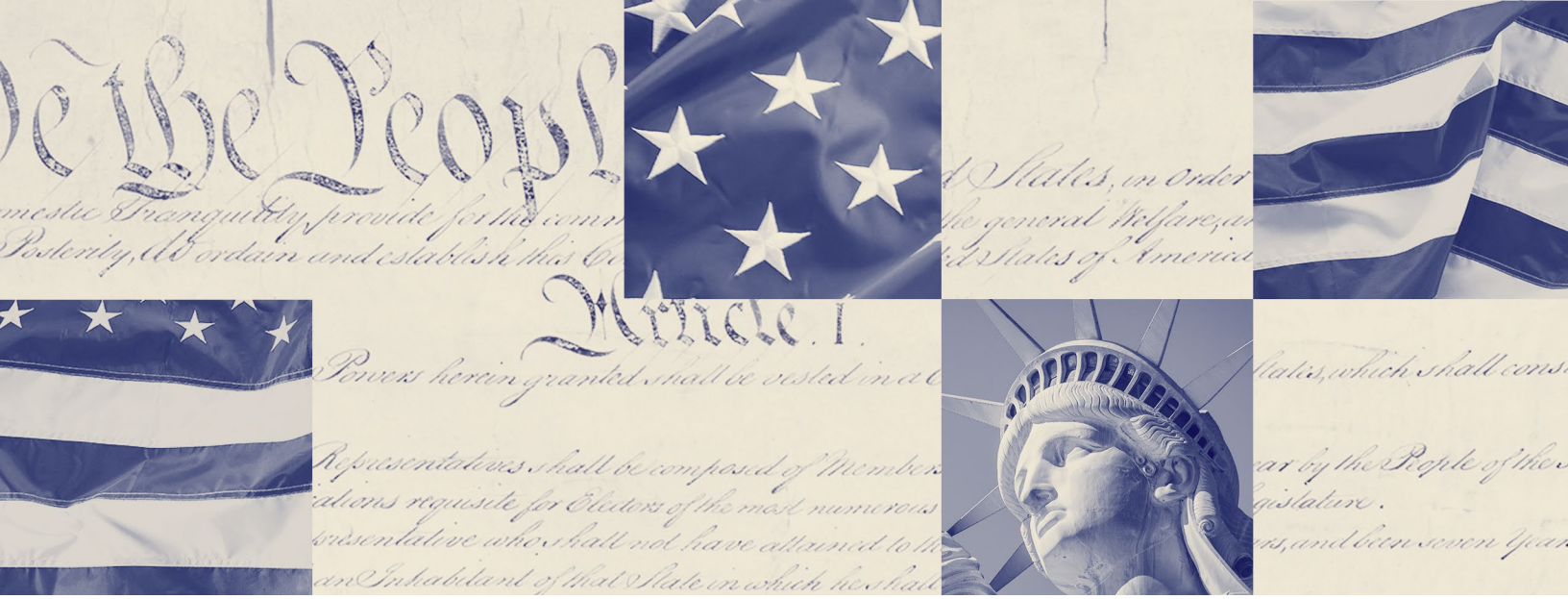


THE HARRIS MEMOS

The ACLU's Roadmap for Protecting Civil Rights and Civil Liberties Under a Harris Administration



ACLU



CONTENTS

FOREWARD..... 1

KAMALA HARRIS ON:

ABORTION 3

VOTING RIGHTS..... 18

LGBTQ RIGHTS 37

SURVEILLANCE..... 48

IMMIGRATION..... 64

THE CRIMINAL LEGAL SYSTEM 77

September 9, 2024

Dear Reader,

We are living through a historic year in American politics.

While the 2024 presidential election was initially set to be a rare [rematch](#) between Joe Biden and Donald Trump, Biden's decision to step down just three months before the election and endorse Vice President Kamala Harris as the Democratic Party's nominee is equally as rare. Not since 1968 — another historic year in American politics — has a presidential candidate [withdrawn from the race](#).

In a race already marked by unprecedented events, the 2024 election will also have an unprecedented impact on our civil rights and civil liberties.

While the American Civil Liberties Union (ACLU) does not endorse or oppose candidates for elected office, we know that a potential second Trump administration and a potential Harris administration will be [drastically different](#) when it comes to our civil rights and civil liberties. A second Trump administration will be disastrous for our most fundamental rights and freedoms, while a Harris administration will bring a mix of challenges and opportunities that largely leaves these rights and freedoms intact.

At the ACLU, our legal, policy, and advocacy experts have laid out a roadmap for protecting civil rights and civil liberties no matter who is elected president in November. The roadmap includes challenges and opportunities that each candidate will bring, and the concrete actions the ACLU will take in response. In June, ahead of the Democratic National Convention and Republican National Convention, we began sharing this roadmap in a [series of 13 memos](#) — seven memos on a potential second Trump administration and six on a potential Harris administration.

Enclosed, you will find a compilation of the six Harris memos, as well as short summaries of each issue covered, including: immigrants' rights, reproductive freedom, trans justice, criminal legal system reform, voting rights and safeguards against government surveillance. The memos and related media coverage can be found at [aclu.org/memos](#).

Our goal with these memos is to move the national discourse from agonizing over potential challenges to analyzing potential solutions. To that end, the memos not only the threats to our most fundamental rights and freedoms, but also outline the legal, legislative, advocacy, and grassroots mobilization strategies the ACLU will use in response. These strategies will help us block punches in some cases — egregious attempts to ignore the Constitution — and lessen the blows in others.

Because [resignation and despair](#) are not a strategy, we and our allies must be prepared to fight back — especially during a second Trump administration. I know the ACLU is fit for the fight because I've seen what our organization can accomplish when our freedom is on the line. In 2016, the ACLU was the only national organization to issue a comprehensive plan for the policies of a potential Clinton administration, but also those of a potential Trump administration. The latter plan laid the groundwork for us to file 434 legal actions against the Trump administration, including the first lawsuit to halt the Trump administration's Muslim ban within hours of its enactment.

Our [detailed analysis](#) of Trump's policies foreshadowed a constitutional crisis that, nearly a decade later, continues to impact our nation. Today, our analysis once again prepares us to continue that fight, over the course of the next administration and beyond, just like we did in 2016.

As Trump and Project 2025 make clear, a second Trump administration will be significantly more aggressive and effective in executing its plans to fundamentally erode our democracy, take away our freedoms, and violate our Constitution. That's because President Trump and the leaders he's likely to put in place are more familiar with how to use the levers of government to their advantage.

If Trump wins, we stand ready to meet his administration head on — in the courts, in Congress, at the state and local levels, on the street, and at the ballot box. Already, we've taken note of the extremist rhetoric he's used on the campaign trail, including promises to:

- Erase protections for LGBTQ people across the entire federal government and mandate discrimination, including banning transgender people from serving in the armed forces.
- Pursue retrogressive immigration policies — including reinterpreting the Fourteenth Amendment to apply only to people who are born in the United States and have at least one parent who is a U.S. citizen or lawful permanent resident — that harm communities of color.
- Restrict refugee resettlement and asylum and end deportation protections for DACA recipients and those with Temporary Protected Status.
- Appoint justices who will carry out the Trump administration's intentions to use antiquated laws to ban abortion or limit access to contraception.
- Eliminate race-conscious instruction in schools and DEI training in the workplace.
- Undermine press freedoms by regularly attacking media organizations he dislikes, and invoke the Insurrection Act to intimidate opponents and shut down dissent.
- Renew efforts to make it harder for Americans to vote and to spread false, debunked theories to undermine confidence in the integrity of our voting system.
- Promote unconstitutional and brutal state policing and federal law enforcement practices, dehumanize people in our criminal legal system, and accelerate mass incarceration.

Four years after Trump was elected, our nation was reeling from relentless attacks on fundamental rights and freedoms. When President Joe Biden and Vice President Kamala Harris took office, the ACLU released a [wish list](#) that called on the Biden-Harris administration to do two things: reverse Trump-era policies and protect and extend our freedoms as part of a vision for our country that included justice, fairness, and equality for all.

Since then, the Biden-Harris administration has made progress toward this vision by expanding voting rights and abortion protections, as well as advocating for equal access for transgender individuals and for students' right to receive an inclusive education. We remain concerned, however, that the administration has not fulfilled its critical civil rights and civil liberties responsibilities across a range of issues, including:

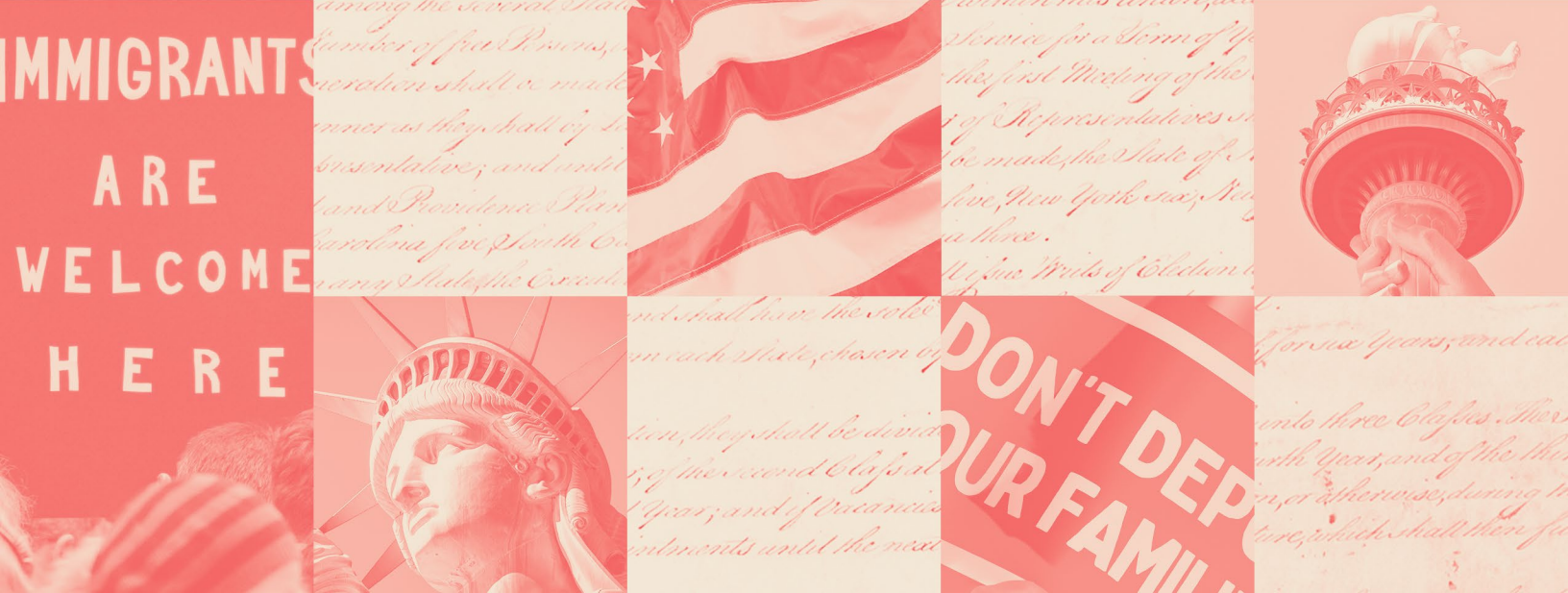
- Fully banning racial and other profiling. The Biden-Harris administration has permitted profiling for national and homeland security purposes, and at the border. These contexts can be pretexts for law enforcement to target Muslims, communities of color, and immigrants.
- Ending suspicionless surveillance of Americans under Section 702 of the Foreign Intelligence Surveillance Act (FISA). The Biden-Harris administration instead pressured Congress to dramatically expand Section 702, resulting in legislation that creates new ways for the government to spy on us without a warrant.
- Restoring the Voting Rights Act of 1965 to its full strength. While restoring the Voting Rights Act requires congressional action that has been blocked, the Biden-Harris administration has yet to fully implement its executive order promoting access to voting.
- Ending the federal death penalty — a commitment Biden-Harris campaigned on in 2020 — and fully implementing the reforms promised in his executive order on policing.

If Harris wins, we stand ready to work with her administration but also hold it accountable for, among other things, protecting the right to abortion and contraception, preserving our asylum system and providing a path to citizenship, safeguarding the right to vote for all Americans, and bringing necessary reforms to our criminal legal system. The ACLU's commitment to this work remains unchanged now, and for years to come.

In November, our nation will send one candidate to the White House. At the ACLU, we're prepared to use all the tools at our disposal to ensure that our nation lives up to the promise of the Constitution no matter who is elected.

Sincerely,

Anthony D. Romero
Executive Director of the
American Civil Liberties Union



HARRIS ON ABORTION

The “Harris on Abortion” memo outlines Vice President Harris’s commitment to restore abortion rights nationwide, and how the ACLU will work to ensure Harris delivers on this commitment if she is elected so that everyone who needs abortion care can access it, no matter who they are, where they live, or how much money they have. The memo also outlines the additional actions that can and should be taken to protect and expand reproductive freedom should Harris become president, regardless of whether she has supportive majorities in Congress. The memo also outlines how the ACLU and its nationwide network of attorneys and advocates will work towards these goals in the courts, in Congress, and in communities across the country.

ACLU PRIORITIES

- **Enact federal legislation to protect abortion.**

If pro-reproductive freedom majorities are elected to Congress, the ACLU will engage in a multi-stage lobbying and mobilization effort to pass equitable federal protections for abortion access. The legislation must go beyond the status quo that existed before *Roe* was overturned to ensure that everyone can access abortion care if they need it, no matter who they are, where they live, or how much money they have.

- **Fulfill commitment to end the Hyde Amendment and other discriminatory abortion coverage bans.**

As a candidate for president in 2020, Harris committed to ending the Hyde Amendment, promising to introduce a “clean” presidential budget with no policy riders containing abortion coverage restrictions and to work with Congress to keep coverage bans out of final appropriations bills.

- **Eliminate medically unjustified restrictions on medication abortion.**

Since approving mifepristone in 2000, the FDA has subjected this essential medication to a set of burdensome restrictions that do not apply to virtually any other prescription drug.

- **Protect access to abortion and contraception for immigrants.**

The Harris administration has the opportunity to protect access to reproductive health care for immigrants. This includes making emergency contraception available to immigrants detained at the border and ending practices that cause those seeking abortion care to be surveilled and monitored by immigration officials.

- **Continue to expand access to birth control.**

Harris should continue the progress made by the Biden-Harris administration to expand access to birth control and urge Congress to rectify the funding shortfall and make needed investments in the Title X program.

- **Continue progress toward protecting reproductive health privacy.**

Even if people can travel out of state to access abortion care, they may still face threats of investigation and prosecution from their home states. The Biden-Harris administration finalized federal regulations to strengthen protections for reproductive health data privacy under HIPAA and prevent disclosure of medical records if they sought to penalize people for providing or obtaining lawful reproductive health care. Harris should enforce these regulations if elected.

“If Vice President Kamala Harris wins the election this year, it will be because she prioritized reproductive freedom as a central tenet of her campaigns. That promise must be met with bold and urgent action. **Vice President Harris has the opportunity to ensure that Congress enacts federal protections for abortion that reflect the American public’s overwhelming support for reproductive freedom.** That means demanding Congress send her a bill to sign that ensures everyone who needs abortion care can access it.”

— **Madison Roberts,**
Senior Policy Counsel for
Reproductive freedom
at the ACLU

“**As extreme politicians increase their attacks on our ability to get abortion care, Vice President Harris has a once-in-a-lifetime chance to push for the bold policies this moment demands, and that the American people want and deserve.** We’ve seen just how far extreme politicians will push to deny us our reproductive freedom, from banning abortion entirely to using widely debunked junk science to take abortion pills off the shelf and even threatening to put doctors in jail for providing emergency care to pregnant people. Make no mistake: The attacks won’t stop there. We know they’ll push to ban abortion nationwide if given the chance.”

— **Jennifer Dalven,**
Director of the ACLU’s
Reproductive Freedom Project

HARRIS ON ABORTION

A Commitment to Abortion Rights and Access for All

If elected president, Democratic nominee Kamala Harris promises to protect and expand reproductive freedom. A central tenet of her campaign is to enact federal legislation to protect the right to abortion. The American Civil Liberties Union will use every tool available to ensure that a potential Harris administration delivers on this promise by signing legislation that ensures everyone who needs abortion care can access it, no matter who they are, where they live, or how much money they have.

The Supreme Court's decision to overturn *Roe v. Wade* set off a wave of new attacks on abortion care. Those attacks led to a catastrophic public health crisis and the rapid erosion of civil liberties and reproductive freedoms. To date, 14 states have banned abortion completely and others have severely limited access to abortion care by criminalizing it after the earliest weeks of pregnancy.¹ Millions of people of reproductive age now live hundreds of miles from the closest abortion provider. In 2023 alone, more than 171,000 people were forced to travel outside of their home state to secure access.² Traveling to another state is simply not possible for many, and some attorneys general have even threatened to prosecute those who help pregnant people get the care they need in states that permit abortion.³ As a result of state bans and other restrictions, countless people are being forced to continue their pregnancies against their will.⁴ Some states have gone so far as to criminalize abortion care in medical emergencies where the inability to get an abortion puts the pregnant person's health, life, and future fertility in danger.⁵

The anti-abortion extremism unleashed by *Dobbs v. Jackson Women's Health Organization* has resulted in a forceful backlash. In the two years since *Roe*

was overturned, there has been a groundswell of public support for abortion rights and rising opposition against bans and restrictions on abortion care. Public opinion polls show public support for abortion is higher than ever, with almost two-thirds of Americans supporting abortion rights.⁶ This backlash is readily apparent at the polls. Voters have repeatedly demonstrated their support for abortion rights at every opportunity since *Roe* fell, including in more conservative and battleground states like Kansas, Kentucky, Michigan, Ohio, Pennsylvania, Virginia, and Wisconsin.

Since *Dobbs*, the Biden-Harris administration has used nearly every executive tool available to protect and expand access to abortion and contraceptive care.⁷ But anti-abortion politicians have had control of at least one body of Congress since *Roe* was overturned, preventing meaningful congressional action on abortion. However, enacting federal legislation to protect the right to abortion throughout the country is a crucial and desperately needed step to rectify the harms of *Dobbs* that Congress must take.

To be clear, restoring the status quo that existed before *Dobbs* isn't nearly enough. Abortion care was not accessible for far too many even before the Supreme Court overturned *Roe*. If elected, Harris must carry out her promise to restore reproductive freedom by taking bold action to ensure that everyone can get an abortion if they need one — no matter who they are, where they live, or how much money they have — by calling for and signing legislation that codifies abortion rights and invalidates state bans and restrictions, and by ending discriminatory barriers to abortion care, such as insurance coverage bans.

OVERALL RESPONSE

Courts

Enacting a federal right to abortion would only be the beginning of the fight to restore access to abortion in states where it has been banned and to expand access nationwide beyond what existed before *Dobbs*. Once the federal right to abortion has been enacted, the ACLU will use this new statutory protection in litigation to challenge the barriers to abortion care that politicians have erected. We will go to court to strike down not only the state abortion bans enacted and enforced in the wake of *Dobbs*, but also the multitude of medically unnecessary restrictions that rendered abortion care available in theory, but inaccessible for far too many even prior to *Dobbs*. And we will continue our ongoing efforts — both in and outside the courtroom — to eliminate the Food and Drug Administration’s (FDA) medically unwarranted restrictions on mifepristone, a safe and effective medication used in most abortions nationwide.

Congress

Instituting a federal right to abortion and ensuring everyone can access abortion care if they need it requires congressional action — the president cannot accomplish it alone. This is a tall order. Congress must reform the Senate filibuster and pass bold legislation that establishes a new federal right to abortion that includes everyone. The ACLU will harness tremendous public pressure to get this done. We will engage in a multi-front effort, including aggressive lobbying and grassroots mobilization, to create the urgency and momentum needed for Congress to act.

While Congress will have to do the lion’s share of the work to enact federal abortion protections, if elected, Harris is responsible for delivering on her promise by calling for expansive protections and demanding that Congress act swiftly and boldly. Just as prior presidents have taken active roles in passing top priority pieces of legislation, we will urge Harris to set a high bar for the abortion rights legislation she’s campaigned on, and not accept a bill that does anything less than ensure everyone can access abortion care when they need it.

Organizing

Organizing and demonstrating power through the strength of our 50 state affiliates is critical to ensuring access to reproductive health care is a reality for everyone. The ACLU has deeply invested in our greatest resource — our members, supporters, and volunteers — and will continue to educate them on the issues and bring them to the forefront of the fight for reproductive freedom.

In the wake of *Dobbs*, the ACLU created a constituent-engagement program for abortion activists that provided training on how to push back against anti-abortion lawmakers and hold them accountable. The ACLU engages these abortion activists in legislative fights for reproductive freedom, including hosting phone banks and postcard campaigns. The ACLU has helped activists volunteer with abortion ballot measure campaigns in their home states, and has engaged thousands of volunteers in signature collection and get-out-the-vote efforts.

Marking the two-year anniversary of the *Dobbs* decision, the ACLU joined with partner reproductive health, rights, and justice organizations to launch the *Abortion Access Now* campaign.⁸ This multi-year campaign is led by a coalition of nine national organizations that, together, use our power and significant resources to enact a federal right to abortion that ensures everyone can get the care they need.⁹ The *Abortion Access Now* campaign will execute a long-term strategy to mobilize support and enact change through federal lobbying, grassroots organizing, public education, and comprehensive communication strategies. This groundbreaking initiative aims to ensure that everyone has the right to access reproductive health care free from stigma or barriers.

SPECIFIC OPPORTUNITIES & RESPONSES

Enacting Federal Legislation to Ensure That Everyone Who Needs Abortion Care Can Access It, No Matter Who They Are, Where They Live, Or How Much Money They Have

Harris has promised that, if she is elected president and pro-reproductive freedom majorities are elected to Congress, she will work with Congress to enact federal protections for abortion. Harris said in one of her first campaign events after becoming the Democratic nominee, “[w]hen Congress passes a law to restore reproductive freedoms, as president of the United States I will sign it into law.”¹⁰ The ACLU will use every tool available to make sure Harris and members of Congress live up to their promises and enact legislation reflecting the American public’s overwhelming support for abortion for all.

Congress

The ACLU is engaged in a multi-stage lobbying effort to create the political momentum needed for Congress to pass bold and equitable federal protections for abortion access. With our abortion activists and partners, the ACLU will deploy grassroots campaigns to pressure Harris and members of Congress to fulfill their promises. We will leverage broad public support for abortion and prior investments in organizing, ballot measures, state legislation, and public education campaigns to mobilize constituents quickly and effectively.

The ACLU will continue to work with reproductive freedom champions in Congress to spotlight the harms of abortion bans and the need to enact federal protections. Already, through congressional hearings, floor speeches, and press conferences, the ACLU has worked with Congress to create a public record of the horrors unleashed by *Dobbs*. The ACLU is also working with and supporting members of Congress pushing an affirmative reproductive freedom agenda, including advancing bills that would codify the right to contraception and neutralize Donald Trump’s threats to misuse the Comstock Act as a backdoor national abortion ban.¹¹

If Harris is elected and pro-reproductive freedom majorities are secured in Congress, the ACLU will begin an aggressive lobbying effort throughout the lame-duck session to urge members to be ready on day one of the new Congress to advance bold legislation to enact abortion rights and secure access. When the next

Congress gavels into session, the ACLU will launch a coordinated lobbying and grassroots mobilization campaign to demand action. We will not allow Congress to advance just any measure. Instead, we will use our political power to ensure Congress pushes ambitious and inclusive legislation.

First, the legislation must ensure that everyone can access abortion care if they need it, no matter who they are, where they live, or how much money they have. Congress must immediately enact a new federal right to abortion to rectify the harms of *Dobbs*. Even before *Dobbs*, abortion care was not accessible for many. Anti-abortion lawmakers in states across the country passed more than 1,000 laws in the decades following *Roe* to circumvent and erode the ruling, imposing burdensome restrictions on abortion care designed to increase costs, shame patients, and shutdown health centers.¹² Any new legislation must go beyond the status quo that existed before *Dobbs*.

State laws, together with discriminatory federal bans on abortion coverage, have long pushed abortion care out of reach for those with the fewest resources and the greatest barriers to health care. For nearly 50 years, the Hyde Amendment — a rider attached to annual federal funding bills that prevents Medicaid, Medicare, Indian Health Service, and Children’s Health Insurance Program from covering nearly all abortion care — and related abortion coverage bans have restricted abortion access for low-income people, people of color, immigrants, people with disabilities, and young people. Enacting abortion rights on paper without ending these harmful coverage bans will only perpetuate reproductive health inequality.

Harris has committed to ending the abortion coverage restrictions¹³ and, if elected, we will urge her to carry out this commitment by aggressively demanding that Congress pass legislation that meaningfully protects abortion rights and access, and leaves no one behind.

Second, the Senate must reform the filibuster to enact federal protections for abortion rights. Abuse of the filibuster currently gives the minority party an effective veto and, contrary to constitutional design or historical precedent, requires a supermajority to get legislation passed in the Senate. Without filibuster reform, anti-abortion lawmakers in the Senate will defy the Senate majority and the voters who elected them by effectively blocking abortion protections — just as they have blocked other protections for reproductive rights for years.¹⁴ The ACLU will engage in a coordinated Senate-lobbying campaign, ramping up in the lame-duck session, to demand filibuster reform.

