

S. HRG. 118-668

HOW MASS DEPORTATIONS WILL SEPARATE AMERICAN FAMILIES, HARM OUR ARMED FORCES, AND DEVASTATE OUR ECONOMY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

DECEMBER 10, 2024

Serial No. J-118-87

Printed for the use of the Committee on the Judiciary



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HOW MASS DEPORTATIONS WILL SEPARATE AMERICAN FAMILIES, HARM OUR ARMED FORCES, AND DEVASTATE OUR ECONOMY

TUESDAY, DECEMBER 10, 2024

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice at 9:56 a.m., in Room G50, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Padilla, Welch, Graham, Grassley, Cornyn, Cruz, Hawley, Kennedy, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. Today, the Committee will discuss President-elect Trump's announced goal of mass deportation of undocumented immigrants from communities across the country.

Thirteen million undocumented immigrants live in our country. Most have been here for a long period of time. They're healthcare workers, teachers, farm workers, small business owners. They pay taxes nearly, \$50 billion a year. They did in 2022. And many, like one of our witnesses today, grew up alongside our children and grandchildren with the same dreams of a first job, a driver's license, and college acceptance.

Let's get down to the bottom line. I hope we can all agree that any undocumented immigrant found guilty of a serious crime should not be allowed to stay here, or if we have knowledge, they should not be allowed to come into this country. Period.

Ms. Morin, I read your testimony this morning, touched my heart. Your loss of your daughter, I know you'll talk about in some length. That is a tragedy which we all lament and look on with sadness, and we don't want to allow that kind of individual who damaged your family so terribly in this country in the first place. Period.

In his first term, President Trump deported DREAMers who came to the U.S. as children. He deported veterans who had served our Nation. He deported essential workers who cared for our families, built our homes, and made sure we have food on the table in the morning. It was an undocumented worker who was watching your grandchild this morning at the daycare center, undocumented

worker who walked carefully with your mother back to her room after breakfast so she didn't fall down. It was an undocumented worker with that leaf blower in your front yard over the weekend.

Now, President-elect Trump has pledged that on the first day of his new administration, he will declare a national emergency and use our military as part of a mass deportation plan. I've made a living out of politics, as have my colleagues at the table here. During the course of the campaign, you can make promises. Sometimes they come true and sometimes they don't.

The notion of Mexico building a wall on our Southern border was repeated over and over again. It didn't happen. There was an extension of the wall on our border, but Mexico didn't pay for it. Things change when you go from high flying campaign rhetoric to ground.

Think about for a moment, using our military for a mass deportation plan. I'm sure it would have a damaging impact on the morale of the troops, rounding up people in their own communities at a time when we're already facing the most serious recruitment challenge in years.

Listen to the words of Stephen Miller, who now has been promoted to a higher-level position, deputy chief of staff for policy for incoming President Trump. Here's what Stephen Miller said "in terms of personnel, you go to the Red State Governors and you say, give us your National Guard. We will deputize them as immigration enforcement officers. And if you're going to go into an unfriendly State like Maryland—" Stephen Miller said, "well, there would just be Virginia doing the arrests in Maryland, right? Very close, very nearby."

Almost a nonchalant attitude toward the notion of sending National Guard from one State to the other to end up sending people out of this country. In addition to weakening our military, it would cost hundreds of billions of dollars to deport every undocumented immigrant in our country. It would damage our economy and separate American families.

Instead, we should focus on deporting those who truly are a danger to America, and we should give the rest a chance to earn legal status. They would have to register with the government, certainly pay their taxes, and submit to serious background checks. Most Americans, nearly two out of three, agree we should give lawful status to undocumented immigrants who don't pose a threat to our country. That's what we did in 2013, a bipartisan group of eight Senators, including myself, Ranking Member Graham, drafted a bill to reform our immigration laws and secure our border. 2013, it was, that bill passed the Senate 68 to 32.

Unfortunately, it wasn't taken up by the House of Representatives and the Republican majority. The notion behind that was that everyone would be under requirement to come forward and identify themselves to the government. All the undocumented people in this country. And if they identified themselves, went through a background check, paid their taxes, they could continue to live and work here without fear of deportation.

In fact, in our bill, over a long period of time, and a really long period of time, they could be on a path to legality and citizenship. That's a starting point that I think makes sense. Not mass deporta-

tion, but mass accountability so we know who's here. And how it would make a difference? We would go to E-Verify to make sure that if you didn't go through that process in our bill, you couldn't legally work in the United States. So, there was an enforcement. It was serious. I'm glad I was part of that effort, and I hope we can return to the discussion.

Over the weekend, by President-elect Trump, I watched his interview on Meet the Press. He said some positive things, from my point of view, and he really challenged us on the Democratic side to work with him when it came to the DREAMers. I accept the challenge. Name the time and place, Mr. President, I'll be there.

The reality is that Congress, for almost 40 years, has failed to fix our broken immigration system. We've had opportunities to do it. I hope we can find more in the future. We should use our 2013 Immigration Bill as a starting point instead of mass deportations. As I said, mass accountability. Let's fix our broken immigration system in a way that protects our country and honors our heritage as a Nation of immigrants.

Now, I recognize Senator Graham.

STATEMENT OF HON. LINDSEY GRAHAM,

A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Thank you very much, Mr. Chairman. From our point of view over here, one of the primary issues facing the American people in 2024, for President and other elections, who is best able to control a broken border? Most Americans are sympathetic, kind-hearted people who feel like the Biden Administration was criminally negligent in protecting us by having a broken border and allowing drugs to pour into our country to kill tens of thousands of young people, allow people to come into our country who are convicted felons to do damage to families who we'll hear from today.

That nightmare is coming to a close. And in January 2025, the Republican Senate will make its top priority a transformational border security bill that will be taken up and passed by the Budget Committee, increasing the number of bed spaces available to detain people instead of releasing them, increasing the number of ICE agents to deal with people who should be deported. Finish the wall and put technology on the border so we'll have operational control of the border. That's going to be our top priority. I want to cut taxes, we'll cut taxes. But as to the Senate, transformational border security goes first, through reconciliation.

Over 8 million people were encountered during the Biden years, 4 million released into the country. The non-detained docket that we have as a Nation is over 7 million people. There are 600-and-something thousand people on that non-detained docket that have criminal records. We're going to start sending people out of the country that present a threat to us and should never have been here to begin with.

The politics of immigration and broken borders, according to a couple of Democratic Senators, was outcome-determinative. I think they're right. So, as much as I respect and admire the Chairman, I think your focus is misplaced here. You should be working with

us to clean up this mess. You should want mass deportations of people here illegally that represent threats to our country.

[Display boards were shown.]

How did we get to where we're at? The average annual deportation for Obama and Trump was about the same. Along comes Biden it drops like a rock. So, when you have people show up, and by the millions, and the number of people being deported goes down by 40-something percent, you're incentivizing more people to come.

It is our belief that the only way you'll get control of the border is for deportations to start early so people will not pay the money to the coyotes and others to come to our border in the first place because they see people leaving, not staying. If we do not have outflow, the inflow will continue.

An example of a broken immigration system was the abuse of parole by the Biden Administration, mass parole of people who did not meet the two criteria under the parole statute. The man who's been convicted of killing Laken Riley was paroled into the country because there was no bed space. There's nothing in the statute that allows parole because we have no place to put you. There are 38,000 beds. We're going to increase that dramatically.

One of the witnesses here today, his family was destroyed by a man that had been deported three times. The fourth time was not a charm. So, if you're here illegally, get ready to leave. If you're a criminal, we're coming after you first. If you've been paroled illegally, we're not going to give you the roots to attach yourself to our country because you should not have been here in the first place. As to the DREAMers, hopefully we can find a solution to that problem.

What I want to do is regain control of a broken border really quickly. The highest number of people on the terrorist watch list in our country exists today. Hope that number will go down pretty quickly. I know Senator Cornyn's on the Intel Committee. In many ways, a broken immigration system has created a ticking time bomb for our national security.

So, yes, the Republican Party will pass as its top priority, border security, more bed spaces so you don't have to release people that shouldn't be released, and more ICE agents to deport people who represent a threat to our country and shouldn't be here to begin with. We're going to do that.

And to my Democratic friends, I think if you resist rational deportation policy, you do so at your own peril. Eighty-six percent of the people deported under the Trump's first term were involved with criminal convictions or pending criminal matters. I have never seen such a mess. It's time to clean that mess up. So, come January, help is on the way.

Chair DURBIN. Thank you, Senator Graham. We have an Immigration Subcommittee, and chairing that Committee is Senator Padilla, Ranking Member, Senator Cornyn. They each ask for a chance to make an opening statement. I recognize Senator Padilla.

**STATEMENT OF HON. ALEX PADILLA,
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator PADILLA. Thank you, Mr. Chairman, and to Senator Graham. And I want to thank each and every one of the witnesses that

are here today for, obviously, a timely and important discussion, but taking place during an uncertain and unnerving time for many in our Nation's history.

I'm going to deviate for a second from my prepared remarks just to acknowledge what Senator Graham has begun to lay out. This topic, this issue, is certainly complex. It doesn't do the issue and the challenge justice to just say, well, there's so many immigrants in America, or some people say illegal, some people say undocumented, immigrants in America, when you really must break it down into a number of categories.

Are there some number that beyond being in the country, undocumented, may be involved with unlawful activities? Yes. And I don't think you're going to find Democrats saying we shouldn't be pursuing actions against violent criminals. But when Senator Graham also suggests, but you know, we hope we can take care of the DREAMers.

DREAMers, as you all know, young people who were brought here by their parents at a very young age, but have grown up here and are undocumented. Are they also on the target list for deportation or not? Because we look at them in a different category. I've had Republican colleagues want to cooperate and collaborate on legal status and pathways to citizenship for farm workers, for example, and I get back to them and other essential workers in America.

But, you know, just because you're undocumented, does that mean you are on the target? It's yes or no, or are we going to have the maturity and act responsibly to kind of break down a complex conversation? Because number one, yes, Democrats believe we need an orderly, safe, and humane border. Number two, yes, we should not hesitate to pursue enforcement actions against violent criminals.

But let's be clear what we are talking about today. This hearing is on the eve of the next Donald Trump Administration, and we've heard him for months, and months, and months now throughout the campaign trail promise mass deportations. We heard him over and over again commit to, quote, "The largest deportation operation in American history." And we've had big ones. For folks watching from home, google Operation Wetback and begin to do some homework.

We've even heard Donald Trump say that there will be no price tag for deportations, and heard him promise on Truth Social to use the United States military to execute it. Now, I can already hear some of the rebuttals from Republican colleagues to suggest that, well, he doesn't really mean all immigrants. He's only talking about violent criminals. Well, I wish I could believe that he's only committing to targeting violent criminals because we agree on that front, but pardon me if I'm skeptical.

We've seen—we've seen Donald Trump in the past and how he operates. Do you remember the Muslim bans he imposed early in his first term and the family separations at the border that we witnessed for years? So, I've seen enough to know that while he may plan to prioritize, in effect, he will be targeting all undocumented immigrants, which will inevitably include those without criminal convictions of any type.

Now, previous administrations of both parties, you saw some stats being presented. It's been the policy of previous administrations to prioritize the deportation of those with criminal convictions, but what we're hearing from incoming President Trump isn't that. And look at who he has putting in these pivotal roles to help him execute are loyalist in Kristi Noem at DHS, extremist Stephen Miller as deputy chief of staff for policy, and Tom Homan as border czar, who told undocumented immigrants through the press, quote, "You should be afraid," end quote.

DREAMers, farm workers, that's the message. And he promised work site raids to prosecute anyone who stands in their way. They're pushing an extremist agenda on top of the fact that separating spouses and ripping away children from their parents, citizen children from sometimes undocumented immigrant parents isn't just cruel. It's not just morally wrong.

Here's another very important reason why Americans should be concerned. For anybody whose vote this last November was motivated by high prices of food, of housing, if anything else, understand that the mass deportation Donald Trump is describing will be disastrous to our economy. Again, I'm not trying to justify those involved with criminal activity. We're on all the same page there. I'm talking about nonviolent, undocumented immigrants.

It is all of us, the American people, who will pay for the extremism policies that he has promised. Put aside the millions, and millions, and millions of dollars to find undocumented immigrants he may be targeting to detain and to remove through the process of deportation for a minute, don't even count on the funds that will be necessary to hire thousands of Border Patrol and ICE agents, let alone the cost of constructing detention centers and jails for this operation.

Let's focus on the impacts to the economy for American families because, the fact is, there are millions of undocumented immigrants living in the United States today who are working in industries critical to our entire economy. Undocumented immigrants make up nearly 15 percent of all construction workers, for example, and roughly half of our agricultural workforce.

Again, if you care about the cost of housing, you care about the about food prices at the grocery store, you should be paying attention. Because if tomorrow Stephen Miller could snap his fingers and have his way, our annual GDP would drop roughly 6.8 percent. Imagine all the losses of the Great Recession, and then still shrinking the economy another 2.5 points.

So, what does that mean for folks at home? It's simple. Any industry with a significant percentage of undocumented immigrants will have a harder time finding workers and know we've all been hearing from employers and business leaders for years now about their struggle already to find sufficient workforce. Stores will have a harder time keeping the shelf stocked, and yes, prices will rise, and rise, and rise.

So, hello, America. Get ready for a more expensive food bill when you're preparing next year's Thanksgiving dinner or next year's Christmas dinner. And if you've been saving up for years and years to try to buy your first home, get ready to wait even longer because construction will slow and prices will go up.

So, the next time we hear Republicans say that they support Trump's plan to deport waves, waves of undocumented immigrants, let's be clear about what comes with that. Higher prices for American families. They're supporting the forced removal of millions of hardworking community members. Eighty percent of whom have lived here 10 years or more. These are not recent arrivals, people who have lived here for years, if not decades.

They're supporting fear and uncertainty in immigrant communities that will cause untold numbers of immigrants, no matter their status, to stay home from work, from school, from shopping. And they're supporting the punishment of over 5 billion workers who Donald Trump's own Administration declared to be, quote, "essential" to our economy. Essential workers who fed us and kept us safe during the COVID-19 pandemic.

So, if you agree with the spirit of at least that segment deserves better, then colleagues join me in supporting the Citizenship for Essential Workers Act. The essential workers that the Trump Administration deemed critical to our Nation's economy and security. Let's provide them with some legal status upfront and a pathway to earn citizenship because we need them.

Our economy needs farm workers. I think you'd agree. Our economy needs construction workers, hospitality, and transportation workers, healthcare workers, and students, and innovators who help keep our economy and our country thriving. We don't need the massive deportations that the political rhetoric of the campaign cycle has brought us, and we certainly don't need the uncertainty, the fear, and the loss that we'll feel for years to come.

So, with that Mr. Chairman, I'm looking forward to hearing from our witnesses and to today's conversation.

Chair DURBIN. Thanks, Senator Padilla.

**STATEMENT OF HON. JOHN CORNYN,
A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Thank you, Chairman Durbin. Listening to my Democratic colleagues, it's as if November 5th never occurred. That we haven't had an election. That we haven't had a referendum on the failed border policies of the Biden/Harris Administration.

Let's be clear, the crisis at the southern border is entirely a problem caused by the Biden Administration's policies. It is a manmade disaster. The election, I believe, in large part, was a referendum on those policies and the American people spoke decisively rejecting this as the new normal. They rejected lawlessness as the new normal.

When President Biden came into office, Customs and Border Protection was apprehending about 70,000 illegal migrants a month. President Biden came in and have reversed virtually all of the Trump Administration policies, including canceling our agreements with Mexico and the Northern Triangle countries to limit illegal immigration.

President Biden also imposed—attempted to impose a 100-day moratorium on all deportations. By March, illegal crossings had ballooned to 170,000 per month up from 70,000, and then climbed progressively higher from there.

Then the President used his executive authority to implement new guidelines that made clear to illegal immigrants that DHS was extremely unlikely to take any action against them until their conduct became especially egregious. Even so, criminal aliens were able to get away with a lot before any action would be taken.

