not wait for the Biden administration to establish a centralized office to begin utilizing humanitarian parole more broadly to remedy unjust deportations. We urge the agency to take immediate steps to encourage and empower its adjudicators to grant humanitarian parole as soon as possible for unjustly deported individuals, while it establishes a more centralized and streamlined process to consider a higher volume of applications for return.

Proposed OROR process

Application: The deported individual who is seeking return submits an application to OROR, which includes: 1) a motion to reopen for DHS to join, 2) any attached applications for relief, and 3) an explanation that addresses any of the stated factors that OROR will use in its adjudication.

OROR has three options to respond:

1. **Grant full relief:** OROR agrees to join the motion to reopen (thereby waiving the 90-day deadline and other regulatory requirements) and stipulates to the relief the person is seeking. OROR communicates its decision to the immigration court that decided the case. A designated immigration judge issues a form-order through a clerk granting the motion and relief without any necessary court time.
 - » *For individuals arguing that they were not removable to begin with, OROR stipulates to termination, then the immigration court uses a form order to formally reopen the case and terminate proceedings, effectively restoring the individual's prior lawful status.⁵³*
 - » *For individuals arguing they were wrongfully or unjustly denied statutory relief (i.e. asylum, cancellation of removal, 212(h), 209(c) refugee waiver, etc.), OROR stipulates to statutory relief and the immigration court uses a form-order to formally reopen the case and grant relief on the merits of the written application.*
 - » *For individuals who are seeking relief that requires adjudication by USCIS, OROR stipulates to administrative closure or termination and works with USCIS to expedite processing and conferring of relief. OROR returns individuals to the United States and grants deferred action while USCIS adjudicates the application.*
 - » *In cases where a person is not eligible for relief, but merits exercise of prosecutorial discretion, OROR stipulates to termination and agrees to return the person to the United States and grant deferred action.*
2. **Stipulate to motion to reopen, but send to immigration court for relief:** OROR agrees to join the motion to reopen, but seeks a hearing on the person's eligibility for relief. In these limited cases, OROR would parole the individual into the country for the duration of their immigration court proceedings.
3. **Reject application in its entirety with a written denial decision that an OROR supervisor has approved.**

Adjudication timelines: This process would require OROR to coordinate with staff from the Executive Office for Immigration Review (EOIR), the Department of Justice agency which oversees the immigration courts, to ensure that the immigration courts can quickly issue form-orders rescinding removal orders and grant relief when instructed by the office. NIJC also recommends that, in its first days, OROR establish and publicize reasonable time frames within which it will respond to applications to ensure speed and accountability.

Facilitation of return: In all cases, OROR should be responsible for facilitating the process of return to the United States rather than relying on ERO to do so. The OROR should leave a request open in its files until an individual is fully returned to the United States. The office should publicly issue guidance regarding its return policy, which should ensure that returns occur at the government's expense when necessary. Critically, the OROR must provide assurances that nobody granted relief through the OROR process will be detained upon arrival in the United States.

D. Identify categories of individuals who should receive expedited review

Through OROR, the Biden administration should expedite for review and return some categories of unjustly deported individuals. We encourage the administration to consider the following four categories of applicants. These do not represent all groups who deserve to return to their homes or who should be reviewed by the OROR, but rather offer a way to prioritize the scope of review of applications and mitigate the worst harms quickly.

1. *Individuals with lawful status unjustly deported based on involvement in the criminal legal system*

We urge the administration to expedite for review applications from individuals who already received lawful immigration status or legal protection in the United States but were unjustly removed based on criminal convictions. This category should include those with lawful permanent residence, refugee, or asylee status, as well as holders of Temporary Protected Status (TPS) or Deferred Action for Childhood Arrivals (DACA). These are individuals who often have significant family and community ties and decades of residence and livelihood in the United States but were nevertheless deported based on harsh and punitive 1996 immigration laws.⁵⁴

Juan Carlos is one of the 86 percent of detained individuals who represented himself in immigration court hearings where ICE wrongfully charged his criminal conviction as a deportable offense, despite controlling case law to the contrary.⁵⁵ The immigration judge failed to advise him of this defense to removal, and then denied him relief from deportation despite the danger he faces as a gay man in El Salvador. The judge also incorrectly recorded that Juan Carlos waived his right to appeal when in fact he stated clearly the opposite. After a five-year fight to stay in the U.S. while detained in immigration detention, he was forced to return to El Salvador. Read Juan Carlos's full story in the appendix.

Passed at the height of the War on Drugs, the 1996 laws created an immigration system that relies on broad definitions of criminal conduct or alleged conduct as a basis for deportation, without sufficient regard to severity, recency, or other mitigating factors and positive equities. Facilitating the reunification of families and communities who have been separated by crime-based deportations will serve as a recognition of the outdated approach of these criminal laws and their inherent tendency to lead to racial injustice and unjust deportations. Specifically, we recommend that a new OROR expedite the following two sub-groups:

» *Individuals with lawful status who were unjustly deported where there is no lawful ground of removal*

The administration should expedite requests for return from lawfully present individuals whose underlying criminal convictions were not a viable basis for deportation at the time of their removal, or have since been found to no longer constitute a lawfully sufficient ground of removal.

Federal immigration law includes broad and vaguely defined categories of criminal convictions that can trigger deportation proceedings or preclude relief from removal for lawfully present individuals, including labels such as “aggravated felony,” “crime of moral turpitude,” and “controlled substance offense.” The determination of which particular convictions fall within these categories is a complex legal exercise. Immigration adjudi-

cators often misinterpret the laws or apply these legal terms of art in unjust and overbroad ways which result in low-level criminal offenses or dated criminal convictions triggering deportation, without regard to positive equities. In other cases, Supreme Court decisions upend previously accepted interpretations.⁵⁶ This means that a conviction that makes an individual deportable today may later be found by a federal circuit court to no longer be a deportable offense.⁵⁷ Individuals should not suffer family separation or the loss of their livelihood because of unnecessarily complex laws that violate basic notions of notice and fairness.

Similarly, individuals should not remain separated from their livelihoods on the basis of criminal convictions that have been vacated by a state court or pardoned by a state governor. If as a matter of law a conviction no longer exists, then an individual deported on the basis of that conviction should be allowed to return home.

» *Individuals with lawful status who were unjustly deported where the facts in their case weigh in favor of return home*

Second, the office should expedite review of applications from people who had lawful status and were deported based on a criminal conviction, but where change in facts or inappropriate consideration of facts led immigration judges to unfairly use their discretion to deny relief such as cancellation of removal or asylum. Statistics demonstrate that immigration judges have been arbitrary in their exercises of discretion for decades.⁵⁸ When the outcomes of a justice system are systematically flawed, as has been the case with the immigration court system, justice requires that the government revisit previous exercises of discretion which resulted in harm.



Jean Montrevil, a Haitian-American immigrant rights advocate and community leader, was deported on the basis of 30-year-old criminal convictions. Jean served a criminal sentence at a young age and, in 1994, represented himself before the immigration judge. The judge did not allow Jean to present his witnesses, denied him relief, and issued an order of deportation. Jean spent the decades that followed dedicated to his church, community, and four U.S. citizen children, but was suddenly deported under the Trump administration in 2018. A lawsuit challenging his deportation as retaliation for his activism is currently pending. His case illustrates the need for ICE to expedite return of long-time community residents torn from their loved ones unjustly, despite overwhelmingly persuasive positive equities. Read Jean's full story in the appendix.

Photo: Jean with his family in 2019 when they were able to visit him in Haiti

2. Deported DACA-eligible individuals

OROR should also expedite review of long-term residents of the United States who would have been eligible to apply for or renew grants of Deferred Action for Childhood Arrivals (DACA), but whose deportation now bars them from meeting DACA requirements.

Since the Obama administration announced DACA in June 2012, more than 700,000 individuals have benefitted from the program. DACA offers two-year, renewable protection from deportation as well as employment authorization to individuals who do not have status and who were young children when they arrived in the United States with their families.⁵⁹ In September 2017, the Trump administration rescinded the program and took steps to end it, resulting in several lawsuits.⁶⁰ Three years later, in June 2020, the Supreme Court overruled the Trump administration and held that its manner of rescinding DACA violated the law.⁶¹ It remanded three consolidated lawsuits to the lower courts for further proceedings based on its decision.⁶² Those remain pending. Due to the uncertainty created by this litigation and fear of deportation under Trump, many previous DACA holders were unable to apply for DACA or decided not to renew their protection — leading to subsequent deportation.