Third, Congress must act swiftly. We are in an escalating health crisis and there is no time to wait. Millions of people of reproductive age are living in states that have banned or severely restricted abortion. Countless people are being forced to continue pregnancies against their will, sometimes at great risk to their health and lives.¹⁵ If elected, Harris must demand that Congress pass a bill enacting federal protections for abortion and send it to her to sign within the first 100 days of her presidency. The ACLU plans to deploy multiple tactics to demand urgent action from Congress, including lobbying key lawmakers and mobilizing the full force of our members and supporters in actions on Capitol Hill, and in states across the country.

Fourth, the threat of misusing the Comstock Act as a national abortion ban must be eliminated. Legislation to protect abortion rights and ensure access to care must also repeal the Comstock Act. The Comstock Act is an 1873 anti-obscenity law that regulates the use of the mail and common carriers concerning sending and receiving anything that is “indecent, filthy, or vile” or “intended for producing abortion.” Trump’s advisors are threatening to misapply this zombie law, claiming incorrectly that the Comstock Act is a dormant national abortion ban already on the books just waiting to be enforced by a Trump Department of Justice. To ensure that no future anti-abortion president can weaponize this antiquated law, it must be repealed. The ACLU worked with Congress this session to introduce the Stop Comstock Act,¹⁶ and we will demand that future legislation codifying abortion rights also repeals the Comstock Act.

Courts

Using a statutory federal right to abortion, we will go to court to strike down not only the abortion bans that states have enforced after *Dobbs*, but also the constellation of restrictions that continue to limit access to care even in states that have not banned abortion outright.

Following the Supreme Court’s unprincipled decision to overturn *Roe v. Wade*, 14 states banned abortion altogether and another seven enacted pre-viability bans at different points in pregnancy — bans that would have been patently unconstitutional under *Roe*.¹⁷ This criminalization of basic, necessary reproductive health care has taken an incalculable toll on peoples’ lives. Hundreds of thousands of people have been forced to travel out of state to access abortion care, while others have been denied the ability to get the care that they need altogether.¹⁸ Once a federal right to abortion is enacted, we will bring new litigation to challenge these harmful bans.

We will continue to challenge the continuous efforts by politicians to erect medically unnecessary — and for some patients, insurmountable — barriers to care

like abortion coverage bans, bans on the use of telemedicine for abortion care, and mandatory delay laws that require patients to make multiple trips to an abortion provider.¹⁹ The ACLU has defeated many of these harmful and unnecessary barriers to abortion care in the past, and we will continue to challenge them as they arise.

Eliminating Medically Unjustified and Harmful Restrictions on Medication Abortion

The ACLU will continue our multi-faceted advocacy efforts — including litigation, organizing, and coalition-building — to eliminate medically unnecessary restrictions on mifepristone, a safe and effective medication used in nearly two-thirds of U.S. abortions²⁰ and for miscarriage care.²¹ Since approving mifepristone in 2000, the FDA has subjected this essential medication to a set of burdensome restrictions beyond the normal layers of protections that apply to virtually every other prescription drug. The nation’s leading medical associations — including the American Medical Association and the American College of Obstetricians and Gynecologists — support lifting these outdated restrictions, which are collectively known as a Risk Evaluation and Mitigation Strategy (REMS).²² As these medical associations have explained, “the [mifepristone] REMS requirements do nothing to enhance the safety of an already safe drug; instead, they impose administrative burdens, exacerbate health inequities, and lead to delays in care.”²³ In particular, the REMS imposes significant burdens on low-income patients, people of color, and people living in rural areas.

The ACLU has brought litigation under both Democratic and Republican administrations challenging the mifepristone REMS on behalf of leading medical authorities.²⁴ For example, during the height of the COVID-19 pandemic, we went all the way to the Supreme Court to fight the Trump administration’s insistence that people seeking mifepristone must appear in-person at a health center — subjecting themselves and their families to the risk of a deadly virus — for the sole purpose of picking up a pill that could otherwise be safely obtained at home.²⁵ Ultimately, the FDA, under the Biden-Harris administration, reviewed the evidence and determined that forcing patients to travel to a health center — in some cases hundreds of miles away — just to be handed a pill is medically unnecessary, as the ACLU advocated.²⁶ But the FDA has maintained its other REMS restrictions on mifepristone, including requirements that prescribers and pharmacies maintain special certifications and that patients review and sign a special counseling form.

These unnecessary restrictions significantly impede patients' access to mifepristone. Among other things, the REMS requirements: create administrative hurdles that delay, or altogether derail, clinicians' ability to integrate mifepristone into their practices; that deter some qualified health care providers from becoming mifepristone prescribers for fear of anti-abortion violence and harassment if their certification forms were ever exposed; that dissuade some pharmacies from dispensing mifepristone because of the burdens of certification; that undermine the informed consent process by mandating counseling that is at best duplicative, but often inaccurate, confusing, and distressing; and that jeopardize mifepristone patients' privacy by requiring them to sign and take with them a form stating, "I have decided to... end my pregnancy."

As the ACLU is arguing in court, by choosing to maintain the mifepristone REMS, the FDA ignored the medical community's consensus that these restrictions burden access with no corresponding safety benefit. Indeed, data shows that when Canada eliminated its REMS-like restrictions on mifepristone, access improved with no reduction in safety.²⁷ The ACLU will continue to use every tool in our toolbox, including our ongoing litigation, to ensure that the FDA's regulation of mifepristone is grounded in the strongest scientific evidence, adheres to the strict limitations that Congress has imposed on the agency's authority, and does not needlessly limit patients' access to a safe medication used in most U.S. abortions and for early miscarriage care.

Protect Access to Abortion and Contraception for Immigrants

Ensuring Access to Emergency Contraception at the Border

To protect immigrants' bodily autonomy and reproductive health, a potential Harris administration must make emergency contraception available to immigrants detained at the border. Immigrants who arrive at ports of entry to seek asylum or cross the U.S.-Mexico border and are detained by U.S. Customs and Border Patrol (CBP) are reliant on CBP to provide necessary health care, including reproductive care. Access to emergency contraception at the earliest moment of detention is especially critical. Women and girls coming to the U.S. face horrifically high rates of sexual violence on both sides of the U.S.-Mexico border.²⁸ Over the last year, many immigrants have been detained in CBP border facilities well beyond the agency's 72-hour detention period — and in some cases upwards of 30 days — further delaying access to critical medical care. Without timely access to emergency contraception, immigrants in CBP detention may endure

further trauma by being forced to become pregnant against their will. Timely access to emergency contraception is especially important given CBP's appalling record of holding pregnant immigrants in its custody.²⁹ The ACLU will continue to urge Harris and her administration to ensure that immigrants have timely access to, and information about, emergency contraception in CBP detention facilities.

Removing Barriers for Undocumented Immigrants to Access Abortion Care

People living in states with bans or restrictions on abortion are forced to travel out of state to seek care. Last year, more than 171,000 people traveled out of state for abortion care.³⁰ Traveling to receive care can be extremely difficult. For many, the nearest clinic is hundreds of miles away. Many patients face significant barriers, including multi-day travel expenses, child-care challenges, lost income, and potential loss of employment. On top of these barriers, undocumented people face an additional financial costs due to the patchwork of state laws on insurance coverage for immigrants,³¹ as well as an additional terrifying obstacle to accessing abortion care: federal immigration checkpoints and the risk of arrest, detention, and deportation.

In states like Texas, with both a large population of undocumented residents and one of the nation's most restrictive abortion bans, immigration checkpoints exacerbate the mounting health crisis. The only state that directly borders Texas where abortion is legal is New Mexico.³² But traveling to New Mexico for care poses special dangers for undocumented immigrants: Travel from southwest Texas into New Mexico means passing through at least one federal immigration checkpoint — and often multiple — along an increasingly militarized border where travelers can expect to be stopped and questioned about their citizenship and reasons for travel.

There are approximately 17 permanent checkpoints run by CBP along Texas' southern border, stationed on the major — and sometimes only — roads in Texas within 100 miles of the U.S.-Mexico border. U.S. Border Patrol also operate roving patrols and temporary checkpoints³³ within this 100-mile "border zone," and has deployed a range of technologies, including surveillance towers and drones, to further monitor and collect data on people's movements in the zone.³⁴ A person driving themselves or a loved one from Laredo, Texas to a clinic in Las Cruces, New Mexico, for example, would likely have to drive through six CBP checkpoints in Texas alone. They can only reduce the number of inspections, but never avoid them all together, if they add several hours to their drive. Finally, most people driving out of southwest Texas will also have to drive through Operation Lone Star counties, where state troopers are attempting to enforce federal

immigration law by subjecting suspected noncitizens to proxy arrests for offenses like trespassing. This has led to an increase in racial profiling of citizens and noncitizens in these border communities, and adds yet another layer of fear for noncitizens and their families traveling through Texas to get medical care.³⁵

In an escalating reproductive health crisis, these checkpoints present a real and daily danger, isolating some people from services and making it impossible to travel safely to get health care. To fulfill her commitment to protect reproductive freedom, Harris, if elected, must end the use of internal checkpoints and issue guidance to stop CBP and Immigration and Customs Enforcement (ICE) from patrolling at sensitive locations, including hospitals and abortion and family care health centers.

To further protect immigrants' reproductive freedom, under a Harris presidency the Department of Homeland Security should establish a firewall to protect information about immigrants seeking reproductive health care, including abortion and contraception, from being shared with hostile state agencies. This firewall should be far-reaching, encompassing information learned at immigration checkpoints as well as information about immigrants in the government's care and custody. Information about a pregnant person's request for abortion care should only be shared with health care providers for the purposes of procuring medical assistance and treatment; it should never be shared with state agencies that may use this information for purposes of prosecution.

Continuing Progress and Ensuring Robust Enforcement of Reproductive Health Actions Taken by the Biden-Harris Administration

The Biden-Harris administration took several important steps to protect and expand access to abortion, birth control, and reproductive freedom. If Harris is elected, the ACLU will urge her administration to continue and improve upon these actions.

Fulfill Commitment to End Hyde Amendment and Other Discriminatory Abortion Coverage Bans

For decades, the Hyde Amendment and related abortion coverage bans have pushed abortion care out of reach for low-income people, particularly impacting people of color. The Hyde Amendment's restrictions on Medicaid coverage for abortion forces one in four women seeking an abortion to carry an unwanted pregnancy to term.³⁶ This harrowing reality was intended by Congressman Henry Hyde, who was the architect behind the

amendment and who, when he first introduced it in 1976, said, "I certainly would like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle-class woman, or a poor woman. Unfortunately, the only vehicle available is the...Medicaid bill."³⁷

As a candidate for president in 2020, Harris committed to ending the Hyde Amendment, promising to introduce a clean presidential budget with no policy riders containing abortion coverage restrictions, and to work with Congress to keep coverage bans out of final appropriation bills.³⁸ The Biden-Harris administration made progress toward ending these discriminatory bans by removing the Hyde Amendment and other abortion coverage restrictions from the presidential budget.³⁹ If she's elected, the ACLU will urge Harris to build on that progress and fulfill her campaign commitments.

However, the presidential budget continues to include other harmful abortion restrictions, including the Weldon Amendment, an appropriations rider that has been attached to federal funding bills since 2005. The Weldon Amendment purports to prevent discrimination by recipients of federal money against health care providers and entities that refuse to provide, pay for, or refer for abortion care. However, in practice, it has been weaponized to penalize states that protect abortion access and ensure equal treatment for those seeking abortion care. For example, in 2020, the Trump administration announced that it was using the Weldon Amendment to improperly block hundreds of millions of dollars of critical federal funding to California simply because state law required health plans to include abortion coverage.⁴⁰

Unfortunately, removing Hyde from the presidential budget has amounted to a mostly symbolic measure, given that Congress continues to send must-pass appropriations bills to the president's desk for signing with both Hyde and Weldon Amendments attached. To ensure everyone can access abortion care regardless of their income or source of insurance, Harris must continue to introduce clean budgets without the Hyde Amendment, remove the Weldon Amendment from her presidential budget, and carry out her commitment to work with Congress to keep such restrictions out of final appropriation bills. The ACLU will continue to lobby Congress, alongside our coalition partners, to remove the Hyde and Weldon Amendments from congressional appropriations bills and we will strenuously resist any new coverage riders or expansions of existing coverage bans.

Continuing Progress Toward Expanding Access to Birth Control

Title X is a federally-funded family planning program that helps low-income people obtain critical health-care services for free or at a reduced cost. For more

than 50 years, Title X has provided affordable birth control and lifesaving preventive care, such as sexually transmitted infections testing and cancer screening, to millions of Americans.⁴¹ Even though the Title X program was created under a Republican administration, and received bipartisan support in Congress for decades, the program has come under attack from anti-abortion extremists in recent years. The Trump administration imposed disastrous restrictions on the Title X program, decimating access to birth control for low-income people by forcing Planned Parenthood and other providers of high-quality family planning services out of the program.⁴² Anti-abortion lawmakers in Congress have even proposed defunding the Title X program entirely.⁴³

The Biden-Harris administration has made progress toward helping the Title X network recover from these attacks. Soon after taking office, the administration reversed the Trump administration's harmful Title X restrictions.⁴⁴ The administration also proposed increases in Title X funding in its presidential budgets. However, Congress has continued to level-fund the program, preventing the Title X network from keeping up with growing demand. To expand access to birth control and reproductive health care, the Title X funding shortfall must be addressed. With millions of Americans currently living in states that have banned or severely restricted access to abortion care, the ability to access family planning and reproductive health services is more important than ever. If Harris is elected, the ACLU will work with her administration to continue the progress made by the Biden-Harris administration to expand access to birth control and will urge Congress to rectify the funding shortfall and make needed investments in the Title X program.

Continuing to Defend Access to Emergency Abortion Care

For nearly four decades, the Emergency Medical Treatment and Labor Act (EMTALA) has guaranteed that anyone experiencing an emergency medical condition can get the care they need — including abortion care — regardless of where they live.⁴⁵ Since EMTALA was signed into law by President Ronald Reagan, every administration — Democrat and Republican — has recognized that EMTALA requires emergency abortion care. However, anti-abortion politicians have put people's health and lives at risk by threatening to put doctors in jail simply for providing emergency abortion care to pregnant patients experiencing complications. These extreme politicians went all the way to the Supreme Court just to strip pregnant people of their longstanding right under federal law to emergency care.⁴⁶ While the Supreme Court recently dismissed one such case as improvidently granted, another challenge is still pending certiorari before the court.⁴⁷ And several justices have already

indicated a willingness to eliminate EMTALA's protections for people seeking emergency abortion care.⁴⁸

The Biden-Harris administration has defended EMTALA against these extreme attacks in court, and has taken important steps to ensure access to emergency care, including issuing guidance affirming that EMTALA preempts state laws restricting access to abortion care in emergency situations⁴⁹ and developing new tools for reporting violations of EMTALA.⁵⁰ If elected president, Harris and her administration should continue to robustly defend pregnant peoples' right to the bare minimum of emergency abortion care and ensure all hospitals satisfy their obligations under EMTALA.⁵¹ Over the past 25 years, the ACLU has been involved in multiple challenges, including filing a friend-of-the-court brief in the most recent case before the Supreme Court seeking to vindicate the right to emergency abortion care guaranteed by EMTALA.⁵² The ACLU will continue to work in the courts and with coalition partners to defend the critical right to emergency abortion care, including urging Congress to swiftly respond to a Supreme Court decision that eliminates these protections.

Continuing Progress Toward Protecting Reproductive Health Privacy

Protecting reproductive health care data and guarding against criminalization of abortion care is more important than ever. In the wake of *Dobbs*, prosecutors have increasingly used state abortion bans and other criminal laws — sometimes impermissibly — to investigate, arrest, and prosecute patients, providers, and helpers. Even if people can travel out of state to access abortion care, they may still face threats of investigation and prosecution from their home states. Earlier this year, the Biden-Harris administration finalized federal regulations to strengthen protections for reproductive health data privacy under the Health Insurance Portability and Accountability Act (HIPAA) and prevent disclosure of medical records if they are sought to penalize people for providing or obtaining lawful reproductive health care.⁵³ The new regulation, called the Final Rule, prohibits the disclosure of protected health information to law enforcement or other entities investigating or imposing liability on someone for merely seeking or providing lawful reproductive health care.

If elected, Harris and her administration must robustly enforce the Final Rule to ensure it meets its goal of protecting patient privacy and supporting access to health care, including abortion care. Health care providers and their business partners who handle protected health information must understand their obligations under the rule to adequately shield protected reproductive health data from improper disclosure. The ACLU will lobby the administration to conduct comprehensive education and

outreach campaigns to inform people covered by the rule of their obligations and of the prohibitions on sharing reproductive health data. We will also lobby the administration to monitor for Final Rule violations and engage in meaningful and robust enforcement of the penalties for violations.

Continuing Progress Toward Ensuring Abortion Access for Unaccompanied Immigrant Minors in Government Custody

In 2017, the Trump administration adopted a policy of preventing unaccompanied immigrant minors in government custody from accessing abortion care. Unaccompanied immigrant minors come to the United States on their own, often fleeing abuse and torture in their home country, with the hope of being reunited with family members in the United States. One of these young people, Jane Doe,⁵⁴ came to the United States after being abused by her parents. She was apprehended by the federal government and was placed in a shelter funded by the Office of Refugee Resettlement (ORR). At the shelter, she discovered she was pregnant, and requested an abortion. But under the Trump administration's policy preventing unaccompanied minors from obtaining an abortion, she was prohibited from leaving the shelter for any abortion-related appointments. On behalf of Jane Doe and similar young women, the ACLU brought a class action lawsuit against the Trump administration.⁵⁵ We successfully obtained court orders for each young person who requests an abortion to be granted access to that care, and eventually the court certified our class action and blocked the policy for everyone in ORR custody.

After we were successful on appeal, the Trump administration settled the case by adopting a policy to ensure abortion access for those in ORR custody.⁵⁶ After President Biden was elected, we urged policy changes at two junctures: 1) After Senate Bill 8 took effect in Texas and effectively banned abortion as early as five to six weeks into gestation; and 2) When *Roe* was overturned. We encouraged the ORR to adopt policies that would ensure that pregnant unaccompanied minors were not initially placed in states with abortion bans and, if they were placed in such states, that upon request the ORR would transfer them to a state where abortion was legal. The ORR adopted such a policy after receiving our feedback.⁵⁷

The ACLU has been monitoring how the policy is working in practice. For example, when we first filed the case in 2017, the ACLU established a hotline number to learn about obstacles that unaccompanied immigrant minors were facing when trying to access abortion care. We still receive calls from people working with unaccompanied immigrant minors who have questions about how the policy works, or who inform if they may be encountering barriers. If there are any issues, we raise them with the ORR and press for an expeditious resolution. Furthermore, we have filed a Freedom of Information Act (FOIA) request with the ORR to obtain documents to learn more about how the policy works in practice. If Harris is elected, we will continue to monitor the ORR's implementation of the policy under her administration to ensure that unaccompanied immigrant minors are obtaining timely abortion care under the terms of our court settlement.

CONCLUSION

The Supreme Court's decision to overturn *Roe v. Wade* set off a wave of new attacks on abortion care, sanctioning states across the country to ban abortion, which led to an escalating public health crisis. But support for abortion rights has never been greater. Harris championed reproductive freedom as vice president and today, acting as the Democratic nominee, her campaign has promised to enact federal protections for abortion.

If Harris is elected, the ACLU will use every tool available to ensure she enacts a federal right to abortion so that everyone can access abortion care if they need it, no matter who they are, where they live, or how much money they have.

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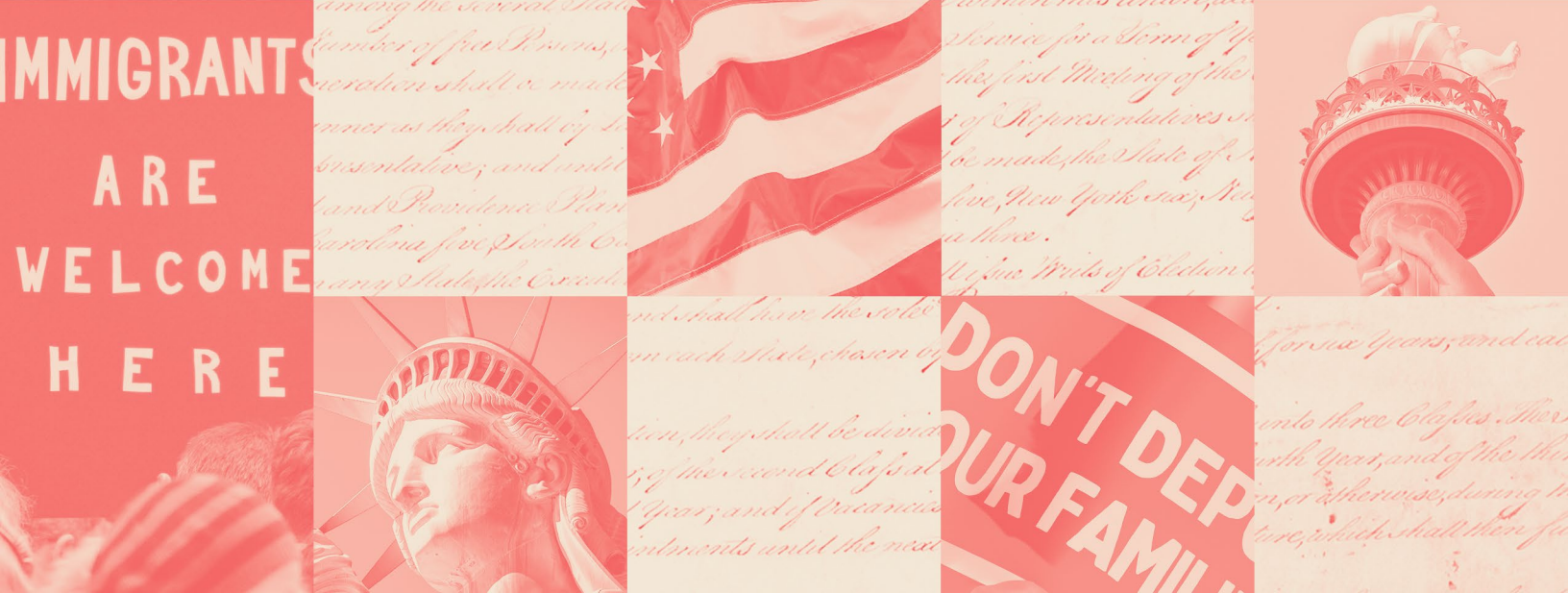
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HARRIS ON VOTING RIGHTS

The “Harris on Voting Rights” memo outlines Vice President Harris’s commitments to protecting and expanding voting rights, and how the ACLU will work to ensure that a potential Harris administration delivers on these commitments. **In a moment when hostile state legislators have used unlawful redistricting efforts and discriminatory voting laws to attack our electoral systems, Democratic nominee Harris has committed to protecting our democracy.**

ACLU PRIORITIES

- **Passing crucial federal voting rights legislation, if a pro-civil rights majority is elected to Congress.**

This includes the John Lewis Voting Rights Advancement Act (JLVRAA), which restores and strengthens the Voting Rights Act; core provisions in the Freedom to Vote Act (FTVA) that remove barriers to voting; the Native American Voting Rights Act (NAVRA), which provides protections to the right to vote for Tribal communities; and the Washington, D.C. Admission Act to grant D.C. statehood.

- **Pushing relevant federal agencies to continue implementing Executive Order 14019 on Promoting Access to Voting in the quickest, most effective manner possible.**

This includes action to implement effective non-partisan voter registration opportunities by the Social Security Administration, U.S. Citizenship and Immigration Services, and the U.S. Department of Education. Furthermore, the ACLU will work to ensure that the U.S. Department of Justice under a Harris presidency prioritizes the enforcement of federal voting right protections.

- **Demanding that state and local officials protect and strengthen voting rights through law, policy, and practice.**

The ACLU will hold states accountable for upholding their shared duty to fund local election administration adequately and consistently, as well as for providing election officials with the significant resources needed to safely and securely run elections and counter mis- and disinformation.

- **Continuing to support a successful, useful, and accurate decennial census.**

A fair census must be available to determine the allocation of seats in Congress across states, as well as the distribution of billions in public funding for the ensuing decade.

“Expanding voting rights is crucial to ensuring every citizen’s voice is heard in our democracy. **Vice President Harris has promised to address long-standing challenges and enhance access to the ballot for all eligible voters.** If she is elected, we will use every tool at our disposal, including litigation, to hold her to these commitments and protect and advance voting rights and fair representation at every level of government.”

— **Sophia Lin Lakin,**
Director of the ACLU’s
Voting Rights Project

“We are long overdue to pass critical federal voting rights legislation—like the **John Lewis Voting Rights Advancement Act—to prevent discrimination in voting, increase access to the ballot, and maintain integrity in our elections.** Every freedom we hold dear is upheld by our right to vote. As we have for decades, the ACLU will continue our efforts to demand our leaders fulfill their obligation to protect our democracy.”

— **Xavier Persad,**
Senior Policy Counsel
at the ACLU

HARRIS ON VOTING RIGHTS

Increase Voting Access, Decrease Voting Discrimination, And Strengthen Democracy

If elected president, Democratic nominee Kamala Harris will likely build on her past record and campaign promises to champion measures that would increase voting access and fair representation, prevent discriminatory voting laws, and ultimately strengthen our democracy.¹ Should Harris prevail in securing the presidency, it will be in the face of aggressive efforts by the Donald Trump campaign to purge votes and influence election outcomes. Given this reality, the state of play of our voting systems will likely be battered in critical jurisdictions by partisan jockeying. President Harris will need to shore up systems and policies adversely affected in the run-up to her presidency. The ACLU will work on all fronts to make certain a Harris presidency builds on her pro-voting record and lives up to her campaign promise to increase access to voting and protect our democracy.