Take for example the tragic case of Rachel Morin, a mother of five who was raped and murdered by an illegal migrant. Her killer crossed the border illegally in February 2023. He was suspected of committing multiple crimes even before he took her life. This tragedy and others like it could have been prevented were it not for President Biden's willful refusal to enforce the law.

The truth of the matter is President Biden's willful neglect of border of security and public safety has created—created immense suffering for American families, and his administration is fully responsible for the fact that we have to hold this hearing today. The American people are fed up with the lawlessness at the southern border, and in November, they tasked Republicans the job of cleaning it up. And that we will do.

We have a big job ahead of us, no doubt. But by one estimate, there are already 1.3 to 1.6 million migrants who are under final orders of deportation who are still in the country. That strikes me as a good place to start; people who've been entitled to full due process and hearing in front of an immigration court and are under final orders of deportation. What are they still doing here? Well, it's because of the Biden Administration's willful neglect of the law and enforcement.

By my calculations, Biden Administration has released at least 3.6 million illegal migrants over the southern border, and during the same 4 years, Border Patrol recorded an additional 1.7 million gotaways. Those are people willfully evading law enforcement. As of 2022, more than 1 million illegal immigrants have received final orders of removal, but were still present in the United States and that has now ballooned to about 1.3 million-plus.

As of July 21st, 2024, ICE, Immigration and Customs Enforcement, had more than 660,000 criminal aliens on its national docket. I look forward to doing what the American people voted for on November 5th, which is to restore the law and enforcement of the law as the new normal in America, unlike the last 4 years. And it's going to require us to do a lot of work to clean up the mess left by the previous administration's policies.

We have to make it absolutely clear to prospective illegal immigrants that we will enforce our immigration laws. We will not accept illegal border crossings as the new normal. What we will accept is lawful, orderly, humane immigration policies. We are the most generous country in the world when it comes to naturalizing people coming to our country, roughly a million people a year. That's the right way to do it, not the way the Biden Administration had it done.

We will follow through on the orders of removal by immigration courts and again, we will not accept lawlessness—lawlessness and criminality in the United States as the new normal. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Cornyn. Today, we welcome five witnesses. I'll introduce the three majority witnesses, and then

turn to Ranking Member Graham to introduce the two minority witnesses.

Our first witness is Foday Turay—I hope I was close to pronouncing it correctly.

Mr. TURAY. Yes, Senator.

Chair DURBIN. Thank you. He is protected from deportation under the Deferred Action for Childhood Arrivals program, also known as DACA created under President Obama. Mr. Turay now serves as an assistant district attorney in the city of Philadelphia.

Our second witness is retired Major General Randy Manner, who served our Nation in a variety of positions in the Pentagon and around the world for 30 years, including acting vice-chiefs of the National Guard Bureau in which he oversaw that important part of our military defense.

Finally, we are joined by Aaron Reichlin-Melnick, a senior fellow at the American Immigration Council, where he works to inform the American public about immigration policy and advance fact-based research into enforcement. Ranking Member Graham, would you like to introduce your witnesses?

Senator GRAHAM. Thank you, Mr. Chairman. Our first witness is Mr. Art Arthur. He's a resident fellow in law and policy at the Center for Immigration Studies. Prior to joining the center in 2017, he served as an immigration judge, was associate general counsel of Immigration Naturalization Service. He served as staff director for the National Security Subcommittee on the House Committee on Oversight and Government Reform, and counsel on the House Judiciary Committee.

He is an expert on immigration policy. He has decided thousands of cases, and has testified before Congress on more than 10 occasions. He received his JD from George Washington University and his bachelor's from University of Virginia.

Ms. Morin is here with us again. She from Aberdeen, Maryland. She's retired, but currently works part-time as an office administrator for a church. She has six children, stay-at-home mom for 25 years, and homeschooled her children. She is mother of Rachel Morin, and she joins us today to share Rachel's story.

Real quickly, Senator Cornyn mentioned this, but the man who stands accused of murdering Rachel was deported three times, is suspected of murdering a woman in El Salvador where he came from, broke into a home in California and assaulted a young girl, who's pending trial like everybody else. He's innocent to prove until proven guilty, but this case not only has destroyed your family and broken your heart, Ms. Morin. It should be a wake up call to the country. And I got the call, and we're going to do something about this. Thank you.

Chair DURBIN. Thanks, Senator Graham. We're going to proceed as follows. I'm going to swear in the witnesses. They each have 5 minutes to make presentations and then we open it to the Senators who have each 5 minutes to ask questions. So, my first request is for the five witnesses to please stand and take the oath.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that the five witnesses answered in the affirmative. Mr. Turay, you're first.

**STATEMENT OF FODAY TURAY, ASSISTANT
DISTRICT ATTORNEY, PHILADELPHIA DISTRICT
ATTORNEY'S OFFICE, PHILADELPHIA, PENNSYLVANIA**

Mr. TURAY. Chairman Durbin, Ranking Member Graham, a Member of this Committee, good morning—

Chair DURBIN. Good morning.

Mr. TURAY [continuing]. And thank you all for inviting me to speak with you today. Before I begin, I'd like to express my deep sympathy to Patty Morin for the horror she and her family have endured. My prayers are with you and those dedicated fighting for justice. My name is Foday Turay, I'm a DACA recipient, a prosecutor, a husband, and a dad. And without question a patriot.

My love for this country stems from my elementary school days when I recited the Pledge of Allegiance with all my classmates each morning. My family came to the United States in search of freedom and safety. I was born in Sierra Leone at a time of great civil unrest. When I was 4 years old, my father was killed, and my mother, and grandmother, and I fled to Guinea, a neighboring country.

My mother was able to migrate to the United States, but I stayed with my grandmother who died shortly after my mother left. I came to the United States on my seventh birthday in 2003. I have been here ever since. I learned that I was undocumented when I tried to get a driver's license. It was one of the worst days of my life. In 2012, I was drawn a lifeline when DACA was announced. Thanks to DACA, I was able to graduate from college and attend law school on a full-merit scholarship. I now work full-time for the district attorney's office in Philadelphia.

During this time, I met and married my beautiful wife, Jaxhiel, who is here with me today, and we bought a house, and we had our son. The opportunity to address all of you on behalf of DACA recipients and mixed status families like mine is not one I take for granted. My wife and I have spent years building community, and we're extremely anxious about what the future might bring.

I feel the consequences of mass deportation on a personal level, on a community level, and on a societal level. On a personal level, my wife is here, and I have no family in Sierra Leone to help sustain me. I'm currently the breadwinner in my family. If I were to be deported, my wife and our son would be left, without to pay the mortgage.

My son would also be without a father. My deportation would hurt my own U.S. citizen mother and my wife's extended family, all of whom are United States citizens. My wife is the primary caregiver of her mother who is legally disabled and has a tumor in her brain. My wife's mother requires chemotherapy injection each month in order to control the size of the tumor on her brain. If I were to be deported, my wife would no longer be able to play such a critical role in her mother's life.

My wife should not have to choose between caring for her mother, who's legally disabled and has a brain tumor, and me. My brother-in-law who—my brother-in-law should not have to choose between re-enlisting in the Marines next year and risking his mother's health if my wife is not here to care for her. My brother-in-law has been serving in the United State Marines since he graduated high school.

On a community level, my taxes help fund my community's road, school and overall well-being. If I were to be ripped from my community, the taxes I pay would go with me. My wife and I are also devoted Christians with strong ties to our church. Finally, the people of Philadelphia would be hurt if I were to disappear. Victims of crimes whose cases I prosecute will lose an ally in their fight for justice.

On a societal level, mass deportation would be devastating. As a prosecutor, I know how delicate the ties between law enforcement and immigrants can be. If immigrants are afraid to cooperate with the police or prosecutors, like myself, because they're afraid of deportation, we all suffer. When you have ICE agents patrolling courthouses and police station, you create a category of people who are less willing to report crimes and less willing to cooperate with law enforcement in solving crimes.

Mass deportation hurts all of us, our family, our community, and our society. We owe it to ourselves and to our country to reject mass deportation and look for a solution for DREAMers whose lives have become deeply rooted in the country and strengthened our borders.

DACA recipient and long-term undocumented individuals in mixed status families have become pillars in their homes. Removing them will place hardship on U.S. citizens like my mother-in-law, U.S. citizenship—U.S. citizens, like my wife who depends on our contribution in the house. This will cause an incentive for those U.S. citizens to turn to social welfare programs due to one less income in the home.

After more than two decades here, I can absolutely state that this is my home. I'm part of the fabric of my community and they're part of me. The Federal Government may not have fully recognized this truth yet, but I long for the day when they do. Until that day comes, I'll continue to contribute everything to my house, to my mother-in-law, to my son, to my wife, and to my entire family.

Thank you, all so much for your time and attention to this critical issue.

[The prepared statement of Mr. Turay appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Turay. Mr. Arthur.

**STATEMENT OF ART ARTHUR, RESIDENT
FELLOW IN LAW AND POLICY, CENTER FOR
IMMIGRATION STUDIES, WASHINGTON, DC**

Mr. ARTHUR. Chairman Durbin, Ranking Member Graham, and Members of the Committee. Thank you for inviting me today. My name is Andrew Arthur, and I'm the resident fellow in law and policy at the Center for Immigration Studies, a nonpartisan think tank here in Washington.

Respectfully and humbly, I believe that today's hearing, which focuses on the immigration enforcement policies of the incoming Trump Administration is premature because, as of yet, the incoming administration has not announced its policies.

Given that, however, the Committee should assume two things. First, that the policies the new administration will implement will

comport with law. And second, that those policies will implement enforcement mandates Congress has set forth in the Immigration and Nationality Act.

As the Supreme Court has made clear, the principle that Congress is entrusted, exclusively, with the formulation of policies relating to the entry of aliens and the right to remain here, quote, “has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government,” close quote.

Right now, the U.S. immigration system is at a breaking point. The number of cases pending before the immigration courts has nearly tripled in the past five fiscal years, and that’s after 700,000 cases involving putatively removable aliens were terminated, dismissed, or closed. A record 10.8 million-plus inadmissible applicants for admission have been encountered nationwide since FY 2021. And between releases and gotaways, nearly 8 million inadmissible aliens have entered our country over the past 4 years.

The sad state of our immigration system is directly attributable to policy decisions that have been made at the local, State, and most critically, Federal level, not by Congress that has plenary power over—under our constitutional order over immigration, but by an executive branch that has usurped Congress’s authority.

That has, needlessly, rendered the American people vulnerable to predation by criminals and aliens who pose a national security risk. And as the chairman of the Federal Reserve has admitted, it has dampened wages for American workers, both citizens and lawful immigrants, and impacted the unemployment rate.

Most critically, however, it has ruined the faith of the American people and the credibility of our immigration system. As Barbara Jordan, civil rights icon, former Member of Congress, and at the time, chairman of the U.S. Commission on Immigration Reform told Congress in 1995, quote, “Credibility in immigration policy can be summed up in one sentence. Those who should get in, get in. Those who should be kept out, are kept out. And those who should not be here will be required to leave,” close quote.

With deportations, including deportations of criminal aliens plunging over the past 4 years, Senator Graham’s chart showed, it’s little wonder that as Gallup reported in July, a majority of Americans want an immigration reduction, reversing a 19-year trend.

The law mandates that illegal migrants be detained, but that law has been ignored. The law mandates that criminal, that alien criminals be removed, but that law has been ignored. And most crucially, the law mandates that foreign nationals who want to come here do so legally. But that law has only been honored in the breach.

This massive migrant surge has allowed our elected officials to ignore the fact that 22.5 percent of working-age American men are out of the workforce. A 7.6 percent increase compared to just 2000, and 11.2 percent more than in 1960. Those non-working Americans are more vulnerable to addiction, disease, and, quote, “deaths of despair,” close quote.

Two weeks ago, in the United Kingdom, Prime Minister Kier Starmer resolved to address the immigration source of such issues

in Great Britain, and it's well past time that our government did the same.

In his 1995 State of the Union address, President Bill Clinton explained, quote, "All Americans, not only in the States most heavily affected, but in every place in this country, are rightly disturbed by the large numbers of illegal aliens entering our country. The jobs they hold might otherwise be held by citizens or legal immigrants."

The public service they use impose burdens on our taxpayers, that's why our administration has moved aggressively to secure our borders more by hiring a record number of new border guards, by deporting twice as many criminal aliens as ever before, by cracking down on illegal hiring, by borrowing welfare benefits to illegal aliens," close quote.

Change the tenses, and that's pretty much what President Trump promised to do when he was Candidate Trump on the campaign trail.

Thank you. Truly appreciate the honor, and I look forward to your questions.

[The prepared statement of Mr. Arthur appears as a submission for the record.]

Chair DURBIN. Thanks Mr. Arthur. General Manner.

**STATEMENT OF RANDY MANNER, MAJOR GENERAL,
RETIRED, UNITED STATES ARMY, RETIRED,
ALEXANDRIA, VIRGINIA**

General MANNER. Chairman Durbin, Ranking Member Graham, Members of the Committee, I thank you for your invitation to speak today.

For over 35 years, I served our Nation in both the regular Army and in the National Guard. Prior to retiring from the Army as a major general, I served as a deputy commanding general of the United States Third Army in Kuwait, as the acting vice-chief of the National Guard Bureau, and as the acting and deputy director of the Defense Threat Reduction Agency.

During the time I served, I saw firsthand that our military force is the envy of the world. It is respected by our allies and by people around the world who want to live free of oppression. It is feared by our enemies and those who would do us harm.

Our military members come from every possible background representing every State, every race, ethnic group, and religion. But when they come together in the military, they are molded together in a team expected to embody the values which make America great; duty, honor, integrity, respect, selfless service, loyalty, personal courage, and excellence.

President-elect Trump has announced his intent to use the U.S. military to execute his mass deportation plan. I'm gravely concerned that placing our military in this role could cause significant harm to both the institution of our armed forces and to service members themselves.

There are four significant risks that I want to emphasize. First, using military assets for mass deportations would negatively impact the military's readiness and capability to accomplish its core mission of national defense. Our military is engaged in over 160

countries around the world. They are focused on responding to potential threats from China, Russia, and other competitors, strengthening interoperability with allies and partners, and taking care of our servicemen and their families.

Our National Guard units are stretched thin, responding to natural disasters at home, while also regularly deploying overseas in active-duty status. Additional training or deployments to support deportation operations would absolutely harm operational readiness and reduce the military's ability to counter adversaries or respond to crises in combat.

My second concern is that the military is simply not trained to do this mission. Immigration enforcement is the responsibility of Federal law enforcement agencies like ICE and CBP. These agencies' personnel regularly interact with migrants and U.S. citizens. They are extensively trained in the appropriate application of immigration law, the protection of civil rights and civil liberties, and care of migrants in custody.

The U.S. military is the best trained in the world for its war-fighting mission, but it is neither trained or equipped for immigration enforcement. Most active-duty armed forces receive no training for domestic law enforcement situations. A small number of National Guard units receive a mere 4 to 8 hours of civil disturbance training per year. This lack of training and experience greatly increases the risk of significant and potentially deadly mistakes in a charged operational environment.

My third concern is the effect on recruiting, retention, and morale. The military is already facing its most challenging recruitment environment in 50 years. Involvement of the military in a politically charged domestic deportation efforts would only add to those challenges. It would separate service members from their families, their jobs, and their communities for extended periods of time in order to engage in a highly controversial mission for which service members would feel ill-equipped and trained. That's a recipe for disillusionment and a poor advertisement for political—potential recruits.

Finally, involving the military in a politically charged domestic issue like mass deportation would erode public trust in the military. Americans trust our military because it protects all of us, regardless of our politics, from the possibility of foreign aggression.

When the military is tasked with carrying out domestic policies that may be controversial to some, it undermines the foundation of that trust. That, in turn, will increase risks in morale, recruitment, retention, and readiness. And all of these impacts carry serious consequences for our national security.