In the meantime, DHS's U.S. Citizenship and Immigration Services (USCIS) continues to accept DACA applications. President Biden issued an executive order that commits his administration to fortifying the program and proposed legislation that would offer an expedited pathway to citizenship for those with DACA.⁶³

In light of the legal turmoil of the past four years and recent promising developments, OROR should expedite for review and return individuals who have been deported but otherwise would be eligible to apply for DACA. This group includes people who:

1. Had approved DACA applications that were rescinded or not renewed by USCIS for discretionary reasons (rather than eligibility reasons)
2. Had DACA, but their status lapsed without timely renewal
3. Were eligible for DACA, but had not applied or had not received an approval at the time of their removal



Jesus Alberto (“Beto”) Lopez Gutierrez was a quiet and committed community member in Chicago. A construction worker, Beto worked many hours alongside his uncle to support his parents. In his free time, he helped his ailing grandmother with daily tasks. Beto had a small group of friends and loved to hike and camp. A celebratory camping trip for Beto’s 25th birthday in May 2019 led to a traffic stop. ICE arrested Beto for his undocumented status. His DACA protections had expired but were still eligible for renewal. The agency kept him detained for nearly a year until he was ordered released. During his time in detention, Beto organized fellow immigrants to publicize inhumane detention conditions. In what community members believed was retaliation for his activism, in June 2020, USCIS denied Beto’s DACA renewal application and ICE deported him immediately. His deportation broke the “continuous residence” requirement for DACA and he is technically no longer eligible for the protection. He now lives in Guadalajara, Mexico. Read Beto’s full story in the appendix.

Photo: Beto with his parents and siblings before he was deported.

Many other individuals who were deported during the Trump administration would be eligible for DACA but for their untimely removal or voluntary departure from the United States. This includes people who met all the requirements for DACA, but were summarily removed by ICE officers at the local level. Others may have opted to take a voluntary departure order from an immigration judge when they were unable to apply for DACA because the program was terminated. However, the physical act of leaving the United States disqualifies long-term residents from DACA, as they

no longer meet the physical presence and “continuous residence” requirements for the program.⁶⁴ Therefore, the OROR would need to waive the “continuous residence” requirement for individuals returned home. Taking these steps would allow long-term members of U.S. communities to rebuild their lives in the country they consider home. Depending on future congressional action, this executive act of grace might also provide them a future pathway to citizenship.

3. Individuals who were eligible for lawful status with pending USCIS applications filed prior to deportation

Next, we urge the OROR to expedite review of applications from undocumented individuals who were deported through removal proceedings when they still had applications for immigration status pending before USCIS, either as principal applicants or as beneficiaries of petitions filed on their behalf by relatives.

After spending decades in the U.S., most undocumented individuals establish full livelihoods, roots, and family ties.⁶⁵ Through ever-changing life circumstances and national immigration policies, they often become eligible for temporary or permanent lawful immigration status. For example, in 2012 when the Obama administration first introduced the program, some individuals became DACA-eligible. Others have been the victim of serious harm or violence while living in the U.S. and became eligible for special visas for survivors of crime such as the U visa or T visa, or VAWA self-petition process. For some, a spouse or adult child who is a U.S. citizen may be able to petition for them to adjust their status to lawful permanent resident.

Because applications for these programs are adjudicated by USCIS rather than ICE, many individuals are still detained or deported despite having open, pending applications for lawful status or other form of relief. In these instances, immigration judges have historically used their discretion and authority to place removal cases



Issa Sao, a 37-year-old father and husband who was living in Ohio, was deported in October 2018 to Mauritania. That country is known to enslave Black Mauritians like Issa who lack lawful status, and Issa already had endured beatings and torture there. In addition to his asylum application, Issa’s wife had petitioned for him to receive lawful permanent resident status. That application was pending before USCIS at the time of his deportation. Issa’s wife and two children struggle financially in his absence and continue to fight for his return to the U.S., where he had lived for 14 years. Read Issa’s full story in the appendix.

Photo: Issa poses with his daughter in a photo taken before his deportation

on hold while waiting for a final adjudication from USCIS.⁶⁶ However, in recent years ICE attorneys and immigration judges have become unwilling to leave removal cases open for USCIS adjudica-



James Chesire, a father of four, had lived in the U.S. for four decades when he was brutally assaulted by an ICE officer while in detention. In November 2016, ICE officials in Chicago brought James to their office and asked him to sign a document. When he asked about its contents and said that he wanted to speak with his attorney, five ICE officers tackled him to the ground, placing their weight on his back and neck such that he pleaded with them that he could not breathe. They physically forced James's fingerprints onto deportation documents, handcuffed him, yelled racial slurs, and slammed his head against a wall — leaving him unconscious in a cell. The assault led to a civil lawsuit that was still pending when he was deported. James has now been in Kenya for nearly three years, separated from his family in Kentucky and still reeling from the violence he experienced in ICE detention. Read James' full story in the appendix.

Photo: James and his wife prior to his detention and deportation

tions that may take years because of the system's backlogs.⁶⁷ Recent regulatory action and attorney general decisions also have stripped immigration judges of their ability to temporarily remove these cases from their docket all together.⁶⁸

Because of these delays and anti-immigrant policies, people in removal proceedings are forced to accept deportation and separation from their families before they receive a final answer from USCIS.

4. People who merit a positive exercise of discretion

Finally, we recommend that OROR expedite the review of applications from individuals whose compelling circumstances merit an exercise of discretion that would allow them to return to the U.S. with their families, even if existing immigration laws, which often are unforgiving, do not offer statutory relief.

DHS has broad authority to exercise prosecutorial discretion where equitable factors outweigh an individual's alleged violation of the civil immigration code. The OROR review program must leave room for just and rational decisions in cases that do not fall into other delineated categories. Justice demands that OROR give equitable consideration to individuals even if they do not meet the Immigration and Nationality Act's rigid categories of relief eligibility, especially in the broader context of an immigration system universally acknowledged to be broken. In these cases, DHS has the authority to exercise discretion by staying removal and granting deferred action, a form of temporary protection that also allows individuals to work lawfully and contribute to their families and communities.

The OROR should exercise discretion particularly in cases that implicate the broader public interest or that rectify injustices that undermine the legitimacy of the immigration system.

Precedent exists for redressing unjust deportations

Bringing Home U.S. Veteran Miguel Perez Jr.

Despite swearing an oath to defend and protect the U.S. and risking their lives to honor that oath, U.S. veterans — if they happen to be immigrants — nevertheless may still be deported.

Many noncitizen veterans enlisted as teenagers or young adults to serve the country they called home, believing that the government would reward their service automatically with citizenship. However, due to the passage of harsh 1996 immigration laws and Congress' failure to ensure naturalization for veterans, one mistake is enough to get a U.S. veteran deported without regard for their patriotic service or sacrifice to the United States. Despite the long history of immigrants serving in U.S. military interventions, a significant number of immigrant veterans continue to be unceremoniously deported.⁶⁹ The majority resided in the U.S. with lawful status and nearly all were eligible for citizenship at the time of their service of discharge.⁷⁰ However, some may not have applied because they erroneously believed they already were citizens due to their military service and oath. Others applied for citizenship, but the adjudication of their application was delayed due to red tape or their immigration office notices were lost in the mail as they transferred between service assignments. Many were ordered deported based on allegations of criminal conduct that was the direct result of the trauma they encountered during their service.

According to a report from the American Civil Liberties Union, ICE fails to exercise discretion in favor of veterans when pursuing deportation action against them, despite a 2004 memo explicitly instructing the agency to do so and further guidance in a 2011 memo stating ICE officers should include an individual's military service when exercising prosecutorial discretion.⁷¹

Establishing a centralized office, like OROR, to review unjust deportations would provide an opportunity to honor these directives by facilitating the return of U.S. veterans.

Veteran Miguel Perez, Jr., made national headlines when USCIS denied his citizenship application due to a 2010 conviction. Perez completed a 7.5-year prison sentence for the conviction and was deported to Mexico soon after in 2018.

Prior to his involvement with the criminal legal system, Miguel served two tours as a Special Forces mechanic in Afghanistan, where he suffered a traumatic brain injury due to an explosion. Despite his service and the post-traumatic stress disorder (PTSD) that led to drug addiction after his honorable discharge, ICE failed to exercise appropriate discretion to prevent his deportation.

Miguel was finally permitted to re-enter the United States to pursue citizenship after a pardon and grant of clemency from Illinois Governor J.B. Pritzker. Miguel's experience of PTSD and deportation is not uncommon for immigrant veterans, but the national press on his story helped him gain unique relief and return home. The OROR should provide similar relief to other U.S. veterans like Miguel so that he is not just an exception.

Congress also has a role to play to help bring U.S. veterans home. The Strengthening Citizenship Services for Veterans Act, introduced in the U.S. Senate, would require USCIS to facilitate naturalization services for U.S. veterans who have been deported.⁷² The bill would require noncitizens to travel to and from points of entry in their home countries to complete the process.