Vice President Harris has promised to push for passage of essential federal voting rights protections, including the John Lewis Voting Rights Advancement Act (JLVRAA), the Freedom to Vote Act (FTVA), and the Native American Voting Rights Act (NAVRA).² At a time when the integrity of our electoral systems is under assault from hostile state legislators and election officials through voter suppression measures and redistricting schemes that discriminate against voters of color, Harris has committed to upholding the U.S. Constitution, protecting our democracy, and honoring voters' choices regardless of electoral outcome.³

This memo focuses on three areas that a Harris administration would likely work to expand and protect voting rights and fair representation. First, a Harris administration must use the bully pulpit of the presidency to press for federal policies that advance voting access, eliminate racial discrimination in voting, and strengthen our electoral processes. While the passage of federal legislation ultimately depends on Congress, if elected, Harris is responsible for delivering on her promise to advance

voting rights by calling for robust federal protections starting on day one of her administration and demanding that Congress act swiftly and boldly. A Harris presidency must champion foundational federal voting rights legislation like the JLVRAA, the NAVRA, and core provisions of the FTVA; demand that our elections are properly funded; and work to create other opportunities to enact other vital federal legislation that would combat racial discrimination in voting and promote representational fairness, like the Washington, D.C. Admission Act.⁴ A Harris Department of Justice (DOJ) should also prioritize voting rights by rigorously enforcing federal voting rights laws and increasing the DOJ's efforts to hold jurisdictions erecting illegal and discriminatory voting barriers accountable in the courts.

Second, a Harris presidency is likely to continue to implement Executive Order 14019 on Promoting Access to Voting.⁵ The Biden-Harris administration brought about historic federal policies to increase voter registration and education through Executive Order 14019, which encourages federal agencies to provide nonpartisan voter registration opportunities for all eligible citizens pursuant to longstanding federal law: the bipartisan National Voter Registration Act (NVRA).⁶ This groundbreaking executive order directs the federal government to live up to the NVRA's declaration that government at every level, including the federal government, has a duty to increase opportunities for all eligible Americans to register and vote.⁷ While the Biden-Harris administration has made laudable strides in implementing this visionary executive order, room for improvement remains.⁸ A Harris administration should push for the fullest and most expeditious implementation of this executive order across the federal government.

Third, a Harris administration is likely to build on the current administration's work supporting a successful, useful, and accurate 2030 Census.⁹ The next president's term overlaps with most of the years before the next

census in 2030, which will be used to determine the allocation of seats in Congress across states as well as the distribution of billions of dollars in public funding for the ensuing decade. A Harris administration should ensure

that the Census Bureau is equipped with the tools and resources to execute a successful and accurate count in 2030.

OVERALL RESPONSE

The ACLU will use every resource at our disposal — lobbying, organizing, litigation, the vast reach of our state affiliates and millions-strong membership — to ensure Harris builds on her pro-voting record and makes good on her campaign promise to increase access to voting and protect our democracy.¹⁰

Congress

If pro-democracy majorities are elected to Congress under a Harris administration, the ACLU will use every tool available to demand that Congress pass key legislation to protect and expand voter access. This includes: passing the JLVRAA,¹¹ which restores and strengthens the Voting Rights Act of 1965 (VRA),¹² to eliminate racial discrimination in voting; passing core provisions of the FTVA¹³ that remove barriers to voting; passing the NAVRA, which provides protections to the right to vote for tribal communities; and passing the Washington, D.C. Admission Act¹⁴ to grant D.C. statehood. To secure these legislative victories, the ACLU will double down on our coordinated effort to reform the filibuster,¹⁵ which has been used to block foundational pro-civil rights laws for far too long.

Federal Agency

Our federal advocacy will extend to federal agencies under a Harris administration. If Harris is elected, the ACLU will work to push all relevant federal agencies to continue implementing Executive Order 14019 on Promoting Access to Voting in the quickest, most effective manner possible. This includes federal agencies acting to implement effective voter registration opportunities by the Social Security Administration, U.S. Citizenship and Immigration Services, and the U.S. Department of Education (DE). Furthermore, the ACLU will work to ensure that the DOJ under a Harris presidency prioritizes the enforcement of federal voting right protections.

State and Local

Similarly, we will use our political power and presence in all 50 states to demand that state and local officials protect and strengthen voting rights through law, policy, and practice. We will fight to stop state measures that aim to restrict access to the ballot, including efforts to make it hard to register to vote, vote by mail, or vote early. We will utilize our extensive organizing resources to bolster efforts to implement voter access and modernization measures. This includes implementing same-day registration, automatic voter registration, no-excuse and permanent absentee voting, and state-level VRAs, as well as ending felony disenfranchisement.¹⁶ Furthermore, the ACLU will hold states accountable for upholding their shared duty to adequately and consistently fund local election administration, providing election officials with the significant resources required to safely and securely run elections and counter mis- and disinformation.¹⁷

Courts

The DOJ has the statutory authority to enforce the VRA¹⁸ as well as other federal statutory protections intended to safeguard the right to vote.¹⁹ The number of enforcement actions brought by the DOJ pales in comparison to the number of actions brought to enforce these protections by private litigants, including those brought by the ACLU. For example, a review of the DOJ's voting cases since the Supreme Court's *Shelby County v. Holder* decision in 2013²⁰ shows that the DOJ's voting section filed nearly a dozen cases in those 11 years. Meanwhile, the ACLU has initiated more than 110 new voting rights matters, including filing cases and opening investigations, in that same time span.²¹ Even putting aside the new legislation a Harris administration may see enacted, there is no good reason for less than robust enforcement by a Harris DOJ of the existing protections of the right to vote.

In addition to demanding that a Harris DOJ prioritize the enforcement of federal voting rights laws, we remain

poised to take action in the courts ourselves. The actions brought by the ACLU and others tee up opportunities for the DOJ to file statements of interest²² and act as intervenors²³ in cases brought by private litigants. As we observed following the elections of President Barack Obama²⁴ and President Joe Biden,²⁵ these wins, which were propelled by the growing voting strength of voters of color, have resulted in a backlash as state legislatures erected additional barriers to franchise. If Harris wins the presidency, we expect to see the same thing again. The vast majority of election administration — and the rules that govern access to the ballot — happen at the state

level. While the Constitution provides a floor for access to the right to vote,²⁶ and Congress can legislate concerning the conduct of elections,²⁷ states mostly control how federal, state and local elections are conducted. When states pass restrictive laws, like those that proliferated in the 2021 legislative sessions, we challenge those restrictions in the courts.²⁸ The ACLU is prepared to do the same should similar efforts follow the start of a Harris administration. If the JLVRAA, the NAVRA, or FTVA are enacted, we will leverage the restored and strengthened voting rights protections to intensify and expand our effort in the courts.

SPECIFIC OPPORTUNITIES

Enacting Federal Legislation To Expand Voting Access & Protect Democracy

A Harris administration must fiercely endeavor to enact foundational federal voting rights laws that prevent racial discrimination in voting, help ensure that every eligible voter can easily cast a ballot and have their votes count equally, and ultimately strengthen our democracy. Harris has suggested she is committed and equipped to push such a pro-democracy agenda. As vice president, Harris led the Biden-Harris administration's efforts to pass critical federal legislation protecting the right to vote, work that had majority support in Congress but was stymied by the filibuster.²⁹ She has also been the face of the Biden-Harris administration's pro-voting rights work, unveiling new efforts across federal agencies to offer nonpartisan voter registration opportunities as part of Executive Order 14019 on Promoting Access to Voting and announcing the White House's three national "days of action" to promote voting.³⁰ If elected, Harris has promised to champion efforts to advance critical voting legislation that has been repeatedly introduced across multiple congressional sessions — including the JLVRAA, FTVA, and the NAVRA. She is likely to continue efforts to end the denial of equal representation to D.C. residents and long-standing injustices related to people living in U.S. territories. The ACLU has long championed these reforms and would pull all our levers to secure legislative measures that protect or expand voting rights and safeguard democracy.

Critical Federal Voting Rights Legislation

Vice President Harris has consistently called for the passage of critical voting rights federal legislation, specifically the JLVRAA, the FTVA, and the NAVRA. In July 2024, Harris said in a campaign speech that "generations of Americans before us led the fight for freedom, and

now the baton is in our hands. It's in our hands. We, who believe in the sacred freedom to vote, will finally pass the John Lewis Voting Rights Act and the Freedom to Vote Act."³¹ Harris has also strongly voiced her support for the NAVRA, stating at a Gila River Tribal Nation event that "[Native American leaders have] told us in no uncertain terms that the Native vote is under threat. Polling sites are too often hours away from where Native voters live. Ballots and voter information are too often not available in languages they speak. Postal service is irregular. And the use of tribal IDs has been denied. President Biden and I will continue to call on Congress to pass the Freedom to Vote Act, the John Lewis Voting Rights Advancement Act, and the Native American Voting Rights Act."³² Based on this enduring commitment, we expect a Harris presidency to make passage of these three critical pieces of legislation a priority. Specifically:

- The **John Lewis Voting Rights Advancement Act**³³ would restore and strengthen the landmark federal VRA.³⁴ Signed into law by President Lyndon B. Johnson in 1965, the VRA is a monumental piece of legislation meant to end state and local voter suppression tactics designed to keep Black and Brown voters from casting ballots. For decades, the VRA not only protected Black, Brown, Indigenous, and other marginalized voters, but did so with virtually unanimous, bipartisan support.³⁵ However, in 2013, in *Shelby County v. Holder*, the Supreme Court struck down its core "preclearance" requirement, which directed jurisdictions with long records of racial discrimination in voting to obtain federal approval before changing their voting laws and practices.³⁶ As Justice Ginsburg famously predicted in her dissent, states immediately unleashed a torrent of voter suppression laws that disproportionately impacted voters of color and have continued to do so.³⁷ Indeed, the ACLU has filed or intervened in over 100 new cases since that time,³⁸ and discriminatory

anti-voter efforts continue to proliferate, including unnecessary restraints on voter registration, voter roll purges, cuts to early voting and vote by mail, documentary proof of citizenship requirements, and polling place closures.³⁹ Additionally, eight years after *Shelby*, the Supreme Court weakened another provision of the VRA — Section 2, a nationwide ban on voting practices that discriminate on the basis of race, color, or language — making it more difficult for voters to challenge discriminatory voting tactics.⁴⁰

- The **Freedom to Vote Act**⁴¹ is transformative legislation that contains essential voting access provisions that would set a wide range of much-needed national standards for federal elections. Among other critical reforms, the FTVA would:
 - Expand automatic voter registration and require states to offer online and same-day voter registration, which would greatly improve registration rates and civic participation nationwide, while reducing administrative burdens and costs on election officials;
 - Mandate at least two weeks of early voting and make no-excuse mail voting an option for everyone, which would drastically improve access to the franchise and help reduce congestion and wait times on Election Day;
 - Create affirmative statutory protections for the constitutional right to vote in federal elections;
 - Increase safeguards for marginalized populations, including voters with disabilities and those with prior felony convictions; and
 - Set national standards to prevent partisan and racial gerrymandering, as well as protect against onerous photo identification requirements and more.
- The **Native American Voting Rights Act**⁴² is essential to protect Indigenous communities from discriminatory voting practices and address the unique barriers to voting that Native communities face. Native American voters have long been the targets of systematic discrimination, including the taking of land, the denigration of languages and cultures, the isolation of people on reservations, the denial of rights of citizenship, and efforts to remove or wipe out Indigenous peoples and tribes. The effects of this discrimination and subjugation continue. One consequence is a depressed socioeconomic status that limits the ability of tribal members to participate effectively in local, state, and national elections.⁴³ Compounded with the Supreme

Court's 2021 decision in *Brnovich v. Democratic National Committee*, which makes it more difficult to challenge policies like restrictions on ballot return assistance that disproportionately harm Native voters in many states,⁴⁴ the NAVRA is needed now more than ever. Among other protections, the most recent version of the NAVRA, introduced in the 117th Congress, set out to address these barriers by:

- Authorizing up to \$10 million in federal funding annually⁴⁵ to support states, localities, and Native tribes' efforts to make voting more accessible for voters on Native lands;
- Requiring states to establish on-reservation polling and voter registration sites,⁴⁶ a provision seeking to address the prohibitive distances that tribal members are often forced to travel to cast a ballot, many times outside of their reservations; and
- Increasing voter access through allowing the use of tribal addresses to register to vote, increasing ballot drop boxes on tribal lands, requiring the acceptance of tribal IDs for voting, and mandating adequate language assistance for Indigenous communities.⁴⁷
- Ending anti-democratic and racially-discriminatory policies of exclusion in D.C. and U.S. territories

A Harris administration is likely to promote the long-overdue passage of the **Washington, D.C. Admission Act**,⁴⁸ granting D.C. statehood and bringing us closer to ending racial discrimination in voting and representation. In June 2020, Harris said on social media that “Washington, D.C. has 700,000+ residents — more than some states — but they are denied full representation in Congress. It’s time to grant D.C. statehood.”⁴⁹ D.C. residents pay federal and local taxes, just like anyone living in any other state, yet they are denied their civil right to representation in the federal government due to the District’s lack of statehood. Not only does D.C., which has a larger population than Wyoming and Vermont, lack voting representation in Congress,⁵⁰ Congress continues to vote to override the will of D.C. voters and residents by overturning D.C.’s local laws.⁵¹ The denial of equal voting and representation rights to roughly 700,000 D.C. residents is deeply rooted in Reconstruction-era racial voter suppression.⁵² It is a wrong that Congress can easily cure by passing statehood-granting legislation that would cover most of the area that currently makes up Washington, D.C. Harris has previously voiced support for D.C. statehood,⁵³ and we will demand she backs up that

support with the power of the presidency. Additionally, we will urge the Harris administration to stand in unequivocal support of the existing self-governance and autonomy granted to D.C. under the Home Rule Act.⁵⁴ In line with this, we will further demand that Harris veto any legislation that seeks to overturn laws enacted by the D.C. government.

A Harris presidency must also build upon efforts the Biden-Harris administration has made to include residents of U.S. territories — like Puerto Rico, the U.S. Virgin Islands, and Guam — in a democracy and racial justice agenda. More than 125 years after the United States began its relationship with the current U.S. territories, one thing about those territories is clear: They were colonies then and effectively remain colonies today. The 3.6 million people who live there — 98 percent of whom are people of color — lack voting representation in Congress and can't vote in presidential elections. They are also denied certain federal benefits, such as Supplemental Security Income Benefits for seniors and people with disabilities, just because of where they live. As a senator, Harris cosponsored legislation to correct harmful inequities in federal health care funding for millions of U.S. territory residents.⁵⁵ We would expect and urge a Harris administration to promote this vital and unfinished work. Ultimately, the ACLU believes U.S. territory residents must, as President Biden said, be able to “determine their own political future” and “receive the full rights and benefits of their citizenship.”⁵⁶ The ACLU will vigorously advocate that a Harris administration dismantle colonialist policies that undermine fundamental rights and economic opportunity for millions of people who live in U.S. territories.

Strengthening our election infrastructure

Finally, a Harris administration is likely to continue the Biden-Harris administration's efforts to **fund state and local elections** across the country adequately and annually, bridging deficits that have resulted in elections that are severely under-resourced, understaffed, and potentially vulnerable to security and other challenges. Experts estimate that fully modernizing our election infrastructure will require \$53 billion over 10 years,⁵⁷ and the Biden-Harris White House has consistently requested billions in funding over a 10 year period.⁵⁸ The President's Fiscal Year (FY) 2025 Budget requested \$5 billion in election grants, starting with \$1.625 billion for FY 2025.⁵⁹ Yet, as the FY 2025 appropriations process moves forward, the House Appropriations Committee passed an appropriations bill that includes \$0 in federal funding for elections.⁶⁰ Additionally, while neglecting this responsibility to fund election infrastructure, members of Congress have simultaneously pushed for bans on nonpartisan private funding for election administrators that seeks to fill the gap left by federal and state

legislators,⁶¹ highlighting the need for concerted pressure on Congress to provide funding.

Congress

The ACLU will continue our work with partners and allies to pass the JLVRAA, core voting provisions of the FTVA, the NAVRA, and the Washington, D.C. Admission Act. The JLVRAA would begin to root out racially discriminatory voting barriers at a moment when the need to restore and strengthen the protections of the VRA has never been clearer. That's why the ACLU has long supported the JLVRAA, including through congressional testimony, consistent lobbying and briefings to members of Congress, reports exposing the impact of *Shelby County* on racially discriminatory voting practices, and constituent education and advocacy activations in support of the bill.⁶² Harris has said repeatedly that “Congress must pass the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act ... the combination of these bills would set a basic standard for voting that puts a stop to obstructionist tactics. These bills would help make sure that all voters, no matter where they live, can vote and have their vote counted.”⁶³ In a Harris administration, the ACLU will double down on our efforts to move these bills through Congress and support the administration to make them part of its agenda in the first 100 days.

While the outlook for these bills in Congress will ultimately depend on whether pro-voter and pro-democracy candidates secure a majority in each chamber, and if those members can reform the filibuster rules, the president plays an important role in using their influence to set a congressional agenda. Filibuster abuse has been used for more than 150 years to thwart minority political participation in our democracy,⁶⁴ including to prevent the passage of a combined version of the JLVRAA and the FTVA.⁶⁵ The ACLU is determined to not let this history repeat itself. Without filibuster reform, anti-voter members of the Senate can block a Senate majority sent to Congress to ensure protections of the right to vote. So, the ACLU will engage in a coordinated Senate-lobbying campaign, ramping up in the lame-duck session, to demand filibuster reform. If there is not a pro-voter Congress, we will not stop fighting. The ACLU and our partners led efforts to reauthorize the VRA five times, each with strong bipartisan support.⁶⁶ It is past time for Congress to return to its longstanding bipartisan tradition to protect every citizen's right to vote.

Our elections simply cannot run efficiently and securely when the officials who perform the daily functions that make our democracy work lack the funds to recruit and hire staff, update voting equipment, research ways to increase accessibility, obtain sufficient and secure facilities, implement other measures to ensure election worker security, and counter mis- and disinformation.

The ACLU will activate pro-democracy supporters across the country, and leverage the reach of key ACLU affiliates, to ensure that congressional appropriators consistently and sufficiently fund elections.

State & Local

In a Harris administration, the ACLU will continue to fight to expand and protect the right to vote on every level of government. This includes pressing state and local officials to leverage every available tool to increase access to voting and strengthen democracy. We have a long history of spearheading successful legislative and ballot campaigns to secure impactful policies that expand voting access.⁶⁷ For instance, while we work federally to enact the JLVRAA, we have used our political power and 50-state reach to help secure state-level VRAs that, like the federal VRA, seek to end discriminatory voting practices.⁶⁸ We will continue to expand these efforts in the coming years regardless of the federal outcomes. Additionally, we will continue to advocate for hallmark policies that expand access to the ballot in states that do not yet have policies. This includes modernizing elections and removing voting barriers through laws creating or expanding same-day registration, automatic voter registration, and early and mail voting. We will activate our members and supporters to demand state legislators repeal felony disenfranchisement laws that strip otherwise eligible citizens from the right to lend their voice to our democracy.

Finally, as we expect to see backlash to a Harris presidency and a flood of voter suppression bills move through state legislatures, we will use our on-the-ground presence with lobbyists, organizers, and activists in every state to stop these bills and minimize any damage these efforts cause.

Courts

In nearly every new state legislative session, numerous bills that aim to restrict people's right to vote have been introduced.⁶⁹ This effort to restrict the right to vote only becomes more intense in response to electoral victories by candidates who support the expansion of civil rights and civil liberties. After Trump pushed the "Big Lie" around the 2020 election there was wave of suppressive bills introduced in the 2021 legislative sessions across the country. In that session, more suppressive legislation was enacted than in any period since advocates began tracking it, with over 440 such bills introduced, 34 enacted into law, and 152 carried over as still live in the next legislative year.⁷⁰

Just as we were in 2021,⁷¹ the ACLU stands ready to go to court to take on suppressive laws, policies, and practices that are likely to follow a Harris win. Since 2021, in

addition to our redistricting docket discussed below, the ACLU has obtained 27 victories for voters across 14 states using the courts, and we're ready to intensify our efforts going forward.⁷² While many introduced anti-voter bills may be beaten back through our advocacy work, if they become law, we will challenge them in court — and we will demand that the Harris DOJ does its part to enforce federal statutory protections of the right to vote. We will make use of both the federal constitution, as well as federal statutory protections, such as the VRA and the Americans with Disabilities Act.⁷³ And should the JLVRAA, the FTVA, or the NAVRA become law, we will not hesitate to make use of these strengthened and new protections to intensify our effort in the courts. Beyond the federal courts, state constitutions and state statutory schemes, including many recently enacted state VRAs, provide additional mechanisms we will use to ensure access to the ballot.⁷⁴

Fully Implementing Executive Order 14019 On Promoting Access To Voting

The Biden-Harris administration brought about historic federal policies to increase voter registration and education. Most notably, President Biden issued Executive Order 14019, which encourages federal agencies to promote nonpartisan voter registration opportunities for all eligible citizens pursuant to longstanding federal law — namely, the bipartisan NVRA⁷⁵ — and directs the federal government to live up to its "duty [...] to promote the exercise of [the right to vote]."⁷⁶ Since the executive order was issued in 2021, some agencies have taken steps toward offering voter registration services under the NVRA to the millions of eligible citizens that receive services directly from the federal government. This progress includes adding voter registration opportunities in Indian Health Service clinics and Veterans Affairs medical centers that will increase access for tribal communities and veterans;⁷⁷ making significant improvements to [Vote.gov](https://www.vote.gov) (the multilingual website that helps you register to vote and understand the voting process);⁷⁸ and providing DOJ guidance to the Bureau of Prisons on facilitating voter registration access for eligible individuals in federal custody.⁷⁹

But there is more to do. In speeches and meetings with voting rights leaders, Harris has vocally embraced efforts to increase nonpartisan voter registration and education under the executive order. In remarks commemorating the one-year anniversary of the executive order, Harris declared that "[t]he President and I have the full power of the executive branch behind this effort [to implement the Executive Order]. And I commend the [federal] agencies that are here today for [their] innovative work."⁸⁰ And

in July 2023, Harris gave a speech at an event in Arizona hosted by the Gila River Tribal Nation and uplifted the great work that is being done in Arizona under the executive order to expand voter registration opportunities at Indian Health Service locations.⁸¹

Federal Agency Implementation

We will encourage a Harris administration to do everything in its power to push federal agencies to continue their impactful work implementing the executive order and increasing participation in our democracy — and to do so more expeditiously. In particular, a Harris administration must push for better implementation of the executive order in three agencies, where growth and expansion of the executive order is possible:

First, we would urge a Harris administration to press for additional steps at the **Social Security Administration (SSA)**, an agency that directly interacts with millions of U.S. citizens as it administers its many different benefits programs.⁸² The SSA should more actively incorporate robust information about voter registration directly into its actual benefits applications, following the model established by Section 7 of the NVRA, which requires social service agencies to provide voter registration opportunities.⁸³ In particular, we will advocate for the SSA to incorporate an impactful voter registration opportunity into all Supplemental Security Income (SSI) applications. Individuals apply for SSI payments through an online disability benefits program, through the telephone, or at their local Social Security Office.⁸⁴ These processes are all run by the SSA and currently do not include information about voter registration, nor do they provide an opportunity to register to vote.⁸⁵ Approximately 34 state Medicaid systems currently rely on the SSA to enroll SSI beneficiaries directly into Medicaid. Consequently, individuals within these systems are typically enrolled in their state's Medicaid program without receiving the required NVRA voter registration opportunity other Medicaid applicants receive.⁸⁶ As of January 2023, there were 7.4 million individuals receiving SSI benefits.⁸⁷ Individuals with lower incomes and disabilities who depend on programs like SSI are much less likely to be registered to vote.⁸⁸ Adding voter registration to the SSI process is a huge opportunity to close the gap and expand access to voter registration for underrepresented populations.

Second, we would press a Harris administration to improve voter registration opportunities following naturalization ceremonies. **U.S. Citizenship and Immigration Services (USCIS)**, which is part of the Department of Homeland Security, has been providing information and access to voter registration opportunities to newly naturalized U.S. citizens after their naturalization ceremonies for years, efforts that pre-date the executive order.⁸⁹ In response to the executive order, USCIS improved its

operations manual guidance related to information about how to register to vote that is provided after the completion of the naturalization process. But much more could be done. We would urge USCIS to require its employees to provide nonpartisan assistance with voter registration applications to any new citizen who asks for it immediately following the naturalization oath ceremony, and to explore ways to share information electronically with state election officials for any new citizen who wishes to be registered to vote.