Gentlemen, for these reasons—and ladies, for these reasons, I strongly encourage any future Presidential administration to keep immigration enforcement and our military separate.

Thank you, and I look forward to your questions.

[The prepared statement of General Manner appears as a submission for the record.]

Chair DURBIN. Thanks, General Manner, Ms. Morin.

STATEMENT OF PATTY MORIN, ABERDEEN, MARYLAND

Ms. MORIN. Chairman, Ranking Member, Senators, thank you for this opportunity to come speak to you. I really appreciate it. As you can tell from my introduction, I'm not a politician. I'm a mother. I raised six children. I have 25 grandchildren. I have four great-grandchildren.

The day that we got the phone call that my daughter had been murdered, I was—I'm sure you've heard this before, but I was in Kentucky. We had a grandbaby that had passed away. And when I got the phone call, the detective said, "Ms. Morin, we found your daughter's body."

At the time, all I knew was that my daughter was dead. When I went to meet with a detective and we had come back from Kentucky, I was told that she was beaten so badly that her body was blanketed in bruises, that she was strangled, that she was raped, and that she was stuffed into a drain pipe.

The person—the person that they alleged did this was an illegal immigrant from El Salvador that was a getaway. He had already—they already had an Interpol warrant for him in El Salvador for murdering a woman. He had attacked a 9-year-old and her mother in California. And he waited on the trail that day that our family has walked for 25 years, and snapped, dragged my daughter off the trail, and did these horrendous, brutal things. This is what she looked like before that day.

[Picture shown.]

She's a beautiful woman. But more than that, you can tell from looking at her, just the light that comes out of her. She was a happy person. She loved her children. She was a hard worker. My daughter is like so many other American girls that go about their life and they're just caught unawares from behind, dragged off the main road trail, whatever, strangled, raped, murdered. Some have been found, some have not.

I realized that deportation and illegal immigration has become such a big issue. And rightly so. We have Americans that are dying every day, and law enforcement don't want to give you the true numbers because they don't want the public to panic. In our town, we've had two murders by illegal immigrants.

Maryland, is a sanctuary State, and we have sanctuary cities. I was last told that crime in Maryland has increased by 850 percent over the last 4 years. We have 54,000—over 54,000 convicted criminals, illegal immigrants that are criminals in our country at this very moment.

I think deportation is necessary. The American people should not feel afraid to live in their own homes. When I was 14 years old, and I don't know if anybody knows this, but when I was 14 years old, a criminally insane man came into my house, kidnapped me, made me walk 60 miles toward the Canadian border while raping me at night. I have some idea of what it's like to be a victim of a violent crime where law enforcement did not believe that they were going to find me alive. So, I have some understanding of what my daughter suffered.

And when I was at that funeral home and saw my daughter's body, because the case, the hearing's not until April, I can't tell you in detail, but I can tell you this one thing; that my daughter suf-

ferred so terribly in a very brutal and violent way. And these types of immigrants should not be in our country, and because we have open borders, and because everyone is allowed in, and because the law is not being carried out at the borders. If they had done a DNA swab the three times they encountered this person that's allegedly accused of killing my daughter, they would've known that he had an Interpol warrant for murder in his country.

We need to follow the laws that are already on the book. We need to close our borders. We need to protect American families. We need to protect our women and children, which are the most vulnerable in this country. And I do understand the economics that everyone is talking about. I do understand the military position, but I think that you should put American citizens first.

We are the ones that pay your paycheck. We are the ones that pay taxes. We are the ones that believe that when you went into office, that you were going to keep your word, and that you were the man or the woman for the job at the time that would uphold our values. We are a constitutional republic for the people, by the people. We, the people, have put you the people into office and you should be doing everything you can to protect us. That's why we put you there.

A thought that I had just today coming on the train over here, is that when you look at a tree and you say, "Oh, that's an apple tree." You say that because you see that their apple is the fruit that's growing on the tree. It's the same thing with a man's character. It's by your actions that a person knows what their character is like. And I think one of the reasons why 87 percent of Americans voted for Donald Trump is because they have seen the character by the fruit that President Biden and Kamala Harris have produced these last 4 years. Thank you.

[The prepared statement of Ms. Morin appears as a submission for the record.]

Chair DURBIN. Thank you, Ms. Morin. Mr. Reichlin-Melnick.

**STATEMENT OF AARON REICHLIN-MELNICK,
SENIOR FELLOW, AMERICAN IMMIGRATION
COUNCIL, WASHINGTON, DC**

Mr. REICHLIN-MELNICK. Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee, my name is Aaron Reichlin-Melnick, and I'm the senior fellow at the American Immigration Council.

At the Council, we have long studied the population of immigrants in the United States, and provide detailed estimates of their demographics and economic contributions on our map, the Impact website. Today, there are at least 13 million undocumented immigrants in the United States. President-elect Trump has promised a mass deportation campaign with the stated intent of rounding up and deporting every single one of them.

So, who are they? Well, most have been here for at least 15 years, having entered before the Obama administration. Over 4.8 million people have been here for 25 years or more with no path to permanent legal status. No line for them to stand in. Most undocumented immigrants have spent decades living, working, and putting down roots all at constant risk of deportation.

Nearly all are either employed or attending school. Some have permission to work legally. Most do not, putting them at increased risk of exploitation. They're farm workers, meat packers, cooks, waiters, construction workers, factory workers, delivery people, home health aides, nurses, teachers, artists, writers, musicians, entrepreneurs, and yes, even lawyers.

Undocumented immigrants are also more than their jobs. They are parents, spouses, partners, brothers and sisters, grandparents, and grandchildren, loved ones, and friends to millions of U.S. citizens and permanent residents. Five million U.S. citizen children have at least one undocumented parent. In an average public school classroom of 25 children, at least two have an undocumented immigrant parent at risk of deportation.

While president-elect Trump talks about targeting criminals, over 90 percent have no prior criminal record whatsoever, of the small minority that do the most common prior convictions are traffic offenses or immigration offenses. Efforts to ramp up deportations would sweep in tens of thousands of people each year who have no or minimal criminal legal system contact.

We know this because this is what happened during the first Trump Administration. When there were no enforcement priorities, everyone was an enforcement priority. And the single largest group of the increased arrests under the Trump Administration was people with no criminal record.

Beyond splitting families apart, a mass deportation campaign would be a costly mistake for American taxpayers. When we account for the enormous capital investment, infrastructure, and hiring necessary to arrest, detain, process, and remove 1 million people per year, we estimate that mass deportations would cost \$968 billion in total, enough to instead construct 2.9 million new homes or fund headstart for 79 years.

Mass deportations would also cause economic chaos. As millions are expelled, the U.S. population and labor force would shrink. So, too, with the economy. Prices would rise in sectors with significant undocumented workforces. Building, maintaining, and repairing houses would become more expensive, as would groceries, restaurants, travel, and childcare. Every American would feel the pinch of inflation.

Overall, we estimate that a mass deportation campaign would lead to a loss in total GDP of 4.2 to 6.8 percent at minimum, as much as the Great Recession. And just like then, many Americans would lose their jobs. Even an attempt to deport millions of people will have repercussions. After all, undocumented immigrants are not just producers, they're also consumers. Collectively, they hold over a quarter trillion dollars in annual purchasing power. If millions are deported or otherwise forced to leave, American businesses will close, not just from a lack of workers, but also from a lack of customers.

A large-scale mass deportation campaign will also increase exploitation while it is carried out. Unscrupulous employers will dangle deportation over any of their workers who dare to push back and will have the full force of the U.S. Government to support their threats.

But mass deportation is not the only option. Congress could instead create a new path to permanent legal status, allowing many people already living here to file an application, go through a background check, pay a fee, and get their papers in order.

When the Council studied the impact of Reagan's 1986 amnesty, we concluded that legalization would be the cheapest Federal workforce development and anti-poverty program to for children in history. It would also raise overall wages, create new jobs, increase tax revenues, and create a level playing field and fair competition for U.S. workers. The President-elect's mass deportation plans would crash the American economy, break up families, and take a hammer to the foundations of our society by deporting nearly 4 percent of the entire U.S. population.

But Congress has a choice. Instead of going down that path, we can instead crack down on exploitation, strengthen millions of families, and build American prosperity by providing undocumented immigrants a way to fix their papers. The choice is clear.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Reichlin-Melnick appears as a submission for the record.]

Chair DURBIN. Thank you very much. Each of us now has 5 minutes of questions, and I'm going to start mine with Mr. Turay. Mr. Turay, are you undocumented?

Mr. TURAY. Yes.

Chair DURBIN. Pardon me? Say it again.

Mr. TURAY. Yes, Senator.

Chair DURBIN. And why are you undocumented?

Mr. TURAY. I came here from a civil unrest. I had no choice. My life was in danger. My mom told me the story when I was trying to get my driver's license.

Chair DURBIN. How old were you when you came?

Mr. TURAY. I came here when I was 7 years old.

Chair DURBIN. What do you do today?

Mr. TURAY. I'm a prosecutor. I represent victims of crimes and go after heinous people that have committed crimes against the Morins family.

Chair DURBIN. You've talked about Ms. Morin's situation a minute or so earlier, but the perpetrator of the crime against her daughter, Rachel, would be the type of person that you would prosecute?

Mr. TURAY. Yes, Senator.

Chair DURBIN. I think there is a fundamental difference we're being asked to acknowledge here. Is there a difference between Mr. Turay and the animal who attacked Ms. Morin's daughter? Of course, there is. This man for a living is prosecuting criminals. This other individual is a clear criminal with a record. When we say massive deportation, should we consider them the same because they're both undocumented?

Let me ask you this, Mr. Reichlin-Melnick. Most Americans, when you talk about the cost to the government in billions of dollars for this deportation are going to say what most of us would fundamentally say, "Keep me safe. I don't care what the hell it costs." So, is it realistic? If we're talking about a massive deportation for us to be looking at Federal budgets for financing?

Mr. REICHLIN-MELNICK. I think it's important for people to understand that ICE already goes after people with criminal records all the time. And, in fact, that has been the priority of the previous two to three or more Presidential administrations and is what Congress sets.

So, the overwhelming majority of people who would be the targets of a mass deportation campaign do not have criminal records. They are people who have been living otherwise law-abiding lives in this country, living, working, and in many cases paying taxes.

Chair DURBIN. So, you estimate at least in one publication here, that the cost of massive deportation would be \$316 billion.

Mr. REICHLIN-MELNICK. At a minimum. In fact, if you look at it over the course of an 11-year operation, it could be as much as \$1 trillion.

Chair DURBIN. And that's for conducting sufficient arrest, detaining immigrants en masse, legal processing, and removal for those four categories.

Mr. REICHLIN-MELNICK. That's right. And we're looking at hundreds of billions of dollars to carry out and deportation of 4 percent of the U.S. population.

Chair DURBIN. So, if you want to do a massive deportation to get Mr. Turay out of this country, you're talking about a massive amount of money that has to be spent?

Mr. REICHLIN-MELNICK. Enormous sums.

Chair DURBIN. And we hear from General Manner the impact it could have on our National Guard and military if they are given this responsibility. Have you taken that into consideration?

Mr. REICHLIN-MELNICK. We weren't even able to account for the costs to the military. So, you should consider our estimates to be conservative. The actual costs would likely be significantly higher because there are so many factors that we couldn't even attempt to estimate.

Chair DURBIN. You are right. To carry out over 13 million arrests in a short period of time would require somewhere between 220,000 and 409,000 new government employees and law enforcement officers. Nearly impossible given current hiring challenges across law enforcement agencies. Could you explain that?

Mr. REICHLIN-MELNICK. Well, right now, ICE only has about 8,500 officers in the entire agency, and less than a thousand are assigned to fugitive operations. Whose job it is to go out into the community and arrest people. But because the overwhelming majority of undocumented immigrants have no interaction with the criminal justice system, they have no criminal offenses.

That means that to arrest them would require going out into the community, finding them, and rounding them up. And in order to do that, would require an enormous investment in personnel far beyond any law enforcement operation ever conducted in the United States history.

Chair DURBIN. So, if we were determined to remove Mr. Turay, the prosecutor from Philadelphia, from America and send him back to Sierra Leone, or someplace like that, you're talking about massive amounts of money. If we are to focus on the truly dangerous people in this country to make sure that they are removed, and should be, that is a lesser amount for sure?

Mr. REICHLIN-MELNICK. That's right. And, in fact, if you look at ICE's own data, non-detained docket, which has already been cited by several Members here, that is looking at about 1.2 percent or less of people who have any sort of serious violent offense. And, of course, the resources involved there would be much smaller than trying to deport 13 million people.

Chair DURBIN. Making a priority the dangerous people who are in this country, or those who are here illegally and could be dangerous, certainly, is a much different assignment than saying massive deportations. Thank you, Mr. Melnick. Senator Graham.

Senator GRAHAM. Does anybody disagree with the following statement: America has a right to limit how many people can come into our country? Nobody disagrees with that. Good. Mr. Turay, very successful life. You have much to be proud of. During the 4-years of the Trump Administration, were you ever—anybody suggest you should be deported?

Mr. TURAY. Thank you, Senator, for the question. No.

Senator GRAHAM. Okay. Do you support deporting the 1.2 million people who have been through the system, have a final order of removal? Do you support them leaving?

Mr. TURAY. Senator, I'm a prosecutor. I—

Senator GRAHAM. No, no, no, no. I didn't ask you if you're prosecutor. Do you support them leaving?

Mr. TURAY. I support people that have committed serious crimes—

Senator GRAHAM. Do you support the people who have gone through the system, been denied, had their day in court, final order of removal, do you support them leaving?

Mr. TURAY. If you have committed—

Senator GRAHAM. As a prosecutor, as a rule of law person?

Mr. TURAY. If you have committed a serious crime in this country—

Senator GRAHAM. That, that's not the question. So, is it your belief that every non-criminal in the world can come to America?

Mr. TURAY. No.

Senator GRAHAM. How many people want to come to America that are non-criminals? Probably hundreds of millions. And I understand why. It's a great country. So, my point is, if you're not willing to say that we're going to deport you after you've had your full day in court, you're facing a final order of deportation, we're going to incentivize people to come forever.

Mr. Melnick, is that, that right? How many people did Ronald Reagan provide amnesty to?

Mr. REICHLIN-MELNICK. Estimates are roughly 2.7 to 3 million.

Senator GRAHAM. How many illegal immigrants are in the country today?

Mr. REICHLIN-MELNICK. I said roughly 13 million of them. I don't know the exact estimates.

Senator GRAHAM. Okay. I would say that the last thing we want to do is give amnesty to people here now because we'll be overrun. Mr. Arthur, would you describe the last 4 years as mass illegal immigration coming to our borders?

Mr. TURAY. I believe that that's fair characterization, Senator.

Senator GRAHAM. Does anybody disagree that the last 4 years has resulted in mass illegal immigration directed toward America? Because if this is not mass, what the hell would be?

Now, how do you answer mass illegal immigration? You start enforcing the laws, Ms. Morin said, and you start sending people back who've had their day in court. You can't answer the question. And I respect you. You've been able to take the opportunity to make something of yourself, but we're passing on just constant disorder.

If you can't say you should be deported after you've had a full hearing, everything been available to, and you lose, and it's hard to say you need to go, then we don't have an immigration system.

General, how many people have been deployed to the border by Governors to assist in border security from the National Guard?

General MANNER. Sir, I don't have that information.

Senator GRAHAM. Okay. It's thousands. Is that a legal use of the National Guard?

General MANNER. It is not the illegal use of the National Guard.

Senator GRAHAM. It's legal, right?

General MANNER. That is correct.

Senator GRAHAM. Yes, I agree with you there. What's the largest cause of death in America for young people? Does anybody know? Mr. Arthur?

Mr. ARTHUR. Drug poisoning, overdose deaths.

Senator GRAHAM. Coming from a drug called fentanyl, mainly?

Mr. ARTHUR. That is correct, sir.

