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# **CITIZENSHIP DENIED: FROM DRED SCOTT TO DEPORTATION**

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# INTRODUCTION

## Types of Immigration Status

- **Citizen:** a person born in the United States or a U.S. territory (*jus soli*), a person with parents who are U.S. citizens (*jus sanguinis*), or a person who fills out paperwork after meeting the legal requirements to become a U.S. citizen (*naturalized*).
- **Migrant:** a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, for a variety of reasons.
- **Immigrant:** a person who comes to live permanently in another country.
- **Undocumented migrant:** a person who resides in a country without the legal right to do so, possibly after entering the country unlawfully or overstaying a valid visa.

## Glossary

- **Citizenship laws:** Citizenship laws are rules that decide who is a member of a country and what rights and responsibilities they have. In the United States, citizens can vote, run for office, and live in the country without fear of being removed. The Fourteenth Amendment states that all people born or naturalized in the United States are U.S. citizens. The Fourteenth Amendment's citizenship clause was ratified during Reconstruction, born of the courage of abolitionists and rooted in Black people's fight for liberation.
- **Immigration laws:** Immigration laws are civil, not criminal, rules that control who can come into the United States from other countries, how long they can stay, and what they are allowed to do while they are here. These laws also explain who can apply to live in the United States permanently or become a citizen.
- **Naturalization laws:** Naturalization laws are rules that explain how a person who was not born in the United States can become a U.S. citizen. This involves living in the United States for a certain number of years, learning English, and passing a test about U.S. history and government.

In September 2021, news media showed images of U.S. Border Patrol agents on horseback chasing Black Haitian migrants at the United States-Mexico border in Del Rio, Texas. The agents appeared to use their horse reins to whip the Haitians, who ran away in fear.<sup>1</sup> In one photo, Mirard Joseph, a Haitian migrant, “ran, clinging to plastic bags filled with food” as an agent “wrenched his shirt” while the horse’s rein “seemed to coil like a whip.” Joseph, his wife, and their two-year-old daughter had been living with approximately 15,000 other mostly Haitian migrants in makeshift tents in Del Rio.<sup>2</sup> The images from the border echoed the United States’ history of slavery,<sup>3</sup> demonstrating the systemic racism of U.S. citizenship, immigration, and naturalization laws and their enforcement.<sup>4</sup>

In the United States, being a citizen determines what rights a person has—like voting<sup>5</sup> or running for office. This paper focuses on the role of the law in defining citizenship and immigration for Black people and how that has contributed to Black people being treated unequally. It shows the ways that the law has imposed second-class citizenship on Black people—both Black migrants and Black U.S. citizens.<sup>6</sup> While people categorized as migrants do not have the same rights as U.S. citizens, the Fourteenth Amendment guarantees all people equal rights under the law.<sup>7</sup>

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*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*  
**U.S. Constitution, Fourteenth Amendment<sup>8</sup>**

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The goal of this paper is to demonstrate that, despite this guarantee, the United States has maintained second-class status for Black people<sup>9</sup> that has locked them out of full membership in American society. This means that throughout history, even when Black people obtain citizenship on paper, they are still excluded from the full benefits of membership. The first part of this paper explains how anti-Black racism has shaped the rules about who gets to be a citizen. This section discusses how, both during and after the era of slavery, Black people in this country continued to be denied equal rights. The second part explores how Black migrants are deported more often because of anti-Black racism. The paper ends with ideas for changing laws and policies so that everyone—no matter their race or immigration status—is treated fairly and is fully included in American life.

## RACE AND CITIZENSHIP

Understanding how racism impacts immigration enforcement helps to develop the tools to eradicate systemic racism. From the beginning, U.S. citizenship and immigration laws were designed to make sure that white people always had more power and rights than people of other races.<sup>10</sup> Within this system, white men who owned land were freely given citizenship,<sup>11</sup> while

Black people were treated as if they did not fully belong, even if they lived in the United States or were born here.