V. Conclusion

The U.S. government's immigration system in recent decades has prioritized mass detention and deportation over the preservation of U.S. families and communities. Through a punitive enforcement regime, DHS and Department of Justice (DOJ) effectuated policies and practices that encourage unjust and inhumane decision making at the expense of immigrants. Under the Obama and Trump administrations, the U.S. government ordered a record number of deportations of individuals who had deep ties to the U.S., including people with decades of residence.

Adopting the roadmap proposed in this paper, the U.S. government can bring home community members torn away from their livelihoods and families in an efficient and fair manner that does not burden the immigration system. This proposal offers the Biden administration an opportunity to follow through on its own promises to mitigate harms and build trust with immigrant communities. Bringing home unjustly deported fathers, mothers, community leaders, veterans, and workers is a critical step toward shifting the U.S. immigration system to one that prioritizes family and community unity. A meaningful chance to come home will also redress the racial injustice that permeates the system and instill fairness and legitimacy.

Alongside community partners, advocates, and academics, NIJC calls on the Biden administration to give the unjustly deported a chance to come home.

VI. Appendix: Bring Them Home

Unjust deportations damage family unity and disrupt community cohesion, violate principles of racial justice, and undermine the legitimacy of the U.S. immigration system. The stories on the following pages feature 10 individuals who were unjustly deported. They offer a snapshot of the painful experiences of American families and communities subjected to the deportation machine. These men and women now live in countries they hardly know or where they face grave danger, separated from their children and spouses. Deportation tore them from established careers and critical community work. The inaccurate or unfair decision-making and outcomes in their cases and in thousands of others like them continue to harm them and their families and communities.

Jesus Alberto (“Beto”) Lopez Gutierrez

Denied DACA renewal in retaliation for exposing harmful solitary confinement in ICE detention

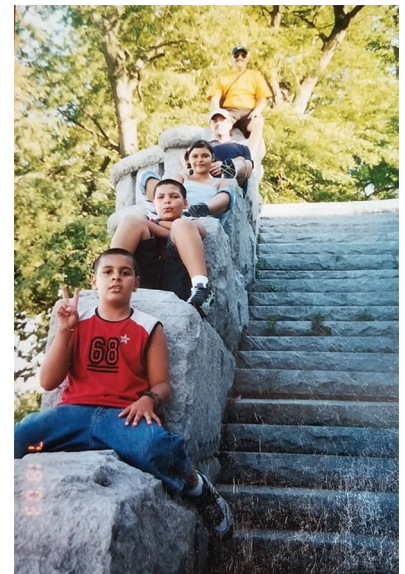
Jesus Alberto (“Beto”) Lopez Gutierrez was a quiet and committed member of his community in Chicago. A dedicated construction worker, Beto worked many hours alongside his uncle and used his income to support his parents. In his free time, he helped his ailing grandmother with daily tasks. Beto had a small group of friends and loved to hike and camp with them. A celebratory camping trip for Beto’s 25th birthday in May 2019 led to a traffic stop. His friends in the car were U.S. citizens, so they went home unharmed; but ICE arrested Beto for his undocumented status. His DACA protections had expired but were still eligible for renewal. The agency kept him detained for nearly a year until he was ordered released.

During his time in detention, Beto organized fellow detained immigrants to publicize inhumane detention conditions and demand ICE treat them with dignity. He coordinated with other local immigrant rights advocates through Organized Communities Against Deportation (OCAD) in Illinois and the national organization Mijente.⁷³ He spoke at a press conference by phone while still detained to advocate for his rights. In ICE detention, these activities landed him in “the hole,” or solitary confinement. In the outside world, Beto’s campaign received widespread publicity in the media.⁷⁴ Beloved by his community, his former high school organized a phone banking campaign to demand that ICE free Beto.

In what community members believed was retaliation for his activism, in June 2020, USCIS denied Beto’s application to renew his DACA status on the basis of past traffic violations — reasons that don’t usually lead to discretionary denials — and ICE deported him immediately after.

Although Beto had lived in the U.S. for 16 years, his deportation broke the “continuous residence” requirement for DACA and he is technically no longer eligible for it. He now lives in Guadalajara, Mexico. His brother and sister worry about Beto’s bouts of sadness — he tells them that he doesn’t belong in Mexico. Beto’s family would love for him to return and bring stability and security to their own lives. However, they worry about him being detained by ICE again — the last time, he rapidly lost weight and his mental health suffered. A humane legal system that purports to support undocumented youth and provide them a pathway to citizenship would not have silenced advocates like Beto. A fair legal system would allow Beto to come home and renew his DACA protections, waiving the continuous residence requirement for current and future applications.

Beto is represented by attorneys at Beyond Legal Aid who can be reached at aheinen@beyondlegalaid.org.



Beto (top), with his family (middle) and as a child with his siblings during a zoo visit in Chicago (bottom)

Issa Sao

Father deported to danger despite a pending application for lawful status

Issa with his wife and children prior to his deportation



In October 2018, ICE deported 37-year-old Issa Sao to Mauritania — a country known to enslave Black Mauritians like Issa who lack legal status, and where Issa had already endured beatings and torture. Issa's U.S. citizen wife and their two children fought against his deportation to no avail and have fought for his return for over two years. Issa lived in the U.S. for 14 years and spent five months between several ICE detention facilities prior to his deportation.

Despite the inevitability of harm and violence Issa would face in Mauritania, an immigration judge cited minor inconsistencies in the story Issa shared in court to deny his asylum application and appeal. In addition to his asylum application, Issa's wife had petitioned for him to receive lawful permanent resident status. That application was pending before USCIS at the time of his deportation. To temporarily escape likely slavery and/or physical harm in Mauritania, Issa now resides in Senegal while his wife struggles financially and emotionally to support their two children in Cincinnati, Ohio. Issa has emptied his entire retirement savings account to support himself because finding a job in Senegal or Mauritania is nearly impossible.

Issa's deportation was one of thousands in a concerted effort by the Trump administration to ramp up deportations of African immigrants to countries like Mauritania despite dismal records of human rights abuses.⁷⁵ Bringing Issa home while USCIS adjudicates his beneficiary I-130 petition will reunite him with his U.S. citizen wife and children, ensure his economic and general survival, redress an injustice of the explicitly racist agenda of the Trump administration, and offer Issa a shot at lawful permanent status.

For more information on Issa's case, contact Lynn Tramonte at Ohio Immigrant Alliance, latramonte@gmail.com.



Juan Carlos Romero Escobar

Permanent resident unjustly deported after an immigration judge's legal error

In July 2015, after fighting his case for five years from immigration detention, Juan Carlos Romero Escobar was deported to El Salvador based on a state criminal conviction that should not have been a basis for deportation in the first instance. Despite clear case law, the immigration judge failed to advise Juan Carlos — who was unrepresented at the time — that he was not deportable for his underlying state offense under binding precedent in the Ninth Circuit Court of Appeals. The judge proceeded to deny Juan Carlos affirmative relief from deportation. At the end of his hearing, when Juan Carlos noted in plain terms that he wanted to appeal the deportation order, the immigration judge erroneously noted that he had “waived his right to appeal.” Juan Carlos and his family spent years trying to undo the immigration judge’s errors, but their efforts were thwarted by procedural and jurisdictional issues. Ultimately, despite the fact that he was not removable, flawed immigration laws and procedures allowed DHS to deport Juan Carlos.

Juan Carlos had entered the U.S. as a young child and obtained his lawful permanent residence in 1992. He grew up in California and openly identified as a gay man. When Juan Carlos moved to Arizona for a job in 2007, he met a young man online and began a relationship with him. Although the young man represented himself to be older than 18, he turned out to be a minor. Because of this relationship, Juan Carlos was arrested, pleaded guilty to an Arizona statute penalizing sexual conduct with a minor, and was sentenced to probation.

In 2012, ICE detained Juan Carlos and placed him into removal proceedings on the basis of this conviction. He appeared without an attorney for the entirety of his proceedings. At this first hearing, he conceded that he had been convicted of the Arizona state crime, but the immigration judge failed to advise him that under binding precedent, his conviction did not count as the type of offense that ICE claimed could lawfully support his deportation.⁷⁶ Simply put: ICE had no legal basis to deport Juan Carlos.

Juan Carlos also applied for affirmative relief from deportation through applications for asylum, withholding of removal, relief under the Convention Against Torture, and cancellation of removal. Despite his nearly 27 years in the United States (21 as a lawful permanent resident), his strong family ties, long work history, and the hardships his family would suffer if he were to be deported, and despite his testimony about his fears of returning to El Salvador as an openly gay man, the judge ordered Juan Carlos to be deported.

Since his deportation to El Salvador, Juan Carlos has been threatened for being gay and therefore keeps a low profile. His family in California worry about Juan Carlos’ safety in El Salvador, but also fear that ICE might detain him again if he returns. Neither he nor his family can imagine suffering through prolonged detention again. A legitimate immigration system must bring Juan Carlos home and give him back the lawful permanent resident status which was erroneously taken from him.