Senator GRAHAM. Okay. Where does that drug come from?

Mr. ARTHUR. That drug, reports indicate that it's made from precursors that come from the People's Republic of China, assembled in Mexico, and largely smuggled into the United States over the southwest.

Senator GRAHAM. General Manner, do you consider illegal immigration a national security problem?

General MANNER. I believe that it is something that ICE and CBP needs to address.

Senator GRAHAM. No, I asked you, is it a national security problem?

General MANNER. I think it's a concern, yes.

Senator GRAHAM. Okay. I do, too. And they are the highest number of people on the terrorist watch list in our country today. At the end of the day, the number of people being killed in America by drug poisoning is coming from labs and cartels in Mexico. General Manner, does the President have the authority to attack a drug lab in Mexico that's making fentanyl to kill American citizens?

General MANNER. I am not a legal expert, Senator.

Senator GRAHAM. Okay. And I do not know. So, here's what I would say. I think we need to be tough, compassionate, but end this crap. If you're trying to poison America, you're a drug cartel, your days are numbered. We're coming after you, hopefully working with Mexico. If you've had your full day in court and you lost, it's time for you to go and try to do it right.

We have to break this endless cycle of having policies that entice people to come to our country illegally, because that is the lack—we're losing sovereignty and losing control over our Nation. There

are too many people being hurt from this out-of-control system. So, how do you deal with mass, illegal immigration? You start with mass deportation of people who shouldn't be here.

Mr. Turay, I think President Trump was pretty clear about DACA, but what do we tell the kids who've been brought here in the last year who are 7 years old? Do you ever break this chain? So, I'm hoping Mr. Chairman, that once we regain control of our border and try to shut down the poisoning of America, we can have a logical, rational discussion about DREAMers and others. But until we control that border, until we get control over the crime coming into this country and the poisoning of America, that discussion cannot happen.

I've worked with you and others for decades, for—yes, really, decades, to fix a broken immigration system. The way the Biden Administration's handled this border problem has created a nightmare for our country. And there's a reason 70 percent of the people want deportations. It's not cost. They want to bring order to chaos. Thank you.

Chair DURBIN. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. Mr. Chairman, thank you for having this hearing. And I know that you've worked with Senator Graham in the past on the DREAMers issue, and I hope that work continues.

And I would start with what you said, Mr. Arthur, just about how we don't know yet how this is going to come down. And I do actually appreciate that Senator Durbin did this hearing, because I think we've got to start anticipating it, and start having these discussions.

Now, I personally don't want to have what happened last time. I went over a weekend, I got calls from a family in Lebanon who was ready to bring their little baby that they had adopted to the U.S. and were stopped practically at the airport with a little kid with a flag sweatshirt on. And we were eventually able through officials in the past Trump Administration to get that baby adopted and is now a thriving child in the U.S.

And so, I, Ms. Morin, so appreciate you being here and your strength coming forward. I believe there is a way we could do this right. I'm not certain how this is going to head, but I just want you to know that based on the work that was being done on a bipartisan basis at this last year, that there are people that want to get to this point where we get this order at the border, where we put the funding into enforcement, into things like Border Patrol agents.

And this was legislation that I'm sure not everyone agreed with on both sides, but a proposed legislation that Senator Lankford had negotiated that was supported by a number of people. And, hopefully, that can be at least a starting point for discussing it, even though it didn't go anywhere last year.

And that was, you know, increasing ICE detention capacity. It was looking at increasing border management. And I personally have taken a lot of grief for my support for COPS Reauthorization and adding resources to law enforcement, which I think is so necessary with the fentanyl issue.

But I think that there is a way, I note that in that agreement, that proposal that was made, as well as the proposal that Senator

Rounds negotiated that Senator Graham has been involved in the past on path to citizenship for DREAMers on doing something about the temporary status people, on looking at people who have not committed crimes, and what we can do to make sure our workforce is strong. I think there is a path here, and I'm just continuing to focus on where we can go.

And I would ask you, Mr. Turay, and your story was moving in its own way. You've lived in the U.S. for 21 years, you're now married to an American citizen, have an 18-month-old son who's also a U.S. citizen. And I watched President-elect's interview on Meet the Press this weekend, and he did talk about working with Democrats on the DREAMer issue, which I appreciated. But that same time, then he talked about the only way not to break up a family is you keep them together and then you send them all back. I'm not certain he meant that with DREAMers, but what would happen to your family if you were sent back?

Mr. TURAY. I mean, my family would face serious consequences. As I noted in my testimony, my wife is a U.S. citizen. Our entire family are U.S. citizens. Not only would this impact me on a personal level, but it would impact the U.S. citizens that have built their lives around me, U.S. citizens like my mother-in-law who has—who is legally disabled and has a brain tumor that requires her to take chemo in the United States. If my wife is not around to care for her, if my wife is not around to be there for her mother, it's going to cause serious hardship on her life and potentially cause her to lose her life.

And, also, my brother-in-law has been serving in the Marines since he graduated from high school. He wants to reenlist in the Marines next year. However, he has to choose between the love for his country or the love for his mom, and come back home and take care of his mom. So, not only is this impacting me on a personal level, it's impacting the people around us that have built their life around me.

I've been in this country for so long. And to think that you can just remove an individual who United State citizens have built their lives around would not cause hardship on other people around them, it's just disheartening.

Senator KLOBUCHAR. Okay. Mr. Reichlin-Melnick, could you go through just one more time the statistics and then I'm out of time here. And if the focus was on enforcement, you know, as well as the border, and going after the people that we know have criminal records here, just that kind of money we'd be talking about if we wanted to focus our efforts on that group, as well as, I would add to that, it's also going to be more border protection, which we know we need?

Mr. REICHLIN-MELNICK. Yes, Senator. So, we estimate that an on average, a single deportation costs the U.S. Government, in today's fund money, slightly under \$24,000. So, if we're looking at deporting 13 million people—

Senator KLOBUCHAR. No, I didn't ask—

Mr. REICHLIN-MELNICK [continuing]. That adds up to—

Senator KLOBUCHAR [continuing]. I'm actually trying to get us to a solution that might work here. Let's see—I remember when you were talking to Senator Durbin, and you talked about if you fo-

cused on the group that we know have criminal records that are still out there, that kind of cost and what that would be.

Mr. REICHLIN-MELNICK. I have to run the exact numbers for you, or I'm happy to get those for you. But it is substantially less expensive than what President Trump has repeatedly said he would do, which is aim to deport every single person here, regardless of whether they have a conviction or not.

Senator KLOBUCHAR. So, if we could get that and follow up later, because I think that there'd be some widespread agreement that if we're going to start somewhere, for one thing, we must begin with these most serious offenders that are out there and get the money set aside for that. Do more at the border, try to do something positive here with DREAMers and people that are contributing so greatly to our economy, and trying to figure this out.

We have done this, tried this several times and had agreements with Democrats and Republicans in the Senate. Not everyone—not everyone on the left, right? Not everyone, but I'm just hoping we can get to a place like that. So, thank you very much.

Chair DURBIN. Thanks, Senator Klobuchar. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Mr. Arthur, you are with the Center for Immigration Studies, is that right?

Mr. ARTHUR. That's correct, Senator.

Senator KENNEDY. And that's a nonpartisan think tank, is it?

Mr. ARTHUR. It is, sir.

Senator KENNEDY. Okay. The border is an open bleeding wound, isn't it?

Mr. ARTHUR. That's a fair way to characterize what's been going on for the last 4 years.

Senator KENNEDY. The southern border is chaotic by design, isn't it?

Mr. ARTHUR. Yes, it is. I've been covering the border for three decades, and yes, it's pretty chaotic.

Senator KENNEDY. Will it be fair to say that the broken southern border is manmade?

Mr. ARTHUR. It would be fair to say that, sir, based on policies that have been implemented.

Senator KENNEDY. And that man's name is Joe Biden, isn't it?

Mr. ARTHUR. That would be a fair assessment, yes, Senator.

Senator KENNEDY. Under President Biden, if you wait in line for legal immigration, you're a chump, aren't you?

Mr. ARTHUR. When you look at the benefits that have been given to people, and the speed at which they've been released into the United States, I would be chagrined if I were waiting.

Senator KENNEDY. You're a chump, aren't you?

Mr. ARTHUR. Yes, sir.

Senator KENNEDY. General—

General MANNER. Yes, sir.

Senator KENNEDY [continuing]. You believe in open borders, don't you?

General MANNER. I believe in the rule of law, sir.

Senator KENNEDY. Right. And it makes you angry that President Bi—President Trump does not believe in open borders, doesn't it?

General MANNER. Senator, I'm not here to discuss immigration policy. I'm here to discuss whether or not we use the military to enforce it.

Senator KENNEDY. And it makes you angry that most Americans don't believe in open borders, doesn't it?

General MANNER. Not in the slightest, sir. Again, I'm not here to discuss the immigration policy.

Senator KENNEDY. Duty, honor, respect. You talked about that—

General MANNER. Yes, sir.

Senator KENNEDY [continuing]. In your opening statement.

On October 14th of this year, you went on CNN. I want to read you what you said. Make sure I'm accurate. Here's what you said. "President Trump is not like any sane leader. I'm very proud of General Milley for saying that President Trump is a total fascist. To Bob Woodward, if he is chairman of the Joint Chiefs is calling the President the fascist. I'm so proud of him for breaking that barrier. The challenge is because most MAGA Republicans, they don't understand what fascism is. The reality is that they are, in fact, fascists themselves." Did I read that accurately?

General MANNER. Senator, I am happy to discuss my personal perspectives with you separately at any time. That's not the purpose of the hearing today.

Senator KENNEDY. Did I read that accurately?

General MANNER. I believe so, yes.

Senator KENNEDY. Yes. You think you're smarter than the American people, don't you?

General MANNER. Absolutely not, Senator. I am here to discuss the use of the military as part of this mass deportation.

Senator KENNEDY. You think you're more virtuous than the American people, don't you, General?

General MANNER. Senator, I'm insulted by your comment.

Senator KENNEDY. Duty, honor, and respect. You talked about that in your opening statement, didn't you?

General MANNER. Yes, sir.

Senator KENNEDY. Ms. Morin said—I wrote down her words. She said by their actions, you know, what someone's character is like. You agree with that?

General MANNER. Senator, for 35 years, I served my country with absolute honor and distinction, and I will continue to do so.

Senator KENNEDY. You agree with what Ms. Morin said?

General MANNER. Of course.

Senator KENNEDY. Mr.—got a few minutes left.

Chair DURBIN. Twenty-three seconds.

Senator KENNEDY. Well, actually, you let Ms. Klobuchar go well over, so I'm assuming you'll extend me the same order.

Chair DURBIN. I'll give you the same minute I gave to her.

Senator KENNEDY. You gave it 1 minute 20. I timed it.

Chair DURBIN. You're using—

Senator KENNEDY. I watched you like a hawk, Dick.

[Laughter.]

Mr. Mel—Mr. Reichlin-Melnick, you believe in open borders, too, don't you?

Mr. REICHLIN-MELNICK. I do not, Mr. Kennedy.

Senator KENNEDY. Okay. On November 1st, 2022, you tweeted, “Both Texas and Louisiana have their knives out for Black immigrants.” Do you remember that tweet?

Mr. REICHLIN-MELNICK. I don’t, but it’s quite possible.

Senator KENNEDY. What Texans—it’s not only possible, it happened. You’re not denying it, are you?

Mr. REICHLIN-MELNICK. No, I’m saying—I’m referring to the context—actually, I don’t know the context.

Senator KENNEDY. Who are you talking to about—who in Texas had their knives out for Black immigrants?

Mr. REICHLIN-MELNICK. I’m guessing the context, but my suspicion—

Senator KENNEDY. Give me a name.

Mr. REICHLIN-MELNICK [continuing]. Is to do with the Attorney General Ken Paxton and the attorney general—

Senator KENNEDY. Give me a name.

Mr. REICHLIN-MELNICK [continuing]. Of Louisiana.

Senator KENNEDY. Give me a name.

Mr. REICHLIN-MELNICK. I just did.

Senator KENNEDY. You don’t have a name, do you?

Mr. REICHLIN-MELNICK. I just said Ken Paxton.

Senator KENNEDY. You don’t have a name, do you?

Mr. REICHLIN-MELNICK. I just said it. Ken Paxton.

Senator KENNEDY. How about Louisiana? You said Louisiana has its knives out for Black immigrants. Who in Louisiana were you talking about?

Mr. REICHLIN-MELNICK. Again, I’m not certain. That was 2 years ago. And as I’m sure you know, much has happened in the last 2 years.

Senator KENNEDY. Well, did you say it?

Mr. REICHLIN-MELNICK. Again, I do not remember the context, Senator Kennedy.

Senator KENNEDY. But you said somebody had their knives out from Louisiana for Black immigrants, but you don’t know who they were. You just said it.

Mr. REICHLIN-MELNICK. I said the Attorney General of Louisiana and Texas. And I believe this referred to, specifically, lawsuits brought and arguments that were made in court that the arrival of Haitians—

Senator KENNEDY. I’m out time, but I want to get you on the record—

Chair DURBIN. Thank you very much, Senator. Appreciate your questions.

Senator KENNEDY [continuing]. That you believe that the Attorney General at that time of Louisiana had his eyes—knives out for Black immigrants. That’s your testimony?

Chair DURBIN. Thank you, Senator Kennedy.

Mr. REICHLIN-MELNICK. Given the litigation conduct, yes.

Chair DURBIN. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. We have a broken immigration system. This was acknowledged over a decade ago when I first arrived in the U.S. Senate. And we actually, in 2013, we had a bipartisan, comprehensive immigration reform bill that addressed the issues of all of the immigrants who are working in

various large sectors of our economy, IE, in the Ag sector, where the Chamber of Commerce are concerned about what we're doing with immigration policy. Where we dealt with the undocumented immigrants who are working and paying taxes for which they get absolutely—you know, they're paying the Social Security, Medicare, and they don't get those benefits at all.

So, we have a broken immigration system. We actually had the two Senators who are sitting here, the Chairman and of the former chair of the Committee who are part of a comprehensive immigration reform. So, I don't know why we cannot come to some sort of an agreement to deal with the massive, complex issues that confront us.

So, that is what I'm calling for. Until we make a commitment to comprehensive immigration reform, pointing fingers at the Biden Administration or any other administration, it's not going to get us far anywhere fast. And, in fact, every administration has had border enforcement policies. You may not like the policies, for example, I certainly didn't support the Trump policy of separating thousands, thousands of children from their parents without keeping track of who their parents were.

All I'm asking for is a rational, reasonable, humane immigration policy. So, that was what I thought the comprehensive immigration bill in 2013 was. I didn't agree with all of the provisions, but some of us worked really hard on it. And Senator Graham as I mentioned, was part of that. So, that's what I think we ought to be focusing on.

Now, General Manner, I'm glad you're here because we have a President who has said many times that he intends to use the military to do immigration policies, to affect his immigration policies. And General Manner, you said that that is going to have a very negative impact on readiness, for example, because our military, including a National Guard, they're not trained for immigration enforcement.

So, as the Chair, currently, of the Armed Services Committee's Readiness Subcommittee, I share your concerns. By the way, maybe you can go over again a little bit more. What kind of infrastructure would be needed to enforce immigration deportation on up to 4 percent of our population? What kind of infrastructure would we need in order to affect that?

General MANNER. I have to defer to the other experts on the panel.

Senator HIRONO. Okay. Well, then that would be Mr. Reichlin-Melnick?

Mr. REICHLIN-MELNICK. Yes.

Senator HIRONO. Now, I'm pronouncing your name. Would you like to go into some of that?

Mr. REICHLIN-MELNICK. Senator, in order to carry out that form of operation would require hiring tens of thousands of new law enforcement agents. It would require building dozens, if not hundreds, of new detention centers, hiring thousands of new judges, all at a cost of hundreds of billions of dollars, potentially up to or more than a trillion dollars over the course of more than a decade.