Since 1619, when Africans were first forced to come to what is now the United States, early laws excluded formerly enslaved Black people from becoming citizens. The law has long been used to define and limit who is considered a citizen and to exclude those who are not. For example, in 1787, the U.S. Constitution included language noting that enslaved Black people would be counted as three-fifths of a person.<sup>12</sup> In 1790, the law limited citizenship to “free white person[s].”<sup>13</sup> Because the law made being white a requirement for becoming a citizen, it sent the message that only white people truly belonged—a message that still shapes U.S. laws today. In 1857, the U.S. Supreme Court ruled in the case of *Dred Scott v. Sanford* that enslaved Black people were not citizens.<sup>14</sup> Dred Scott was an enslaved Black man who went to court to argue that he should be free because he had lived in places where slavery was illegal. He also argued that, as a free person, he should have the same rights as any other American citizen.<sup>15</sup> A famous line in the decision from Chief Justice Roger B. Taney stated that Black people “had no rights which the white man was bound to respect.”<sup>16</sup>

The exclusion of formerly enslaved Black people from citizenship established the foundation for racially discriminatory citizenship and immigration laws. In 1868, after the Civil War, the Fourteenth Amendment to the U.S. Constitution provided citizenship for Black people, overturning the *Dred Scott* case and replacing the “three-fifths” language from the Constitution. However, even after the Fourteenth Amendment overturned the *Dred Scott* decision and acknowledged that Black people born in the United States were U.S. citizens at birth, laws continued to prevent individuals of African descent from exercising the same rights as white citizens.<sup>17</sup>

In the following years, Congress continued to pass discriminatory laws about who could become a citizen through naturalization laws and who could come to the United States through immigration laws. In 1882, Congress passed the Chinese Exclusion Act, which prevented people from China from coming to the United States for ten years.<sup>18</sup> This law was the first to exclude a racial group from entering the United States. In 1924, the Johnson-Reed Act<sup>19</sup> excluded Asians and severely restricted the number of immigrants who were not white from migrating to the United States.<sup>20</sup> In this way, the United States’ past naturalization and immigration laws had the racist goal of excluding non-white immigrants.

Before the Civil Rights Movement, another example of widely practiced exclusion was the United States’ policy of limiting how many people could come from certain countries. This was called the *quota system*. During the Civil Rights Movement, the Immigration and Nationality Act of 1965 ended this quota system because it privileged European immigrants over other immigrants coming to the United States.<sup>21</sup> The Immigration and Nationality Act was born out of the Black-led Civil Rights Movement, which resulted in increased rights and privileges for immigrants of all races.<sup>22</sup> In signing the act, President Lyndon B. Johnson stated that the quota system “violated the basic principle of American democracy—the principle that values and rewards each man on the basis of his merit as a man. It has been un-American in the highest sense, because it has been untrue to the faith that brought thousands to these shores even before

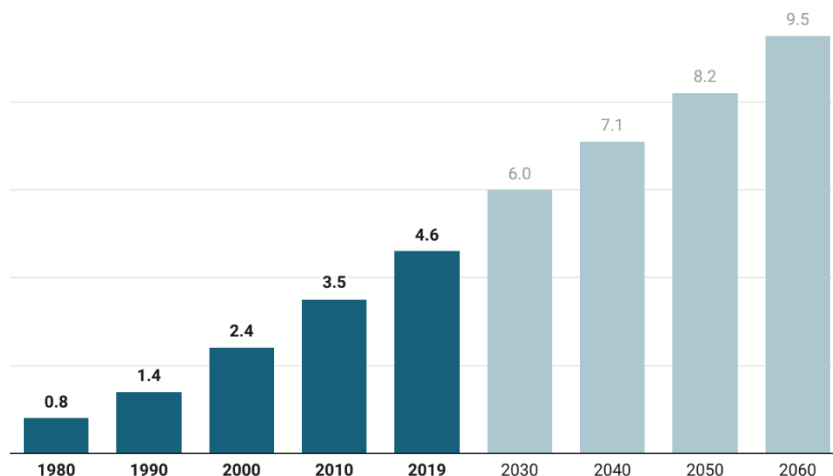
we were a country.”<sup>23</sup> The end of the quota system in 1965 “dramatically altered the racial and ethnic makeup of the United States,” advancing the country closer to a multi-racial democracy.<sup>24</sup>