Juan Carlos was represented by Keren Zwick at the National Immigrant Justice Center. Keren can be reached at kzwick@heartlandalliance.org.

Garfield Kenault Lawrence

Father deported based on wrongful categorization of criminal offense

In January 2013, DHS deported Garfield Kenault Lawrence to Jamaica, a country that he had not seen in 16 years, tearing him from his U.S. citizen newborn son and leaving his U.S. citizen wife in a desperate economic position. Kenault spent more than a year in ICE detention prior to his deportation, meeting his newborn, Devario, for the first time through a glass partition in the visitation area.⁷⁷ Kenault did not get to hold his only son in his arms for more than a year, after he had been deported to Jamaica and his family had saved up enough money to visit him.

Kenault and his son during a visit in Jamaica in 2019



Kenault was a lawful permanent resident, brought to the United States as a child. He and his wife, Melissa, met in school in Front Royal, Virginia. They were high school sweethearts, and Kenault was on the school wrestling team. Melissa was pregnant with Devario when ICE detained Kenault in 2011 on the basis of marijuana convictions from years earlier. Melissa often asks how she ended up as a single working mom, despite being married to a wonderful man who wants more than anything to be there for his child. Melissa struggles to support herself and Devario, yet conscientiously saves whatever money she can to pay for Devario's visits to his father in Jamaica.

Kenault's life is precarious in Jamaica. The neighborhood where he lives is dangerous and frequently under curfew. Accessing the internet is difficult. Kenault lives for Devario's visits to Jamaica and his regular WhatsApp talks with Melissa and Devario.

Three months after Kenault's deportation, the U.S. Supreme Court issued a decision revealing that ICE had wrongfully categorized Kenault's conviction as an "aggravated felony." Had this decision been issued prior to his deportation, Kenault would have been able to ask the immigration judge for a form of relief called cancellation of removal. Through his own dedicated research from Jamaica in 2013, Kenault learned of the Supreme Court's decision and emailed immigration attorneys in the U.S. to take on his case and help him return to his family. For the past eight years, with the help of multiple attorneys and filings before the BIA and Fourth Circuit Court of Appeals, Kenault has been trying to come home. Through all these years, DHS has persisted in refusing to join Kenault's motion to reopen even though they do not contest that Kenault is eligible for cancellation of removal. Under a more humane system that fully recognizes the chance to come home, DHS would review Kenault's request, apply the applicable Supreme Court decision, and give him the opportunity to reunite with his family.

Kenault is represented by Maureen Sweeney, director of the Immigration Clinic at the University of Maryland Carey School of Law. She can be reached at msweeney@law.umaryland.edu.



Jean Montrevil

Immigrant rights advocate deported in retaliation on the basis of 30-year-old drug convictions

Jean Montrevil, co-founder of the New Sanctuary Coalition in New York City, was deported to Haiti in January 2018 in retaliation for his immigrant rights advocacy. At the time of his deportation, Jean's criminal convictions were 30 years old.

Jean experienced a difficult childhood, raising and supporting himself from the age of 10 after his mother died and his father fled political violence in Haiti. In the late 1980s, at the height of the U.S. War on Drugs, Jean was arrested several times, resulting in three drug convictions and a decade of imprisonment. While Jean was imprisoned, the government initiated deportation proceedings against him. In 1994, Jean represented himself before the immigration judge, who did not allow Jean to present his witnesses, denied him relief, and issued an order of deportation.

When Jean was released from prison in 2000, he was determined to correct the course of his life. Jean showed up as a supportive and loving father to his son, who had been born shortly after Jean was incarcerated. After he met and married his wife, he had two more children, and became an adoptive father to his wife's oldest daughter. Jean developed a number of community services through his church, volunteering with HIV patients and driving families to jails to see their incarcerated loved ones. But in 2005, out of the blue, Jean was arrested and detained by ICE. Eventually, ICE released Jean and granted him an order of supervision, which provided him permission to stay in the United States. In 2007, he helped found the New Sanctuary Coalition and became a vocal advocate for immigrants. Although this public political stance was a natural outgrowth of his love and support for his community, Jean's work with the New Sanctuary Coalition drew ICE's attention to his own immigration case.

In 2010, despite his community's overwhelming display of support, ICE attempted to deport Jean.⁷⁸ They eventually released him and reinstated his order of supervision. In 2017, ICE placed the New Sanctuary Coalition under surveillance and planned to deport its leaders to harm the organization.⁷⁹ Then, in January 2018, ICE detained and deported Jean to Haiti without notice. An ICE official referred to Jean's deportation as an orchestrated "war game."⁸⁰ ICE's practice of targeting and deporting immigrant activists led Jean to file a civil suit in federal court in January 2020 for the violation of his First and Fifth Amendment rights, asking that he be returned home.⁸¹

For the past three years, Jean's entrepreneurial spirit has been dimmed by the realities of the economic and political violence in Haiti. Jean's fledgling restaurant has been burned down, vandalized, and subject to closure due to curfew. His economic struggles have made him reliant on small donations from his community in the United States, showing his deep ties to New York. Jean's children, aged between 14 and 31, are deeply impacted by his forced absence. His daughter was forced to take a leave of absence when she couldn't rely on her father to pay her college tuition. His son, admitted to one of New York City's top high schools, struggled in school after his father's deportation.

More than anything, Jean and his family are suffering from the immigration system's lack of forgiveness and overly punitive laws of the 1990s. Despite the 30 years that have passed since Jean was convicted and despite all he has done for thousands of people in New York, it took ICE just two weeks to undo his entire life in the United States. A more humane and equitable immigration system would reunite Jean with his family and the community he lovingly built and supported over decades.

Jean is represented by Alina Das, co-director of the Immigrant Rights Clinic at the New York University School of Law, and Diana Rosen and Lauren Wilfong. Alina can be reached at alina.das@nyu.edu.



Jean with family in Haiti (top) and with family and clergy during a Jericho walk in 2017 at ICE's New York headquarters (bottom). Credit: Michelle Thompson, Judson Memorial Church

Dora Platero Cuadra

Primary caretaker of three disabled U.S. citizen children deported after a hostile immigration hearing

DHS deported Dora Platero Cuadra to El Salvador despite the fact that she was the primary caregiver of three U.S. citizen children with exceptional special needs.

Showing brilliant resilience from her own abusive childhood, Dora is the attentive and loving mother of a child who has cerebral palsy and a chronic lung condition, another who has severe developmental disabilities, and a third who has a learning disability. Each child is under the age of 12.

In addition to surviving her own mother's alcoholism, Dora was 14 years old and newly arrived in the U.S. when she was raped — resulting in a pregnancy. In 2006, Dora's mother passed away in El Salvador, exacerbating the pain of Dora's past traumas. Lacking medical and mental health support, Dora turned to alcohol and obtained three DUI convictions, which resulted in ICE placing her into removal proceedings.

Dora worked hard to rehabilitate from these mistakes and continued to responsibly care for her children and support her husband in his work. However, Dora's work to obtain a second chance for herself and her family were disregarded in a hostile immigration court hearing. The immigration judge interrogated and berated Dora with detailed questions for 40 minutes and glossed over Dora's irreplaceable role in ensuring the day-to-day survival of her special needs children. The judge focused singularly on her criminal convictions, without adequately considering her traumatic past. In an unjust decision, the judge ultimately found Dora to lack the "good moral character" necessary for cancellation of removal because of her convictions. The judge denied her relief from deportation.

Dora has now been in El Salvador for over a year and is struggling without the love and support of her husband and with debilitating concern regarding the care of her children. Her husband has started the process for obtaining lawful permanent residence for Dora and has obtained an approved I-130 family petition for her. But continuing the process of sponsoring Dora through the U.S. consulate while she is in El Salvador will take years that he cannot afford. Through the OROR, DHS should bring Dora home so she can reunite with her children and complete her process of adjusting status to lawful permanent residence.

Dora is represented by Charles Roth at the National Immigrant Justice Center. Charles can be reached at croth@heartlandalliance.org.

James Chesire

Father deported after violent assault in ICE detention

At the end of a year in which a national movement called out the continued racial injustices imposed on Black Americans at the hands of law enforcement authorities, James Chesire's brutal assault and subsequent deportation by ICE resulted in media attention,⁸² a civil lawsuit against the federal agency⁸³, and demands for his freedom from detention.⁸⁴ Nevertheless, his case resulted in deportation.