Senator HIRONO. Do you support comprehensive immigration reform?

Mr. REICHLIN-MELNICK. I do. We——

Senator HIRONO. Does anybody on this panel not support comprehensive immigration reform that really gets to some of the problem—well, that really addresses the issues that we’re facing? Anybody on the panel?

Mr. ARTHUR. Senator, I have to say, if comprehensive immigration reform is not a defined term, and as with all legislation——

Senator HIRONO. But, you can look at——

Mr. ARTHUR [continuing]. The devil is in the detail.

Senator HIRONO. Excuse me. You can look——

Mr. ARTHUR. Sorry.

Senator HIRONO [continuing]. At the 2013 bill, and that had some of the kinds of—that would be what I would describe as comprehensive. It was not the answer. It was not the be-all and end-all, but it was pretty comprehensive, wouldn’t you say?

Mr. ARTHUR. I was actually on the bench at the time that that bill was introduced. I was an immigration judge and not involved in legislation.

Senator HIRONO. Well, it was—trust me when I say that it was about as comprehensive immigration reform as we have managed to do, and over a decade at this point. And that’s more, I think, what we need to do. And I don’t think there’s anybody here who supports something called the “open borders” because, as I said, every single administration has had border enforcement policy. You may not agree with all that. I don’t think there’s anybody sitting here who supports open borders, whatever the heck that means.

But we all know that we need to have border control. We do need—need that. But what are we going to do about the 11 million to 13 million undocumented people here who are very much a part of our community and the fabric of many, many communities? Not to mention, that there are U.S. citizens that are part of their families. And are we going to start busting them up? What’s that going to do?

So, you know, before we start throwing out all kinds of so-called “solutions”, I think we need to rethink that— about what are we going to do to have a rational, reasonable immigration policy. And that’s what I’m calling for. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Thank you to each of you for being here today. Ms. Morin, I am so sorry for your loss. I know that’s been a very difficult time for you and your family. And this truly is a season of sorrow for you-all, and I recognize that.

I find it so interesting. This open border policy that we’ve seen is not a compassionate policy. I’ve talked to people that work with human trafficking and sex trafficking, and what is happening to women and children is abhorrent. And we all are fully aware of that.

Mr. Chairman, I appreciated your remark that we should deport those that are truly a danger to Americans. I think that—that’s accurate. I don’t think there’s anything anyone would disagree with that. We’ve all seen the uptick in violent crimes such as Ms. Morin and her family have experienced. And this is the reason I reintroduced my CLEAR Act this year, which would enable local law en-

forcement when they apprehend someone who's in the country illegally to detain them and then call on ICE to deport them. And then the Federal Government have to repay that local law enforcement agency for what they've spent and that apprehension, that detention.

And we should pass this bill today. And that would be a good thing for this Committee to be doing this last week. Pull it up, put it on the hotline, and run it. Is there anybody on this panel that disagrees with deporting criminal, illegal aliens? Raise your hand if you disagree with that. Everybody agrees. Those that have committed crimes against our citizens should be deported.

Mr. Arthur, I want to come to you. Talk for just 1 minute about why it is important that we empower local law enforcement to carry out the job that the Federal Government has not done.

Mr. ARTHUR. Well. You actually heard Mr. Reichlin-Melnick talk about how few ICE enforcement removal officers there are. There's always going to be a set number of those individuals. When you allow police officers who are involved in their community, who are the first line, actually putting hands on criminals, they're going to be the people who are best able to pull those individuals out of the community.

And it's important to note, Senator, that when you talk about immigrant crime—you know, Ms. Morin's situation is horrible. And every crime is horrible. So, much of that immigrant crime takes place in immigrant communities. Sanctuary jurisdictions do nothing but punish the immigrants that those individuals that live in those communities that those criminals are sent back to. So, that's why it's absolutely crucial.

Senator BLACKBURN. I appreciate that. So, I think we should move forward with my legislation, Mr. Chairman. Mr. Reichlin-Melnick, I'd like to come to you. I want to talk about some of your tweets. You've been active on X. Here's one. "This is bad analysis that bears a little resemblance to the facts. The Remain in Mexico program was not very successful. It was a human rights disaster that fed people to the cartels with not much impact on border crossings. Plus, Biden ended it when it was barely in use at all."

Mr. REICHLIN-MELNICK. That's correct.

Senator BLACKBURN. Let's talk about that. So, do you still believe that Remain in Mexico was not very successful?

Mr. REICHLIN-MELNICK. It wasn't. In fact, it was one of a suite of programs that went into effect in 2019, about four or five different ones over the course of about 8 months.

Senator BLACKBURN. Do you believe that it was a human rights disaster?

Mr. REICHLIN-MELNICK. Yes. And I can tell you the stories of the women sent back by the United States to Mexico who were raped—

Senator BLACKBURN [continuing]. Tell you stories—

Mr. REICHLIN-MELNICK [continuing]. In Mexico because of that.

Senator BLACKBURN [continuing]. People that were raped along the way, people that have been trafficked—

Mr. REICHLIN-MELNICK. And we sent them back to those traffickers—

Senator BLACKBURN [continuing]. And drug dealers—okay.

Mr. REICHLIN-MELNICK. Remain in Mexico gave people to the cartels, and we turned our eyes away from them.

Senator BLACKBURN. Remain in Mexico was successful, and we all know it. Now, let me talk to you——

Mr. REICHLIN-MELNICK. It was not.

Senator BLACKBURN [continuing]. You about another tweet that you put up. “There are not 320,000 missing children——”

Mr. REICHLIN-MELNICK. That’s correct.

Senator BLACKBURN. “That number is a false interpretation of a DHS OIG report that said that 32,000 people who entered as unaccompanied children from 2019 to 2023 were ordered deported for missing court, and ICE failed to charge—to file charging documents for 291,000 more.”

Mr. REICHLIN-MELNICK. That’s right. That’s an accurate description of the OIG report.

Senator BLACKBURN. Now, you know, this is a human rights disaster. Because what we have heard is the DHS Inspector General, and what they have testified, is that they found 32,000 migrant children did not show up for their court date. And an additional 291,000 migrant children never received notices to appear.

Mr. REICHLIN-MELNICK. That’s correct. That’s what my tweet said.

Senator BLACKBURN. So, it is it your testimony that DHS does, in fact, know the whereabouts of every single one of these 320,000 children and they’re just not telling people where these children are?

Mr. REICHLIN-MELNICK. No, because that’s not DHS’s function here. It’s also Office of Refugee Resettlement.

Senator BLACKBURN. It is DHS and ORR.

Mr. REICHLIN-MELNICK. It’s not their job to go out and find every single people.

Senator BLACKBURN. It is DHS and ORR.

Mr. REICHLIN-MELNICK. I guess the broader point, if somebody isn’t missing if no one’s looking for them.

Senator BLACKBURN. What we know—what we know is that through reports that have been made, reported even in The New York Times, many of these children are in abusive situations. They are working in plants. And indeed, DHS says that you’ve got these 320,000 migrant children that cannot be located. That is a human rights disaster. I yield back.

Mr. REICHLIN-MELNICK. Senator Blackburn, they did not say they can’t be located. They said that they had not even attempted to——

Senator BLACKBURN. My time is expired. I yield back, Mr. Chairman.

Mr. REICHLIN-MELNICK [continuing]. File a charging document, which is a very different thing.

Chair DURBIN. I’m going to give the witness an opportunity to finish his remarks.

Mr. REICHLIN-MELNICK. I just want to note, the DHS report did not say these children were missing. It said that ICE had failed on the job to actually start the court process for them. If ICE filed the court documents, many of those people would be living at the exact address that the ICE told them. It’s just ICE has not filed the

charging documents. It's not that they're missing. And, of course, exploitation is very real. And we've called for more labor enforcement to ensure it doesn't happen.

Chair DURBIN. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. And the fact that we're still discussing, debating the struggle to reconnect children who were separated from their parents more than 4 years ago today, should tell us a lot about what to expect in the next administration.

I think it's worthy of further conversation, maybe a different hearing, a different day to focus on that. Just as a reminder for folks that are observing today's hearing, that the topic—the stated topic of today's hearing is, “How Mass Deportations Will Separate American Families, Harm Our Armed Forces and Devastate Our Economy.”

So, I'll attempt in my questions to bring us back to the focus of this hearing today. But, first, wanted to point out a couple of notes that I've taken throughout the hearing, in hearing from my colleagues on the Committee, the issues they've raised, the questions they've raised to underscore a statement I made at the outset, which is how complex this conversation in this policy area is. And so, it requires thoughtful and nuanced solutions.

You know, Senator Graham was talking about the numbers. The numbers, the numbers, the numbers, and even questioned witnesses of—would you be opposed to someone who has had their date in court, he said, and has been denied a further stay in the United States after having had their day in court that sheds light on process, due process, often lack thereof, representation in the process. Lack of representation in the process.

I'm for a process and finality of a process, a finality, an answer, clarity about your future in a matter of weeks and months, not years and years. But that requires investment in the process by the Federal Government in hearing officers, in immigration judges. So, let's just lay that out if we're going to be genuine and serious about tackling the backlogs and the issues.

Second, man, if I had a nickel for every time I heard fentanyl in this Committee. Serious problem, serious problem, but irresponsible in how it's misportrayed so often in immigration conversations. Fentanyl needs to be addressed. Fentanyl needs to be stopped. Its import—its illegal importation needs to be tackled.

But if we're going to do it thoughtfully and seriously, let's look at what the Customs and Border Protection Agency tells us. Eighty percent of individuals who are prosecuted and convicted for bringing fentanyl into this country are United States citizens. Happy to share the link, folks. Happy to share the report. So, if that's a concern, then let's address the heart of the concern and not just use it as a soundbite to further attack immigrants.

Oh, by the way, did you know that the numbers at the Southern border are way down? People talking about this crisis at the border crisis, we always need to do more to ensure a safe, orderly, and humane border. But some of these numbers that are being tossed around are not what's happening today because of President Biden's policies this last year. So, let's be intellectually honest with ourselves and the public.

Now, that being said, Mr. Reichlin-Melnick, you're pretty popular today. I have a question for you as well. As you know, and you've referenced the largest mass deportation effort in U.S. history was President Eisenhower's Operation Wetback. I referenced to it in my opening statements. During that operation, more than half a million Mexicans and many United States citizens were deported. And, as far as anybody can tell, Operation Wetback did not achieve its intended effects of increasing employment rates or wages for U.S. workers.

Former President Trump has said that he planned to model his deportations on Operation Wetback. Now, you testified today about the expected negative economic impacts of mass deportation, including the rising costs of food. Some estimates say food prices are going to go up 19 percent based on this alone. In what world does food become cheaper with mass deportations?

Mr. REICHLIN-MELNICK. Mass deportations would not cause food prices to become cheaper. The exact opposite would occur. In fact, a single work site raid in 2018 under the Trump Administration at a beef plant in Tennessee led to ground beef prices rising by 25 cents for the year that the plant was out of operation following the raid.

Senator PADILLA. And just to follow up to that question—I'm cognizant of my time, Mr. Chairman—I've referenced so many industries that have significant percentages of undocumented workforce in them. I think chief among them is the agricultural industry, not just nationally, but particularly, in the State like California, the largest agricultural producing State in the Nation where estimates are more than 75 percent of the workforce is undocumented.

I hear from growers, as do all my colleagues, I hear from labor contractors, as do all my colleagues, about how easy it is for them to recruit United States citizens to do the work in the fields. And let me tell you how easy it is. It is not. There's a reason that the agricultural industry relies on immigrants, including so many undocumented immigrants, to help keep the food supply chain going, keep food on the tables of American families.

And I invite my colleagues, if you want to get a taste of what it's like and the difficulties for the recruitment, to spend a day in the fields, like I did in 2022, picking radishes and parsley, like Senator Booker did in 2023. Happy to work with growers and farm workers to provide that opportunity for all of you.

Follow up question. Mr. Reichlin-Melnick, just briefly describe to us what it would look like if the agricultural industry were suddenly to lose half of its workforce.

Mr. REICHLIN-MELNICK. I mean, if it was overnight the U.S. food supply would crumble. Workers—undocumented workers work across the agricultural sector; from picking crops in the field, to meat processing, to poultry processing, to dairy, to everything in between. And these are workers that, without them, our food supply would drastically diminish.

I'm not saying that there's no jobs Americans will do. Of course, that's not true. Americans have done those jobs in the past, but it could take decades before we got enough workers to replace the experience and the knowledge of some of these workers who have been doing the jobs for 20, 30 years. It is not something that can

just be replaced overnight. It can cause severe impact to the U.S. food supply.

Chair DURBIN. Thank you, Senator Padilla.

Senator PADILLA. The violent criminals, let's go after them. The vast majority of immigrants and undocumented immigrants who are contributing so much to this country, they deserve better. Thank you.

Chair DURBIN. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. I want to paint a picture of the crisis at the border and what the incoming administration has to deal with. Roughly, eight million people came into this country illegally from the outgoing administration's border policies. Eight million. Does anyone find that acceptable? I'm going to give you-all a chance to answer that question shortly.

The American people elected a new President, in large part, to secure the border and deport people who came illegally under their predecessor. So, to my Democratic colleagues, how many illegal immigrants being deported by the new administration would you find objectionable? Mr. Melnick, I'll ask you, a million?

Mr. REICHLIN-MELNICK. I think one million would be a disaster.

Senator TILLIS. Two million?

Mr. REICHLIN-MELNICK. Again, considering we're talking about law abiding people who've been here for decades, I think that is enough that would have severe negative ramifications for the United States.

Senator TILLIS. Three million?

Mr. REICHLIN-MELNICK. Same answer.

Senator TILLIS. Five million?

Mr. REICHLIN-MELNICK. Same answer, even worse ramifications.

Senator TILLIS. Do you think it would be fair or moral to deport any illegal immigrants?

Mr. REICHLIN-MELNICK. Yes. I'm not a supporter of open borders, as I said before.

Senator TILLIS. Well, I'm kind of curious what your position was back during the Obama administration when that's exactly what he did. I'm not reading what Trump intends to do. I'm reading exactly what President Barack Obama did when he came into office and deported nearly five million people, or in excess of three million people. So, at that time were you involved, politically, or in this space at the time that Obama was here? How old were you back then?

Mr. REICHLIN-MELNICK. I was a graduate of law school and was working at the time.

Senator TILLIS. Were you opining on deportations at that time?

Mr. REICHLIN-MELNICK. I was not.

Senator TILLIS. Do you believe that President Obama made a grave, horrible, inhumane mistake by deporting those folks?

Mr. REICHLIN-MELNICK. Well, it wasn't five million people—

Senator TILLIS [continuing]. That came in under the Bush administration?

Mr. REICHLIN-MELNICK. It wasn't five million people. We're looking at internalized deportations

Senator TILLIS. Over three million. So, let's not split hairs.

Mr. REICHLIN-MELNICK. Actual numbers are closer to 1.5 internal ICE deportations. And there was a portfolio of—

Senator TILLIS. So, you said President Obama was immoral and inappropriate to deport those million people. Is that what I heard you say?

Mr. REICHLIN-MELNICK. There were many people who were deported—

Senator TILLIS. It's a yes or no question. Look, I don't normally get into these antagonistic sorts of discussions here, but it needs to be said. Because you, just a month ago, said, "At the turn of the century, Jim Crow was legal. Lynchings were at their highest level in U.S. history. Women couldn't vote. The infant mortality rate was 165 per 1,000, and the average life expectancy was 47—" Oh, "and we also had quasi-open borders." That part wasn't bad.

So, let me tell you what I tell everyone who comes in this room and has the polarizing testimony, sir, that you have had. You're a part of the problem. I'm a part of a group of people here who have said, as the President did, incidentally, on Sunday. He believes there should be a path for DREAMers. We're demonizing President Trump for something he may or may not do. But he has said to his Republican base, he believes that there should be certainty for DREAMers.