## Anti-Black Racism and Immigration Laws

In 2016, then-presidential candidate Donald Trump’s campaign strategy included racist language, such as referring to Mexican immigrants as “criminals” and “rapists.”<sup>25</sup> During his first term, he crudely referred to Haiti and El Salvador as “shithole” countries from which the United States should limit migration.<sup>26</sup> He also issued three versions of the “Muslim ban,”<sup>27</sup> also known as the “African Muslim ban,”<sup>28</sup> which barred migrants from countries with majority-Muslim populations from entering the United States.<sup>29</sup>

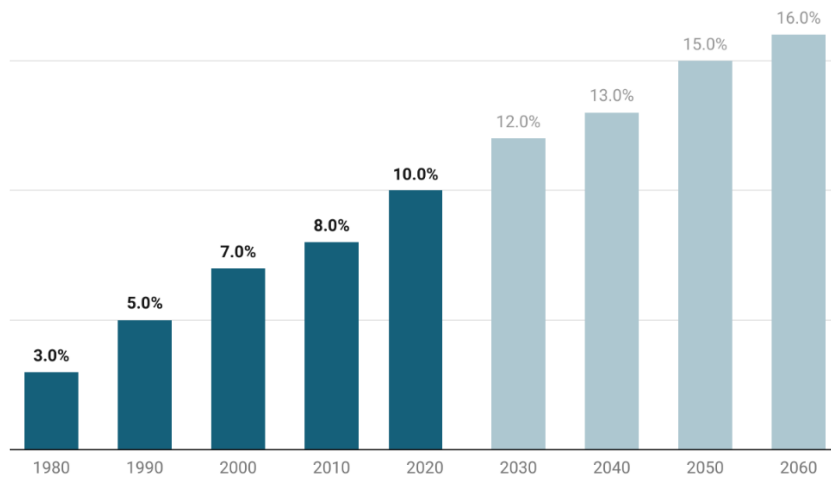
***Who is a “Black Immigrant”?*** It is difficult to categorize a person as a “Black immigrant” without oversimplifying the diverse identities of people of African descent from all around the world.<sup>30</sup> Black immigrants come from different countries, have different cultures, and speak different languages and dialects. The Pew Research Center notes that for census years 1980 and 1990, Black immigrants were defined as “persons born outside the U.S., Puerto Rico, or other U.S. territories whose sole self-identified race is Black, regardless of Hispanic origin.”<sup>31</sup> It is important to understand who Black immigrants are because when they enter the United States, they become primarily identified by their race—Blackness.<sup>32</sup> The Pew Research Center estimated that there were 4.6 million Black immigrants living in the United States in 2019,<sup>33</sup> representing ten percent of all Black people in the United States.<sup>34</sup>

**Total U.S. Black foreign-born population, in millions**



Source: Tamir, Christine. “Key Findings about Black Immigrants in the U.S.” Pew Research Center, January 27, 2022.  
<https://www.pewresearch.org/short-reads/2022/01/27/key-findings-about-black-immigrants-in-the-u-s/>. • Created with Datawrapper

## Percentage of U.S. Black population who are foreign born



Source: Tamir, Christine. "Key Findings about Black Immigrants in the U.S." Pew Research Center, January 27, 2022. <https://www.pewresearch.org/short-reads/2022/01/27/key-findings-about-black-immigrants-in-the-u-s/>. • Created with Datawrapper

Even though Black immigrants are less likely to be in the United States without authorization in comparison to other U.S. immigrants,<sup>35</sup> Black immigrants face deportation at a disproportionate rate. "Jamaica was the top country of origin in 2019, with over 772,200 Black immigrants in the U.S."<sup>36</sup> The Black Alliance for Just Immigration estimates that twenty percent of immigrants (one in five) facing deportation before U.S. immigration courts are Black.<sup>37</sup> This number includes both immigrants who have lawful permanent resident status and undocumented migrants. In contrast, Black undocumented migrants account for 5.6% of the total undocumented population living in the United States.<sup>38</sup> However, they are 10.6% of migrants in deportation proceedings.<sup>39</sup>

