

# U.S. IMMIGRATION LAWS AND ANTI-BLACK RACISM



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FULL PAPER

The Fourteenth Amendment of the U.S. Constitution guarantees all people equal rights under the law regardless of a person's citizenship status. Despite this guarantee, the United States has maintained second-class status for both Black migrants and Black U.S. citizens, which has locked them out of full membership in American society.

## Race and citizenship: A history of exclusion

Anti-Black racism shaped early U.S. citizenship and immigration laws, which excluded Black people from becoming citizens to keep white people in power.

- In 1787, the Constitution stated that enslaved Black people counted as three-fifths of a person.
- In 1790, the law limited citizenship to “free white person[s].”

**(above)** Haitian families with pregnant mothers spend a cold night next to a cauliflower field after crossing from Mexico through a gap in the border wall on December 07, 2021 in Yuma, Arizona. Photo by John Moore/Getty Images

→ In 1857, the U.S. Supreme Court ruled in the case *Dred Scott v. Sandford* that Black people, whether enslaved or free, were not citizens. The decision from Chief Justice Roger B. Taney stated that Black people “had no rights which the white man was bound to respect.”

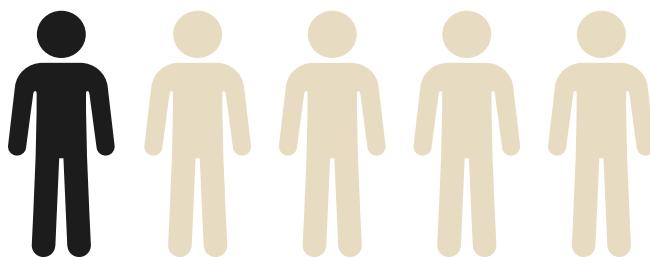
After the Civil War, the Fourteenth Amendment provided citizenship for all people born in the United States to ensure that formerly enslaved Black people were recognized as full citizens with equal rights. But racist citizenship and immigration laws persisted, including practices like the “quota” system that privileged European immigrants.

## Racism against Black immigrants today

Black immigrants — who come from many different countries, have different cultures, and speak different languages — continue to face racist immigration policies and rhetoric.

- ➔ During his first term as president, Donald Trump referred to Haiti and El Salvador as “shithole” countries. He also implemented a travel ban that mainly prevented migrants from African Muslim countries from coming to the United States.
- ➔ Black immigrants face removal on criminal grounds at a higher rate. Black immigrants make up 20.3% of immigrants facing removal based on a criminal conviction despite making up only 5.4% of the undocumented population in the United States.<sup>1</sup>
- ➔ Black immigrants are more likely to be arrested than immigrants of other racial groups, so they are at greater risk of being sent into the custody of Immigration and Customs Enforcement (ICE) and deported. This is known as “the prison-to-deportation pipeline.”

## More than one in five immigrants facing removal based on a criminal conviction in the U.S. are Black



<sup>1</sup> Nana Gyamfi & Ronald Claude, Black All for Just Immigr. Informational One-Pager for the U.N. Hum. Rts. Comm. on the Elimination of Racial Discrimination (Jan. 5, 2023), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/forums/forum-african-descent/sessions/session1/statements/2023-01-05/Black-Alliance-for-Just-Immigration.pdf>.

## LDF's affirmative vision: Advance equality, not exclusion

The Legal Defense Fund (LDF) envisions a multi-racial democracy where Black people's dignity, humanity, and legal rights — regardless of citizenship or immigration status — are fully recognized and protected. To achieve this vision, LDF recommends the following action steps:

- ➔ **Stop efforts to end birthright citizenship.** President Trump has proposed ending the Constitutional right to citizenship for children born in the United States. This would create a permanent underclass of non-citizen U.S.-born children with no home country or rights.
- ➔ **Expand protections for immigrant populations facing racialized harm and climate disaster,** especially those from majority-Black countries.
- ➔ **Enact laws protecting immigrants from racial discrimination** in immigration and parole decisions.
- ➔ **Decriminalize immigration status** and end the prison-to-deportation pipeline.
- ➔ **Ensure legal representation** for all immigrants in removal proceedings.
- ➔ **Institute independent oversight** of the Department of Homeland Security (DHS), Customs and Border Protection, and ICE to investigate racial bias and misconduct.
- ➔ **Recognize and disaggregate data** on Black immigrants to improve accountability and visibility under DHS.

Ending anti-Black racism in the enforcement of immigration laws requires that people in the United States examine the nation's past and expose present inequalities while building a future where Black people are fully included and protected — not only as citizens, but as human beings.