He's also said that we have to have a secure border. And as long as the border is not secure, people like me who try to treat people who are in the State, that they are here, with respect and understanding, some of the issues that Mr. Padilla brought up, you cause people to go into their corners and get nothing done.

That is why Chair Durbin has not been able to fulfill the promise on DREAMers every single year he has tried for the last 20 because people like you make it impossible to have a—let me finish, and then I'll let you speak as long as the Chair wants to—have a rational discussion about it.

Because if we don't secure the border, I can't get a path to citizenship for the DACA population. If we don't secure the border, I can't get Democrats and Republicans to come together and give certainty to the DREAMer population.

Are there any DREAMers in the room? Raise your hand if you are. All right, well, this is a part of the problem, ladies, and gentlemen. You have an incoming Republican President who just said, as late as Sunday, that he's prepared to give you certainty. But we have people here demonizing him for asking the reasonable question of; can't we all agree that we need to secure the border?

So, if you are sincerely—I don't know how you make your money. I don't care what your political motives are. But, number one, I would really appreciate it, to say, if you would go out on social media and say that President Obama did a horrible disservice to those people he deported. And he's as wrong-minded as every other Republican who said we've got to secure the border, deport people.

Because you can't have one being okay and the other one not being okay. And if you don't come to the table and recognize in a world where, yes, 100 years ago, it was probably safe to have a quasi-open door border because the world order was changing and we emerged as a world leader.

But today we have terrorists that can fly from the Middle East, land in Mexico, and come across the border in less than 24 hours. We're not living in Ellis Island anymore. We've got a problem that can't be solved. And people like you are creating more obstacles to people like me who are willing to take hits from my own party to satisfy what people like Donald Trump want to get done. Thank you.

Mr. REICHLIN-MELNICK. May I respond?

Senator TILLIS. Knock yourself out.

Senator WELCH. [Presiding.] No. Thank you, Senator. It is my time, so I'm going to speak. First of all, I want to thank all the witnesses. I think we're actually going to start making progress on securing the border and on a sensible humane policy. I want to thank folks from the immigrant community, and DREAMers, who I know are here, and acknowledge my respect for the contributions you've made to our country. And I don't want to lose the benefit of that.

As I've listened to my colleagues, I think there's—it's not that complex. Number one, I think there is agreement we have to have a secure border. You can't have a country that doesn't have a control over its border.

Second, I think there's broad consensus that criminals who are here should be deported. Ms. Morin and I just want to acknowledge, as we all have, the incredible life you've had, and the loss of your daughter, and your own experience. People who do that, they shouldn't have gotten in, and they shouldn't be here. And if they are here, they should be in jail.

Third, we have the question of people whose status has been determined, but it took so long for that status to be determined, in many cases, years, and years, that they become an integral part of their community and they put roots down here and they haven't committed a crime. This is where we don't have consensus. There's a view among some, and I think that President-elect Trump has this view, that if you are here illegally, no matter how long it took for that adjudication to occur, and no matter what your roots are, then you should go back.

Senator Graham was indicating a view that if you've been adjudicated, fear is fair and should go back. There's another point of view. And that is that if you have been here, and we had a system that didn't adjudicate in any kind of timely way, and you have been working—put it in very specific terms, on a farm in Vermont for seven, or for eight, or for 9 years, and you become a contributing member to the community and the economy.

There's another approach one could take where you might pay a fine, you might have to make amends for the fact that you came here illegally, but there'd be an acknowledgement of the contributions you've made, the roots you've established, and what the harm to the community would be. And that, certainly, would be the case in Vermont.

Just speaking about agriculture, I just can't imagine—actually, I can imagine. I've talked to some farmers who if they lost their labor, they would lose their farm, because cows don't milk themselves. And they are not able to get local labor to do that.

So, there is a real potential here for us to find common ground and get something done; that is securing the border, that is deport-

ing criminals, that is making judgments about allowing people the option of paying a fine, where there would be a deterrent as long as we have a secure border.

You know, Ms. Morin, and I just want to ask you, you've suffered so much, and I want to express to you my gratitude for your advocacy on behalf of others. But if we had a secure border, you're advocating for that. If we have and that keeps criminals out, right, would it be in conflict with what you think would be a reasonable outcome for like DREAMers, for instance, folks who—kids who came here with their parents who've not committed any crime, who've become parts of the community. Would that be something that you would see as a reasonable outcome to find a way for them to have a legal status?

Ms. MORIN. A couple of things from listening to everyone speak. One, as an American citizen and not a politician, so I don't know all the ins and outs, but just what I'm hearing is the bottom line is profit. To an American citizen here, you're putting like—you're putting profit above American lives. So, that's the message you're communicating.

For me, personally, there—our country is made of immigrants. We have 250 years or more of immigrants that have come to this country and have built the country to what it is today, and we are descendants of those immigrants. The issue is having an open border that allows an invasion of people that compromises our national security because our borders, we don't have enough border agents to stem the flow of immigrants. But then also, they bypass the law to speed up them coming in, and in doing so, they miss all the criminals that are coming into our country.

So, I think we need to put those laws back into place and to practice so we can catch them at the border. And then, I think that we should work toward those that have come to the country—if it's illegal. Illegal, the very word itself, means unlawful. So, are we saying it's okay to come to America in an unlawful way? There has to be some kind of a line, a precedence of what is lawful and what isn't lawful.

Senator WELCH. Well, I thank you for that. I mean, the heart of—at least as I hear what you're saying, is that we have to have a secure border in the first place.

Ms. MORIN. Yes.

Senator WELCH. Yes. Well, thank you again. My time is up, and I'm going to—who's—are you next, Hawley? Senator for Missouri.

Senator HAWLEY. Thank you, Mr. Chairman. Thanks to the witnesses for being here. I have to say, I'm kind of amazed that we're holding this hearing. To me, it's remarkable that the idea of, actually, as you were just saying, Ms. Morin, the idea of enforcing our laws, protecting our border, securing our streets from criminals. It's amazing that that's controversial at all. And it says something a lot about the other side of the dais that we're having this hearing today.

Let me just ask you, Mr. Reichlin-Melnick, I mean, is it really such a bad idea to deport people like the criminal who killed this young man? This is Travis Wolfe. He was 12 years old when he was killed. [Poster is displayed.] He was mowed down—and I do mean mowed down in a car by an illegal immigrant, 12 years of

age, walking along a sidewalk in my State of Missouri, mowed down by an illegal immigrant who, I think, also had a prior criminal record. Is it such a bad idea to deport the person who killed him?

Mr. REICHLIN-MELNICK. Any person who commits a heinous crime should suffer the consequences under the law.

Senator HAWLEY. Good. What about officer David Lee? Officer David Lee was killed in Missouri just a few months ago by another illegal immigrant, once again in a car, who used it as a lethal weapon to ram him and kill him. Is it so wrong, such a bad idea to deport the illegal immigrant who killed this good man?

Mr. REICHLIN-MELNICK. Again, any person who commits an awful act should face the full force of the law.

Senator HAWLEY. We've had multiple stabbings in the State of Missouri at laundromats in O'Fallon, Missouri, where innocent civilians were going to do their laundry of an evening and were attacked with knives, slashed, bled, stomped upon. Should the illegals who do that, should they not be deported?

Mr. REICHLIN-MELNICK. No, as I said, if you commit an offense, you should have face consequences. But the overwhelming majority of the 13 million people—

Senator HAWLEY. We've had an officer here today—

Mr. REICHLIN-MELNICK [continuing]. Have not committed an offense.

Senator HAWLEY [continuing]. Assaulted in Kansas City on the other side of the State who have been assaulted by illegal immigrants. One officer required over 100 stitches to the head, police officer, earlier this year. Should the illegal immigrant who did that not be deported?

Mr. REICHLIN-MELNICK. Again, they should face the consequences of the law, but they are a very small minority of the population that President Trump is promising to deport.

Senator HAWLEY. Well, let's talk about the rest of the people who you don't want to be deported. You said in an article that you wrote recently, "New report shows costs—devastating costs of mass deportation." You wrote this in October. Do you remember this piece?

Mr. REICHLIN-MELNICK. Yes. That is a summary of our report that we published in October.

Senator HAWLEY. Yes. So, in this piece, and it's also in your written testimony, you talk about how much the economy will lose if the United States actually enforces our immigration laws and deports folks who are here illegally. And I want to quote you now. You say, "Some industries would be particularly hard hit, including construction, agriculture, and hospitality, which combined, would lose more than two and a half million workers. What's the argument here, that there aren't American workers who are available to do those jobs?"

Mr. REICHLIN-MELNICK. No. And as I said previously, there likely are, but the issue is that it would cost decades—

Senator HAWLEY. And you don't want their wages to rise?

Mr. REICHLIN-MELNICK. I think that we want to pass a path to citizenship so we can have level, fair playing field for every American.

Senator HAWLEY. Why would—why would you want American citizens and those who are here lawfully to have to compete against illegal immigrants, who by the way, are often paid——

Mr. REICHLIN-MELNICK. I don't want that.

Senator HAWLEY [continuing]. Non-minimum wage, who are not given the federally mandated benefits precisely because they're here illegally. Why would you want to drive down the wages of millions of working Americans who can't get those jobs in construction, agriculture, and hospitality because illegal immigrants are getting them, suppressing wages in the meantime. Why would you want to do that?

Mr. REICHLIN-MELNICK. Well, if you've been here for my initial testimony, you'd know I don't want exploitation.

Senator HAWLEY. Listen, I read your testimony word for word, and I've been watching it, and I know what the answer is. You don't actually care about working people because you're absolutely hell bent on this ideological agenda of opening our border. You want to give everybody who's here a path to citizenship. You want blanket amnesty. You talk about mass deportations, that's your word, not Trump's. You want mass amnesty, right? It's right here in your testimony.

Mr. REICHLIN-MELNICK. We want a path to citizenship for——

Senator HAWLEY. That's amnesty.

Mr. REICHLIN-MELNICK [continuing]. People who pass a background check, who pay a fine, who——

Senator HAWLEY. That's amnesty. That's amnesty. You just said there's millions of people. Thirteen million people, right? Thirteen million people you want to dump into the labor force.

Mr. REICHLIN-MELNICK. They are already in the labor force.

Senator HAWLEY [continuing]. Who will drive—illegally, they're here——

Mr. REICHLIN-MELNICK. Yes. So, unless it's legal for them——

Senator HAWLEY [continuing]. Taking jobs from American citizens and saying, oh, perfect. So, here's your plan—so just if you're wondering America—here's the Democrats' plan. Take the 13 million-plus illegals who are here taking jobs from Americans, taking wages down, taking healthcare benefits, and bring them here legally so that they can continue to drive down wages, flood the labor force and suppress——

Mr. REICHLIN-MELNICK. Senator Hawley, they can't flood the labor force if they're already part of the labor force, which is the economic issue today.

Senator HAWLEY. They are flooding the labor force now. That's what's happening now.

Mr. REICHLIN-MELNICK. The majority have been here for over 15 years. Many—millions have been here since the Reagan——

Senator HAWLEY. And what has happened to Reagan working class wages in that time, Mr. Reichlin-Melnick?

Mr. REICHLIN-MELNICK. Working class wages——

Senator HAWLEY. Have they gone up?

Mr. REICHLIN-MELNICK [continuing]. Wages are currently going up. Yes.

Senator HAWLEY. Oh, really? They've gone up over the last 15 years?

Mr. REICHLIN-MELNICK. Over the last 15 years, I will have to consult the economists on that matter.

Senator HAWLEY. Yes, they're down. Way down. What world do you live in?

Mr. REICHLIN-MELNICK. Senator——

Senator HAWLEY. Listen, here's the deal. The American——

Mr. REICHLIN-MELNICK. Are you familiar with the phrase——

Senator HAWLEY [continuing]. People just voted—oh, well you know what? It's my time not yours. So, you're here to answer my questions, not to offer a soliloquy. And let me just end with this. The American people just got a good look at your economic program and they voted against it.

We've had an open border for the last 4 years. We have had de facto amnesty, as you yourself just said, for the last 15-plus years. It has been a disaster. People have died because of it. Wages are lower because of it. Our streets are in chaos because of it.

And now you and the Democratic Party just say more of the same, more of the same, let's double down. I would just say to you, I think that's insanity. I think it's total insanity. And the American people do, too.

Mr. REICHLIN-MELNICK. Senator Hawley, we have a choice. We can either hurt the economy or help the economy. And if we want to deport 13 million——

Senator HAWLEY. It hurts the economy to give American workers jobs?

Senator WELCH. Senator from Texas.

Senator CRUZ. Elections have consequences. For the last 4 years, we have seen the most radical experiment in open borders this Nation has ever seen. There are many reasons the American people showed up in overwhelming numbers to vote, to reelect Donald Trump, to elect a Republican majority in the Senate, to reelect a Republican majority in the House.

But there was no reason more front and center than the open borders of the last 4 years. And I have to say, I think there were a number of us wondering, did any of the Democrats in Congress learn anything from the election? And the existence of this hearing makes very clear the answer is no.

We've seen 12 million people come into this country illegally under Joe Biden and Kamala Harris. My home State of Texas has seen more than any State in the country. There is a reason that the Rio Grande Valley, which has been Democrat for over 100 years, flipped Red this election. Because when your home is invaded by more than 12 million people, it changes your voting patterns every single day. We have seen Americans murdered. We have seen women raped. We have seen children brutalized by criminal, illegal aliens released deliberately by Joe Biden and Kamala Harris.

The numbers are staggering. According to ICE, as of July 21st, 2024, nearly 650,000 criminal illegal aliens were currently on ICE's non-detained docket. Which means they've been released, they're wandering around, they're free. And of those 650,000, 14,944 have been convicted of homicide.

[Poster is displayed.]

You want to know what mass deportation is? Those 14,944 better pack their bags right now because with a new administration, we're going to show up, we're going to arrest you, and we are going to deport you. Twenty thousand and sixty-one have been convicted of sexual assault.

Now, I want you to ask of my Democrat colleagues—and it is striking that virtually none of them are here. That is reflected in their conduct because they are silent and putting their head in the sand as to the human tragedies. But what resident of what Blue State says; you know what? America's better off with 20,000 rapists being released into this country.

One hundred five thousand and one hundred forty-six have been convicted of assault. I would ask my Democrat colleagues if they were here, why the hell, today, does the Biden Administration not go and arrest every one of these criminals and deport them? What rational world says, America's better off with more criminals.

And these are not just statistics. Ms. Morin, thank you for being here. The country grieves the loss of your daughter. Your daughter was beautiful. She was a mom who I know loved her kids, and she's not with us today. She was raped and murdered because this administration chose to release a violent criminal into America.

Your daughter should still be alive, and every one of these victims should still be alive. Laken Riley, a name that the Democrats on this Committee can't bring themselves to utter, should still be alive. And in my hometown of Houston, Jocelyn Nungaray. I've gotten to know Jocelyn's mother, Alexis, very well.

Ms. Morin, like you, Alexis, is incredibly brave. I cannot imagine the pain. I'm a father. To lose your child, no parent should have to bury their child. Children should bury their parents. Not the other way around. It is wrong what happened to you. But I want to say to you, thank you for having the courage to tell Rachel's story. I would understand if you just curled up in a ball and cried. But—and I'm sure you have wept a lot of tears, but thank you for having the courage to tell Rachel's story.

And I want to say, if there is anything that is a mandate from this election, it is to end this insanity. Stop these murders, stop these rapes, stop these assaults, protect our citizens. And Ms. Morin, I just want to give you the opportunity at the end of my questioning to share from your perspective why this matters. Why we should stop releasing criminals into America?

Ms. MORIN. In order to prepare for this hearing, I was actually looking at statistics over the last couple of days, and most of the rape and murder statistics by illegal immigrants are actually against children. And to me that's astounding. I don't know how many people here have children or grandchildren, but can you imagine your 7-, 8-, 9-year-old daughter being forcibly raped by a stranger, sometimes multiple times?