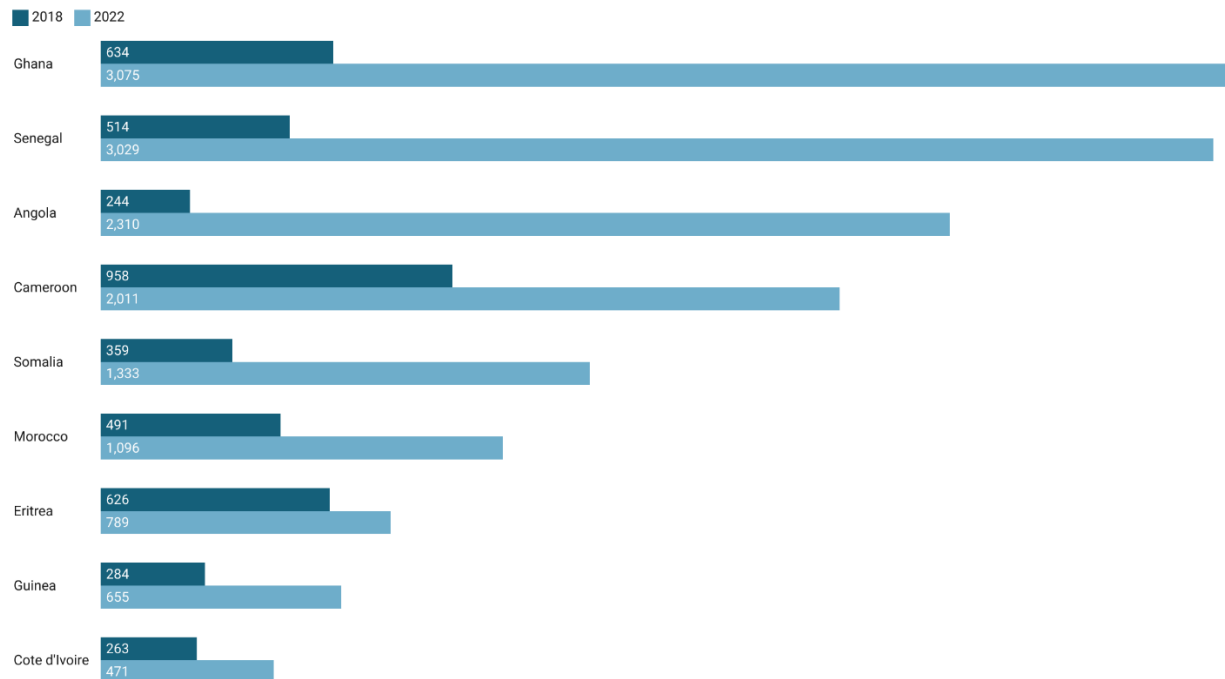
Any person who is not a U.S. citizen can be deported from the United States.<sup>40</sup> The Immigration and Nationality Act refers to all noncitizens as "aliens."<sup>41</sup> Noncitizens include lawful permanent residents (Green Card holders), visa holders (migrants temporarily in the United States), and undocumented migrants (migrants in the United States without authorization).<sup>42</sup> If a noncitizen violates the Immigration and Nationality Act, they can be placed in deportation proceedings before an immigration judge.<sup>43</sup>

There are two immigration law enforcement agencies within the U.S. Department of Homeland Security (DHS):<sup>44</sup> Immigration and Customs Enforcement (ICE)<sup>45</sup> and Customs and Border Protection (CBP).<sup>46</sup> ICE focuses on policing and enforcing immigration laws *inside* the United States, which means the deportation of noncitizens.<sup>47</sup> The main way ICE enforces immigration laws is through the criminal legal system.<sup>48</sup> If a noncitizen engages in criminal conduct and is charged with a crime or convicted of a crime, after the criminal proceedings are concluded, they may be transferred into ICE custody.<sup>49</sup> While in ICE custody, the noncitizen will be placed in deportation proceedings, where they go before an immigration judge who determines in a hearing whether they have committed a civil offense in violation of the Immigration and Nationality Act requiring them to be removed from the United States.<sup>50</sup>

CBP handles policing the borders and preventing noncitizens from entering the United States.<sup>51</sup> During the first Trump administration and the Biden administration, border deportations of migrants from African Muslim-majority countries significantly increased, in some cases tripling.<sup>52</sup>

### Number of individuals deported by country, 2018-2022

Individuals deported due to "Non Citizen Administrative Returns," "Noncitizen Title 42 Expulsions," and "Noncitizen Enforcement Returns."