Naturalized citizens comprise a significant and diverse portion of eligible voters. In the 2023 federal fiscal year, USCIS naturalized 878,500 new citizens.⁹⁰ Naturalized citizens often face numerous structural and political barriers to voting, including language access issues and discriminatory practices that illegally prevent naturalized citizens from voting.⁹¹ These hurdles have historically led to lower voter registration rates and lower voter turnout rates for naturalized citizens compared to native-born citizens. In the 2020 presidential election, 73 percent of native-born citizens reported that they were registered to vote, compared to 66 percent of naturalized citizens.⁹² Similarly, 67 percent of native-born citizens reported voting in the 2020 presidential election, compared to 61 percent of naturalized citizens.⁹³ The ACLU will push a Harris administration to close these gaps by improving the voter registration services provided by USCIS.

Finally, a Harris administration should expand registration opportunities in the Free Application for Federal Student Aid (FAFSA) process administered by the DE. The FAFSA provides an excellent opportunity to reach a population of citizens with lower voter registration rates. Young people are much less likely to be registered to vote than older Americans, and citizens between 18 and 25 years of age have the lowest voter registration rates of all ages due to the unique barriers young people encounter.⁹⁴ For example, in 2018, when a record number of young people voted in the midterm elections, only 28 percent of young people and 40 percent of students cast ballots.⁹⁵ In the 2022-2023 cycle, more than 17 million students filed a FAFSA, including more than 14 million undergraduate students.⁹⁶ Significant numbers of students of color submit a FAFSA application every year: On average, 83 percent of Black students, 74 percent of Hispanic students, 54 percent of Asian American students, and 77 percent of Native American students complete the FAFSA.⁹⁷ Similarly, 73 percent of low-income students complete the FAFSA.⁹⁸ Of these, more than half are eligible for Pell grants, which are generally awarded to those with family incomes below \$30,000.⁹⁹

A simple step the DE can take to help increase voter registration among young people is adding voter registration information to the FAFSA Submission Summary (formerly known as the Student Aid Report) that students

receive after completing the FAFSA.¹⁰⁰ The ACLU will press the DE to add this information to both the electronic and the hard-copy FAFSA Submission Summary and to explore ways to integrate a voter registration question into the FAFSA online application process.

Congress

The ACLU will utilize our lobbying and organizing resources to ensure that Congress blocks any attempt to reverse, defund, or otherwise hamper the strongest implementation of this executive order. This includes defeating appropriation riders and amendments to the NVRA that would nullify or defund the executive order. We will also fight to ensure that agencies have the funding and resources needed to robustly implement this executive order as expeditiously as possible.

State & Local

In addition to our federal efforts, the ACLU will continue to push states and localities to do everything within their power to increase registration opportunities and voter education across state and local government. This includes leveraging our nationwide reach to secure state legislation or executive orders requiring all relevant state and local agencies to offer voter registration opportunities and voter education in interactions with residents. We will continue working to ensure that NVRA-covered states¹⁰¹ are in full compliance with their NVRA obligations to extend nonpartisan voter registration opportunities during all transactions with driver's license offices, public assistance offices, and disability service offices.¹⁰² Moreover, we will ensure that states comply with NVRA list maintenance rules¹⁰³ to avoid the removal of eligible voters from voting rolls and we will urge states to designate additional federal offices as voter registration agencies under the NVRA.¹⁰⁴

Courts

The NVRA contemplated enforcement by the attorney general,¹⁰⁵ but the DOJ has brought very few suits ensuring these protections.¹⁰⁶ We will demand enforcement of the NVRA by a Harris DOJ. These federal protections should be accompanied by federal enforcement.

But we will not wait for action from a Harris administration. The ACLU is one of the few organizations that maintains a full and active docket on enforcing state compliance with the mandatory obligations under the NVRA to provide voter registration opportunities through state motor vehicles agencies and certain other state and local agencies, including public assistance and disability

offices.¹⁰⁷ In a Harris administration, this work will continue in the states to ensure expanded access to voter registration opportunities, making certain that states provide at least the minimum of what the NVRA demands. We will also continue our work in the courts to ensure that state list maintenance practices do not violate the NVRA or other legal protections.¹⁰⁸ This includes taking on efforts of non-governmental groups who aim to use the courts to force more aggressive voter purges by government entities.¹⁰⁹

Some states enact laws that make it more difficult for civic groups to offer voter registration services. As we have in the past,¹¹⁰ we will meet any such laws in the courts. Ensuring that access to voter registration is unimpeded is the key first step in ensuring that access to the ballot is not burdened.

Ensuring An Accurate 2030 Census Count & Apportionment

The next presidential term coincides with the final years of developing and planning for execution of the 2030 constitutionally mandated census count of the entire U.S. population. The ACLU expects that a Harris administration would make every effort to ensure a complete, accurate count that reflects our nation's diversity. Harris strongly condemned former President Trump's efforts to instill fear within immigrant communities, create a "faulty census," and "weaken our democracy."¹¹¹ A Harris administration must therefore build on the Biden-Harris administration's work supporting a successful, more useful, and accurate 2030 Census.

The results of each decennial census are used to apportion seats in Congress among the states; draw congressional and state legislative district lines within each state; and distribute billions in federal and state funding for essential services across virtually every area of life. Attacks on the census are ongoing. The ACLU fought tirelessly against former President Trump's efforts to weaponize and render the census inaccurate because of its immeasurable and wide-reaching impacts.¹¹² That work is not over; it continues as the next census cycle gets in motion. As recently as May 2024, the U.S. House of Representatives passed the misleadingly named Equal Representation Act¹¹³ to mandate a citizenship question and unconstitutionally attempt to exclude noncitizens from the apportionment of U.S. Representatives. Fortunately, pro-democracy Senate leadership refused to advance this harmful undemocratic legislation; it remains as vital as ever for the next administration to serve as a bulwark against these efforts over the next four years.

A Harris administration must also safeguard instrumental progress that the U.S. Office of Management and Budget (OMB) has made to data collection standards for all federal agencies, including the Census Bureau. Under the Biden-Harris administration, in March 2024, the OMB updated quarter-century-old federal standards for collecting and reporting race and ethnicity data to capture more detailed and disaggregated data that more accurately reflects the increasing diversity of the population.¹¹⁴ And while these new guidelines are not perfect and should be further improved,¹¹⁵ protecting this significant advancement is important to expanding efforts to safeguard minority communities from voting discrimination and equipping governments with the detailed data needed to develop programs and allocate resources in ways that bring us closer to a more equitable, inclusive, and stronger democracy.

Furthermore, the ACLU will work with a potential Harris administration and Congress to ensure that the Census Bureau has all the resources and tools needed — including sufficient, consistent federal funding — to be successful in the lead-up to the 2030 Census. We will continue to urge the Census Bureau to revise its residency rule to end prison gerrymandering¹¹⁶ — the practice of counting people who are incarcerated as residents of their detention facility location as opposed to their actual home — that results in skewed and inaccurate political representation and resource allocation that often harms Black and brown communities the most.¹¹⁷

Congress

We will demand that Congress reject any effort to weaken the existing requirement in federal law that “the whole number of persons” be counted in each decennial census or any attempt to mandate a citizenship question.¹¹⁸ Our experienced lobbyists will brief members of Congress on the detrimental, inequitable impact that a citizenship question would have on their home states and constituents, deterring participation by immigrants and communities of color and ultimately leading to an inaccurate count that unfairly reduces federal funding and congressional representation. Additionally, we will invest significant resources in urging Congress to fully fund the Census Bureau’s operations in the lead-up to the next census, pass redistricting reforms that protect against partisan gerrymandering, and require the Census to stop counting incarcerated individuals as residents of their detention facilities.

State & Local

The ACLU will continue our successful efforts to advance legislation and ballot measures that ensure fair

districts in the next 2030 redistricting cycle,¹¹⁹ including enacting protections against racial, partisan, and prison gerrymandering. We will build strong bipartisan support against the addition of a citizenship question in the next census, leveraging our affiliate presence in every state to mobilize state and local officials and other influential voices from districts that stand to lose federal funding and congressional representation from the impacts of such census manipulation. Finally, as we have in the past, we will engage our organizers and members in a public education campaign on the impact of the census in everyday life and the importance of counting every person, laying the groundwork for the most accurate census in 2030.

Courts

Redistricting takes place not in the federal government, but in state and local bodies. The ACLU continually works to ensure fair districting. As we have in each redistricting cycle since the passage of the VRA, we will go to courts to demand that redistricting plans do not dilute the power of voters of color. In the 2020 redistricting cycle, we achieved a landmark ruling at the U.S. Supreme Court in *Allen v. Milligan*,¹²⁰ which held that Alabama’s 2021 congressional map likely violated Section 2 of the VRA, and affirmed the framework and constitutionality of that provision. On the heels of that success, in Georgia, Mississippi, and Louisiana we won Section 2 litigation, securing fairer maps for Black voters in Congress and the state legislatures.¹²¹ This commitment is not just for state and federal offices. We will continue to access the courts to secure fair representation by challenging methods of election that dilute the voting power of voters of color at every level of government.¹²² Redistricting is a key area in which we will encourage a Harris DOJ to use its VRA enforcement authority to hold jurisdictions accountable and ensure fair districts.

Beyond the VRA, we will also access state courts to ensure fair representation. For example, state VRAs will continue to provide a mechanism by which fair representation can be ensured in court. We are litigating to ensure such representation for voters of color in New York,¹²³ bringing one of the first cases to make use of the New York Voting Rights Act,¹²⁴ and will continue to do so where states have enacted these additional protections. State constitutions also provide protections for the right to vote beyond those ensured by the federal constitution. We have challenged unfair maps under state constitutional provisions in state courts;¹²⁵ this will continue to be an avenue to ensure fair representation for all voters at all levels.

CONCLUSION

Vice President Harris said in 2021, “The work ahead of us is to make voting accessible to all American voters, and to make sure every vote is counted through a free, fair, and transparent process. This is the work of democracy.”¹²⁶ We at the ACLU couldn’t agree more. We will be counting on a Harris administration to build on the Biden-Harris administration’s efforts to protect and expand voting access, ensure an accurate census, and shore up faith in and the strength of our democracy. The influence of the presidency can reinvigorate the effort to restore and strengthen the VRA, advance the NAVRA, pass key voting provisions of the FTVA, and secure D.C.

statehood. A Harris administration can double down on a whole-of-government approach to increasing access to voter registration and education through federal agency interactions and efforts to protect the integrity of the 2030 Census. The ACLU stands ready to hold a potential Harris administration accountable to deliver on its promises to protect and expand voting rights, and we will not stop fighting in the courts, in Congress and statehouses, and alongside the most marginalized communities to fortify our democracy for generations to come.

ENDNOTES

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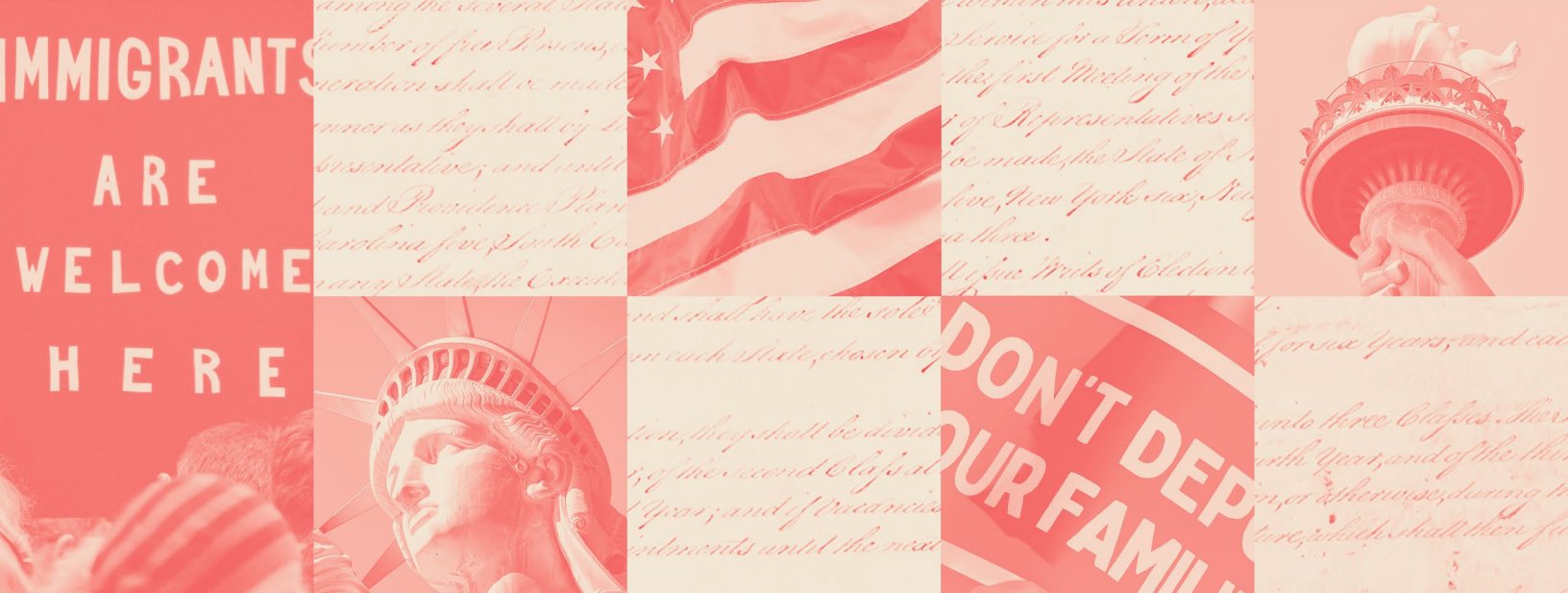
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- 86 Section 7 of the NVRA lays out a number of specific requirements that Medicaid agencies must follow when offering their clients an opportunity to register to vote, such as distribution of voter registration applications and assistance with completing those voter registration applications. 52 U.S.C. § 20506(a)(6).
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- 88 According to a study done on voter registration in the 2020 election, the voter registration gap between voters with disabilities and those without was 2.9%. See Lisa Schur & Douglas Kruse, Fact Sheet: Disability and Voter Turnout in the 2020 Elections 11 (July 2021), https://www.eac.gov/sites/default/files/document_library/files/Fact_sheet_on_disability_and_voter_turnout_in_2020_0.pdf. During the 2022 midterm elections, “sixty-seven percent of eligible voters with household incomes above \$100,000 voted, compared to just 33% of eligible voters with household incomes below \$20,000.” Memorandum from Nat’l Low Income Housing Coal. on Voter Turnout Disparities in 2022 Midterm Elections to Members (May 15, 2023), <https://nlihc.org/resource/new-census-data-reveal-voter-turnout-disparities-2022-midterm-elections>.
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- 95 In the National Study of Learning, Voting, and Engagement, a landmark study of U.S. college and university student voting, the median age of students was 21, and 70 percent of the students were under the age of 25. See Nancy Thomas, et al, Tufts U., Democracy Counts 2018: Increased Student and Institutional Engagement (2019), <https://tufts.app.box.com/v/idhe-democracy-counts-2018>.
- 96 See Dep’t of Educ., FAFSA Volume Reps., <https://studentaid.gov/data-center/student/application-volume/fafsa-school-state> (last visited Aug. 14, 2024).
- 97 FAFSA Application Statistics, available at <https://www.savingforcollege.com/article/fafsa-application-statistics>.
- 98 *Id.*
- 99 Over 60 percent of Pell Grant recipients have family incomes below \$30,000 a year. See President’s FY 2023 Budget Request for the U.S. Department of Education, Congressional Justifications Volume I, Student Financial Assistance at 19 (2022), available at <https://www2.ed.gov/about/overview/budget/budget23/justifications/n-sao.pdf>.
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- 101 Six states (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempted from the NVRA because they “either had no voter-registration requirements or had election-day voter registration at polling places.” *The National Voter Registration Act of 1993 (NVRA)*, U.S. Dep’t of Just. (July 20, 2022), available at <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.
- 102 52 U.S.C. § 20506, *supra* note 7
- 103 *Id.* § 20507(b)-(d).
- 104 *Id.*
- 105 52 U.S.C. § 20510(a).
- 106 See Dep’t of Just., Voting Section Cases, <https://www.justice.gov/crt/voting-section-cases> (last visited Aug. 6, 2024).
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HARRIS ON LGBTQ RIGHTS

The “Harris on LGBTQ Rights” memo outlines the potential opportunities to advance LGBTQ rights under a Harris administration, such as **work to pass comprehensive LGBTQ nondiscrimination protections, like the Equality Act, through Congress and ensuring strong and consistent access to medically necessary health care for trans people across the federal government.** The ACLU is prepared to work alongside a potential Harris administration to respond to backlash against LGBTQ people at the state level.

ACLU PRIORITIES

- **Urging the Harris administration to immediately issue an executive order directing federal agencies to examine ways that they can affirmatively enhance access to gender-affirming care.**

This would send a powerful message about how a future-President Harris is prioritizing the health care needs of trans people, and it would strengthen coverage and access to gender-affirming care under federal policies and programs.

- **Continuing to challenge anti-LGBTQ policies at the state and local levels.**

We also urge a potential Harris administration to fight for LGBTQ people in the courts.

- **Advocating for comprehensive nondiscrimination protections and working with Congress to push back against efforts to include anti-LGBTQ measures in must-pass legislation.**

Anti-LGBTQ members of Congress have previously abused the appropriations process to attempt to include poison pill riders that would have devastating consequences for transgender people, such as measures to ban gender-affirming care.

- **Bringing the full power of its members, supporters, and volunteers to help ensure progress for LGBTQ equality under a Harris administration.**

To help a future Harris administration pass federal nondiscrimination protections for LGBTQ people, we will prioritize organizing in states with key legislative targets to push Congress to reform the Senate filibuster and pass pro-equality legislation.

“The Biden-Harris administration has a strong record of protecting and expanding the freedom of LGBTQ people at a time when those freedoms have faced an unprecedented assault. **With further attacks on our rights and a landmark Supreme Court case on the horizon, we encourage a Harris-Walz administration to continue this commitment and do everything in its power to protect our rights, our health care, and our freedom to be ourselves without fear.**”

— **James Esseks,**
Co-director of the ACLU’s
LGBTQ & HIV Project

“When targeting LGBTQ people is a priority for our enemies, it’s even more critical that defending LGBTQ people remain a priority for our friends. **The Biden-Harris administration has worked hard to earn the trust of LGBTQ people and our families through concerted efforts to protect transgender kids in our schools, defend the right to marriage equality, and ensure medical decisions stay between trans people and their doctors.** We’re hopeful a Harris-Walz administration builds on this legacy. We will bring all our resources to help them do so.”

— **Mike Zamore,**
National Director for Policy &
Government Affairs at the ACLU

HARRIS ON LGBTQ RIGHTS

Building on a Legacy of Undoing Harm, Expanding Protections, and Serving as a Bulwark Against State Attacks

The Biden-Harris administration's record on LGBTQ rights suggests strongly that Kamala Harris, the Democratic candidate for president, would champion LGBTQ rights if elected. Given the significantly anti-trans policy environment that has emerged from state-legislative attacks on LGBTQ people over the past four years, the ACLU would push a future Harris administration to build on the Biden-Harris history and use the power of the federal government to protect LGBTQ people from harm in as many ways as possible.

From its first day in office, the Biden-Harris administration worked to undo many of the Donald Trump administration's regressive anti-LGBTQ federal policies, and to enhance federal protections. The Biden-Harris administration ordered federal agencies to protect LGBTQ people against discrimination by ensuring that the Supreme Court's historic decision in *Bostock v. Clayton County* applied in the contexts of not just employment, but housing, health care, and credit lending. It also reopened the military to transgender service members, reversing the Trump administration's ban. It expanded access to gender-affirming health care through government health-care programs, including in prisons. And it expanded access to accurate gender markers on federal government identification documents.¹

The Biden-Harris administration has been a bulwark against anti-LGBTQ attacks by suing states over some of their anti-trans laws and policies. In particular, it sued several states over their bans on medically-necessary health care for trans adolescents, bringing the issue all the way to the U.S. Supreme Court this coming term.²

While so much more work remains, including passing comprehensive nondiscrimination legislation through Congress, we have seen significant progress under the Biden-Harris administration in undoing the erasure and harm of the Trump years, in strengthening and expanding protections for LGBTQ people, and in fighting back against state attacks on trans people through the courts.

Given this strong record, should Vice President Harris win election this November, our expectation is that much of this work will continue. How much progress we could see under a Harris administration will depend significantly on whether she has pro-equality majorities to work with in the House of Representatives and the Senate. Regardless of the outcome of the election, the ACLU will ensure that the rights and freedoms of LGBTQ people are protected.

OVERALL RESPONSE

Courts

When a new presidential administration takes office in January 2025, the LGBTQ community will likely continue to confront a dismal policy landscape in about half the states where trans adolescents — and increasingly trans adults — cannot access gender-affirming medical care; where trans people are unable to use restrooms in schools and other government buildings; where updating

gender markers on identity documents is challenging or impossible; and where participation in society as their authentic selves is increasingly challenging and fraught.

In addition to trying to reduce or eliminate these harms through its independent regulatory authority and its ability to work with Congress to shape pro-LGBTQ legislation, a Harris administration will also have the opportunity to use the courts. This would continue the

Biden-Harris record of suing states for violating the civil rights of trans people, and the ACLU will urge a Harris administration to hold states accountable through the courts.

That said, a Harris administration, as well as the private litigants that the ACLU represents, will face a challenging course in using the federal courts to stop the ongoing attacks on the LGBTQ community. The Trump presidency had an enormous impact on the courts, including the Supreme Court. Getting courts to understand the experience of transgender people and the impact of discriminatory policies on their lives was difficult even before Trump reshaped the judiciary. It is that much harder now.

That doesn't mean that we can't make an important impact with litigation. We have seen some Trump-appointed judges rule in favor of LGBTQ rights in the lower courts.³ And it was a Trump appointee — Justice Neil Gorsuch — who authored *Bostock v. Clayton County*, 590 U.S. 644 (2020), our case establishing that Title VII, a federal law prohibiting sex discrimination in employment, protects against discrimination based on sexual orientation and gender identity.

But even when we don't prevail in the courts, filing cases would allow both a Harris administration and private litigants to publicly call out unconstitutional and illegal policies, and to build the political and grassroots support that will ultimately result in more just policies over time. Accepting the illegal and unconstitutional anti-trans and anti-LGBTQ policies present in about half the states without a legal fight is not an option. Below we discuss how those state policies should be considered illegal and unconstitutional under any proper reading of precedent.

Congress

Enacting explicit, comprehensive nondiscrimination protections based on sexual orientation and gender identity requires congressional action. While a pro-equality president can do a lot to protect the rights and freedom of LGBTQ people, they cannot achieve this long-sought goal on their own. Since the earliest days of her service in the Senate, Vice President Harris has consistently made clear her support for the Equality Act, which is legislation that would provide LGBTQ people with explicit, comprehensive protection against discrimination. She has consistently urged Congress to pass the legislation.⁴

In the event of a divided Congress, similar to what we have now, it will be essential for the Harris administration — combined with pro-equality members of Congress — to remain vigilant against efforts to include anti-LGBTQ measures, including those banning access to gender-affirming care, in must-pass legislation, such as bills

to fund the federal government. In 2023, anti-LGBTQ members of Congress attempted to include more than 50 such measures in must-pass annual appropriations bills.⁵ These kinds of restrictions often fly under the radar and escape significant public attention, but their impact on the lives and health of LGBTQ people, particularly those who are transgender, can be devastating. As we did for the fiscal year (FY) 2023 bills, the ACLU will mobilize our grassroots to push for appropriations bills free of poison-pill riders.

Federal Agencies

As we have repeatedly witnessed during the Biden-Harris administration's more than three years in office, actions by federal agencies have been essential in strengthening and advancing protections for LGBTQ people. The actions that federal agencies have taken to implement the *Bostock* decision have been critical in providing LGBTQ people with protection against discrimination across critical areas of daily life, including education, housing, health care, and credit. We expect this work to continue under a Harris administration. In the event of a divided Congress — or even one controlled by majorities that are hostile to the rights and freedom of LGBTQ people — action at the federal-agency level will be how progress, however halting or limited, is achieved in the near term.

Strengthening and expanding access to gender-affirming care is an area that various federal agencies can continue to act on to ensure that the health care needs of transgender people are met. These are actions that a pro-equality administration can take regardless of Congress. One significant action that a Harris administration could immediately take is to issue an executive order directing federal agencies to examine ways that they can affirmatively enhance access to gender-affirming care. This would send a powerful message about how a future-President Harris is prioritizing the health care needs of trans people, and it would strengthen coverage and access to gender-affirming care under federal policies and programs. The ACLU will continue to engage with federal agencies, including through the rulemaking process, to ensure that there are strong protections for LGBTQ people in place.

States & Municipalities

Under a Harris administration, we expect to see pro-equality states work alongside the federal government to strengthen and expand protections for LGBTQ people. A Harris administration could work to ensure that states have the resources they need to expand their own pro-equality programs and protections. For example, state employees and state-funded programs should be

fully trained on LGBTQ competency, and state budgets must provide dedicated funding streams for LGBTQ-specific programs. State medical facilities and insurance programs can ensure trans and gender-expansive people have access to the care that is medically necessary to live their lives. State housing programs must have policies in place to ensure they are affirming and accessible to LGBTQ people. State laws and court rules can be updated to ensure all people can access legal name changes and state identification that reflects who they are. Criminal legal systems should be reformed to stop the disproportionate harm to LGBTQ people, specifically BIPOC trans people, and ensure there is increased funding to community-based alternatives to incarceration.