This is the culture—and I realize it's not all immigrants, but this is the culture that they come from, this kind of violence. They grow up in it in their countries. To them, it's just part of what they've known for their lives. But to bring that criminal culture into America, it's destroying our families.

I know of women in my hometown that have come up to me because they know I'm Rachel's mom and say to me, "Some guy just

ran up behind me and tried to pull me down to the ground. And if it wasn't for the fact that I could fight him off and run to a store to call the police, I might not be here." And in one instance, that man had attacked seven other women.

Senator CRUZ. Wow.

Ms. MORIN. Why are we allowing this? And then the women and children that are raped and because they're so ashamed of what's happened to them, how they've been so violated, they don't say anything. So, the numbers are grossly underestimated, I believe, as far as the crimes that are happening in our country. And I think we need to stop this.

Senator CRUZ. Thank, thank you very much.

Chair DURBIN. [Presiding.] Thank you very much. I appreciate all the witnesses appearing before the Committee today.

There are, obviously, many questions asked about the mass deportation proposal of the President-elect. As I said earlier, I listened carefully at the Meet the Press yesterday, and I believe the magnitude of that statement is growing in the mind of the President-elect. Mr. Melnick, you certainly allude to that in terms of the number of personnel and the cost to our Nation.

Bottom line still is, we have no tolerance for keeping dangerous people here who've come to this country and asked to be made citizens. And we have certainly, have no interest in a policy that allows them to come across the border with impunity. But the mass deportation includes not only that possibility of stopping those people, but an impact on Mr. Turay and his family. I think most of us would agree that a man who's given his life to criminal prosecution is a value to us based on what Ms. Morin just mentioned, and I think we should go forward with that in mind. Let's be thoughtful and reflective, and do things that make America safer and are consistent with our values.

The hearing record will remain open for 1 week for additional materials to be submitted.

Chair DURBIN. And with that, the meeting of this Committee stands adjourned.

[Whereupon, at 12:09 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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Testimony of Andrew R. Arthur
Resident Fellow in Law and Policy
Center for Immigration Studies

To the
Committee on the Judiciary
United States Senate

For A Hearing Titled:
“How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and
Devastate Our Economy”

December 10, 2024

10:00 a.m.

Room G50, Dirksen Senate Office Building
Washington, D.C. 20515

Chairman Durbin, Ranking Member Graham, and members of the committee, thank you for inviting me here today to discuss the impacts of possible U.S. immigration enforcement under the incoming administration.

To address the issues raised by the committee, I have structured my written testimony to first, explain the source of the immigration power; second, to describe and delineate the inspection and admission process for aliens coming to the United States; third, to detail the state of border security prior to the Biden administration; fourth, to explain the Biden administration's border policies and their impact on migrant releases; fifth, to assess the economic and public safety impacts of the Biden administration's migrant releases; sixth, to estimate the current unauthorized population and ICE's non-detained docket; seventh, to attempt to predict what the incoming administration's immigration and deportation policies will be; eighth, to explain prior administrations' interior enforcement guidelines and policies; ninth, to describe the impacts of the Biden administration's enforcement guidelines; and tenth, to speculate on the impact of the (second) Trump administration's immigration plans.

I. CONGRESS' PLENARY AUTHORITY OVER IMMIGRATION

Key to understanding how our immigration laws *should* be enforced is recognizing where the immigration authority in this country rests.

Article I, sec. 8 of the U.S. Constitution¹ states, in pertinent part: "The Congress shall have Power . . . [t]o establish an uniform Rule of Naturalization [and] [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers".

"Naturalization"² is the process by which a foreign national in the United States—defined as an "alien" in section 101(a)(3) of the Immigration and Nationality Act (INA)³—becomes a "citizen" (as defined by reference therein and in section 101(a)(22) of the INA⁴). Essential to Congress' constitutional authority "to establish a uniform Rule of Naturalization", is its power to regulate immigration.

As the Congressional Research Service (CRS)⁵ has explained: "Long-standing Supreme Court precedent recognizes Congress as having plenary power⁶ over immigration, *giving it almost complete authority to decide whether foreign nationals* (aliens, under governing statutes and case

¹ U.S. CONST. art. 1, § 8. Source: <https://uscode.house.gov/static/constitution.pdf>.

² *Citizenship and Naturalization*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Jul. 5, 2020). Source:

[https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization#:~:text=Naturalization%20is%20the%20process%20by, and%20Nationality%20Act%20\(INA\).](https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization#:~:text=Naturalization%20is%20the%20process%20by, and%20Nationality%20Act%20(INA).)

³ See sec. 101(a)(3) of the INA (2024) ("The term 'alien' means any person not a citizen or national of the United States.").

Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

⁴ See section 101(a)(22) of the INA (2024) ("The term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."). Source:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

⁵ *Constitution Annotated*, Art. 58. C18.8.1 Overview of Congress's Immigration Powers. CONGRESSIONAL RESEARCH SERV. (undated).

Source: https://constitution.congress.gov/browse/essay/artI-58-C18-8-1/ALDE_00001255/.

⁶ See "plenary power". Legal Information Institute (undated) ("Complete power over a particular area with no limitations.").

Source: https://www.law.cornell.edu/wex/plenary_power. See generally, Feere, Jon. *Plenary Power: Should Judges Control U.S. Immigration Policy?* CENTER FOR IMMIGRATION STUDIES (Feb. 25, 2009). Source: <https://cis.org/Report/Plenary-Power-Should-Judges-Control-US-Immigration-Policy>.

law) *may enter or remain in the United States*” (emphasis added). Reference to Supreme Court precedent illustrates the point.

In its 1954 opinion in *Galvan v. Press*⁷, the Court explained:

Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government. [Emphasis added.]

Thus, when it comes to allowing aliens to enter and remain in the United States, Congress makes the rules and the executive is supposed to carry them out.

Section 212(a) of the INA⁸ delineates the various classes of aliens Congress has determined should be barred from admission to the United States (known collectively as the “grounds of inadmissibility”).

The most basic of those grounds, and the one Congress created to control the flow of immigrants to the United States, is section 212(a)(7)(A)(i) of the INA⁹, which bars the admission of any alien “who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document”.

Conversely, section 237(a) of the INA¹⁰ lists the “classes of deportable aliens”, aliens lawfully admitted to the United States who, for various reasons, Congress has directed be removed from the United States.

Those classes include nonimmigrants who have overstayed their lawful periods of admission or who have otherwise violated the terms of their admission¹¹, aliens convicted of certain criminal acts¹², and aliens who pose a national security, espionage, or terrorism risk¹³.

II. THE INSPECTION AND ADMISSION PROCESS

Congress’s Inspection Protocol for “Applicants for Admission” in Section 235 of the INA

To implement its “policies pertaining to the entry of aliens”, Congress created an inspection protocol in section 235 of the INA¹⁴ that U.S. Customs and Border Protection (CBP) officers

⁷ *Galvan v. Press*, 347 U.S. 522, 532. (1954). Source: <https://supreme.justia.com/cases/federal/us/347/522/>.

⁸ Sec. 212 of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

⁹ *Id.* at cl. (a)(7)(A)(i).

¹⁰ Sec. 237(a) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

¹¹ *Id.* at subpara. (a)(1)(C).

¹² *Id.* at para. (a)(2).

¹³ *Id.* at para. (a)(4).

¹⁴ Sec. 235 of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

(including Border Patrol agents) must follow when considering whether to admit an “applicant for admission”¹⁵.

That statutory term, “applicant for admission”, includes both aliens seeking entry at the ports of entry and migrants apprehended crossing the land and coastal borders between those ports¹⁶-- a fact essential to assessing the legality of what has been occurring at the Southwest border.

Some historical background puts that process into focus and explains why Congress meant for the inspection protocol in section 235 of the INA to apply equally to inadmissible aliens at the ports of entry and illegal entrants apprehended between them.

Section 302 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA)¹⁷, the source of the current language in section 235 of the INA, eliminated prior legal precedents that had treated aliens entering illegally *between the ports* differently from those seeking admission *at the ports*.

Prior to that amendment, officers at the then-Immigration and Naturalization Service (INS)¹⁸ — precursor to both CBP and U.S. Immigration and Customs Enforcement (ICE) in immigration enforcement — were required by case law to apply a factual and legal analysis known as the “entry doctrine”¹⁹ when they encountered aliens at the borders and the ports.

As its name suggests, the focus of the entry doctrine was on whether an alien had physically “entered” the United States²⁰, and on the circumstances surrounding that entry.

Under that doctrine, aliens who had not made an entry into the United States were placed into exclusion proceedings under then-section 236 of the INA²¹ and received few constitutional protections.²²

¹⁵ See *id.* at para. (a)(1) (“An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.”).

¹⁶ See *id.*

¹⁷ Tit. III, sec. 302 of the Illegal Immigration Reform and Immigrant Responsibility Act, Div. C of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208 (1996), 110 Stat. 3009–579 to 584. Source: <https://www.congress.gov/104/plaws/publ208/PLAW-104publ208.pdf>.

¹⁸ See *Overview of INS History*. USCIS HISTORY OFFICE AND LIBRARY (undated) (“The Homeland Security Act of 2002 disbanded INS on March 1, 2003. Its constituent parts contributed to 3 new federal agencies serving under the newly [f]ormed Department of Homeland Security (DHS): 1. Customs and Border Protection (CBP), 2. Immigration and Customs Enforcement (ICE), and 3. U.S. Citizenship and Immigration Services (USCIS).”). Source: <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>.

¹⁹ Wiegand III, Charles A. *Fundamentals of Immigration Law*. U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (revised Oct. 2011). Source:

https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals_of_Immigration_Law.pdf.

²⁰ *Id.* at 1.

²¹ See sec. 236 of the INA (1952). Source: <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

²² See *generally* *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. . . . But an alien on the threshold of initial entry stands on a different footing: ‘Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”) (citations omitted). Source: <https://supreme.justia.com/cases/federal/us/345/206/>.

Aliens who had entered the country — even illegally — and who did so “free from actual and constructive restraint”²³ were placed into deportation proceedings under then-section 242 of the INA²⁴, in which they were accorded greater rights and procedural benefits.

Application of the entry doctrine was simple in the case of aliens stopped at ports seeking admission, because ports were treated as the de facto “threshold” of the United States, and while aliens were in the ports, they had not entered and could be excluded.²⁵

Applying the entry doctrine was challenging, however, in cases involving aliens who had entered illegally.²⁶ Did the alien “actually and intentionally evade inspection”? Was the alien “free from official restraint”?²⁷ Application of the entry doctrine required a time- and resource-intensive analysis of often disputed facts.

In its IIRIRA amendments to section 235 of the INA, Congress dispensed with these questions by treating all “arriving aliens” — those at the ports and those apprehended entering illegally between them — as applicants for admission²⁸, subject to what is now called “inadmissibility” under section 212 of the INA.

In place of exclusion and deportation proceedings, Congress created a single process in which the inadmissibility or deportability of every alien was determined and eligibility for relief assessed, known as “removal proceedings”.²⁹

²³ *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973). Source:

https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals_of_Immigration_Law.pdf.

²⁴ See sec. 242 of the INA (1952). Source: <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

²⁵ See fn. 22 (*Shaughnessy*).

²⁶ See *Matter of G-*, 20 I&N Dec. 764 (BIA 1993) (“The grounding of a vessel 100 or more yards off shore with its passengers facing a hazardous journey to land does not of itself constitute an entry into the United States. In the case of the *Golden Venture*, an alien will be found to have been ‘free from official restraint’ if he establishes that he was among the first of the ship’s occupants to reach the shore, that he landed on a deserted beach, or that he managed to flee into a neighboring community. In contrast, an alien who was escorted off the *Golden Venture*, pulled from the water by rescue personnel, or who landed in the cordoned-off area of the beach after it was secured will not be found to have been ‘free from official restraint,’ as his movements were restricted to the immediate vicinity of the beach that was cordoned-off and controlled by the enforcement officers of the various governmental organizations present at the site to prevent the ship’s occupants from absconding. In a case where there is no clear evidence of the facts determinative of the entry issue, the case ultimately must be resolved on where the burden of proof lies. Where there is no evidence that an alien, who arrives at other than the nearest inspection point, deliberately surrenders himself to the authorities for immigration processing, or that, once ashore, he seeks them out, voluntarily awaits their arrival, or otherwise acts consistently with a desire to submit himself for immigration inspection, actual and intentional evasion of inspection at the nearest inspection point may be found.”). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3215.pdf>.

²⁷ See *id.*

²⁸ See Sec. 235(a)(1) of the INA (2024) (“Aliens treated as applicants for admission. An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

²⁹ See Sec. 240(a)(1) of the INA (2024) (“Removal proceedings. (a) Proceeding (1) In general. An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>. See also *Cruz-Miguel v. Holder*, 650 F.3d 189, 197 (2d Cir. 2011) (“IIRIRA eliminated the bright-line distinction between exclusion and deportation, merging the two into proceedings for ‘removal’ and replacing the definition of ‘entry’ with that for ‘admission’ After IIRIRA, both aliens arriving at the border and aliens already present in the United States without inspection are deemed ‘applicants for admission,’ . . . who must ‘be inspected by immigration officers’ to determine their admissibility If, upon

A key component of that post-IIRIRA inspection protocol is section 235(a)(3) of the INA³⁰, which mandates that all applicants for admission be “inspected by immigration officers” to determine whether they are inadmissible under any of the grounds of inadmissibility in section 212(a) of the INA.

Consequently (and importantly), pursuant to the inspection protocol in section 235, the term “immigration officer” applies to both agents in U.S. Border Patrol and CBP officers within the agency’s Office of Field Operations (OFO)³¹, which has jurisdiction over the ports of entry.

Thus, and regardless of whether those “immigration officers” are Border Patrol agents or OFO CBP officers, their job is the same — to prevent inadmissible aliens from entering the United States.

If, following that inspection, an immigration officer determines that an applicant for admission is inadmissible under section 212(a)(7)(A)(i) of the INA or is seeking admission via fraud and is therefore inadmissible under section 212(a)(6)(C) of the INA³², that officer has two options.

Section 235(b)(1)(A)(i) of the INA³³ allows the officer to “order the alien removed from the United States without further hearing or review” -- and without obtaining a removal order from an immigration judge-- “unless the alien indicates either an intention to apply for asylum ... or a fear of persecution”. This process is known as “expedited removal”.

Pursuant to section 235(b)(1)(A)(ii) of the INA, however, if an alien subject to expedited removal asks for asylum or claims a fear of return, the immigration officer must “refer the alien for an interview by an asylum officer” from U.S. Citizenship and Immigration Services (USCIS) to determine whether that alien has a “credible fear of persecution”.

The term “credible fear of persecution” is defined in section 235(b)(1)(B)(v) of the INA³⁴ as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under” section 208 of the INA.

such inspection, an alien is not ‘clearly and beyond a doubt’ admissible, he must be placed in removal proceedings.”) (citations omitted). Source: <https://casetext.com/case/cruz-miguel-v-holder>.

³⁰ Sec. 235(a)(3) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

³¹ See *Office of Field Operations, What We Do*. U.S. CUSTOMS AND BORDER SECURITY (undated) (“U.S. Customs and Border Protection Officers are responsible for America's border security at ports of entry, safeguarding our country and communities from terrorism, illegal activity, narcotics and human trafficking.”). Source: <https://www.cbp.gov/careers/fofo/what-we-do>.

³² See Sec. 212(a)(6)(C)(i) of the INA (2024) (“Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible”); *id.* at subcl. (ii)(I) (“In general. Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

³³ Sec. 235(b)(1)(A)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

³⁴ Sec. 235(b)(1)(B)(v) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

Thus, it is a screening standard, to determine whether the alien *may* be eligible for asylum.

Congress is clear, however, in section 235(b)(1)(B)(iii)(V) of the INA³⁵, that aliens “*shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed”, and is equally clear in section 235(b)(1)(B)(ii) of the INA³⁶ that if an asylum officer “determines at the time of the interview that an alien has a credible fear of persecution ... the alien *shall be detained for further consideration of the application for asylum*” (emphasis added).