Source: "Non Citizen Administrative returns," "Noncitizen Title 42 Expulsions" and "Noncitizen Enforcement Returns," Department of Homeland Security, Office of Homeland Security Statistics, Yearbooks 2018 & 2022. • Created with Datawrapper

Black immigrants face the intersecting challenges of policing and immigration enforcement. Over-policing in Black communities means that Black immigrants are also more likely to be exposed to the criminal legal system. Mass incarceration disproportionately impacts both Black U.S. citizens and those who are Black migrants. For example, one study found that Black drivers were searched or arrested by police during traffic stops at a rate more than double that of other racial groups: 8.6% of Black drivers, compared to 4.0% of Hispanic drivers, 3.1% of white drivers, and 4.5% of drivers of other races. The share of Black drivers searched or arrested increased between 2020 (5.6%) and 2022 (8.6%).<sup>53</sup>

**Percent of U.S. residents age 16 or older whose most recent police contact was as a driver in a traffic stop, by enforcement action and demographic characteristics, 2022**

| Demographic characteristic | Enforcement action    |         |        |                  |
|----------------------------|-----------------------|---------|--------|------------------|
|                            | No enforcement action | Warning | Ticket | Search or arrest |
| Total                      | 0.51%                 | 0.94%   | 0.92%  | 0.46%            |
| Sex                        |                       |         |        |                  |
| Male                       | 0.63%                 | 1.25%   | 1.26%  | 0.63%            |
| Female                     | 0.74%                 | 1.35%   | 1.23%  | 0.58%            |
| Race/Hispanic origin       |                       |         |        |                  |
| White                      | 0.64%                 | 1.13%   | 1.15%  | 0.56%            |
| Black                      | 1.39%                 | 3.15%   | 2.78%  | 1.8%             |
| Hispanic                   | 1.15%                 | 2.81%   | 2.73%  | 1.1%             |
| Other                      | 1.68%                 | 3.56%   | 3.37%  | 1.54%            |
| Age                        |                       |         |        |                  |
| 16–24                      | 0.93%                 | 2.15%   | 2.27%  | 1.21%            |
| 25–44                      | 0.82%                 | 1.46%   | 1.33%  | 0.73%            |
| 45–64                      | 0.88%                 | 1.59%   | 1.53%  | 0.62%            |
| 65 or older                | 2.06%                 | 3.01%   | 2.6%   | :                |
| Household income           |                       |         |        |                  |
| \$74,999 or less           | 0.7%                  | 1.3%    | 1.27%  | 0.69%            |
| \$75,000 or more           | 0.75%                 | 1.35%   | 1.27%  | 0.58%            |

Source: Bureau of Justice Statistics, National Crime Victimization Survey, Police-Public Contact Survey, 2020 and 2022. • Created with Datawrapper

**Percent of U.S. residents age 16 or older whose most recent police contact was as a driver in a traffic stop, by enforcement action and demographic characteristics, 2020**

| Demographic characteristic | Enforcement action    |         |        |                  |
|----------------------------|-----------------------|---------|--------|------------------|
|                            | No enforcement action | Warning | Ticket | Search or arrest |
| Total                      | 0.54%                 | 0.89%   | 0.93%  | 0.39%            |
| Sex                        |                       |         |        |                  |
| Male                       | 0.71%                 | 1.2%    | 1.28%  | 0.57%            |
| Female                     | 0.78%                 | 1.44%   | 1.51%  | 0.5%             |
| Race/Hispanic origin       |                       |         |        |                  |
| White                      | 0.59%                 | 1.03%   | 1.1%   | 0.43%            |
| Black                      | 1.87%                 | 3.15%   | 3.27%  | 1.59%            |
| Hispanic                   | 1.64%                 | 2.65%   | 2.36%  | 1.01%            |
| Other                      | 1.86%                 | 2.95%   | 3.14%  | 1.38%            |
| Age                        |                       |         |        |                  |
| 16–24                      | 1.34%                 | 2.56%   | 2.76%  | 1.15%            |
| 25–44                      | 0.7%                  | 1.4%    | 1.39%  | 0.66%            |
| 45–64                      | 0.89%                 | 1.46%   | 1.35%  | 0.54%            |
| 65 or older                | 1.61%                 | 2.53%   | 2.4%   | 0.77%            |
| Household income           |                       |         |        |                  |
| \$74,999 or less           | 0.76%                 | 1.14%   | 1.34%  | 0.63%            |
| \$75,000 or more           | 0.77%                 | 1.36%   | 1.28%  | 0.42%            |