We know that a Harris win on the federal level may ignite backlash against LGBTQ people in the form of increased attacks in some states. With that, it will be equally, if not more important, that a Harris administration dedicates attention and resources to supporting LGBTQ people living in anti-equality states. During a Harris administration, the ACLU will work alongside the federal government to fight state attacks on LGBTQ people. This work will include bringing lawsuits to fight existing or new anti-LGBTQ laws that ban access to medical care for trans people, ban access to restrooms and facilities for trans people, strip schools of their ability to support and create a positive learning environment for LGBTQ students, and

more. In states where we see continued attempts to pass anti-LGBTQ laws, we will show up in hearing rooms and state houses across the country to fight these attacks.

Organizing

The ACLU is committed to bringing the full power of its members, supporters, and volunteers to help ensure progress for LGBTQ equality under a Harris administration. Our goal of passing comprehensive federal nondiscrimination protections for LGBTQ people will not be possible without tremendous public pressure through aggressive lobbying and grassroots mobilization to create the urgency and momentum for Congress to enact these protections.

To help a future Harris administration pass federal nondiscrimination protections for LGBTQ people, we will prioritize organizing in states with key legislative targets to push Congress to reform the Senate filibuster and pass pro-equality legislation. We will engage our ACLU activists to join the fight for LGBTQ equality, hosting events in key districts to educate the public on this issue and engaging members of Congress in-district to get them on the record supporting LGBTQ rights. And we will push a Harris administration to prioritize passage of pro-LGBTQ legislation in Congress.

SPECIFIC OPPORTUNITIES & RESPONSES

Filling in Remaining Gaps in LGBTQ Protections at the Federal Level

The Biden-Harris administration made great strides not only in reversing anti-LGBTQ actions by the Trump administration, but in advancing greater affirmative nondiscrimination protections for LGBTQ people at the federal level. Significant gaps still remain, and a Harris administration should move quickly to fill them.

The Biden-Harris Record

The Biden-Harris administration's history on LGBTQ nondiscrimination makes us optimistic that a Harris administration would continue to prioritize this work. On the very first day of the Biden-Harris administration, President Biden signed Executive Order 13988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation."⁶ In it, the administration declared that it was the policy of the United States that "Every person should be treated with respect and dignity and should be able to live without

fear, no matter who they are or whom they love." The executive order affirmed the Supreme Court's historic ruling in *Bostock v. Clayton County*, in which the court held that it was a violation of Title VII of the Civil Rights Act of 1964 to fire someone because they are LGBTQ, and applied its holding to federal laws prohibiting discrimination in housing, education, health care, and credit. Some of these changes happened quickly, such as when the Department of Housing and Urban Development announced that it would enforce the Fair Housing Act to prohibit discrimination against LGBTQ people.⁷ In some cases, this essential work has taken years to accomplish. It was only in April 2024 that the administration finalized a rule to strengthen nondiscrimination protections in health care and insurance coverage under the Affordable Care Act for LGBTQ people.⁸

Outside the context of Executive Order 13988, the Biden-Harris administration has repeatedly worked to expand LGBTQ rights. On its first day, President Biden signed another executive order, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."⁹ This executive order made it U.S.

policy to use the federal government to advance racial equity and support for underserved communities, and explicitly included LGBTQ people within these measures. Just days into the Biden-Harris administration, the Department of Justice (DOJ) reversed a Trump-era memorandum that was intended to severely limit the application of the *Bostock* decision and thus its ability to protect LGBTQ people from a wide range of discrimination. On January 25, 2021, the Biden-Harris administration ended the ban on military service by transgender people that was put in place by President Trump.

The Biden-Harris administration's work on LGBTQ justice has been both substantive and symbolic. In June of 2021, Harris became the first sitting vice president to march in a Pride parade,¹⁰ doing so as part of the Capital Pride Walk & Rally in Washington, DC. In addressing the crowd, Vice President Harris called on the Senate to take up and pass the Equality Act.¹¹ In addition, Vice President Harris has noted the close connection between politicians and legislators attacking health care for transgender people and those doing the same for abortion and other reproductive care, saying, "The intersection on the issue of reproductive care and trans care, and the ability of families to be able to have care for their children and their families, is really, again, an intersection around attacks that are on an identity."¹²

Still, significant gaps in federal protections for LGBTQ people remain, and a Harris administration must work to bridge those gaps.

Ensure strong and consistent access to medically necessary health care for trans people across the federal government

The Biden-Harris administration has made progress in providing access to medically-necessary health care for trans people, but gaps remain. For example, while federal employee health plans, Medicare, and the Federal Bureau of Prisons all provide gender-affirming health care, including surgery, the Department of Veterans Affairs (VA) has been dragging its feet on this issue. Despite the VA announcing in February 2021 that it would begin reviewing its policies to ensure that they are fully inclusive of transgender veterans, including a plan to end the ban on comprehensive gender-affirming care, transgender veterans are still not able to access medically-necessary, even life-saving, surgical care within the VA health care system.¹³ This is a serious issue because the armed forces are likely the country's largest employer of trans people, with approximately one in five (21 percent) trans people serving in the military at some point in their lives,¹⁴ which makes the VA health system an essential resource for trans Americans.

In addition, the Department of Health and Human Services (HHS), including the Centers for Medicare and Medicaid Services, must strengthen coverage for gender-affirming care for federally-funded programs such as Medicare and Medicaid, including through mandatory coverage determinations and increased clarity around what must be covered.

A Harris administration should prioritize ensuring that all parts of the federal government provide medically necessary care for trans people. One of the most significant and powerful ways for a Harris administration to make clear how it is prioritizing the health care needs of trans people is by issuing a day one executive order directing federal agencies to examine ways that they can affirmatively enhance access to gender-affirming care in federally funded programs. An executive order like this would have the benefit of providing clear direction to federal agencies, and doing so in a way that will serve the goal of comprehensively addressing this issue, including through mandatory coverage determinations and increased clarity around what must be covered.

Passing Comprehensive Nondiscrimination Legislation

A Harris administration should work to pass comprehensive LGBTQ nondiscrimination protections like the Equality Act through Congress.

The Biden-Harris administration has long prioritized passage of the Equality Act. Most recently, President Biden called on Congress to pass the bill in his 2024 State of the Union address.¹⁵ From her earliest days in the Senate in 2017, Vice President Harris was a co-sponsor of the Equality Act.¹⁶ A Harris administration would almost certainly prioritize passage of the Equality Act or other comprehensive nondiscrimination legislation for LGBTQ people. While a pro-equality administration is essential for the success of the decades-long struggle to pass federal nondiscrimination protections for LGBTQ people, it alone is insufficient. Not only will it require a pro-equality trifecta at the federal level, but passage through Congress will ultimately depend on reform or elimination of the filibuster in the Senate.

Today's version of the filibuster — unlike the way the Senate operated for almost 200 years on nearly all business — guarantees gridlock by giving the minority party a veto over the Senate's agenda. The ACLU is prepared to harness the public pressure necessary to push the Senate to restore its ability to deliver legislative results for the people. The ACLU will engage in a multi-front effort, including aggressive lobbying and grassroots mobilization, to make the case, create the urgency, and

provide the momentum necessary for Congress to act. Passage of legislation like the Equality Act is something that advocates and elected leaders have strived to achieve since the mid-1970s. We must be prepared to act to finally achieve this goal if the window of opportunity presents itself.

Even in the event of a pro-equality trifecta, the need to act quickly to secure these protections is of paramount importance. New presidential administrations with support from both chambers of Congress typically enact the bulk of their legislative agenda within the first six months of their first year in office. The window of opportunity to win comprehensive nondiscrimination protections for LGBTQ people will quickly close. Acting decisively and early will be essential. This is true not only because of the unforgiving reality of the legislative process in Congress but also because there is an urgency to secure these protections, particularly for transgender people. In recent years, we have seen state after state enact draconian restrictions on the health and lives of transgender people. Federal legislation like the Equality Act is urgently needed to safeguard the basic freedom of transgender people.

When this legislation is ultimately debated on the Congress floor, we can expect opponents of LGBTQ equality to do everything within their power to defeat it, including the “thousand cuts” strategy of offering amendments to water down and strip away its protections. One such tactic is adding anti-trans amendments to the bill. Another is likely to come in the form of amendments to provide religious exemptions for those who object to LGBTQ people. As a senator, Vice President Harris was the lead sponsor of the Do No Harm Act. This legislation would have prevented the Religious Freedom Restoration Act, or RFRA, which is now federal law, from being used to evade compliance with civil rights, labor, child welfare, and health care laws.¹⁷ In sponsoring the Do No Harm Act, Vice President Harris demonstrated an understanding that while religious freedom is a core Constitutional value, it must not be used as a means of causing harm to other people. A Harris administration would need to maintain this position in the face of inevitable efforts to allow for sweeping discrimination against LGBTQ people.

While the path forward for comprehensive federal nondiscrimination legislation remains uncertain — and depends heavily on the outcome of the election — we can expect a Harris administration to continue to champion the Equality Act.

While the passage of explicit, comprehensive legislation protecting LGBTQ people from discrimination is the ACLU’s top LGBTQ priority in Congress, there are many other actions that a Harris administration should urge Congress to take to safeguard the rights of LGBTQ people.

For example, given the critical role that the DOJ has played in acting as a bulwark against anti-trans laws at the state level, a pro-equality Congress should act to increase funding for the Civil Rights Division to allow for the U.S. to play an even more active role in making the case, alongside organizations like the ACLU, for the rights of LGBTQ people in court. In addition, we can expect to see — and will support — additional pro-equality bills introduced by members of Congress to address specific areas of discrimination, such as the REAL ID Gender Requirement Reform Act. This legislation would remove the requirement to include gender under the federal REAL ID law, a step that would improve the ability of trans and nonbinary people to have accurate, REAL ID-compliant IDs.

Use Federal Authority to Stop or Mitigate Discrimination by the States

The ACLU will push a Harris administration to work to mitigate the harms caused by the terrible anti-trans policy landscape in many states both through federal agency action and through the courts.

Federal Agency Actions to Mitigate Harm to LGBTQ People at the State Level

We will continue to see attacks on the rights of LGBTQ people in anti-equality states over the coming years, and the federal government can play an important role in fighting those attacks.

Many federal agencies have an important role to play in protecting LGBTQ people across the country from harmful state laws. The Department of Education can strengthen protection of LGBTQ students across the country through more robust enforcement of nondiscrimination rules and more vigorous investigation and resolutions of Education Office of Civil Rights complaints based on sex discrimination. It is worth noting that the most recent Department regulations clarifying how Title IX can be used to protect LGBTQ students are enjoined in certain states, so the administration must continue to fight in the courts to lift that injunction.

The HHS Office of Civil Rights must also provide more robust enforcement of nondiscrimination policies. This includes providing proactive compliance enforcement with public and private insurance policies across the country to ensure they do not exclude care for transgender patients, as well as rigorously investigating all complaints of discrimination.

Holding States Accountable Through the Courts

A Harris administration should continue the Biden-Harris practice of working through the courts to minimize states' anti-trans attacks.

Since the early days of its tenure, the Biden-Harris administration has consistently fought for LGBTQ people in the courts, repeatedly advancing legal arguments intended to expand protections. The Civil Rights Division of the DOJ filed statements of interest in litigation aiming to strike down laws banning healthcare for young trans people, laws prohibiting trans students from participating in sports, and laws preventing schools from creating a safe learning environment where trans students can use school restrooms and facilities. For example, in April 2021, the DOJ filed a statement of interest in a Georgia case, arguing that to comply with the Eighth Amendment's ban on cruel and unusual punishment, transgender prisoners must be housed according to their gender identity and provided with gender-affirming health care.¹⁸ In June 2021, the DOJ argued that West Virginia's law prohibiting transgender women and girls from playing on sports teams was a violation of federal law and the Constitution.¹⁹ In another statement of interest, the DOJ

argued that Arkansas' law prohibiting medical providers from providing transgender youth with medically-necessary care was a violation of the Constitution.²⁰

Since then, the Biden-Harris administration has sued states over anti-trans policies around health care, including by joining a challenge brought by Tennessee families (represented by the ACLU and Lambda Legal) to that state's ban on medically-necessary health care for trans adolescents. This June, in response to a petition from the United States, the Supreme Court agreed to review a lower court decision upholding the Tennessee ban.²¹ This partnership with the DOJ has been essential in serving as a bulwark against waves of state-level anti-trans attacks year after year.

Vice President Harris used her powers as attorney general of California to support transgender rights in the court,²² and we expect that under her leadership the DOJ Civil Rights Division would continue to expand its litigation that aims to protect transgender people across the country from discriminatory state laws. The ACLU will work with a Harris administration to continue this partnership.

CONCLUSION

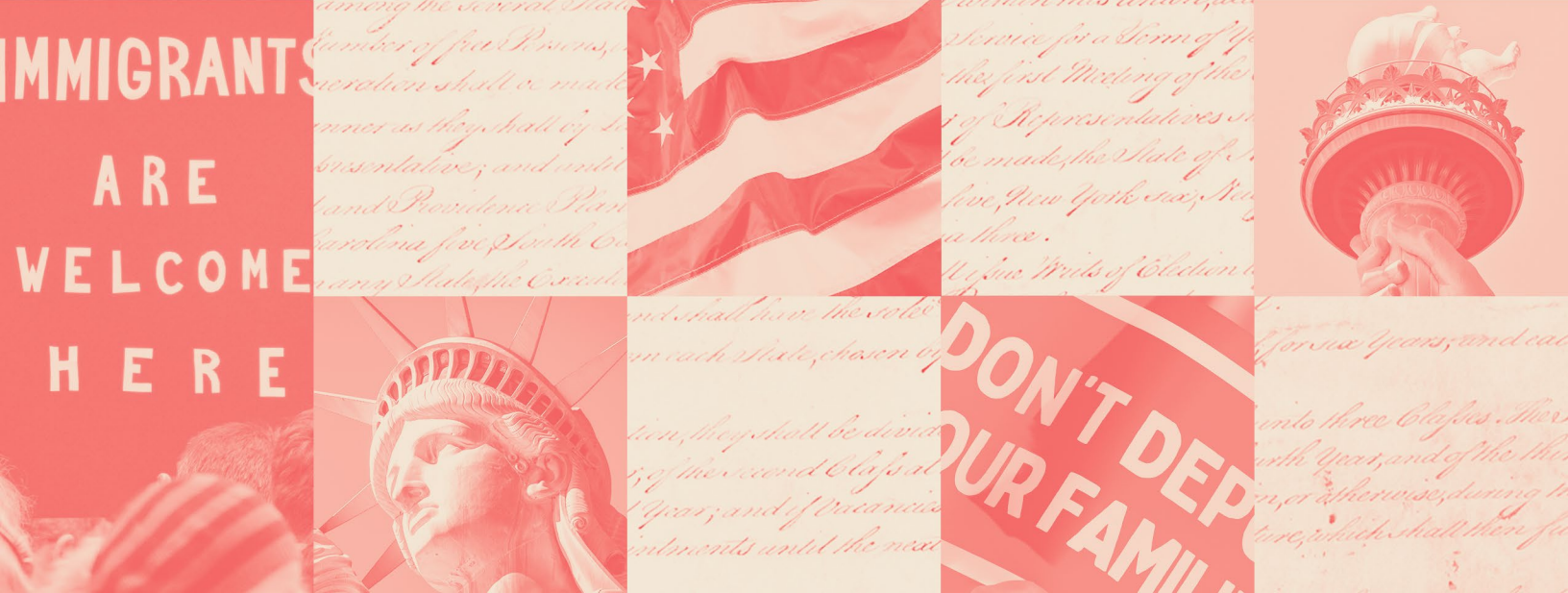
Based on the Biden-Harris administration's record, we see a strong basis for optimism that a Harris administration would continue to fight for LGBTQ people by working to expand federal protections and to combat regressive and harmful state policies. If Vice President Harris is elected president, the ACLU will be there both to partner with her administration on enshrining vital protections,

including the passage of comprehensive nondiscrimination legislation in Congress, and to push her when we must to ensure that her administration stays focused on protecting and expanding justice for the LGBTQ community.

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HARRIS ON SURVEILLANCE

The “Harris on Surveillance” memo outlines steps Democratic nominee Vice President Kamala Harris can take to rein in expansive government surveillance and protect individual rights and liberties if she is elected president. **The memo urges Harris, if elected, to protect against Big Brother digital surveillance, end unjustified and discriminatory domestic surveillance, and implement safeguards for the use of artificial intelligence (AI) and data privacy.**

ACLU PRIORITIES

- **Protecting against Big Brother digital surveillance.**

A Harris administration must end spying under Section 702 and Executive Order 12333, and massive government purchases of our information from commercial data brokers. These activities allow the government to obtain sensitive, private information about Americans without a warrant or privacy safeguards.

- **Ending unjustified and discriminatory domestic surveillance and investigation.**

Loopholes in federal national security policies that permit bias, watchlisting, social media monitoring, and other wrongful and discriminatory targeting of people exercising their rights to free speech and association must end. People who are racial and religious minorities, or those who dissent from government policy, are often unfairly targeted for surveillance and investigation by federal agencies. The ACLU will urge a potential Harris administration to explicitly prohibit discrimination and rein in domestic surveillance powers.

- **Implementing strong safeguards for artificial intelligence and data privacy.**

National security agencies are increasingly developing and deploying powerful AI systems, which present immense risks to the rights and safety of people in the U.S. and abroad. The ACLU will urge a Harris administration to establish robust safeguards around federal uses of AI and urge Congress to pass a federal comprehensive data privacy law that will reduce how much data is collected from us in the first place.

“Despite perennial campaign trail promises to rein in surveillance powers that violate our privacy and civil liberties, once in office, presidents from both parties have all-too-often doubled down on the same powers that consistently lead to abuse. Regardless of who is president, the ACLU will continue to shed light on the government’s warrantless spying on Americans and challenge wrongful and discriminatory surveillance in court to vindicate the rights of people who are harmed.”

— **Hina Shamsi,**
Director of the ACLU
National Security Project

“As a senator, Kamala Harris had a strong record of opposing legislative efforts to expand mass surveillance powers. As vice president, she recognized the ‘moral, ethical, and societal duty’ to protect Americans from potential harms of AI. If elected president, we hope she brings that same fire to the White House to restore checks and balances to mass surveillance.”

— **Kia Hamadanchy,**
ACLU Senior Policy Counsel

HARRIS ON SURVEILLANCE

Protecting Individual Liberties and Rights by Constraining Executive Power

Since this nation's founding, the executive branch has been granted — or has claimed — immense power to enforce the law, including the power to surveil, investigate, and impose criminal or other sanctions that deprive individuals of their freedoms. Today, national security agencies in particular — including those with law enforcement, intelligence, homeland security, and defense functions — combine their expansive authorities with unprecedented digital tools that can peer into our personal and professional lives.

Executive branch officials can exercise their powers to surveil and investigate with vast discretion in deciding who to scrutinize, monitor, and pursue through the criminal and civil tools they command. Those decisions can have severe consequences for individual rights. And federal agents can abuse their authority by directing accusations, surveillance, investigations, and prosecutions to target those who dissent against government policies and discriminate against vulnerable communities.

Over the last 20 years and more, the ACLU and our allies have exposed, documented, and challenged abuses that

range from Big Brother dragnet surveillance programs to unwarranted and discriminatory domestic surveillance and investigation of protestors, racial and religious minorities, immigrants, and social justice activists. Yet successive presidents — Democrats and Republicans alike — have sought to maintain and dramatically expand executive surveillance powers without meaningful judicial constraints or adequate congressional oversight. Campaign-trail promises to examine and rein in these powers and abuses are all too often broken when the presidential candidate wins office — to the detriment of our system of checks and balances, privacy, civil rights, and civil liberties.

If Vice President Kamala Harris wins the election this November, her administration has the obligation and opportunity to break this cycle. Our roadmap focuses on three core priorities as a start: protecting against Big Brother surveillance; ending unwarranted and discriminatory domestic surveillance and investigation; and implementing strong safeguards for artificial intelligence and data privacy.

OVERALL RESPONSE

The ACLU will push a Harris administration to rein in uses of surveillance that discriminate against people in the United States or invade their privacy; urge the administration and Congress to adopt strong guardrails for the use of artificial intelligence; and challenge executive branch abuses of individual rights and freedoms in court, as we have done throughout our history.

Courts

We will maintain our track record of exposing and challenging federal agencies' infringements of individuals' privacy, civil liberties, and civil rights. We will continue to support and defend protestors, racial and religious minorities, immigrants, and others who are subjected to abusive surveillance, investigation, prosecution, and coercive measures like wrongful watchlisting. We will seek redress through affirmative litigation when federal

agencies abuse their coercive powers in ways that illegally breach Americans' privacy or discriminate based on race, ethnicity, and other protected characteristics.

Congress

Although members of both parties have been quick to empower the executive branch in the name of national and homeland security in the post-9/11 era, we have built a durable bipartisan coalition of advocacy organizations and former and current policymakers to push for limits on government surveillance. We will work with congressional allies to implement specific measures to rein in overbroad and unwarranted surveillance. We will work to change the politics around surveillance and individual liberty, so politicians are more likely to defend our privacy and rights. The ACLU is already responding to current and promised attacks on those who dissent against government policies,

and rallying allies around the need for robust separation of powers, strong due process protections, and limits on executive power.

States & Municipalities

We will urge states and cities to restrict the information they provide to federal agencies and departments. For example, the ACLU has successfully advanced state and local laws to increase community control over policing and championed legislation to restrict "reverse" warrants and end purchases of personal information from data brokers. These efforts would reduce the pool of data available to law enforcement, including federal law enforcement. In addition, we will urge state and local governments to end, or sharply limit, their participation in fusion centers and other state-federal intelligence hubs that have been rife with abuse.

SPECIFIC OPPORTUNITIES & RESPONSES

Protecting Against Big Brother Surveillance

The government has vast, unprecedented powers to surveil and peer into people's private lives. It exploits at least three sources to conduct dragnet surveillance of Americans' data: (1) Section 702 of the Foreign Intelligence Surveillance Act (FISA), which authorizes the collection of communications between U.S. persons and people outside the United States; (2) Executive Order 12333, which allows the government to conduct bulk surveillance outside the United States and results in the collection of Americans' private data; and (3) the government's use of commercial data brokers to purchase massive quantities of Americans' private data.¹ Through these dragnet surveillance methods, the federal government obtains access to incredibly sensitive information about Americans — information that can paint a detailed portrait of our private thoughts, relationships, and actions. The government regularly searches through that data for intelligence or domestic law enforcement purposes without a warrant and without notice or other significant safeguards necessary to protect our rights.

For example, the information that the government purchases from data brokers without meaningful oversight and transparency can be highly sensitive, and could include:

- Location information from individuals' visits to health clinics,² as well as reproductive tracking applications

installed on people's phones;³

- Information regarding people's race, ethnicity, gender, sexual orientation, income, and political and religious affiliations;⁴ and
- People's immigration status and related information for immigration enforcement.⁵

According to former deputy director of the CIA Michael Morell, "[t]he information that is available commercially would kind of knock your socks off. If we collected it using traditional intelligence methods, it would be top-secret sensitive. And you wouldn't put it in a database, you'd keep it in a safe."⁶

There are few checks on these surveillance powers. Federal agencies rely on them to collect sensitive information without providing a judicial warrant or even notice to individuals whose data has been captured. And the problem is only getting worse as President Biden recently signed legislation dangerously expanding Section 702.⁷ Under that expansion, the government can conscript essentially any business that provides Wi-Fi to its customers into service for spying, unless it qualifies for one of Section 702's limited exceptions. The Biden administration has promised it will limit its use of this authority,⁸ but that does not commit any future administration to do so.

As a senator, Vice President Harris had a strong track record of legislative efforts to rein in warrantless surveillance of Americans. She served as a member of the

Senate Intelligence Committee and voted to require a warrant before law enforcement and intelligence agencies could query Americans' data acquired through Section 702 surveillance. In 2018, she voted "no" on reauthorizing Section 702 because she said it "neglects to adequately protect the privacy rights of the American people."⁹ If elected president, Harris will have the opportunity to make good on her commitments to protecting Americans by addressing the long-running harms and privacy violations that result from the government's use of Section 702, Executive Order 12333, and commercial data purchases.

How the ACLU Is Preparing to Respond

Litigation

Because the government uses mass warrantless surveillance authorities (Section 702 of FISA and Executive Order 12333) in secret and without disclosure to the people who are surveilled, it is challenging to identify when someone has been subjected to warrantless surveillance. In practice, people whose privacy rights are violated have had very little legal recourse due to the government's refusal to disclose even basic information about this surveillance and the government's repeated use of the "state secrets privilege" to thwart court review of its most intrusive spying programs. The government used the latter tactic in our lawsuit on behalf of the Wikimedia Foundation and eight other organizations that challenged the National Security Administration's (NSA) Upstream surveillance program, which the government uses to search Americans' internet communications as they enter and leave the country.¹⁰ Even people who are criminally charged at least in part on the basis of evidence derived via Section 702 and Executive Order 12333 are hard-pressed to understand whether and to what extent their private communications have been intercepted and searched.