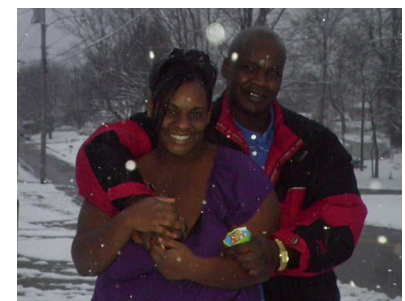
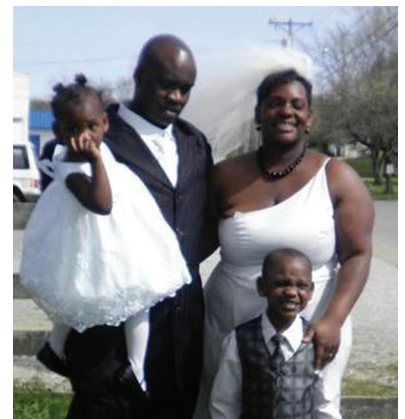
In November 2016, ICE officials in Chicago brought James to their office and asked him to sign a document. When he asked about its contents and said that he wanted to speak with his attorney, five ICE officers tackled him to the ground, placing their weight on his back and neck such that he pleaded with them that he could not breathe. They physically forced James's fingerprints onto deportation documents, handcuffed him, and continued to brutally assault him while yelling racial slurs, including slamming his head against a wall. The officers left him unconscious in a cell. James filed a lawsuit against ICE based on this incident; but, despite demands that he be released from ICE custody, ICE deported him while the case was still pending.

James lived in the United States for nearly two decades. During this time, he fathered four children, now aged 11 to 18, and married his wife who later petitioned for his lawful permanent residence. In 2013, an immigration judge decided in an unjust exercise of discretion that James did not merit lawful permanent residence because his ties to his children, wife, and the life he had created in Kentucky were not sufficient to outweigh the criminal convictions that he had obtained. The immigration judge ordered his deportation. James appealed this decision but received a final removal order. ICE detained James in January 2015 but was unable to remove James for multiple years during which time ICE officers assaulted him.

James has now been in Kenya for nearly three years, separated from his family and still reeling from the violent abuse he faced in U.S. immigration detention. He seeks to return to his family and livelihood in Kentucky. James's wife has considered beginning his green card process again, but is discouraged by the years and years such a process can take through the U.S. consulate. James's wife is now solely financially responsible for their children. A legitimate U.S. immigration system that values family, racial justice, and community cohesion would bring James home to the United States to reunite with his family and heal from the abuse he suffered at the hands of ICE.

James is represented by Mark Fleming at the National Immigrant Justice Center. Mark can be reached at mfleming@heartlandalliance.org.

James with his wife and children, prior to his deportation



Claudio Rojas

Father deported in retaliation for exercising his First Amendment right to free speech



Claudio (top), with his family prior to his deportation (bottom)

In 2019, after 19 years of living in the United States, Claudio Rojas was deported by ICE in retaliation for his advocacy and organizing with the National Immigrant Youth Alliance. Claudio's activism was featured in a Sundance award-winning feature film, *The Infiltrators*, attracting media attention.⁸⁵ One month after the film's premiere, Claudio checked in at the ICE office in Miami — usually a routine procedure without incident — where he was detained and eventually deported.

Since 2000, Claudio had lived in the United States with his wife and his two DACA-recipient children, one of whom is now a lawful permanent resident. In 2010, ICE initiated removal proceedings against Claudio, and he received a grant of voluntary departure that required him to depart the U.S. to Argentina. Due to his wife's failing eyesight and the need to support their family, Claudio stayed. In 2012, ICE detained Claudio outside his home. While Claudio was in ICE custody in a detention center, he worked with immigrant rights activists to shed light on its workings, a role captured in *The Infiltrators*.⁸⁶ After months of brave advocacy, he was released on an order of supervision, requiring him to report to ICE for regular check-ins and permitting him to live and work in Miramar, Florida.

Claudio was a victim of labor trafficking and applied for a T visa, which is available for victims of trafficking. Claudio's application was pending before USCIS at the time of his deportation, and he was scheduled to meet with the Department of Labor, which was investigating the labor trafficking complaint.

He was detained again in 2019, just after the Sundance Institute wrote to ICE to seek Claudio's presence at the Sundance Film Festival and just before *The Infiltrators'* Miami Film Festival premier. His re-detention sent shockwaves through the immigrant rights and documentary film communities.⁸⁷ Claudio filed a civil lawsuit in federal court, alleging clear facts showing ICE had retaliated against him and that he had a due process right to have his T visa fully adjudicated. He was nonetheless deported. Claudio's lawsuit remains pending, but USCIS later denied his T visa application, in part because he no longer met requirements for physical presence in the United States.

Claudio is now 55 years old and living in Argentina, far from his family. He works in Argentina and his sons work multiple jobs in Florida in order to support the whole family. They hold on to hope that they will be reunited one day. Indeed, the calls for Claudio's return to his home in Florida continue with the hope that ICE will end its practice of targeting political activists.⁸⁸ A legitimate immigration system would uphold the constitutional rights of all people in the United States and rectify its past wrongs in deporting individuals for exercising their First Amendment rights. Claudio belongs at home in Florida with his family.

Claudio is represented by Alina Das, co-director of Immigrant Rights Clinic at the New York University School of Law. She can be reached at alina.das@nyu.edu.

Able Kindheart⁸⁹

40-year U.S. resident and assault victim deported for decades-old drug offenses

Born in Sierra Leone in 1972, Able Kindheart arrived in the U.S. at the age of six to reunite with his parents. In 1989, the U.S. government granted Able lawful permanent resident status. He lived continuously in the U.S. for 40 years until ICE deported him to Sierra Leone — a country that he could hardly claim to know.

While growing up in the United States, Able and his siblings often had to fend for themselves. Able was bullied in school and did not have a stable home setting because his parents were always working. In the early 1990s, he began to use marijuana and eventually became addicted to PCP. Because of his addiction, he became involved in selling drugs and received a conviction for drug-related offenses in his early 20s.

Upon his release from prison in 2010 and after serving his entire criminal sentence, ICE detained Able and placed him into removal proceedings due to his conviction. Although an immigration judge granted Able a deferral of removal under the Convention Against Torture, the Board of Immigration Appeals reversed the decision on appeal. Despite the reversal, ICE released Able from detention under supervision in 2012. He had spent two years in immigration detention.

After his release, Able finally had a chance to take steps to change the course of his life. He stayed gainfully employed, filed his income tax returns on a timely basis, and enrolled in several job skills courses. He used those skills to help people in his community, including through his church and leadership of an adolescent mentoring program. He also reconnected with his family, especially his U.S. citizen daughter.

On April 19, 2019, Able applied for a U visa based on a violent assault he suffered in the 1990s. Able had intervened to protect a woman who was being harassed by a group of men, who in turn assaulted Able and left him unconscious. Able sustained injuries to his face, head, chest, ribs, and liver and received treatment during a several-day stay in the hospital. This violent assault left deep emotional scars, triggering post-traumatic stress disorder.

But in July 2019, despite the pending U visa application, and without any notice, ICE detained Able at his regularly scheduled check-in. After an unsuccessful attempt to seek a stay of removal, Able was deported. Later that same year, USCIS denied Able's U visa application despite the broad waiver provisions that were available and despite the voluminous evidence of his rehabilitation. His appeal from his U visa denial remains pending.

Today, Able is living in Sierra Leone, where he is separated far from his U.S. citizen daughter, sister, mother and other relatives. Able accepts responsibility for his past mistakes and has taken significant measures to rehabilitate himself and serve his community. In another context, recovery from a drug addiction and his dedication to ending violence in his community would be applauded, but because he was not born in the United States, the government has instead invested unnecessary resources to banish him from his home of 40 years.

Able was represented by Sarah Gillman at the Rapid Defense Network. She can be reached at sarah@defensenetwork.org.

Howard Bailey

U.S. veteran and permanent resident, deported after a one-time marijuana offense



Howard

Howard Bailey moved to the United States in his teens after obtaining lawful permanent residence through his U.S. citizen mother, who worked tirelessly to give her children a better life. He joined the Navy after high school and served for nearly four years, including two tours in Operation Desert Storm. Howard was awarded the National Defense Service Medal and honorably discharged.

In 1995, shortly after his return from the Persian Gulf, Howard was convicted of a first-time marijuana offense. With Virginia's strict mandatory minimum sentencing laws for drug crimes, Howard did not have many options. His lawyer advised him to plead guilty and take 15 months in a state work camp rather than risk going to trial and a much higher sentence. Howard received no advice on the devastating immigration consequences that would result from this decision. After completing his sentence, Howard returned to his family and worked hard to rebuild his life. He devoted himself to his wife and two children, started two small businesses, and employed seven people. In 2005 Howard applied to become a US citizen, and disclosed his old offense. But in 2010, after five years of delays, his application was denied. At 6 a.m. one morning, ICE agents handcuffed and detained him at his home in front of his wife and children.

After two years fighting his case in immigration detention far away from his family, Howard was deported to a country he had not seen in 24 years. Howard lives in constant fear of violence, as people who have been deported are stigmatized in Jamaica. He lost his home and businesses, and his teenage children have struggled emotionally and academically without him. Howard has become an advocate for himself and other deported veterans, speaking to members of Congress and the press about the harmful impact of current immigration laws on veterans. In December 2017, Governor Terry McAuliffe granted Howard a simple pardon, representing official forgiveness on behalf of the Commonwealth of Virginia.