Source: Bureau of Justice Statistics, National Crime Victimization Survey, Police-Public Contact Survey, 2020 and 2022. • Created with Datawrapper

Because Black migrants are more likely to be targeted by the police and criminalized than migrants of other racial groups, they are at greater risk of being deported. The primary way that Black immigrants are deported is through the criminal legal system.<sup>54</sup> The Black Alliance for

Just Immigration (BAJI) estimated that eighty-two percent of individuals deported in 2022 were from majority-Black countries, compared to fifty-eight percent for migrants overall.<sup>55</sup>

The data demonstrate how racism influences the criminal legal system and immigration enforcement system, which combine to unfairly impact Black immigrants through increased convictions and ultimately deportations.<sup>56</sup> Immigration laws criminalizing noncitizens have become “a coded system that works to funnel [B]lack and Latinx immigrants from the criminal court system into Immigration Customs and Enforcement (ICE) custody to the immigration court system, and ultimately back to their nations of birth—with very little recourse or space for adjudication.”<sup>57</sup> This process has been called “**the prison-to-deportation pipeline**.”<sup>58</sup> As race and immigration law scholar Karla McKanders explained, “The intersection of criminal and immigration enforcement results in immigrants serving their criminal sentences, after which they are deported—in some instances—to countries where they have had little or no contact.”<sup>59</sup>

The racist foundations of immigration law have contributed to the denial of rights for many Black immigrants.<sup>60</sup> Additionally, courts have mostly let the president, the Department of Homeland Security, and immigration judges make decisions without question, since the federal government often justifies its decisions based on national security and sovereignty (authority of the state to make its own laws and run its government the way it chooses). This idea, called “immigration exceptionalism,” lets the government avoid following normal constitutional rules for noncitizens.<sup>61</sup> As a result, constitutional rights are unevenly applied—especially to immigrants of color.

## Affirmative Vision

The Legal Defense Fund (LDF) envisions a multi-racial democracy where the dignity, humanity, and legal rights of Black people—regardless of citizenship or immigration status—are fully recognized and protected. LDF rejects an anti-Black and anti-immigrant vision of who belongs in the United States. In a multi-racial democracy, the law will no longer be used to deny people equal rights because of their race. Instead, the law will become a tool to advance equality and shared belonging. To make this vision a reality, the United States must confront its history and the ongoing role of citizenship and immigration laws in upholding anti-Black racism and exclusion, and it must shift to a legal system that recognizes the full personhood of all people in the United States.

## POLICY RECOMMENDATIONS

- **Stop efforts to end birthright citizenship.** The Fourteenth Amendment states that every child born in the United States is a citizen—this is known as birthright citizenship. At the start of his second term, President Trump issued an executive order in which he proposed ending birthright citizenship.<sup>62</sup> Although an executive order does not have the effect of law, it can influence policymaking. Abruptly ending birthright citizenship would create a permanent underclass of noncitizen U.S.-born children who would have no home country or rights.<sup>63</sup>

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On January 20, 2025, a coalition of civil rights groups filed a lawsuit, *New Hampshire Indonesian Community Support v. Donald J. Trump*, challenging President Trump's executive order seeking to deny birthright citizenship to certain children born in the United States. The plaintiffs argued that the order violated the Fourteenth Amendment and Supreme Court precedent, including *United States v. Wong Kim Ark*, by attempting to strip citizenship from children born on U.S. soil. Represented by the **ACLU**, **LDF**, and others, the case was brought on behalf of organizations including New Hampshire Indonesian Community Support, whose members' U.S.-born children could be affected. The lawsuit warned that the order could leave children stateless and without access to essential rights like health care, identification, and civic participation. On February 10, 2025, a federal judge in New Hampshire issued a preliminary injunction blocking the executive order. The ruling reinforced that birthright citizenship is protected by the Constitution and cannot be undone by executive action.