Although it can be difficult to challenge Section 702 and Executive Order 12333 surveillance, we have done so in the past and will continue to do so by carefully monitoring (1) criminal cases where the government has disclosed its use of other types of sensitive surveillance that are often used in parallel with these secret surveillance methods, (2) publicly available government documents such as Department of Justice (DOJ) press releases, (3) legislative testimony about purported surveillance "successes," and (4) media reports that provide additional information about the government's use of controversial surveillance tools. We will work in collaboration with criminal defense attorneys around the country to file motions that seek to compel the government to provide notice to criminal defendants in investigations where agents relied on Section 702 or Executive Order 12333 surveillance. And in cases where criminal defendants have a basis to believe the government used Section 702 or Executive Order 12333 surveillance

to intercept and search their communications without a warrant — as in cases like *United States v. Muhtorov*, *United States v. Moalin*, *United States v. Hasbajrami*, and *United States v. Russell*, where we have served as either co-counsel or amicus — we will support defendants in filing motions challenging the lawfulness of that surveillance under the Fourth Amendment and in seeking to suppress the resulting evidence.

By representing defendants who are accused of crimes based on illegally obtained private data, we shed light on the ways in which the government is engaging in mass surveillance of Americans — the vast majority of whom may never know that their privacy has been breached by their government.

Legislative Advocacy

The ACLU has built a durable bipartisan coalition of advocacy organizations and former and current policymakers to push for limits on government surveillance. Before the end of this Congress, the ACLU will continue to work with congressional allies to narrow the recent expansion of the definition of "electronic communications service providers" that would allow the government to force a wide range of U.S. businesses to give the NSA access to their Wi-Fi routers, phones, and other communications equipment.¹¹ As a part of this process, the ACLU will also work to reverse the changes made under this year's reauthorization that weaken the FISA Court's ability to obtain independent input from experts on civil rights, civil liberties, and privacy when the government secretly seeks permission to conduct novel forms of surveillance.

Looking forward, given that Congress only reauthorized Section 702 for two years, there will be another opportunity by April 2026 to address the ACLU's longstanding concerns regarding mass warrantless surveillance. We will continue to work with the bipartisan surveillance coalition to limit the federal government's vast ability to search Americans' private communications without a warrant, whether with Section 702, Executive Order 12333, or the purchase of data the government would otherwise need a warrant to obtain. For instance, this year, the ACLU and allies successfully advocated for House passage on a wide bipartisan basis of the Fourth Amendment Is Not For Sale Act, a bill that would prevent the government from purchasing data that would otherwise require a warrant to obtain, although the Senate failed to pass an amendment to the same effect as part of the Section 702 reauthorization law.¹² The ACLU will continue to build up support for this legislation to get it passed in the Senate and will encourage Harris to sign it if she is in the White House. Depending on the outcome of the November election and the composition of the congressional oversight committees, we will also work to ensure that Congress conducts vigorous oversight over the government's surveillance powers and practices.

Local & State Advocacy

In addition, the ACLU will urge states and cities to restrict the information they provide to federal agencies and departments. For example, the ACLU has successfully advanced state and local laws to increase community control over policing and championed legislation to restrict “reverse” warrants and end purchases of personal information from data brokers.¹³ These efforts would reduce the pool of data available to law enforcement, including federal law enforcement. In addition, the ACLU will urge state and local government to end, or sharply limit, their participation in fusion centers and other state-federal data sharing arrangements that have been rife with abuse.

Ending Unwarranted and Discriminatory Domestic Surveillance and Investigation

Domestic national security and counterterrorism policies and programs pose a singular threat to Americans’ privacy, civil rights, and civil liberties. Taken as a whole, these policies reflect: the federal government’s expansive claimed authority to surveil and monitor American communities;¹⁴ federal nondiscrimination guidance that permits profiling on the basis of race, religion, national origin, and other protected characteristics;¹⁵ and the use of overbroad and unfair programs such as the watch-listing system, or tools like social media surveillance, against people exercising constitutionally protected speech and association rights.¹⁶

Federal agencies exercise their authority and wield technology to disproportionately and wrongly surveil and investigate, watchlist, question, and detain at the border, and deny immigration benefits to vulnerable communities. Even when federal surveillance and investigation policies appear facially neutral, in practice, for the past 20 years — and longer — Democratic and Republican administrations alike have disproportionately targeted those who dissent against government policies, racial and religious minorities, and immigrant communities through the lens of “security threat” or “risk,”¹⁷ and undermined our rights to free expression, due process, religious freedom, and equal protection under the law.¹⁸ The harsh reality is that federal national security surveillance and investigation discriminate against communities of color in this country, denying their ability to participate as equals in civic life and our democracy. A Harris administration urgently needs to rein in and reform key overbroad, unnecessary, and discriminatory domestic surveillance policies and programs.

Federal law enforcement and intelligence agencies’ use of national security investigative authorities flows in part from the USA Patriot Act of 2001, which enacted — for

the first time — a definition of “domestic terrorism.” That definition is vague, overbroad, and malleable, covering acts deemed “dangerous to life” that “appear to be intended to” intimidate or coerce the public or the government.¹⁹ It is increasingly being copied by state legislatures.²⁰ Law enforcement and intelligence agencies have used this definition to claim expansive investigative authorities. For example, soon after Congress passed the Patriot Act, the DOJ loosened safeguards intended to protect Americans against intrusive FBI surveillance and investigation.²¹ FBI agents can now open “assessments” without any factual basis for suspicion of actual criminal wrongdoing,²² and use invasive techniques for data gathering, such as racial and ethnic mapping, confidential informants, physical surveillance, and commercial and law enforcement database searches.²³

Recent history is rife with federal agencies’ use of these and similar authorities to unfairly target people of color and other marginalized communities for surveillance, investigation, prosecution, and placement on watchlists. For example:

- The FBI has spied on Muslim communities and, more generally, treated nonviolent civil disobedience and vandalism as justification for conducting national security investigations of civil rights, social justice, and environmental activists;²⁴
- In 2020, the DOJ deployed joint federal-state law enforcement partnerships to conduct “counterterrorism” investigations against racial justice protestors;²⁵ and
- The Department of Homeland Security (DHS) has all too often focused its surveillance authorities on political and constitutionally protected speech, as well as activities far outside its homeland security mandate, including those of: journalists; racial justice demonstrators in the wake of George Floyd’s murder; and people simply reacting online to the Supreme Court’s decision to overturn *Roe v. Wade*. The DHS has also conducted other social media monitoring that bases inquiries on commonly held political views.²⁶

It’s long past time for reforms, including, in particular, banning biased profiling and investigations through strong agency policy prohibitions without any loopholes for national and homeland security. Indeed, President Biden raised hopes when he directed the DOJ and DHS to “assess the implementation and effects” of the Justice Department’s 2014 Guidance on Race, which has long been shown to permit bias, to “consider whether this guidance should be updated.”²⁷ But to our disappointment, when the DOJ updated this guidance in 2023, it kept in place the broad loopholes permitting racial, religious,

and other biases in the contexts of national and homeland security and immigration.²⁸

The DHS has adopted the 2023 DOJ Guidance on Race in part, while it considers further updates of department nondiscrimination policy.²⁹ By virtue of its far-reaching mandate and numerous component agencies, the DHS is the face of federal law enforcement and surveillance power for vastly more people than the DOJ. Its nondiscrimination policies permit bias-based profiling in the national security context, at the border, and in protective, inspection, or screening activities. The DHS's extensive surveillance tools include social media monitoring; purchases of commercial datasets that can include sensitive location information; collection of biometric information at ports of entry; and the monitoring of passenger travel records, which are then mined to conduct even more intrusive physical and electronic searches when individuals are crossing the border. The resulting data is processed and distributed by a sprawling web of interconnected systems, which inform or guide agency decisions affecting individuals' privacy and basic civil rights and civil liberties. Together, expansive claims of investigative powers and gravely inadequate safeguards facilitate abusive approaches across a range of DHS policies, programs, and subcomponents. For example, in recent years, DHS-supported fusion centers, which are joint federal-state surveillance hubs, have monitored protesters at Standing Rock, people protesting the Trump administration's family separation and border policies, and Black Lives Matter activists.³⁰

How the ACLU is Preparing to Respond

Ending discriminatory surveillance through litigation and advocacy. As we have over the last 20 years and more, we will ensure transparency and accountability for unwarranted and discriminatory surveillance through litigation in federal and state courts. For example, in July 2024, we sued to force disclosure of DOJ and DHS records on federal-state law enforcement and intelligence hubs that have long been used to surveil protestors and communities of color, in order to assess their impact on privacy and rights during both the Trump and Biden administrations.³¹ Working alongside impacted communities and allies, we will also urge a Harris administration to end biased national and homeland security profiling by federal, state, and local law enforcement. While President Biden has been willing to countenance biased DOJ and DHS surveillance and investigation policies, a Harris administration should recognize not only historical and current harms, but also the significant risks to Americans from future administrations with even less regard for privacy, civil rights, and civil liberties.

The ACLU will advocate with a Harris administration for DOJ and DHS nondiscrimination policies that: (1) explicitly prohibit discrimination based on actual or perceived race, ethnicity, religion, national origin and nationality, sexual orientation, and gender (including gender identity and expression), without any loopholes for national and homeland security; (2) ensure that a person's nationality and national origin are not used as a proxy to discriminate against them based on their religion, race, or ethnicity; (3) applies these safeguards to state and local agencies that participate in joint operations or partnerships with the DOJ and/or DHS; and (4) require a rigorous and systematic audit of each department's programs and operations for bias based on the use of protected characteristics.

Ending discriminatory, unfair, and secretive watchlisting through litigation and advocacy. The ACLU and our allies have documented and raised grave concerns about the discriminatory, unfair, and secretive U.S. watchlisting system for two decades, including highlighting its use as a tool for continued investigation and coercive pressure on Americans to become informants on their communities. Through litigation on behalf of our American Muslim clients, we forced the government to change its No Fly List redress program so that it now discloses to Americans whether they are on the No Fly List, as well the criteria it uses for that placement,³² but these changes are far from adequate and we will continue to challenge wrongful placement of Americans on the No Fly List in court in order to achieve systemic reform.

At the same time, the U.S. federal watchlist system as a whole continues to be a black box and has now ballooned dramatically to 2 million people.³³ American Muslims and those of Arab, Middle Eastern, or South Asian descent are disproportionately watchlisted³⁴ and suffer the brunt of the stigmatizing and devastating personal and professional consequences. These consequences flow in part from the fact that the government shares watchlisting records with at least 60 foreign governments and numerous private entities;³⁵ government agencies that perform screening functions (such as the Transportation Security Administration, Customs and Border Patrol, and U.S. Citizenship and Immigration Services); and tens of thousands of state, local, and tribal law enforcement agencies nationwide.³⁶ For U.S. persons, this can mean detention and questioning by other governments while abroad; potentially unlawful searches, seizures, and surveillance;³⁷ inability to open or maintain bank accounts; denial of government licenses or employment; and indefinite delays or denials of immigration benefits.

The executive branch exercises virtually unfettered discretion in deciding whom to watchlist, using vague and overbroad criteria and a low bar for placement. Its redress process is a due process nightmare, denying Americans meaningful notice and an opportunity to challenge wrongful watchlisting. If our government is to have a watchlisting system, a Harris administration needs to ensure meaningful redress, requiring at a minimum:

- disclosure of watchlisting status to all U.S. persons, and not only to U.S. persons on the No Fly List;
- disclosure to U.S. persons of the specific criteria or criterion under which they are watchlisted; all reasons that they, in the government’s view, meet those criteria; and all material inculpatory and exculpatory evidence. Disclosures must be consistent with due process and, to the extent that legitimately classified information is used as a basis for determination, the government should apply standards under 8 C.F.R. § 103.2(b)(16);
- prompt and public time limits for responding to redress applicants at each stage of the process;
- a live hearing before a neutral decision-maker in which a wrongly watchlisted U.S. person may fully and fairly present their case.

Ending discriminatory and ineffective collection and monitoring of social media information through transparency litigation and advocacy. Through transparency litigation, we forced disclosure of federal agencies’ monitoring of social media users and speech, exposing the dangers of surveillance without any suspicion of criminal wrongdoing.³⁸ Our focus has included agencies’ collection of social media identifiers from visa applicants seeking leave to enter the United States, which gives the government sweeping access into visa applicants’ online lives, as well as the lives of people in the United States with whom they interact. This poses acute risks³⁹ for people from Muslim countries and their American family, friends, and colleagues. More broadly, social media monitoring programs easily allow the targeting of political and religious beliefs. This fear is particularly pronounced in the current environment of protests on social media and the streets against the war in Gaza. Indeed, since October 7, 2023, there have been reports of CBP asking Palestinians about their social media posts and of U.S. residents being contacted by federal agents asking about their social media posts, perhaps at the request of the social media companies.⁴⁰ Social media is notoriously difficult to interpret, and agencies often wrongly interpret posts as threatening or assume political and religious views are connected with violence.⁴¹

Since 2016, government officials and entities have raised questions about whether this type of screening helps weed out genuine security concerns.⁴² A 2021 analysis of social media collection by the Office of the Director of National Intelligence said the collection of identifiers added “no value” to the accuracy of immigration screening and vetting programs, with a senior administration official confirming that “collecting social media data had yet to identify terrorists among visa applicants.”⁴³

Given the known risks of these programs, the lack of evidence of their utility, and their disparate use and impact, we will continue to litigate and advocate with a Harris administration to end these programs and purge all information they have generated unless it is relevant to an ongoing criminal investigation.

Implementing Strong Safeguards for Artificial Intelligence and Data Privacy

The federal government’s use of artificial intelligence (AI) urgently needs greater oversight and stronger safeguards to protect our privacy. Federal agencies of all stripes are using algorithmic systems and AI to make adjudicatory and policy decisions that were once reserved for human decisionmakers. The use of AI for those critical decisions spans all aspects of the government, including determining public benefits levels, assessing families for child welfare proceedings, scoring incarcerated individuals for early release, and identifying individuals for criminal investigations.⁴⁴ These uses carry risks for civil rights and civil liberties, including in chilling the exercise of the right to speak or protest; moreover, many uses of AI have been well documented to lead to arbitrary and even discriminatory outcomes.

National security agencies — including those with law enforcement, intelligence, homeland security, and defense components — have long relied on AI systems and are rapidly expanding their use, presenting immense risks to the rights and safety of people in the United States and abroad. While Congress and the Biden-Harris administration have taken steps to increase transparency, trust, and fairness in the AI tools used by many federal agencies, national security agencies have been largely exempted from these important measures. Indeed, U.S. national security agencies and the military are seeking to integrate AI into some of the government’s most profound decisions, including: who it surveils; who it places on government watchlists; who it subjects to intrusive searches at the border; who it labels a “risk” or “threat” to national security; and even who or what it targets with

lethal force. These programs have not been meaningfully tested for efficacy and are characterized by vague and overbroad standards, weak safeguards, and little to no transparency.

Despite the dangers these national security systems pose, they lack any meaningful transparency and accountability safeguards — and, to the extent protections exist at all, they are largely unenforceable. The public knows little about the AI being deployed by the country’s largest intelligence, homeland security, and law enforcement entities like the DHS, FBI, NSA, and CIA. And the public knows even less about the civil rights and liberties protections that exist — if any. National security agencies have embarked on an all-out sprint to develop and deploy AI, but any efforts to protect privacy, civil rights, and civil liberties have been slow-moving and without binding rules.

As Vice President Harris recognized when the White House announced its Executive Order on AI, “We have a moral, ethical and societal duty to make sure that A.I. is adopted and advanced in a way that protects the public from potential harm and ensures that everyone is able to enjoy its benefits.”⁴⁵ If Harris is elected president, her administration should ensure that strong baseline protections for AI apply to national security and non-national security uses alike.

More broadly, the federal government must also take significant steps to protect our sensitive data from being bought, sold, and exploited by tech companies and government agencies alike to learn private facts about our lives.

How the ACLU is Preparing to Respond

Executive Branch & Legislative Advocacy on AI

Under a Harris administration, federal agencies should establish robust safeguards around the federal uses of AI that impact rights and safety. Those safeguards should apply where AI affects individuals’ rights in our day-to-day lives including freedom of speech, education, employment, credit, housing, immigration, the criminal legal system, and more.⁴⁶ Federal agencies should subject their use of rights- and safety-impacting AI to certain minimum safeguards, including: impact assessments that gauge the risks posed by AI; testing AI in a real-world context; mitigating harms including discrimination; and discontinuing use of the AI where the harms may not be adequately mitigated.⁴⁷ Other safeguards should include increased transparency about where AI is used and for what purposes; independent evaluations of the AI’s performance; ongoing monitoring for harms; and engaging impacted communities on AI use and impact. Many of these safeguards are already embodied in President Biden’s Executive Order on the Safe, Secure, and Trustworthy Development and Use of

Artificial Intelligence.⁴⁸ A Harris administration should build on Vice President Harris’s leadership and continue advancing the Executive Order.⁴⁹

When it comes to the use of AI by national security agencies, we will advocate for far stronger executive branch and legislative protections. While the rushed adoption of AI poses risks in many contexts, the use of AI for counterterrorism and other national security programs and policies presents some of the greatest dangers to people in the United States and abroad. The deployment of AI systems for surveillance, watchlisting, border searches, biometric identification, and immigration vetting will automate, expand, and make even more opaque some of the government’s most intrusive, damaging, and secretive programs. Moreover, these programs and activities disproportionately impact communities that have long faced bias and discrimination, such as immigrants and racial and religious minorities. As in areas like policing and the criminal legal system, without strong safeguards, the use of AI for national security purposes can easily perpetuate racial, ethnic, or religious profiling, while broadly endangering civil rights and civil liberties.

Because of these dangers, the ACLU will press a Harris administration to urgently adopt safeguards that include: (1) increased transparency across “national security systems” that rely on AI, through the development of comprehensive AI use case inventories, regular declassification reviews, and improvements in existing transparency reporting; (2) adoption of risk management practices that reduce or prevent harm to privacy and civil liberties, including impact assessments, real-world testing, and ongoing risk monitoring protocols; (3) increased scrutiny and oversight of whether and to what extent AI has been effective at accomplishing the agency’s counterterrorism or national security objectives, such as through meaningful gains in the accuracy of detecting or preventing terrorism activities; (4) a minimum standard requiring agencies to refrain from or cease AI use when the AI is not sufficiently tested; it is unreliable or otherwise ineffective; or it raises risks to privacy, civil liberties, civil rights, or safety that cannot be effectively mitigated; and (5) increased resources and support for agencies’ internal oversight mechanisms to scrutinize and ensure compliance with AI-related safeguards.⁵⁰

Transparency Litigation in the Courts

We will litigate Freedom of Information Act (FOIA) lawsuits seeking to ensure greater public transparency about the use of AI for national security purposes.

For example, the ACLU has filed FOIA requests seeking records about the NSA’s use of AI to conduct surveillance. Among U.S. intelligence agencies, the NSA is the self-described leader in the race to develop and deploy AI.⁵¹ According to officials, the NSA has used AI “for a very

long time” to support its intelligence-gathering activities, and today it is one of many spy agencies seeking to integrate AI across its activities.⁵² Yet the public knows very little about how exactly the agency is harnessing AI. NSA officials have publicly described the agency’s use of AI tools to detect threats to critical infrastructure, to summarize large amounts of information or raw intelligence, and to perform “speaker identification and speech-to-text processing.”⁵³ The NSA likely also uses these tools to select new surveillance targets and to analyze the vast amounts of communications it collects every day — often ensnaring people in the United States.⁵⁴ Indeed, although the NSA generally seeks to collect foreign intelligence, the mass surveillance it conducts under Section 702 of FISA and other authorities like Executive Order 12333 routinely sweeps up the sensitive communications and data of Americans.⁵⁵ Yet little is known about the efficacy of the NSA’s AI tools, or what safeguards for civil rights and civil liberties are in place.

Similarly, the ACLU has filed FOIA requests seeking records about the DHS’s use of AI to conduct risk assessments of people seeking to enter, leave, or travel within the United States. CBP today uses “machine learning” to conduct risk assessments of travelers at U.S. ports of entry.⁵⁶ In producing these risk assessments, CBP applies machine learning to its data holdings — which include information from dozens of databases from federal, state, and local governments, as well as from private brokers, amassed within the DHS’s notoriously opaque Automated Targeting System (ATS).⁵⁷ CBP uses ATS to apply “risk-based rules based on CBP officer expertise, analysis of trends of suspicious activity, and raw intelligence from DHS and other government agencies to assist CBP officers in identifying individuals who require additional inspection or in determining whether individuals should be allowed or denied entry into the United States.”⁵⁸ The TSA also relies on ATS and related databases to conduct its own rules-based risk assessments. Passengers flagged under the rules may be subject to more intrusive screening.⁵⁹ Yet the public knows almost nothing about the AI systems CBP and the TSA use to conduct these rules-based risk assessments, including how the agencies select and train the models they rely upon, how the agencies assess the systems’ performance, and what measures the agencies have taken to ensure our privacy and other rights are protected.

The government’s lack of transparency is especially concerning given the danger that many AI systems pose for people’s privacy and civil rights and civil liberties. Just as in areas like law enforcement, using algorithmic systems to gather and analyze intelligence can compound privacy intrusions and perpetuate discrimination. AI systems may amplify biases that are embedded in the datasets used to train those systems, and they may have higher error rates when applied to people of color

and marginalized communities because of flaws in the algorithms or underlying data. AI-driven surveillance may be used to guide or expand government activities that have long been used to unfairly scrutinize communities of color. For example, built-in bias or flawed intelligence algorithms may lead to additional unwarranted surveillance and investigation of individuals, exposing their lives to wide-ranging government scrutiny under FISA or other authorities.

We will pursue litigation where necessary to compel national security agencies to promptly process our FOIA requests, search their files for responsive records, and produce the resulting documents to the ACLU for public dissemination and advocacy for necessary reforms. Where agencies withhold responsive records or information on national security or other grounds, we will consider further litigation seeking to pry critical information loose. Only with greater transparency can we ensure that the public and Congress have the information they need to oversee these society-altering systems.

Legislative Advocacy on a Federal Comprehensive Privacy Law

The amount of data that is available to national security agencies — including commercially available data — may also be addressed through a federal comprehensive privacy law. The goal of privacy legislation should be to reduce the amount of data that is being collected from us in the first place and — consistent with the First Amendment — reduce its downstream use, sharing, and retention. Key to achieving these goals are four requirements.⁶⁰ First, data minimization would require that entities limit their collection, use, and disclosure of data to what is necessary to provide services requested by consumers — including by limiting sales to national security agencies. Second, civil rights protections should prohibit discriminatory uses of data.⁶¹ And third and fourth, a robust federal privacy law should provide individuals with a private right of action and limit preemption of state and local laws by setting a “floor” that states and municipalities may build upon.⁶² In addition to advocating for new legislation, the ACLU will seek to vigorously encourage the use of congressional oversight hearings on the civil liberties implications of increased use of AI.

CONCLUSION

The federal government's power to surveil, investigate, prosecute, and intimidate is vast — and Democratic administrations, like Republican ones, have a pattern of defending executive power at the expense of individual freedoms and rights. But the ACLU exists to ensure those powers are constrained and abuses are challenged. If elected, Harris will face both tests and opportunities for significant surveillance reforms to safeguard our

privacy and constrain policies and programs that already undermine civil liberties and rights. As we have for over a century, the ACLU will use every tool at our disposal — in the courts, in Congress, and in the halls of power in states and cities — to uphold our system of checks and balances, safeguard privacy, and enforce the protections of the Bill of Rights for all.

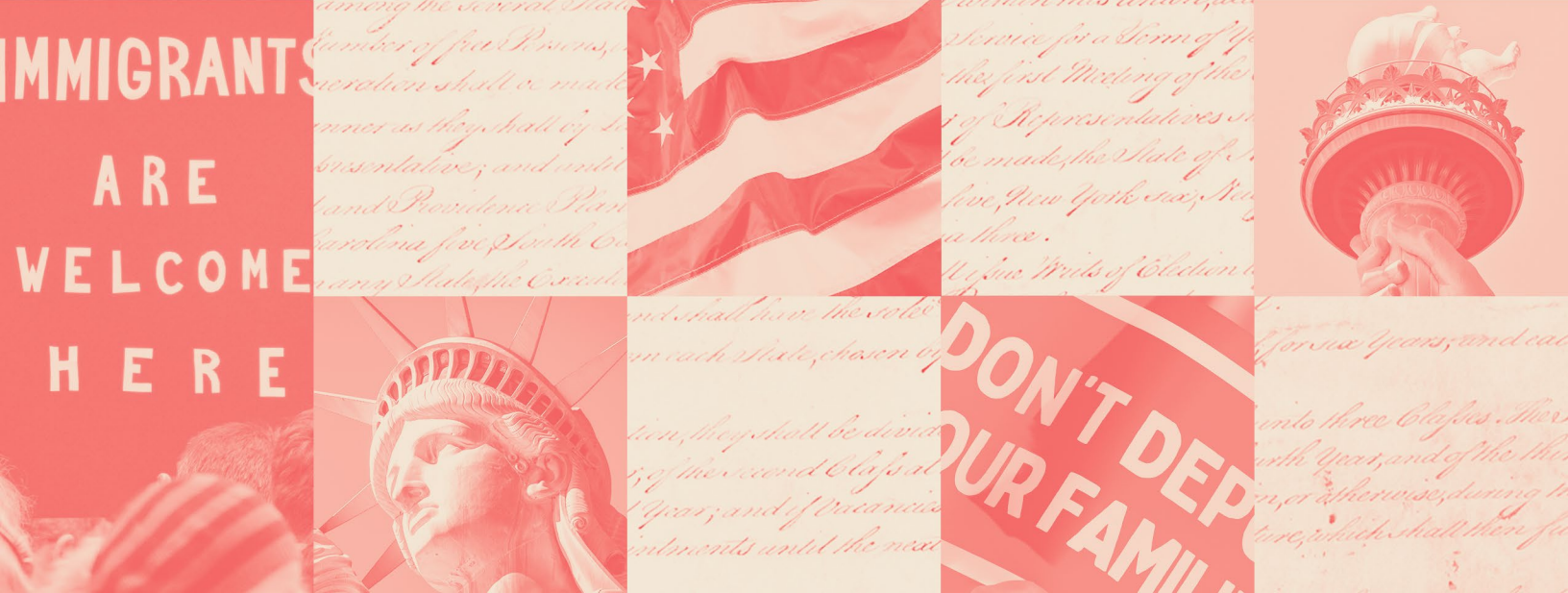
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HARRIS ON IMMIGRATION

The “Harris on Immigration” memo outlines how the ACLU would work with a potential Kamala Harris administration to ensure **balanced and humane policies to reform our outdated immigration system, and to fight harmful immigration enforcement policies at the state and local levels**. The ACLU is prepared to challenge any anti-asylum policies a Harris administration may institute, and will challenge prolonged immigration detention, the detention of people in abusive confinement conditions, and immigration proceedings that violate due process and basic standards of fairness

ACLU PRIORITIES

- **Pushing for an immigration reform bill that adopts balanced and humane policies that work to manage the border and support American families.**

The ACLU will fight any bills that seek to decimate our asylum system, expand mass immigrant detention, or expand mass surveillance in the name of immigration enforcement. Numerous polls show that the American public wants policies that provide status to long-time undocumented residents and provide an orderly, fair, and secure path to apply for humanitarian protection in the United States.