While the Trump administration showed no mercy to deported veterans, Howard's advocates are hopeful that the Biden administration will review his case and consider joining in a motion to reopen his immigration proceedings to allow him an opportunity to present his equities before an immigration judge.

To learn more about Howard's case, read the Politico feature "[I Served My Country. Then It Kicked Me Out.](#)" or contact his attorney Alisa Wellek at alisa@justcounsel.us.

Leonel Pinilla

Deported for marijuana possession now legal under New York law

In 2009, Leonel Pinilla was arrested for traffic-related infractions, triggering an arrest-to-deportation pipeline that would tear his family — already in crisis — apart. ICE initiated deportation proceedings against Leonel on the basis of minor marijuana possession convictions and one drug-related felony conviction from 1992. At the time ICE detained Leonel, his teenage daughter had recently been diagnosed with thyroid cancer, his young adult son was house-bound due to severe depression, and his wife suffered from chronic pain which left her nearly unable to walk. The family also faced eviction proceedings.

Leonel spent years in ICE detention fighting his case before he was deported in 2012. In the years since his deportation, his daughter has been forced to take on the role of breadwinner for her mother and brother, and her own young family including a baby daughter. Leonel himself lives in an unstable region in Panama, frightened for his own safety and unable to access reliable internet which makes connecting with his family difficult.

In 2019, New York State passed a new law decriminalizing minor marijuana possession, and with it overturning the convictions that had rendered Leonel unable to seek a waiver of removal more than a decade ago. Leonel's family has never given up on the possibility of reuniting with their father. His daughter, more than anything, hopes her father will be able to come home to see her receive her master's degree.

Leonel is represented by Charles Roth at the National Immigrant Justice Center. Charles can be reached at croth@heartlandalliance.org.



Leonel with his family, when his children were still young and prior to his deportation nearly 10 years ago

Endnotes

1. See e.g., The Ohio Immigrant Alliance and its #ReuniteUS campaign, <https://bit.ly/MemoReuniteUS>, and ongoing petition <https://bit.ly/BidenReuniteUS>; The Rhizome Center for Migrants #right2return campaign and open letter to the Biden campaign supporting a right to return, <https://www.rhizomecenter.org/2021/01/open-letter-to-biden-bill-sponsors-caucus-leadership/>; and Otros Dreams en Accion and their efforts to support deported families and those in exile, <http://www.odamexico.org/>. See also, various ongoing and former campaigns to bring deported individuals home including the Asian Prisoner Support Committee's #Right2Reunite campaign, <http://righttoreunite.org/>, 1LoveMovement's right to return campaign, <https://1lovemovement.wordpress.com/category/community-power/>, and the Bring Jean Home! campaign, <https://www.bringjeanhome.org/>.
2. Bill Hing & Lizzie Bird, *Curtailing the Deportation of Undocumented Parents in the Best Interest of the Child*, 35 Geo. Immigr. L. J. __, U. S.F. L. Res. Paper No. 2020-08, 1 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3680173.
3. See, e.g., Exec. Order No. 14013, 86 Fed. Reg. 8839 (Feb. 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/> ("United States humanitarian programs should . . . reflect[] the principle that reunifying families is in the national interest."); Exec. Order No. 14011, 86 Fed. Reg. 8273 (Feb. 2, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-the-establishment-of-interagency-task-force-on-the-reunification-of-families/> (establishing an Interagency Task Force on the Reunification of Families).
4. Biden for President, *The Biden Plan for Strengthening America's Commitment to Justice*, Biden-Harris (2020), <https://joebiden.com/justice/#> [hereinafter Biden Plan].
5. Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement* (Nov. 22, 2019), <https://americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.
6. Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Res. Ctr., (Nov. 2011), http://www.asph.sc.edu/cli/word_pdf/ARC_Report_Nov2011.pdf.
7. Hing & Bird, *supra* note 2, at 7 (Children with caregivers "who are at risk for detention or deportation are already at much higher risk for poor health outcomes than those with documented parents' because '[t]he daily fear of deportation can become so severe that it can have resoundingly negative health impacts.") (alteration in original) (citation omitted).
8. *Id.* at 6.
9. *Id.* at 5 (citation omitted).
10. Julia Preston, *The Trust Costs of Deportation, Marshall Project* (June 18, 2020), <https://www.themarshallproject.org/2020/06/22/the-true-costs-of-deportation>.
11. Kathleen M. Roche, Ph.D. et al., *Association of Family Member Detention or Deportation With Latino or Latina Adolescents' Later Risks of Suicidal Ideation, Alcohol Use, and Externalizing Problems*, JAMA Pediatrics (Mar. 16, 2020), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2762642>.
12. Hing & Bird, *supra* note 2, at 6-7 (noting a study in 2017 found that the loss of a father, including through deportation or incarceration, is associated with "shorter telomere length, a biological phenomenon linked to a wide range of diseases").
13. *Id.*; see also Preston, *supra* note 10.
14. Melinda D. Anderson, *How Fears of Deportation Harm Kids' Education*, Atlantic (Jan. 26, 2016), <https://www.theatlantic.com/education/archive/2016/01/the-educational-and-emotional-toll-of-deportation/426987/>.
15. Preston, *supra* note 10.
16. *Id.*
17. *Id.*
18. See Anita Isaacs & Anne Preston, *Lives Derailed*, N.Y. Times (Jan. 27, 2021), <https://www.nytimes.com/interactive/2021/01/27/opinion/mexico-deportation-immigration-reform.html>.
19. Chris Outcalt, *When a Family Separation Becomes Permanent*, Atlantic (Aug. 2, 2020), <https://www.theatlantic.com/politics/archive/2020/08/ice-family-separation-death/614335/>.
20. The note reads as follows: "This is too much. I can't stand him not being w/ me and the thought of him

not being w/ me to share our future together like we planned. I'm tired of crying about it every night when Idrissa doesn't deserve this; we both don't. I'm sorry everyone. I'm sorry Idrissa, I love you, love you all. Please cremate me. This pain is too much. My heart is broken. Don't dare call me selfish. You don't know what these 265 days have been like. Anyone who voted for Trump cannot attend my funeral. You helped ruin my life."
Id.

21. Soc'y Cmty. Research & Action Div. of the Am. Psychological Ass'n, *Statement on the Effects of Deportation and Forced Separation on Immigrants, Their Families, and Communities*, 62 Am. J. Community Psychol. 3, 3-12 (2018), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/ajcp.12256>; Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families and Communities*, Ctr. Am. Progress (Aug. 2012), <https://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf>; Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, Urb. Inst. (Feb. 2010), <https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF>.
22. Outcalt, *supra* note 19.
23. See Christopher Lyons et al., *Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities*, 78 Am. Soc. Rev. 604 (2013), <http://asr.sagepub.com/content/early/2013/06/14/0003122413491964>; Tom Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Ctr. Am. Progress (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.
24. See Biden Plan, *supra* note 4; see also Elena Moore, *Trump's and Biden's Plans for Racial Equality*, NPR (Oct. 16, 2020), <https://www.npr.org/2020/10/16/916741084/trumps-and-biden-s-plans-for-racial-equality>.
25. See e.g., Janell Ross, *How Black Voters in Key Cities Helped Deliver the Election for Joe Biden*, NBC News (Nov. 7, 2020), <https://www.nbcnews.com/news/nbcblk/how-black-voters-key-cities-helped-deliver-election-joe-biden-n1246980>; Rashi Randev, *US Presidential Election 2020: Black, Brown and Biden*, Financial Express (Nov. 10, 2020), <https://www.financialexpress.com/world-news/us-presidential-election-2020-black-brown-and-biden/2125410/>; Adrian Carrasquillo, *Largest Coalition Aimed at Black and Brown Voters in Florida Endorses Biden*, Newsweek (Sept. 23, 2020), <https://www.newsweek.com/biden-wins-endorsement-largest-florida-coalition-black-brown-voters-1533842>.
26. Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> ("Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.").
27. In 2017, almost 74% of people arrested by Immigration Customs Enforcement (ICE) had a criminal conviction. Jeremy Raff, *The 'Double Punishment' for Black Undocumented Immigrants*, Atlantic (Dec. 30, 2017), <https://www.theatlantic.com/politics/archive/2017/12/the-double-punishment-for-black-immigrants/549425/>.
28. Raff, *supra* note 27; see also Nayna Gupta & Heidi Altman, *Disentangling Local Law Enforcement From Federal Immigration Enforcement*, Nat'l Immigr. Justice Ctr. (Jan. 13, 2021), <https://immigrantjustice.org/research-items/policy-brief-disentangling-local-law-enforcement-federal-immigration-enforcement>; Julianna Morgan-Trostle et al., *The State of Black Immigrants*, Black Alliance Just Immigr., <https://www.sccgov.org/sites/oir/Documents/sobi-deprt-blk-immig-crim-sys.pdf>.
29. Raff, *supra* note 27.
30. Tanya Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program*, 11 Latino Stud. 271 (2013), <https://escholarship.org/uc/item/8g-w8r8xj>; Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, N.Y. Times (Apr. 6, 2014), <https://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html>.
31. *Id.*; Golash-Boza & Hondagneu-Sotelo, *supra* note 29.
32. Yolanda Vazquez, *Constructing Crimmigration: Latino Subordination in a "Post-Racial" World*, 76 Oh. St. L. J. 599 (2015), https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1256&context=fac_pubs.
33. See e.g., Kelly Lytle Hernandez, "Amnesty or Abolition? Felons, illegals, and the case for a new abolition movement" *Boom: A Journal of California*, Vol. I, Number 4, 57-59; Michelle Alexander, "The Injustice of This Moment Is Not an 'Aberration,'" *The*