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- **Expand protections for immigrant populations facing racialized harm and climate disaster**, especially those from majority-Black countries. Temporary Protected Status (TPS) gives migrants from certain designated countries the right to live and work in the United States because their home countries are considered unsafe due to armed conflict, environmental disasters, or other extraordinary conditions.<sup>64</sup>
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In *NAACP v. DHS*, LDF filed a lawsuit to stop the government from ending Temporary Protected Status (TPS) for Haitian immigrants. The lawsuit argued that the decision was driven by anti-Black racism and violated the Fifth Amendment's protections of due process and equal treatment under the Constitution. It pointed to actions by the Department of Homeland Security, like searching for crime and public benefits data specifically about Haitians, that the plaintiffs said relied on harmful racial stereotypes. The complaint also highlighted racist comments by President Trump, including saying Haitians "all have AIDS," asking, "Why do we need more Haitians?", and saying he preferred immigrants from mostly white countries like Norway. The Court ruled that the case could go forward because there was enough evidence to suggest that racial bias influenced the decision. However, before the case was finished, the Biden administration reversed the policy and extended TPS for Haiti, so the case was dismissed and never went to the Supreme Court.

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- **End immigration exceptionalism.** Courts must apply constitutional protections, including equal protection and due process rights under the Fourteenth and Fifth Amendments, to all immigration enforcement actions.
- **Enact laws protecting immigrants from racial discrimination** in immigration decisions and parole determinations.
- **Decriminalize immigration status** and end the prison-to-deportation pipeline.
- **Ensure legal representation** for all immigrants in removal proceedings.
- **Institute independent oversight** of DHS, CBP, and ICE to investigate racial bias and misconduct.

- **Recognize and disaggregate data** on Black immigrants to improve accountability and visibility under DHS.

As a multi-racial democracy, the United States must reflect the full participation of and provide constitutional protections to all people within its borders. The rights of Black people—whether born in the United States or newly arrived—cannot be conditional.<sup>65</sup> The Constitution promises equal protection and fair treatment for all people through the Fourteenth<sup>66</sup> and Fifth Amendments.<sup>67</sup> These rights cannot be taken away just because the president says a law is needed for national security or foreign affairs, especially when the real reason is anti-Black racism or fear of immigrants. Ending anti-Black racism requires that people in the United States examine the nation’s past and expose present inequalities, while building a future where Black people are fully included and protected—**not only as citizens, but as human beings**.

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## **Statutes and Constitutional Provisions**

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8 U.S.C. § 1101(a)(3).

8 U.S.C. § 1227(a).

8 U.S.C. § 1229(a)(2).

8 U.S.C. § 1357.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Kevin R. Johnson & Karla McKanders, *Systemic racism is rooted in immigration laws — it can no longer be ignored*, The Hill (Feb. 25, 2022), <https://thehill.com/opinion/immigration/595696-systemic-racism-is-rooted-in-immigration-laws-it-can-no-longer-be-ignored/>.

<sup>5</sup> Rights that are exclusive to citizens are the right to vote in federal elections and the right to hold certain federal offices. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966) (citing U.S. Const. art. I, § 2, of the Constitution for the right of citizens to vote in federal elections); U.S. Const. art. II, § 1, cl. 5.

<sup>6</sup> The U.S. Immigration and Nationality Act defines aliens “as any person not a citizen or national of the United States.” 8 U.S.C. 1101(a)(3); see Gil Gott, *Introduction: Identity and Crisis: The Critical Race Project and*

*Postmodern Political Theory*, 78 Denver U. L. Rev. 817 (2001), <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1775&context=dlr> (defining de jure noncitizens).