- **Challenging anti-asylum policies that would harm people seeking safety.**

Should a Harris administration continue the Biden administration's illegal anti-asylum policies, such as its severe June 2024 and May 2023 restrictions on asylum eligibility, we will continue our legal fights against them.

- **Pushing back against state laws that target immigrant communities for harassment, profiling, arrest, banishment, or removal.**

As we've done with litigation against Texas's SB4 and its copycats, we will urge the federal government to stop states from adopting and enforcing these illegal measures, and protect all communities from abusive, politically motivated policies.

“If elected, a Kamala Harris administration has an opportunity to chart a new course on U.S. immigration policy and ensure a pathway to citizenship for longtime residents, while doing the critical work to restore our nation’s asylum system. As we have under every administration in the last two decades, we will continue to challenge the government when it violates the constitution and laws, as it has done with prolonged immigration detention, detention of people in abusive conditions of confinement, anti-asylum bans, and immigration proceedings that violate due process and basic standards of fairness.”

— **Omar Jadwat,**
Director of the ACLU’s
Immigrants’ Rights Project

“A Harris administration could provide a critical opportunity to ensure a balanced and humane approach to U.S. immigration policy that recognizes the contributions of immigrants to our communities. Poll after poll, including research from the ACLU, shows that Americans support fair, orderly, and efficient policies that improve border management while offering a pathway to citizenship for our longtime neighbors — and a Harris administration should deliver on the will of the American people.”

— **Maribel Hernández Rivera,**
Director of Policy and Government
Affairs for Border and Immigration
at the ACLU

HARRIS ON IMMIGRATION

A New Opportunity to Reform Our Immigration System

A Kamala Harris administration would present an unexpected and critical opportunity for serious reform of the nation's immigration system. Our current immigration system does not serve American families or economic interests. It provides no way for millions of immigrants who are already contributing to communities across this country to apply for legal status and citizenship. It wastes billions of dollars on dangerous and unnecessary detention, frequently violates basic principles of fairness and due process, and fails to deliver on our legal and moral obligation to protect people fleeing persecution.

The Biden administration has retreated from some of the Trump administration's worst immigration policies, particularly in interior immigration enforcement. But it has adopted some of the same thinking that Donald Trump employed at the border and has deeply damaged — instead of restored — the asylum system. And the immigration system's fundamental flaws remain much the same.

If elected, Harris has an opportunity to chart a new course. She should lead by closing the book on the failed and harmful strategy of building an immigration policy

based primarily on deterrence and instead articulate a balanced approach with policies that recognize the value of immigrants' contributions to the United States, humanely manage the border, restore asylum and respect the rights of arriving immigrants, strengthen safe and orderly ways to lawfully come to this country, and provide a pathway to citizenship to longtime undocumented residents. Just as she did in her 2019 presidential campaign, Harris should put forward visionary executive actions for safeguarding millions of our immigrant neighbors and loved ones from deportation.

Harris should not accede to the faulty instincts of advisors who would have her support and sign legislation gutting our nation's asylum system. That would squander a rare opportunity to support longtime residents and craft lasting, balanced solutions to systemic challenges, which is what voters really want. As shown in poll¹ after poll,² the American public wants policies that provide status to longtime undocumented residents and provide an orderly, fair, and secure path to apply for humanitarian protection in the United States.

OVERALL RESPONSE

Administration

- We will encourage a Harris administration to exercise executive power to expand pathways for people inside and outside the United States — including our nation's military veterans and people who have been wrongfully deported — to safely seek lawful status.
- We will work to persuade a Harris administration to phase out the Biden administration's devastating anti-asylum policies in favor of a balanced strategy that recognizes and protects the right to asylum, while improving border management.

- We will demand that the Harris administration take strong action against state and municipal governments that illegally attempt to engage in immigration enforcement, including by challenging them in court.
- We will urge a Harris administration to take aggressive executive action to dismantle mass immigrant detention.

Congress

- We will push for an immigration reform bill that adopts policies that work to manage the border and supports American families by providing a pathway to citizenship to longtime undocumented residents.
- We will fight any bill that seeks to decimate our asylum system, expand mass immigrant detention, or expand mass surveillance in the name of immigration enforcement.
- We will continue to advocate for federal support so that cities get the financial and logistical support they need to welcome new migrants.

Courts

- As we have under every administration since at least 1996 — when Congress passed catastrophic immigration legislation that President Bill Clinton signed into law — we will continue to challenge prolonged immigration detention, detention of people in abusive confinement conditions, and immigration proceedings that violate due process and basic standards of fairness.
- If a Harris administration continues the Biden administration’s illegal anti-asylum policies, such as its severe June 2024 and May 2023 restrictions on asylum eligibility, we will continue our legal fights against them.³
- We will challenge state laws that target immigrant communities for harassment, profiling, arrest, banishment, or removal, as we have with Texas’s SB4 and its copycats.⁴
- We will work to defend positive administration actions from baseless legal attacks by hostile state officials and anti-immigrant advocacy groups.⁵

Organizing

- As we have done time and again, we will mobilize our members to elevate the will of the American people to take a balanced approach to immigration and for the United States to live up to its values.⁶

SPECIFIC OPPORTUNITIES & RESPONSES

Fight for a Path to Citizenship & Protection from Deportation for Millions of Longtime Residents

Harris has already begun campaigning for president on a promise to “fix our broken immigration system.”⁷ Previously, as a candidate for president in 2019, Harris pledged to use executive authority and to work with Congress to secure a path to citizenship for millions of people in the United States who are our loved ones, co-workers, and neighbors, but who lack status.

We will encourage Harris as president to put serious resources into a fight for immigration reform that includes a path to citizenship. As a candidate, Harris

spoke eloquently about the need for protection from deportation. At a campaign event in 2019, she shared her motivation to protect children who “have to be afraid to go to sleep at night for fear that someone will knock on their door and take their parents.”⁸ She told an Iowa audience in 2019, “There is bipartisan support in the United States Congress to put in place a policy for comprehensive immigration reform and a pathway towards citizenship and as president that will be one of my first orders of business.”⁹ She put forward an agenda of four executive actions, which her campaign described as ensuring more than two million Dreamers could get a path to citizenship.¹⁰

Harris grounded her advocacy for these measures in the recognition that “we are a nation of immigrants.” As vice

president, she emphasized that “[i]mmigrants have always helped strengthen our country, grow our economy, and drive innovation...[D]iversity is our strength.”¹¹

We will encourage a Harris administration to make good on these stated values and commitments, including through robust use of executive authority to protect longtime members of our community. The Biden administration recently announced new executive actions to keep families together,¹² facilitate access to work visas for U.S. college graduates,¹³ expand access to legal representation,¹⁴ and bring immigration-related assistance into local communities.¹⁵ During its tenure, the Biden administration has also designated and redesignated various countries for Temporary Protected Status (TPS). We will encourage a Harris administration to build upon these efforts, including by issuing additional TPS designations and providing relief for caregivers.¹⁶

We will also urge Harris to work with Congress to prioritize major immigration reform legislation. Although she has recently touted a 2024 Senate border proposal, pushing that fundamentally flawed bill into law would be a disastrous way to start her presidency from an operational, strategic, and moral perspective.¹⁷ Instead, she should put forward a new bill that includes an earned path to citizenship and sensible, long-needed fixes to our nation’s immigration laws and infrastructure. These fixes will help manage the border, restore asylum, clear visa backlogs that undermine American businesses, and modernize our system to meet the nation’s needs.

One priority of any new legislative effort on immigration should be strengthening American families and communities. For decades, our immigration system has prioritized family-based immigration on the principle that keeping families together will strengthen U.S. communities. But due to a lack of legal system updates — there has not been major immigration reform in decades — our system does not work for American families.

While the vast majority of undocumented immigrants have lived in the United States for more than a decade, most have no path to apply for citizenship and there is no “line” for them to get into or “right way” to obtain status.¹⁸ Because of country-based quotas, discrimination is also built into the system.¹⁹ An estimated 1 in 10 American children (8 percent) live with someone who lacks legal status, including parents and siblings.²⁰ These families live in fear of being broken apart through deportation. Many are at risk of deportation to countries they do not consider home — having left those countries as children — or where they would be unsafe due to conflict and crises.

To protect American families, a Harris administration should push Congress to enact bills like the American Dream and Promise Act, which Harris supported as a

senator.²¹ This legislation would provide an earned path to citizenship for people who came to the United States as children, including those currently protected from deportation by Deferred Action for Childhood Arrivals (DACA) and so-called “Documented Dreamers,” who are the children of temporary workers. It would also protect people with TPS and Deferred Enforced Departure (DED) from deportation and create an opportunity to apply for permanent legal status.²²

We will also join immigrant justice movement partners in calling on a Harris administration and Congress to create and fully fund mechanisms allowing people who were wrongfully or unjustly deported to return to their families and communities in the United States.²³ The “ImmVets” program, which the Biden administration initiated to support the repatriation of unjustly deported military veterans and their family members, has proven a lifeline. But far too many military veterans continue to struggle in forced exile without access to needed medical treatment and benefits, and without family and community support. We will urge a Harris administration to expand and improve ImmVets and build on it through additional programs that will help repair the harm of our unjust deportation system. And if these policies are challenged in the courts, we will find ways to contribute to their defense.

Restore Meaningful Access to Asylum & Adopt Smart, Balanced Border Management Policies

The right to seek asylum — safety from persecution — in another country was born out of the tragedies of World War II and the horrors of the Holocaust.²⁴ In its aftermath, dozens of nations committed to never again slam the door on people in need of protection. The right to asylum was enshrined in 1948’s Universal Declaration of Human Rights and then again in the Refugee Convention of 1951 and its 1967 Protocol. To implement our commitment to those new international laws, Congress passed the Refugee Act of 1980, for people who are fleeing persecution on “account of race, religion, nationality, membership in a particular social group, or political opinion.” The Refugee Act is meant to ensure that individuals who seek asylum within the United States or at its border are not sent back to places where they face persecution. Under U.S. law, a person in search of safety can apply for asylum no matter where or how they entered the country.²⁵

The Trump administration aggressively attacked and undermined the asylum laws, and in 2020, Biden campaigned on ending then-President Trump’s anti-asylum and anti-immigrant policies.²⁶ As a candidate for president in 2020, Harris also made clear that she did not support asylum

bans, stating: “I disagree with any policy that would turn America’s back on people who are fleeing harm.”²⁷ And as a senator, Harris joined community members in protesting then-President Trump’s “zero tolerance” border policies — notably family separation — and called for due process in asylum reviews and immigration proceedings.²⁸

Soon after President Biden’s inauguration, his administration revoked former President Trump’s xenophobic Muslim and African bans and restarted the refugee processing system, giving hope to many that the Trump era of scapegoating immigrants and dismantling our humanitarian protection system was over.²⁹

However, the Biden administration never restored the asylum system. To the contrary, President Biden initially elected to continue his predecessor’s unlawful³⁰ and extreme “expulsion” policy, known as Title 42, and the policy remained in effect until May 2023.³¹ And even when Title 42 finally ended, the government did not return to the asylum laws as written; instead, the Biden administration rolled out a new, extreme border restriction that largely mimicked two Trump-era policies — known as the “entry” and “transit” bans — which had been blocked by the courts as illegal.³²

Since then, for most people in search of safety, the only way to request protection at the border has been to secure a scarce appointment to present themselves at a port through a flawed mobile application. Recently, the wait time for an appointment has been six to eight months; meanwhile, more than 2,500 cases have been documented where people waiting for an appointment have been exposed to horrific violence, including sexual violence, kidnapping, and extortion.³³ The ACLU and partners have challenged this program in federal court, arguing that it deprives asylum seekers of rights that they are entitled to under existing law.³⁴

To be sure, the Biden administration also expanded lawful pathways for certain migrants from certain countries, which has somewhat improved border management by allowing more people to apply for and receive advance travel authorization.³⁵ But people left out of these programs, or unable to wait in danger with their families, have been rapidly deported, often with no opportunity to speak to a lawyer.

In June 2024, the Biden administration doubled down on this approach with its illegal “Securing the Border” rule,³⁶ further tightening access to protection for everyone at the border who is not able to obtain a rare appointment to appear at a port.

The ACLU and our partners have challenged Biden’s 2024 asylum restrictions in federal court as well.³⁷ But the 2023 and 2024 restrictions have remained in effect while litigation continues. As a result, many people with strong claims for protection have been deported back to the very dangers they fled.

Harris has said that, if elected, she would urge Congress to re-introduce the Senate Border Act of 2024,³⁸ which was initially introduced as a bill to secure unrelated foreign aid, and would write severe asylum restrictions into permanent law.³⁹ She has touted that bill, and promised to hire thousands more border agents, in a campaign ad.⁴⁰ Her team has also suggested she will continue the illegal 2023 and 2024 anti-asylum policies if elected.⁴¹ The current administration has credited these rules with a significant reduction in southern border arrivals. However, the number of arrivals had been declining for months before the 2024 rule was announced due to a variety of factors, including seasonal patterns and actions taken by Mexican authorities.⁴²

Despite these statements, Harris still has an opportunity to rethink the border, building on her knowledge of the root causes of migration and her prior support for the U.S. asylum and refugee system. She also has an opportunity to invest in real solutions like expanding port processing and lawful pathways, giving support to communities receiving immigrants, and improving staffing and resources for asylum officers and immigration courts.⁴³ Punitive, deterrence-only-based policies do not stop people from seeking safety; they may, at most, reduce arrivals in the short term but at a tremendous cost, putting people’s lives in immediate danger. On the other hand, asylum seekers who have been able to receive employment authorization and community support have become our neighbors and quickly joined our communities, contributing to our cities and workforce as well as to their families.⁴⁴

To truly make lasting progress in this area, Harris must go beyond “toughness” as the measure of border and asylum policy. She will instead need to embrace and communicate the fact that a functional asylum system furthers our values and benefits American communities. And her administration will need to invest in solutions that restore and modernize the asylum system, ensure fairness for people seeking protection, and support the communities that receive new immigrants.

Protect Communities from Racial Profiling, Harassment, & Unlawful Arrest by Hostile State and Local Officials

In recent years, some states have attempted to take enforcement of the federal immigration laws into their own hands and create their own laws regulating immigrants and immigration. States have no lawful authority or reason to do so. Evidence has repeatedly demonstrated that state and local immigration enforcement leads to racial profiling and arbitrary detention — including of U.S. citizens — and terrorizes entire communities.⁴⁵ The federal government has a critical role to play in stopping states from adopting and enforcing these illegal measures and protecting all communities from abusive, politically motivated policies.

Texas’s SB4, which was enacted in December 2023, is one of the most prominent in this new wave of state anti-immigrant laws. This unconstitutional law creates state crimes of “illegal entry” and “illegal reentry,” and authorizes state judges to order people deported from the United States. Thus, state officials with no training in immigration law and no authorization to act as immigration agents would be able to arrest, punish, and deport people they deemed to be unauthorized immigrants. The ACLU and our partners promptly sued; the Biden administration filed its own suit shortly thereafter, and the law is currently blocked as litigation continues.⁴⁶ The ACLU and partners have also successfully sued to block copycat versions of this law in Oklahoma and Iowa — alongside the Biden administration in each case.⁴⁷

We expect that a Harris administration would continue to vigorously challenge state and local anti-immigrant laws in court. But it can and should do more to end collaboration between federal immigration agents and Texas and other state officers whose anti-immigrant policing has led to the racial profiling and abusive arrest and detentions of border residents, people who are immigrants, people in mixed status families, and U.S. citizens.

For example, despite urgent requests from affected communities and organizations including the ACLU and the ACLU of Texas, the Biden administration has not taken concerted steps to disengage the federal government from participation in and facilitation of Operation Lone Star (OLS), Texas Governor Abbott’s multi-billion-dollar anti-immigrant initiative to arrest, detain, and prosecute people suspected of entering the United States without authorization using state trespassing laws. This program has led to numerous abuses, including racial profiling of border residents and other Texans,⁴⁸ deadly car chases⁴⁹ and prolonged detention.⁵⁰ In 2023, Texas

state troopers placed razor-wire-wrapped buoys in the Rio Grande between Texas and Mexico, leading to serious injuries, and were reportedly ordered to deny water to people arriving in the height of summer.⁵¹ While the federal government challenged Texas’ placement of the buoys in the Rio Grande in court,⁵² it has not taken broader action to withdraw any financial or logistical support from OLS. The ACLU has documented concerns and filed complaints with the federal government related to Customs and Border Protection (CBP) officers and Texas police cooperating in arrests of suspected noncitizens and sharing information and technology with one another, despite OLS’s manifest problems.⁵³

The ACLU will push Harris to swiftly end this cooperation, commit the federal government to holding federal, state, and local official officials accountable for violations of civil rights and federal law occurring under OLS, and do everything in its power to oppose the program. More generally, we will urge a Harris administration to set strict and clear guidance and rules about when and where federal law enforcement can share information with state agencies — and press for accountability when these state agencies, which receive funding and support from the federal government, engage in civil rights abuses and cause deaths and injuries.

We will also urge a Harris administration to finally dismantle the 287(g) program, which taps state and local law enforcement to act as immigration agents. The Trump administration greatly expanded this program as part of its push to increase deportations, which Harris rightly condemned because it had “sown fear and anxiety in communities across the nation,” led to a drop in crimes reported to local law enforcement in Latine communities, and instilled fear among sexual assault and domestic violence survivors about contacting polices.⁵⁴ It is past time for the federal government to end the 287(g) program, restrict and reform Immigration and Customs Enforcement (ICE) requests to state and local law enforcement agencies (known as detainers), and respect the prerogative of localities to focus local resources on local public safety needs.

Dismantle Mass Immigrant Detention

As a candidate for president in 2019, Harris told ACLU supporters: “I will absolutely decrease [immigration] detention,” adding “this is an issue I’ve been working on for many, many years.”⁵⁵ Indeed, as California’s junior senator, Harris aggressively pressured the Department of Homeland Security (DHS) and ICE regarding the mistreatment of people in immigrant detention, calling conditions at a California facility “horrifying” and

“unacceptable.”⁵⁶ Harris championed legislation to ensure access to counsel for those in immigrant detention.⁵⁷ She led senators in calling for a decrease in funding for the immigrant detention system, calling it “already overgrown, expensive, and inhumane.”⁵⁸

Early in the Biden administration, DHS Secretary Mayorkas committed to continuously review conditions at detention facilities and close those that fail to meet health and safety standards.⁵⁹ While the Biden administration has closed or limited the use of some detention facilities — most notably facilities that had been used for the detention of families — many more remain open despite persistent records of abuse and negligence, and the number of deaths in ICE custody has doubled since the prior year.⁶⁰

Mass immigrant detention is expensive — costing \$3.4 billion in taxpayer money this year alone — and unnecessary.⁶¹ Most individuals in ICE detention are locked up pending removal proceedings, which means they have not been ordered deported and, in fact, very well may have the legal right to remain in the United States. Many languish in detention for months and years for no reason, only to win their cases. Even people who have won their cases sometimes continue to be detained, pending appeals by the DHS, during proceedings that can last for years.

During the COVID-19 pandemic, ICE reduced its average daily population by nearly 70 percent from its peak levels under Trump — demonstrating that another way is possible. When Biden entered office, the average daily population was at a 20-year low of about 14,000.⁶²

Unfortunately, since then, the Biden administration has dramatically ramped up detention and is even now planning a significant expansion of ICE detention facilities nationwide.⁶³

We will urge a Harris administration to reverse course and take aggressive executive action to dismantle the system of mass immigrant detention that she rightly condemned in the past. We will encourage a Harris administration to:

- Issue an executive order on immigrant detention that includes a moratorium on any new detention facilities, review and closure of detention facilities with records of abuse, and a phase out of private and contract detention centers.
- In the next presidential budget request, seek a major reduction in congressional funding for immigrant detention and an increase in funding for detained immigrants’ access to counsel.
- Initiate a file review of every person currently in immigration custody, eliminating cash bond and other unjust barriers to release.

CONCLUSION

Our immigration system does not serve our national interests. We deserve a fair, orderly, and humane immigration system that both manages the border and provides a path to citizenship for longtime residents. If a Harris administration perpetuates the failed and illegal policies of the past, or introduces harmful new ones of its own, we will of course hold the administration to account. But that is not the road the administration should take; it should

instead seize the opportunity to make real progress on overdue and significant reforms that will finally provide a pathway to citizenship for millions of our longtime community members, adopt orderly and humane solutions that address the challenges at the border while restoring asylum, protect communities from hostile state and local officials and profiling, and eliminate mass detention.

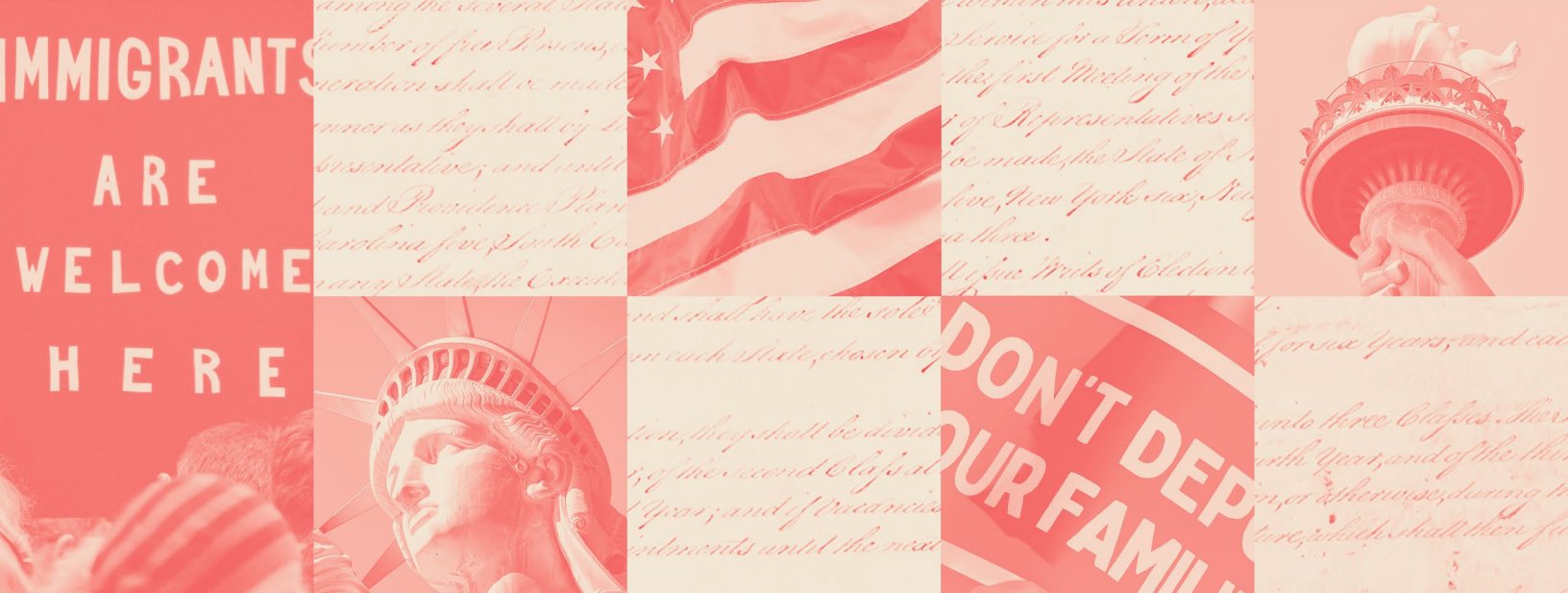
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HARRIS ON THE CRIMINAL LEGAL SYSTEM

The “Harris on the Criminal Legal System” memo outlines the ACLU’s plan to push for transformative change to the criminal legal system under a Harris administration. **The memo outlines Harris’s likely policies on issues such as policing, sentencing, federal prison conditions, and the death penalty.** The ACLU will work in Congress and across the states to fight for a criminal legal system that is humane and just, including by holding police accountable, ending extreme sentencing, and abolishing the death penalty once and for all.