- New York Times*, January 17, 2020, <https://www.ny-times.com/2020/01/17/opinion/sunday/michelle-alexander-new-jim-crow.html>.
34. Josie Duffy Rice, *Do Conviction Integrity Units Work?*, Appeal (Mar. 22, 2018), <https://theappeal.org/do-conviction-integrity-units-work-a718bbc-75bc7/>.
 35. Attorneys at the Office of the Principal Legal Advisor serve as the government's counsel in removal proceedings, and per the agency's own budget documents the agency is oriented toward securing the highest percentage of removal orders possible. See ICE's Fiscal Year 2021 Congressional Budget Justification at p. 9, https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf.
 36. While Conviction Integrity Units ("CIUs") are touted by progressive prosecutors' offices, they are not without flaws. CIUs process and exonerate a miniscule amount of the review requests they receive, despite there being widespread official misconduct among prosecutors. An OROR would implement the lessons learned through existing CIUs by ensuring that the office has capacity and clear guidelines to process a significant number of requests for review.
 37. See 8 C.F.R. § 1003.23
 38. See Immigration and Nationality Act (INA) § 240(c)(7), 8 U.S.C. § 1229a(c)(7) (2011); see also 8 C.F.R. § 1003.23 (2020) (motions before the immigration court); 8 C.F.R. § 1003.2 (2020) (motions before the BIA).
 39. Equitable tolling is a principle that entitles litigants to an extension of non-jurisdictional filing deadlines if they act diligently in pursuing their rights but are nonetheless prevented from timely filing by some extraordinary circumstance. See, e.g., *Holland v. Florida*, 560 U.S. 631 (2010). Nearly every circuit court of appeals to address the issue in a published decision has found that equitable tolling applies to consideration of Motions to Reopen in immigration court. See, e.g., *Lugo-Resendez v. Lynch*, 831 F.3d 337 (5th Cir. 2016); *Kuusk v. Holder*, 732 F.3d 302 (4th Cir. 2013); *Avila-Santoyo v. U.S. Att'y Gen.*, 713 F.3d 1357 (11th Cir. 2013) (per curiam); *Borges v. Gonzales*, 402 F.3d 398 (3d Cir. 2005); *Pervaiz v. Gonzales*, 405 F.3d 488 (7th Cir. 2005); *Hernandez-Moran v. Gonzales*, 408 F.3d 496 (8th Cir. 2005); *Harchenko v. I.N.S.*, 379 F.3d 405 (6th Cir. 2004); *Riley v. I.N.S.*, 310 F.3d 1253 (10th Cir. 2002); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176 (9th Cir. 2001) (en banc); *Iavorski v. I.N.S.*, 232 F.3d 124 (2d Cir. 2000).
 40. See 8 C.F.R. 1003.23(b)(4)(iv).
 41. See *Kerry v. Din*, 576 U.S. 86 (2015) (plurality opinion); see also *Sesay v. United States*, 984 F.3d 312, 315 (4th Cir. 2021) ("The doctrine of consular nonreviewability is well established."); *Baan Rao Thai Rest. v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021) (describing the doctrine of consular nonreviewability).
 42. See 8 C.F.R. § 1003.2(d) (motions filed with the Board of Immigration Appeals); see also *id.* § 1003.23(b)(1) (motions filed before the Immigration Court); see generally Beth Werlin & Trina Realmuto, *Departure Bar to Motions to Reopen and Reconsider: Legal Overview and Related Issues*, Am. Immigr. Council (Nov. 20, 2013), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/departure_bar_to_motions_to_reopen_and_reconsider_11-20-13_fin.pdf.
 43. Werlin & Realmuto, *supra* note 43 (citing cases and noting that the U.S. Court of Appeals for the Eighth Circuit has not yet ruled on the issue).
 44. See, e.g., U.S. Immigr. & Customs Enf't, U.S. Dep't Homeland Sec., No. 11061.1, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens* (2012), https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf [hereinafter ICE ERO]; see also U.S. Immigr. & Customs Enf't, U.S. Dep't Homeland Sec., FAQs: *Facilitating Returns for Lawfully Removed Aliens*, ice.gov (Nov. 3, 2020), <https://www.ice.gov/remove/facilitating-return> [hereinafter ICE FAQs].
 45. 556 U.S. 418 (2009).
 46. Lyle Denniston, *Regrets, But No Apology*, SCOTUSblog (Apr. 25, 2012), <https://www.scotusblog.com/2012/04/regrets-but-no-apology>.
 47. Letter from Michael R. Dreeben, Deputy Solic. Gen., U.S. Dep't Just., to Hon. William K. Suter, Clerk, U.S. Sup. Ct. (Apr. 24, 2012), <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/04/Nken-letter-to-SCt-4-24-12.pdf>.
 48. See generally ICE ERO, *supra* note 46; see also ICE FAQs, *supra* note 46.
 49. Delegating solely to DHS discretionary authority to parole will also eliminate the need for consular processing at U.S. consulates abroad and mitigate the burden of such an office.
 50. To ensure effective return of individuals, the ICE Director, in consultation with OROR, should issue a revised directive and guidance on "Facilitating Return for Certain Lawfully Removed Aliens," ICE Directive 11061.1. and the accompanying Frequent-

- ly Asked Questions which address post-removal returns for persons who, in light of subsequent developments, should not have been removed. Revisions should ensure that the ICE ERO budget covers the cost of flights for those the OROR returns and include issuance of two-month long travel documents to give individuals sufficient time to organize a return.
51. INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) (2011); 8 C.F.R. § 212.5(c) (2012).
 52. The DHS Secretary has discretionary authority to parole into the United States temporarily “under conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any individual applying for admission to the United States,” regardless of whether the noncitizen is inadmissible. INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). The Secretary’s authority is expansive. Congress did not define the phrase “urgent humanitarian reasons” or “significant public benefit,” entrusting interpretation and application of those terms to the Secretary. The Secretary may empower OROR to grant parole in individual cases.
 53. For these individuals, OROR would need to take steps to ensure that any legal and procedural barriers to reentry are waived for those granted return and restored to former lawful status.
 54. In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA) making one criminal conviction of “moral turpitude” a deportable offense. Pub. L. No. 104-132, § 435, 110 Stat. 1214, 1274 (1996). That same year, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) legislated that any “aggravated felony” conviction carrying a minimum sentence of one year would also be a deportable offense. Pub. L. 104-208, § 321, 110 Stat. 3009-546, 627 (1996).
 55. Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, Am. Immigr. Council (Sept. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.
 56. See, e.g., *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017) (holding California conviction for unlawful sexual intercourse with a minor is not an aggravated felony); *Mellouli v. Lynch*, 575 U.S. 798 (2015) (holding Kansas conviction for drug paraphernalia possession is not a removable offense); *Moncrieffe v. Holder*, 569 U.S. 184 (2013) (holding Georgia conviction for possession of marijuana with intent to distribute is not an aggravated felony under the Immigration and Nationality Act); *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (determining Florida conviction for driving under the influence and causing serious bodily injury in an accident is not an aggravated felony).
 57. See, e.g., *Jack v. Barr*, 966 F.3d 95 (2d Cir. 2020) (determining New York possession and sale of firearms convictions are not removable offenses); *Larios v. U.S. Att’y Gen.*, 978 F.3d 62 (3d Cir. 2020) (holding New Jersey conviction for making a terroristic threat is not a crime involving moral turpitude); *Nunez-Vasquez v. Barr*, 965 F.3d 272 (4th Cir. 2020) (determining Virginia convictions for leaving an accident and for use of false identification are not crimes involving moral turpitude); *Ortiz v. Barr*, 962 F.3d 1045 (8th Cir. 2020) (holding Minnesota conviction for obstructing legal process is not a crime involving moral turpitude); *Cortes-Maldonado v. Barr*, 978 F.3d 643 (9th Cir. 2020) (holding lawful permanent resident’s Oregon marijuana delivery conviction is not a removable offense); *Hernandez v. Whitaker*, 914 F.3d 430 (6th Cir. 2019) (determining alien’s conviction for felonious assault under Michigan law is not a crime involving moral turpitude).
 58. See TRAC Immigr., *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2015-2020*, Syracuse Univ. (2020), <https://trac.syr.edu/immigration/reports/judge2020/denialrates.html> (showing how widely grants of asylum applications vary from one immigration judge to another); see also Jeremy Redmon, *Georgia’s Immigration Court Judges Among Toughest in Nation for Asylum*, Atlanta J.-Const. (July 26, 2019), <https://www.ajc.com/news/breaking-news/georgia-immigration-court-judges-among-toughest-nation-for-asylum/svQ2Cm-RGXS5Hgi2utVTmrO/> (noting how certain immigration courts deny asylum applications at a much higher rate than others).
 59. Clinic Legal, *Summary of DACA Litigation and Policy Developments* (Dec. 7, 2020), <https://clinic-legal.org/resources/humanitarian-relief/deferred-ac-tion-childhood-arrivals/summary-daca-litiga-tion-and-policy#:~:text=Humanitarian%20Relief%20Since%20the%20Obama%20administration%20announced%20Deferred.from%20temporary%20pro-tection%20from%20>.
 60. Memorandum from Elaine C. Duke, Acting Sec’y, U.S. Dep’t Homeland Sec., to James W. McCament, Acting Dir., U.S. Citizenship & Immigr. Servs. et al. (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>; see generally, e.g., *Regents of Univ. of California v. United States Dep’t of Homeland Sec.*, 298 F. Supp. 3d 1304 (N.D. Cal. 2018); *Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018); Nat’l Ass’n for