<sup>7</sup> See Angela M. Banks, Chapter 19: Nordic Perspectives on Human Rights Education, of *A Human Rights Approach to Membership and Belonging* (Audrey Osler & Beate Goldschmidt-Gjerløw eds., Routledge 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4975800](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4975800) (“The Fourteenth Amendment of the United States Constitution guarantees equal protection, and it does so on the basis of personhood rather than citizenship status. This provision states: ‘[nor shall any State] deny to any person within its jurisdiction the equal protection of the laws’ (US Constitution, 1776, amendment 14). Even though both approaches to membership have gaps, the personhood approach offers a more inclusive theoretical approach to membership. Human rights are allocated based on personhood because they are viewed as inalienable rights that are necessary for human flourishing. This approach to membership has the potential to further the aims of human rights by ensuring that all individuals, regardless of citizenship or immigration status, can participate freely in the places where they live . . .”).

<sup>8</sup> U.S. Const. amend. XIV.

<sup>9</sup> *Infra* section Race & Citizenship Section.

<sup>10</sup> Karla McKanders, *Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, 26 Harv. J. Racial & Ethnic Just. 163 (2010) (arguing that state and local anti-immigrant laws lead to the segregation, exclusion, and degradation of Latinos, creating “tiered personhood”).

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<sup>12</sup> U.S. Const. art. I, § 2.

<sup>13</sup> Naturalization Act of 1790, 1 Stat. 103 (1790).

<sup>14</sup> *Dred Scott v. Sanford*, 60 U.S. 393 (1857), *superseded by constitutional amendment*, U.S. Const. amend. XIV.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Karla McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 Ga. State Univ. L. Rev. 1139 (2021), <https://readingroom.law.gsu.edu/gsulr/vol37/iss4/6>.

<sup>18</sup> Chinese Exclusion Act, 22 Stat. 58 (1882). There were a series of Chinese exclusion statutes from 1882 to 1892. See Act of May 6, 1882, 22 Stat. 58 (executing certain treaty stipulations relating to Chinese); Act of July 5, 1884, 23 Stat. 115 (amending treaty stipulations relating to Chinese); Act of Oct. 1, 1888, 25 Stat. 504 (supplementing prior treaty stipulations); Act of May 5, 1892, 27 Stat. 25 (prohibiting the immigration of Chinese people).

<sup>19</sup> See generally Immigration Act of 1924, 43 Stat. 153 (1924).

<sup>20</sup> Mae M. Ngai, *The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924*, 86 J. Am. Hist. 67, 69 (1999) (“The central theme of [the Immigration Act of

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1924 quotas] was a race-based nativism, which favored the ‘Nordics’ of northern and western Europe over the ‘undesirable races’ of eastern and southern Europe.”); *see also id.* at 72 (“The Quota Board used census race categories to make its calculations. It subtracted from the total United States population all blacks and mulattoes, eliding the difference between the ‘descendants of slave immigrants’ and the descendants of free Negroes and voluntary immigrants from Africa.”).

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<sup>35</sup> Christine Tamir & Monica Anderson, *Chapter 1: The Caribbean is the largest origin source of Black immigrants, but fastest growth is among African immigrants*, in *One-in-Ten Black People Living in the U.S. Are Immigrants*, Pew Rsch. Ctr. (Jan. 20, 2022), <https://www.pewresearch.org/2022/01/20/the-caribbean-is-the-largest-origin-source-of-black-immigrants-but-fastest-growth-is-among-african-immigrants/>.

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<sup>42</sup> *Id.*

<sup>43</sup> 8 U.S.C. § 1229(a)(2) (“An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title.”).

<sup>44</sup> *See generally* Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (codified as amended in scattered sections of 6 U.S.C. and 8 U.S.C.) (creating the DHS).

<sup>45</sup> *See generally* 8 U.S.C. § 1357 (listing the duties of ICE officers).

<sup>46</sup> 6 U.S.C. § 211, amended by Pub. L. 116–277, 134 Stat. 3368 (2020) (listing the duties of Customs and Border Protections).

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Statistics 2022. Please note data for Haiti was excluded from this calculation as an outlier for this year's data. The number of Haitians deported quadrupled between 2021 and 2022, with only eight percent on criminal grounds.

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