ACLU PRIORITIES

- **Hold police accountable.**

A Harris administration should advocate for the passage of the George Floyd Justice in Policing Act, full implementation of Biden's Executive Order on Policing, and legislation that would end qualified immunity for law enforcement.

- **Passing federal legislation to end extreme sentencing and address the harms of mass incarceration.**

This includes the Marijuana Reinvestment and Expungement (MORE) Act, which would decriminalize marijuana and remove barriers to reentry; the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act, which would end racially disparate sentencing between crack and cocaine; and the End Solitary Confinement Act, which would significantly limit the use of solitary confinement.

- **End disparities in sentencing and right past injustices.**

A Harris administration must appoint an attorney general committed to abolishing mandatory minimum sentences, ameliorating racial disparities in the criminal legal system, and increasing transparency in sentencing policies and practices. The Harris administration must also advocate for a broad use of executive clemency power and full implementation of the First Step Act to right past injustices and mitigate the harms of excessively harsh sentences.

- **End the death penalty.**

A Harris administration must end the death penalty through state and federal litigation and advocacy, including ending federal death penalty prosecutions, commuting federal death sentences to life imprisonment, and repealing the federal death penalty law.

“I served as a public defender during the same period in our country’s history that Vice President Harris worked as a prosecutor. I know that she witnessed first-hand the systemic injustices in our criminal legal system that need to be addressed immediately. **We hope that if elected, Harris will use this insight to bring about transformative changes, including protecting people from police abuse, ending extreme and unjust sentencing, addressing the inhumane conditions in jails and prisons, and abolishing the federal death penalty so the country might end this inhumane practice once and for all.** The fight to overhaul this country’s approach to the criminal legal system is a long one, and the ACLU will continue to be at the forefront of this struggle through every presidential administration.”

— **Yasmin Cader,**
Deputy Legal Director and
Director of the ACLU’s Trone
Center for Justice and Equality

“The ACLU will demand that Harris recommit to the legislative agenda that she championed as a senator. But **Harris cannot wait on Congress to act. She must use her executive authority to end extreme sentencing, halt federal executions, and vastly expand the number of people granted clemency.** The ACLU will continue to fight for a criminal legal system that is humane and just.”

— **Cynthia W. Roseberry,**
Director of Policy and
Government Affairs at the
ACLU’s Justice Division

HARRIS ON THE CRIMINAL LEGAL SYSTEM

An Opportunity for Increased Accountability, Fairness, and Humanity

Democratic nominee Vice President Kamala Harris has comprehensive knowledge of the criminal justice system and a demonstrated record of a commitment to reform. While Harris may not be aligned with all of the ACLU's positions on criminal law reform, there is nonetheless considerable overlap and synergy.

Before she was elected to the Senate, Harris served as an assistant district attorney and district attorney for the city of San Francisco, and as attorney general for the state of California. As a district attorney, Harris established a reentry program focused on removing barriers to housing, education, and employment.¹ As an attorney general, she created an office to address the rights of children in the juvenile justice system.² Later as a senator, Harris championed progressive legislation to address police transparency and accountability and to address disparities created by the war on drugs.³

To be clear, Harris has a mixed record on criminal law reform. For instance, her position on the death penalty has shifted over time. As district attorney, she demonstrated fidelity to campaign promises when she declined to seek the death penalty. But, under her leadership as attorney general, her office defended the death penalty in California after a court found it to be unconstitutionally arbitrary. That said, Harris's most recent work in the Senate to reform the criminal legal system is encouraging. If she continues this path, she could have a significantly positive impact on America's justice system.

This year also marks the 30th anniversary of the 1994 Crime Bill, which presents Harris with an opportunity to renounce the failed policies that drove mass incarceration and to embrace reform to end racial disparities and move toward a more humane system for all. The ACLU will continue our advocacy for such meaningful reform. We will push the Harris administration to expand progressive reform efforts and challenge draconian approaches to criminal legal policy.

OVERALL RESPONSE

Congress

The ACLU will continue to demand that Congress enacts key legislation to ensure a fair and just criminal legal system, some of which were championed by Harris when she was in the U.S. Senate. This includes an improved George Floyd Justice in Policing Act to ensure accountability for police misconduct; marijuana reform to begin to address the harmful impact of the war on drugs; the Driving for Opportunity Act to reduce police interaction and the commensurate risk of harm; the Mental Health Justice Act to provide non-law enforcement responses

to mental health crises; the EQUAL Act to remove sentencing disparities between crack and powder cocaine; and the End Solitary Confinement Act, to limit solitary confinement in federal facilities.

Additionally, the ACLU will continue our advocacy for legislation to repeal the federal death penalty, end mandatory minimum sentences, abolish the doctrine of qualified immunity, and stop the 1033 transfer of military weapons program.

Administrative Advocacy

We will push a potential Harris administration to implement transformative reforms to policing, sentencing policy, conditions in prisons, and to work towards abolishing the death penalty.

The ACLU has advocated for the full implementation of President Joe Biden's executive order on policing, which is an important step towards addressing the plague of police violence in this country. We will continue this advocacy under a Harris administration and urge them to go beyond the executive order and end to the Pentagon's 1033 and 1122 programs, which funnel military equipment to local police departments.

If Harris is elected, the ACLU will encourage her to appoint an attorney general committed to ending extreme sentencing practices, including the use of mandatory minimums, which are major contributors to mass incarceration. We will also urge Harris to continue to fully

implement the Biden administration's charging policies that equalize sentencing outcomes for crack and cocaine offenses. The ACLU has long championed clemency to right past injustices, and we will encourage Harris to use her clemency power to mitigate the harms of excessively harsh sentences.

Under any administration, the ACLU will continue advocating for the rights of people in federal and state prisons, jails, and immigration facilities. We will encourage a Harris administration to immediately issue an executive order banning the use of solitary confinement in federal custody and enforce Biden's executive order barring the Department of Justice (DOJ) from contracting with private prison companies, that prioritize profits over the health and safety of people behind bars.

Lastly, the ACLU will continue to lift up nationwide calls for an end to the death penalty and urge a Harris administration to finally put an end to the federal death penalty once and for all.

SPECIFIC RESPONSE & OPPORTUNITIES

Policing

The ACLU will continue to advocate for evidence-based solutions to public safety and will push a Harris administration to champion reforms that increase police accountability, while advancing opportunities to provide alternative responses to community contact with law enforcement.

In 2022, President Biden issued an executive order on policing that changed the use of force standard for federal law enforcement, restricted the distribution of military equipment to local law enforcement, restricted the use of deadly chokeholds and carotid restraints, and created a national police misconduct registry.⁴ In the absence of congressional action, a potential Harris administration should continue the work of implementing President Biden's policing executive order. The ACLU will continue our advocacy for this critical work. We will also continue to call for an end to the Pentagon's 1033 and 1122 programs, which funnel battlefield equipment such as mine-resistant ambush-protected vehicles (MRAPs), tanks, and heavy arms and ammunition into local police departments.⁵

The ACLU will fight for the privacy rights and civil liberties of everyone and push the Harris administration and Congress through advocacy and public pressure to provide strong federal intervention to address the ongoing crisis of police misconduct and violence.

Justice in Policing Act

While in the U.S. Senate, Harris cowrote and was one of the lead sponsors of the Justice in Policing Act of 2020,⁶ which was the most significant police reform bill to gain traction in the U.S. Senate after the murder of George Floyd in 2020. The legislation addressed racial profiling, created a national standard for excessive use of force by police, and called for independent investigations and prosecutions for police misconduct.⁷ A companion bill in the U.S. House of Representatives, re-named the George Floyd Justice in Policing Act, passed the House of Representatives with bipartisan support.⁸ While the Act was supported by Senate Democrats, it ultimately stalled in the Senate.

In response to the ACLU's federal advocacy, the most recent introduction of the George Floyd Justice in Policing Act in the Senate included grants for mental health crisis response programs and unarmed civilian government departments to enforce traffic violations.⁹ Harris has continued to be a proponent of police reform and accountability in her current role as vice president, recently applauding the development of a national non-public police misconduct registry for hiring federal law enforcement¹⁰ and calling for the passage of the George Floyd Justice in Policing Act.¹¹ If elected, Harris has an opportunity to champion improvements to the Act.

The ACLU will continue to advocate for updates to the George Floyd Justice in Policing Act under a potential Harris administration. For example, we will push to include a publicly accessible police misconduct registry because the public has a right to know which officers have engaged in practices that are harmful to communities and should be excluded from policing.

The George Floyd Justice in Policing Act also contains some provisions limiting the use of biometric data, but these provisions must be expanded and strengthened to keep pace with the development and deployment of these technologies by law enforcement.¹² The ACLU will continue to push for privacy protections that safeguard civil liberties for everyone, especially for Black, Brown, LGBTQ+, and disabled communities. For example, the ACLU filed a lawsuit on behalf of Robert Williams, a Black man who was wrongfully arrested after the Detroit Police Department relied on incorrect results from facial recognition technology. As a result of this litigation, the city of Detroit enacted one of the nation's strongest police department policies on facial recognition technology, implementing important guardrails that constrain the technology.¹³

Ending Qualified Immunity

Qualified immunity is a court-created legal doctrine that protects police officers and government actors from being held accountable for constitutional violations. Ending qualified immunity is an important tool to increase accountability for unconstitutional use of force, and changing the culture in police departments where law enforcement feel empowered to violate rights knowing they will face little to no consequences.

In 2020, Harris cosponsored the Justice in Policing Act, including a provision that would end qualified immunity for law enforcement.¹⁴ The ACLU strongly supports an end to qualified immunity, which allows officers and government officials who engage in the most egregious conduct to evade accountability, and we will continue to advocate in Congress and the courts for an end to this doctrine.

Reducing Contact With Police Officers

A majority of police-initiated contact with the public happens during police-initiated stops, whether of drivers or pedestrians.¹⁵ These stops disproportionately impact Black and Brown people and can escalate into violent encounters.¹⁶ And, the practice of police enforcing fines and fees increases opportunities for this contact with law enforcement. There are an estimated 30 million cases for infractions, violations, and misdemeanors filed every year that are punishable by fines and fees.¹⁷ A 2021 ACLU report documents the pervasive practice of using driver's

license suspension as punishment for unpaid fines and fees, and its consequences. These burdens are borne disproportionately by Black and Brown communities, fueling a vicious cycle of poverty and criminalization, and can even result in deadly consequences.¹⁸

The ACLU has advocated for the passage of the Driving for Opportunity Act, introduced by Senators Chris Coons (D-Del.) and Roger Wicker (R-Miss.), which was co-sponsored by Harris during her time in the Senate.¹⁹ This bipartisan legislation provides grants to states that do not suspend, revoke, or refuse to renew the driver's license of a person or registration of a motor vehicle for failure to pay a civil or criminal fine or fee. By helping states cover the costs of reinstating driver's licenses previously suspended for unpaid fines and fees, the Driving for Opportunity Act would encourage states to pass similar laws, and it would give millions of Americans the opportunity to have their driving privileges restored and significantly reduce potential encounters with police. Ten states have already ended debt-based license suspensions, and Congress can encourage more to do so by passing the Driving for Opportunity Act.²⁰ A potential Harris administration could support these state and local efforts at the federal level by championing the Driving for Opportunity Act and other federal grant programs that incentivize states and localities to repeal laws that unnecessarily criminalize people, saddling them with debt and jail time.

Police are also often the default response to people experiencing mental health crises. Law enforcement is ill-equipped to provide assistance in these circumstances, which can lead to violent and even deadly encounters.²¹ A 2021 study found that the risk of experiencing police use of force during contact is almost 12 times more likely for a person with mental illness than one without mental illness.²² The ACLU will continue to advocate for increased funding for alternative responses to behavioral and mental health emergencies — including programs that offer trained professionals such as social workers and community violence intervention specialists in lieu of law enforcement in emergency situations — and passage of the bipartisan Mental Health Justice Act.²³ The Harris administration should continue the Biden-Harris administration's commitment to providing funding and incentives for these critical alternative public safety resources.

Sentencing & Charging Discretion

A Harris administration has an opportunity to address systemic issues in the criminal legal system that drive mass incarceration and fuel the growth of the prison industry. The ACLU will press a Harris administration to champion policies on charging discretion and sentencing consistent with a more effective and less punitive

approach to public safety that also reduces racial disparities.

Mandatory Minimums

Mandatory minimum sentences require federal judges to impose a required sentence — sometimes as much as five years, 10 years, or 20 years, or even a mandatory life in prison sentence — regardless of the specific facts of the case or the circumstances of the person sentenced. Mandatory minimum sentences remove discretion from federal judges and transfer that power to federal prosecutors. Prosecutors regularly use their charging authority to pressure people to accept a plea deal who may be innocent, have testimony that should be heard by a jury, or were coerced. Mandatory minimums have fueled mass incarceration, racial disparities, and overcrowding in our federal prison system.²⁴

In 2019, Senator Harris introduced a criminal justice reform plan for federal criminal court that would end mandatory minimum sentences and limit solitary confinement and the federal death penalty, as well as phase out cash bail and for-profit prisons.²⁵ The ACLU will encourage her to pursue these important goals as president. In service of those goals, the Harris administration should appoint an attorney general committed to ending mandatory minimums. The Harris administration can also support and champion legislative proposals such as the Justice Safety Valve Act, which Harris has co-sponsored in the past,²⁶ and would allow federal judges the discretion to sentence below the mandatory minimum sentence.

Attorney General Policies on Charging, Pleas, and Sentencing

As we continue to advocate for the abolishment of mandatory minimums, the Harris administration should use its authority to minimize their impact in federal criminal prosecutions. The current administration offers a useful framework. Specifically, on December 16, 2022, Attorney General Merrick Garland issued two memoranda to all federal prosecutors: *General Department Policies Regarding Charging, Pleas, and Sentencing* (“General Memo”)²⁷ and *Additional Department Policies Regarding Charging, Pleas, and Sentencing in Drug Cases* (“Drug Memo”).²⁸ These changes include directing prosecutors to charge crack cocaine offenses like powder cocaine offenses in order to avoid unwarranted and racially disparate sentencing outcomes. The also include guidance to not pursue charges that carry a mandatory minimum sentence for cases where such charges would not sufficiently reflect the seriousness of the person’s alleged criminal conduct, danger to the community, or harm to victims.²⁹

If properly implemented, policies requiring federal prosecutors to exercise greater restraint in using mandatory minimums could reduce racial disparities in sentencing. Research has shown that “[t]he initial mandatory minimum charging decision alone is capable of explaining more than half of the black-white sentence disparities not otherwise explained by pre-charge characteristics.”³⁰

Attorney General Garland wisely included requirements for U.S. Attorneys’ Offices and commitments by the DOJ to conduct training, implementation, reporting, and transparency measures to ensure compliance with the memoranda’s new policies.³¹ However, notwithstanding the promise of these policies and the administration’s pledge of transparency, reports from federal public defenders and other defense attorneys in multiple federal court districts indicate federal prosecutors are not consistently abiding by the memoranda. In response, on March 5, 2024, the ACLU, the National Association of Criminal Defense Lawyers, and the Federal Public & Community Defenders submitted a Freedom of Information Act (FOIA) request seeking public records detailing the DOJ’s implementation of the December 2022 memoranda.³² Because the administration has since failed to provide any of the requested records, we filed a lawsuit on June 6, 2024.³³

A potential Harris administration should renew the previous administration’s stated commitment to limiting the use of mandatory minimums by federal prosecutors and make good on the current administration’s commitment to transparency by providing the public with the information necessary to assess whether federal prosecutors are abiding by the administration’s charging policies.

EQUAL Act

The ACLU has long advocated for an end to the racially disparate sentencing between crack and powder cocaine.³⁴ The Anti-Drug Abuse Act of 1986 established a five-year mandatory minimum sentence for first-time simple possession of crack cocaine.³⁵ The law created the infamous 100:1 crack versus cocaine disparity, where an individual with five grams of crack would receive the same punishment as an individual with 500 grams of powder cocaine, despite the identical chemical nature of crack and powder cocaine.³⁶ In 2010, the Fair Sentencing Act removed the mandatory minimum five-year sentence for simple possession of crack and reduced the sentencing ratio for crack and cocaine powder to 18:1.³⁷ But it was still an unconscionable distinction based on politics rather than science. As a senator, Harris called for an end to the crack and powder cocaine sentencing disparity.³⁸

The ACLU strongly supports passage of the EQUAL Act, a bipartisan bill³⁹ that would end the racist and unfounded sentencing disparity that has resulted in racially disproportionate arrests, prosecutions, and federal imprisonment of Black and Brown people. The Harris administration should prioritize the EQUAL Act and federal sentencing reform to curb lengthy and racially disproportionate sentences that are fueling mass incarceration in our federal prison system.

Marijuana Reform

The ACLU and coalition partners have advocated for legislation that would ensure marijuana legalization is grounded in racial justice and remove re-entry and employment barriers to individuals and communities that were directly harmed by the war on drugs. Vice President Harris has advocated for similar positions as a senator and during her previous presidential campaign.⁴⁰ In 2019, Vice President Harris advocated for ending the war on drugs with specific emphasis on the harms of marijuana criminalization,⁴¹ which accounts for 340,000 people charged with crimes at the state and federal level annually.⁴²

In 2019, Harris introduced the Marijuana Opportunity Reinvestment and Expungement Act (MORE) Act.⁴³ The legislation would have decriminalized marijuana at the federal level and made the de-scheduling of marijuana retroactive.⁴⁴ Additionally, the bill would have created an opportunity trust fund to administer funds to nonprofit community organizations to serve individuals adversely impacted by the war on drugs, and administer substance-use treatment services. The bill would have also provided funds through the Small Business Administration to implement equitable licensing programs for marijuana businesses and employment.⁴⁵

The ACLU supports the aims of the MORE Act and federal legislation that decriminalizes marijuana and allows states to undo the harms of the war on drugs. As states continue to legalize marijuana, the ACLU will push a Harris administration to support federal legislation that includes critical decriminalization components, automatic expungements, and equitable opportunities for individuals and small business owners most impacted by the war on drugs.

Conditions of Confinement & Decarceration

Solitary Confinement

Solitary confinement, even for relatively short periods of time, causes intense suffering and aggravation of

mental illness, and can lead to self-harm and suicide. Numerous courts have recognized that it can violate the Constitution's prohibition on cruel and unusual punishments. As a senator, Harris co-sponsored legislation to limit solitary confinement in immigration detention,⁴⁶ as well as an early version of Senator Dick Durbin's bill to reform solitary in federal prisons.⁴⁷ Before ending her campaign for the Democratic presidential nomination in 2020, she promised to "end solitary confinement, but ensure alternative therapeutic and rehabilitative mechanisms are available to protect the safety of individuals in prisons and of prison staff."⁴⁸

The Biden-Harris administration failed to keep its promise, with the use of solitary confinement in the federal Bureau of Prisons increasing between 2021 and 2024.⁴⁹ A Harris administration should immediately issue an executive order banning the use of solitary confinement in all forms of federal custody.⁵⁰ The administration should, through the executive order, require the Federal Bureau of Prisons, the U.S. Marshals Services (USMS), and Immigration and Customs Enforcement to implement the limits on solitary confinement set out in the End Solitary Confinement Act.⁵¹ The administration should also support the passage of the Act to ensure that the prohibition of solitary confinement is permanent.

Prison Privatization

Private prisons cut corners on health care, safety and security, and other essential services to maximize shareholder profits. They are also less transparent, and subject to less public oversight, than publicly operated prisons. One of the first acts of the Biden-Harris administration was to issue an executive order barring the DOJ from contracting with private prison companies.⁵² This executive order led the Federal Bureau of Prisons to end its use of private prisons, but the USMS evaded the order's requirements and continues to hold thousands of people in private detention facilities.⁵³ If elected, Harris should ensure that the USMS complies with the executive order and that the DOJ ends, once and for all, its use of private, for-profit prisons.

Clemency & First Step Act

The ACLU has championed clemency to right past injustices. The ACLU Redemption Campaign is a nationwide effort to liberate 50,000 people from federal and state prisons by pushing elected officials — from the president to state governors — to use their existing clemency powers in new and transformational ways, forcefully confronting mass incarceration and racial injustice.⁵⁴

The ACLU advocates for categorical commutations to release for four large groups of people who are unjustifiably imprisoned, including:

1. People who would serve a lesser sentence than what they are serving if they were convicted under current reformed laws;
2. People convicted of drug distribution and possession offenses regardless of the underlying substance, including marijuana;
3. People incarcerated for technical probation or parole violations; and
4. Older incarcerated people.⁵⁵

Clemency offers a chance to prioritize humanity over finality and mitigate the harms of excessively harsh sentences that do not serve a public safety interest.

Harris has been a supporter of clemency for marijuana-related convictions,⁵⁶ which keep countless individuals locked behind bars or create barriers to housing, employment, education, and stability.⁵⁷ Harris has previously called for reforms to the clemency process and to increase the use of clemency and sentencing review units.⁵⁸ We will encourage a potential Harris administration to commute sentences consistent with the categories identified above and for marijuana-related convictions.

The First Step Act created a retroactive pathway for the sentencing reforms in the Fair Sentencing Act of 2010, however, the First Step Act still requires people to petition the federal courts for relief if they were convicted prior to the law's passage.⁵⁹ Federal judges frequently deny these petitions, leaving some people with an incredibly long sentence for crack offenses that they would not receive under today's sentencing laws. The Harris administration should grant clemency to individuals who were left behind by some of the First Step Act's sentencing reforms. Additionally, the ACLU will push the Harris administration to fully implement the reforms in the First Step Act, including addressing the flaws and racial bias in the federal risk assessment tool.⁶⁰

In March 2020, Congress expanded the Bureau of Prisons' authority to allow people to serve the remainder of their federal sentences in the community on home confinement during the "COVID-19 emergency period."⁶¹ Since then, over 13,000 people have been released to home confinement, and about 2,600 remain on home confinement.⁶² The overwhelming majority of people released under this Act successfully reintegrated into their communities without committing new offenses.⁶³ Their success demonstrates that we hold far too many people in prisons for too long, and the Harris administration should commute the remaining sentences for individuals who have successfully re-integrated into their communities. Additionally, the Harris administration should grant clemency to older and vulnerable people in custody.

Death Penalty

The ACLU will continue our multi-faceted advocacy efforts — including litigation, organizing, and coalition action — to abolish the death penalty once and for all.

The death penalty is rife with injustice. Since 1973, when the "modern death-penalty era" began, 200 innocent people condemned to die in the United States have been exonerated.⁶⁴ Botched executions, often caused by the experimental use of compounded drugs administered by incompetent personnel, occur on a regular basis.⁶⁵ The costs of these shameful errors in the American death penalty system fall hardest on Black and Brown people.⁶⁶ Indeed, the capital sentencing process itself is infused with racial bias, including in over-selection of Black defendants for death sentences, particularly in white-victim cases,⁶⁷ and the under-selection of Black jurors.⁶⁸ These are just a sampling of the myriad problems with America's most extreme punishment.⁶⁹

Acknowledging these concerns, and in the immediate wake of the Trump administration's execution spree, which killed 13 people, the Biden-Harris administration ordered, through Attorney General Garland, a halt to any future federal executions and a review of the federal execution process.⁷⁰ This was consistent with President Biden's campaign promise to end the federal death penalty and to incentivize states to follow the federal government's example.⁷¹ Notwithstanding this public commitment, the Biden administration has continued to seek the death penalty in isolated cases.⁷²

Over the course of her life in public service, Harris's stance on the death penalty has fluctuated. During her time in the Alameda County and San Francisco District Attorney's Offices throughout the 1990s, Harris did not prosecute any death penalty cases. She then won a race for district attorney on a platform promising never to seek execution⁷³ — and adhered to this position even under pressure from political allies.⁷⁴ When she became attorney general of California in 2011, she became the chief law enforcement officer in the state with the largest death row population. Although California has held no executions since 2006,⁷⁵ Harris's office defended the death penalty, challenging a court ruling that found California's statute to be unconstitutionally arbitrary. Then, as a senator in 2019, Harris took more of an abolitionist position, co-sponsoring S. 2390, which would have ended the death penalty for federal crimes, consistent with her record.⁷⁶

Against this backdrop, the ACLU is hopeful that Harris, joined by Tim Walz, will create an administration that is responsive to calls for a continued suspension of federal executions, broad grants of clemency to those on federal death row, and abolition of the federal death penalty.

We will continue to advocate for those positions. The ACLU will also continue our critical litigation that puts the death penalty “on trial” in the states, invalidating the death penalty based on its racist administration,

including in the selection of juries.⁷⁷ Under a Harris administration, we will steadfastly advance these efforts with the aim to repeal both the federal death penalty and its imposition in every state jurisdiction.

CONCLUSION

If elected, Harris will have an opportunity to work toward dismantling mass incarceration. Much of this will require Harris to recommit to the legislative agenda she pursued as a senator and that the Biden administration advanced during its tenure. Those efforts aimed to end mandatory minimums, the war on drugs, solitary confinement, and the federal death penalty, along with securing meaningful police reform.

As president, Harris must not wait for Congress to act. Her administration should leverage its power to limit mandatory minimums and inequitable drug sentencing, halt federal executions, vastly expand the number of people granted clemency from excessive sentences and increase police accountability. If Harris is elected, the ACLU will advocate for the enactment of these critical measures, and to end mass incarceration.

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