- the Advancement of Colored People v. Trump, 298 F. Supp. 3d 209 (D.D.C. 2018).
61. Dep't of Homeland Sec. v. Regents of Univ. of California, 140 S. Ct. 1891 (2020).
 62. *Id.*
 63. Associated Press, *Biden Orders Cabinet to Preserve DACA*, L.A. Times (Jan. 20, 2021), <https://www.latimes.com/politics/story/2021-01-20/biden-orders-cabinet-to-preserve-daca>.
 64. Right now, ICE exercises broad discretion in deciding whether to release a DACA-eligible noncitizen from detention. In many situations, ICE decides to keep the noncitizen detained, which prevents them from applying for or renewing DACA. DHS guidance should clearly instruct ICE to immediately release DACA-eligible noncitizens under an Order of Supervision to give them the opportunity to apply or renew DACA.
 65. Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, Pew Res. Ctr. (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/> (noting that as of 2017, two-thirds of undocumented immigrant adults had been in the U.S. for more than a decade and half had been in the U.S. for at least fifteen years).
 66. See James R. McHenry III, Exec. Dir. Office of Immigr. Rev., U.S. Dep't of Justice, OOD PM 19-13, Use of Dockets (Aug. 16, 2019), <https://www.justice.gov/eoir/page/file/11963336/download>.
 67. Specifically, over the past few years, the Attorney General curtailed IJs' ability to administratively close removal proceedings, terminate proceedings, continue proceedings, and use the status docket in order to wait for USCIS adjudications. See *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1064086/download>; *Matter of S-O-G- & F-D-B-*, 27 I. & N. Dec. 462 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1095046/download>; *Matter of L-A-B-R-*, 27 I. & N. 405 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1087781/download>.
 68. See *Matter of Castro-Tum*, 27 I. & N. Dec. 271 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1064086/download>.
 69. ACLU of Cal., *Discharged, Then Discarded: How U.S. Veterans are Banished by the Country They Swore to Protect*, ACLU (July 2016), <https://www.aclusandiego.org/sites/default/files/wp-content/uploads/2017/07/DischargedThenDiscarded-ACLU-ofCA.pdf>.
 70. *Id.*
 71. *Id.*
 72. Strengthening Citizenship Services for Veterans Act, S. 3294, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/3294/text>.
 73. See, e.g., Org. Cmty. Against Deportations, <https://action.mijente.net/partnerships/organized-communities-against-deportations>.
 74. See, e.g., Irene Romulo, *The Fight to Release Beto*, Chi. Reader (Jan. 29, 2020), <https://www.chicagoreader.com/chicago/fight-to-release-beto/Content?oid=77404793>; Maria Ines Zamudio, *Detained Chicago DACA Youth Sues Federal Government For His Release*, WBEZ Chi. (Dec. 16, 2019), <https://www.wbez.org/stories/detained-chicago-daca-youth-sues-federal-government-for-his-release/f11e0598-e614-4fcc-8194-dc73f356f78f>; Antonio Zavala, *DACA Beneficiary Posts Bail with the Support of His Community and Local Chicago Organizations*, Gate News (Mar. 5, 2020), <https://thegatenewspaper.com/2020/03/daca-beneficiary-posts-bail-with-the-support-of-his-community-and-local-chicago-organizations/>.
 75. Noah Lanard, *There's Still Slavery in Mauritania. That Didn't Stop ICE From Deporting People There on Tuesday*, Mother Jones (January 20, 2021), <https://www.motherjones.com/politics/2021/01/theres-still-slavery-in-mauritania-that-didnt-stop-ice-from-deporting-people-there-on-tuesday/>.
 76. See *Rivera Cuartas v. Holder*, 605 F.3d 699, 701-02 (9th Cir. 2010) (finding that Az. 13-1405 is not an aggravated felony or child abuse removable offense).
 77. See *Moncrieffe v. Holder*, 569 U.S. 184 (2013) (holding that state marijuana distribution offenses that criminalized social sharing of marijuana were not an aggravated felony under federal statute).
 78. *Bring Jean Home!* (2020), <https://www.bringjean-home.org/>.
 79. Nick Pinto, *Trump Banished Immigration Right Activist for Speaking Out. He's Suing ICE to Come Back*, Intercept (Jan. 16, 2020), <https://theintercept.com/2020/01/16/jean-montrevil-deportation-first-amendment/>.
 80. *Id.*
 81. *Id.*
 82. See, e.g., Chip Mitchell, *Lawsuit: Feds Beat Up Detained Immigrant in Chicago*, WBEZ Chi. (Dec. 13, 2016), <https://www.wbez.org/stories/lawsuit-feds-beat-up-detained-immigrant-in-chicago/d51f13a3->

[e762-4374-b7a6-bfecc88691f1](#).

83. See Complaint, *Chesire v. Vigare*, No. 1:16-cv-11220 (N.D. Ill. 2016), https://immigrantjustice.org/sites/default/files/content-type/press-release/documents/2016-12/Chesirecomplaint_filed.pdf.
84. See, e.g., Color of Change, *Tell Homeland Security to Release James Chesire*, <https://act.colorofchange.org/sign/homeland-security-release-james-chesire/>.
85. See, e.g., Jordan Hoffman, *The Infiltrators Review – Angry and Impressive Immigration Docudrama*, *Guardian* (Jan. 27, 2019), <https://www.theguardian.com/film/2019/jan/27/the-infiltrators-review-angry-and-impressive-immigration-docudrama>; THR Staff, *‘The Infiltrators’: Film Review -- Sundance 2019*, *Hollywood Rep.* (Jan. 26, 2019), <https://www.hollywoodreporter.com/review/infiltrators-review-1179502>.
86. See Amended Complaint, *Rojas v. Moore*, No. 1:19-cv-20855-JLK (S.D. Fla. 2019), <https://www.law.nyu.edu/sites/default/files/First%20Amended%20Verified%20Compliant.pdf>.
87. See Tabitha Jackson, *A Silenced Voice? A Note Concerning ‘The Infiltrators’ Protagonist Claudio Rojas*, *Sundance Inst.* (Mar. 7, 2019), <https://www.sundance.org/blogs/a-silenced-voice-a-note-concerning-the-infiltrators-protagonist-claudio-rojas>; Simon Kilmurry, *Letter in Support of ‘The Infiltrators’ Protagonist Claudio Rojas*, *Int’l Documentary Ass’n* (Mar. 5, 2019), <https://www.documentary.org/advocacy/letter-support-infiltrators-protagonist-claudio-rojas>.
88. See Simon Kilmurry, *Letter to President Biden to End ICE Retribution*, *Int’l Documentary Ass’n* (Jan. 29, 2021), <https://www.documentary.org/advocacy/letter-president-biden-end-ice-retribution>; Nick Pinto, *Across the U.S., Trump Used ICE to Crack Down on Immigration Activists*, *Intercept* (Nov. 1, 2020), <https://theintercept.com/2020/11/01/ice-immigration-activists-map/>.
89. Able Kindheart is a pseudonym used to protect the identity of this individual.