Detention in this context is critical to the credibility of this process because the credible fear standard is low and because, as I will explain below, asylum is particularly susceptible to fraud. The release of aliens who pass credible fear incentivizes other alien applicants for admission to make weak or bogus claims to gain entry—a clear abuse of humanitarian relief.

With only extremely limited exceptions³⁷, the “consideration of the application for asylum” in that context is performed by an immigration judge in removal proceedings under section 240 of the INA³⁸.

The other choice immigration officers — again, OFO CBP officers at the ports or Border Patrol agents between them— have during the inspection protocol under section 235 of the INA in the case of “applicants for admission” inadmissible under sections 212(a)(7)(A)(i) or 212(a)(6)(C) of the INA is to treat them the same as aliens inadmissible under the other grounds in section 212(a)(2) of the INA, and to place them directly into section 240 removal proceedings, a procedure Congress provided for in section 235(b)(2)(A) of the INA³⁹.

“Parole”

Although section 235(b) of the INA requires the Department of Homeland Security (DHS) to detain inadmissible applicants for admission, Congress gave the DHS secretary extremely limited authority in section 212(d)(5)(A) of the INA⁴⁰ to “parole” individual aliens into the United States in exceptional or emergent circumstances.

³⁵ Sec. 235(b)(1)(B)(iii)(V) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

³⁶ Sec. 235(b)(1)(B)(ii) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

³⁷ See Arthur, Andrew. *Biden Administration to ‘Pause’ Radical Asylum Officer Rule*. CENTER FOR IMMIGRATION STUDIES (Apr. 15, 2023). Source: <https://cis.org/Arthur/Biden-Administration-Pause-Radical-Asylum-Officer-Rule>.

³⁸ See sec. 240 of the INA (2024) (“Removal proceedings”); see also *id.* at para. (a)(1) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”); *id.* at para. (c)(4) (“Applications for relief from removal”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>; *id.* at para. (c)(4) (“

³⁹ See section 235(b)(2)(A) of the INA (2024) (“in the case of an alien who is an applicant for admission, if the examining immigration officer *determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted*, the alien shall be detained for a” removal proceeding under section 240 of the INA) (emphasis added). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

⁴⁰ Sec. 212(d)(5)(A)(1) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1182&num=0&edition=prelim>.

That provision⁴¹ states, in pertinent part, that the DHS secretary:

*[M]ay, in his discretion parole into the United States temporarily under such conditions as he may prescribe **only on a case-by-case basis for urgent humanitarian reasons or significant public benefit** any alien applying for admission to the United States, but **such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the [DHS secretary], have been served** the alien shall **forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.** [Emphasis added.]*

The congressional limitations on DHS's authority are apparent from the highlighted portions of the statutory language.

First, parole may only be granted “on a case-by-case basis”⁴², and thus may not be issued on a blanket basis to allow the entry of large numbers of aliens, or programmatically.

Second, DHS may only grant parole for either “urgent humanitarian reasons” or for “significant public benefit”⁴³. Granting parole for any other purpose is thus *ultra vires*⁴⁴, as it exceeds the statutory parole authority.

Third, an alien granted parole is not “admitted” to the United States, and therefore—as a legal matter—remains in the same immigration status he or she held when parole was granted.

Consequently, an alien apprehended entering illegally without proper documents (as nearly all are) or who has been deemed inadmissible at a port of entry under section 212(a)(7)(A)(i) of the INA, and who has been paroled, remains amenable to expedited removal once “the purposes of such parole . . . have been served” and parole is revoked.

Congress first provided the executive branch with that parole authority when it enacted the INA in 1952⁴⁵, at which time the parole statute read as follows:

*The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe **for emergent reasons or for reasons deemed strictly in the public interest** any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See *ultra vires*. Legal Information Institute (undated) (“Latin, meaning ‘beyond the powers.’ Describes actions taken by government bodies or corporations that exceed the scope of power given to them by laws or corporate charters.”). Source: https://www.law.cornell.edu/wex/ultra_vires.

⁴⁵ Sec. 212(d)(5) of the Immigration and Nationality Act of 1952, Pub. L. 88-414, 66 Stat. 188 (1952). Source: <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. [Emphasis added.]

The secretary of Homeland Security, both *de facto* and *de jure*, succeeded the attorney general as the executive officer given the statutory authority to grant parole under the Homeland Security Act of 2002⁴⁶ (although the current text has not been formally amended), but most importantly the highlighted text reveals the tighter restrictions Congress has placed on the DHS secretary in granting parole in the intervening seven decades.

Congress rigidly cabined the parole authority in IIRIRA because various administrations abused parole to ignore Congress' plenary power over immigration and exceed the limits it set on the annual admission of immigrants⁴⁷.

Note that when Congress amended the parole provision in IIRIRA⁴⁸, it did so under the title "Limitation on the Use of Parole"⁴⁹, clearly expressing its intent to restrain the parole authority.

In its 2011 opinion in *Cruz-Miguel v. Holder*⁵⁰, the Second Circuit described how IIRIRA amended the parole statute and explained why Congress had constrained the executive's parole power therein:

IIRIRA struck from [section 212(d)(5)(A) of the INA] the phrase "for emergent reasons or for reasons deemed strictly in the public interest" as grounds for granting parole into the United States and inserted "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." . . . The legislative history indicates that this change was animated by concern that parole under [section 212(d)(5)(A) of the INA] was being used by the executive to circumvent congressionally established immigration policy. [Emphasis added; citations omitted.]

That raises the question, however, what Congress intended by its use of the terms "urgent humanitarian reasons" and "significant public benefit" in the parole statute.

Fortunately, the then-INS explained in detail what their predecessor phrases-- "emergent reasons" and "reasons deemed strictly in the public interest" -- meant when it first promulgated⁵¹ parole regulations in 1982:

⁴⁶ Homeland Security Act of 2002, Pub. L. 107-206 (2002). Source: <https://www.congress.gov/bills/107th-congress/house-bill/5005/text>; see also *id.* at sec. 471(a) ("Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.").

⁴⁷ See Fishman, George. *The Pernicious Perversion of Parole, A 70-year battle between Congress and the president*. CENTER FOR IMMIGRATION STUDIES (Feb. 16, 2022). Source: <https://cis.org/Report/Pernicious-Perversion-Parole>.

⁴⁸ Tit. VI, sec. 602 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, div. C of Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208, 110 Stat. 3009-689 (1996). Source: <https://www.congress.gov/104/plaws/publ208/PLAW-104publ208.pdf>.

⁴⁹ *Id.*

⁵⁰ *Cruz-Miguel v. Holder*, 650 F.3d 189, 199 n.15 (2d Cir. 2011). Source: <https://casetext.com/case/cruz-miguel-v-holder>.

⁵¹ *Detention and Parole of Inadmissible Aliens; Interim Rule with Request for Comments*, 47 Fed. Reg. 30044 (Jul. 9, 1982). Source: <https://www.govinfo.gov/content/pkg/FR-1982-07-09/pdf/FR-1982-07-09.pdf#page=1>.

The legislative history of the parole provision shows a Congressional intent that parole be used in a restrictive manner. The drafters of the Immigration and Nationality Act of 1952 gave as examples situations where parole was warranted in cases involving the need for immediate medical attention, witnesses, and aliens being brought into the United States for prosecution. . . . In 1965, a Congressional committee stated that the parole provisions “were designed to allow the Attorney General to act only in emergent, individual, and isolated situations, such as in the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside the limit of the law.” [Emphasis added.]

Thus, even prior to Congress further limiting the executive’s authority to parole aliens into the country in IIRIRA, the phrase “emergent reasons” was interpreted to apply only to aliens requiring “immediate medical attention”, and “reasons deemed strictly in the public interest” to mean aliens being brought into the United States to participate in criminal proceedings here.

Plainly, as the Second Circuit explained, the IIRIRA amendments limited the circumstances in which parole may be granted; they did not in any way expand them.

I note, however, that the current version of the parole regulation, 8 CFR § 212.5⁵², states:

(b) Parole from custody. The parole of aliens within the following groups who have been or are detained . . . would generally be justified only on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit,” provided the aliens present neither a security risk nor a risk of absconding: . . .

(5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section. [Emphasis added.]

That seemingly broad regulatory catch-all parole authority, however, actually derives from the aforementioned 1982 parole regulation, when that provision⁵³ read as follows:

The parole of aliens within the following groups would generally come within the category of aliens for whom the granting of the parole exception would be “strictly in the public interest”, provided that the aliens present neither a security risk nor a risk of absconding:

(v) Aliens whose continued detention is not in the public interest as determined by the district director. [Emphasis added.]

Accordingly, that current regulatory authority is not the “catch-all” it appears to be, but simply a reiteration of the existing bases for granting parole, that is, for emergency medical treatment or

⁵² 8 CFR § 212.5 (2024). Source: <https://www.law.cornell.edu/cfr/text/8/212.5>.

⁵³ See 8 CFR § 212.5(2) (1982) as amended by Detention and Parole of Inadmissible Aliens; Interim Rule with Request for Comments, 47 Fed. Reg. 30044 (Jul.9, 1982). Source: <https://www.govinfo.gov/content/pkg/FR-1982-07-09/pdf/FR-1982-07-09.pdf#page=1>.

appearance at U.S. criminal proceedings, or an analogous purpose. To the degree it is treated as a catch-all release authority, it is also *ultra vires* because it exceeds congressional authorization.

Finally, it should be noted that even though aliens are paroled into the United States, the law treats them as if they are still awaiting admission. As the Fifth Circuit has explained:

*parole creates something of legal fiction; although a paroled alien is physically allowed to enter the country, the legal status of the alien is the same as if he or she were still being held at the border waiting for his or her application for admission to be granted or denied.*⁵⁴

So, even though an alien who has been paroled can be released, seek work authorization, buy a house and a car, get married, and have children, in the eyes of the law that alien has never left the port of entry and has only the constitutional rights that any other alien sitting in a port has.

Which is to say, they don't have many rights at all.⁵⁵ Moreover, as the parole statute⁵⁶ shows, the DHS secretary has broad discretion to revoke a grant of parole, at which point the paroled alien must be returned to custody for removal proceedings.

These points are all crucial to this analysis because every alien paroled into the United States is facially inadmissible, and therefore removable unless and until that alien is either admitted to this country or allowed to withdraw his or her application for admission and depart.

III. THE STATE OF BORDER SECURITY IMMEDIATELY PRIOR TO THE BIDEN ADMINISTRATION

When President Biden took office, he inherited what his first Border Patrol chief, Rodney Scott, described in a September 2021 letter to Senate leadership as “arguably the most effective border security in” U.S. history.⁵⁷

The new administration, Scott complained, allowed border security to quickly “disintegrate” as “inexperienced political appointees” ignored “common sense border security recommendations from experienced career professionals.”⁵⁸

The security Scott described was the direct result of a series of border-related policies that had been implemented by the Trump administration.

⁵⁴ *Duarte v. Mayorkas*, 27 F.4th 1044, 1058 (5th Cir. 2022). Source: <https://casetext.com/case/duarte-v-mayorkas-12>.

⁵⁵ See, e.g., *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative”). Source: <https://supreme.justia.com/cases/federal/us/459/21/>; *Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned”). Source: <https://supreme.justia.com/cases/federal/us/338/537/>.

⁵⁶ See Sec. 212(d)(5)(A)(1) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1182&num=0&edition=prelim>.

⁵⁷ Letter from Rodney S. Scott to Sens. Charles Schumer, Mitch McConnell, Gary Peters, and Rob Portman (Sep. 11, 2021). Source: <https://justthenews.com/sites/default/files/2021-09/Honorable%20Rob%20Portman%20%20US%20Senate%20Security%20Concerns%20-%20Rodney%20Scott.pdf>.

⁵⁸ *Id.*

“Remain in Mexico”

The most notable Trump border security program — and arguably the most effective — was the Migrant Protection Protocols (MPP)⁵⁹, better known as “Remain in Mexico”.

MPP was first implemented by then-DHS Secretary Kirstjen Nielsen in January 2019⁶⁰, and it allowed DHS to return certain “other than Mexican” (OTM) migrants who entered illegally or without proper documents at the Southwest border back to Mexico to await removal hearings.⁶¹

Remain in Mexico was premised on DHS’s authority in section 235(b)(2)(C) of the INA⁶² to return inadmissible applicants for admission who had crossed a land border back pending removal proceedings. Aliens subject to MPP were thereafter paroled into the United States to apply for asylum at port courts⁶³, while the Mexican government agreed to provide them with protection for the duration of their stays in that country.

MPP was expanded from a pilot site in San Ysidro, Calif.⁶⁴ in late January 2019, to Calexico, Calif.⁶⁵, and El Paso, Tex.⁶⁶ in March of that year, and then in July 2019⁶⁷ to Laredo and Brownsville (both in Texas) before finally it was expanded to the Arizona border town of Nogales⁶⁸ in the late fall.

⁵⁹ See *Migrant Protection Protocols*. U.S. DEP’T OF HOMELAND SECURITY (Jan. 24, 2019). Source: [https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20\(MPP,of%20their%20immigration%20proceedings%2C%20w](https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols#:~:text=The%20Migrant%20Protection%20Protocols%20(MPP,of%20their%20immigration%20proceedings%2C%20w) [here](#).

⁶⁰ *Id.*

⁶¹ Arthur, Andrew. *Why Trump’s Border Security Didn’t Last, Part 3*. CENTER FOR IMMIGRATION STUDIES (Jul. 17, 2023). Source: <https://cis.org/Arthur/Why-Trumps-Border-Security-Didnt-Last-Part-3>.

⁶² See section 235(b)(2)(C) of the INA (2024) (“Treatment of aliens arriving from contiguous territory. In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section” 240 of the INA. Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

⁶³ Arthur, Andrew. *Tent Courts Aren’t Tents — and Provide Due Process. Inside the Laredo MPP hearing facility, and then the view from the other side*. CENTER FOR IMMIGRATION STUDIES (Feb. 4, 2020). Source: <https://cis.org/Arthur/Tent-Courts-Arent-Tents-and-Provide-Due-Process>.

⁶⁴ Averbuch, Maya and Sieff, Kevin. *Asylum seeker is sent back to Mexico as Trump administration rolls out new policy*. WASHINGTON POST (Jan. 29, 2019). Source: https://www.washingtonpost.com/world/the_americas/asylum-seekers-are-being-sent-back-to-mexico-as-trump-administration-rolls-out-new-policy/2019/01/29/a0a89e9c-233b-11e9-b5b4-1d18dfb7b084_story.html.

⁶⁵ Rose, Joel. *‘Remain in Mexico’ Immigration Policy Expands, But Slowly*. NPR (Mar. 12, 2019). Source: <https://www.npr.org/2019/03/12/702597006/-remain-in-mexico-immigration-policy-expands-but-slowly>.

⁶⁶ Montes, Aaron. *El Paso begins Trump policy that sends migrant asylum seekers back to Mexico*. EL PASO TIMES (Mar. 16, 2019). Source: <https://www.elpasotimes.com/story/news/immigration/2019/03/16/trump-immigration-metering-policy-migrant-protection-protocols-implemented-el-paso-juarez/3177682002/>.

⁶⁷ Roldan, Riane. *Asylum seekers will appear before judges via teleconferencing in tents as “Remain in Mexico” program expands to Laredo*. TEXAS TRIBUNE (Jul. 9, 2019). Source: <https://www.texastribune.org/2019/07/09/remain-mexico-program-expands-laredo-texas/>.

⁶⁸ Prendergast, Curt. *‘Remain in Mexico’ program begins in Nogales*. TUCSON.COM (Dec. 17, 2019). Source: https://tucson.com/news/local/remain-in-mexico-program-begins-in-nogales/article_95f757ac-1851-11ea-b29e-47f1d679e3d8.html.

When it was fully implemented, nearly 70,000 migrants⁶⁹ were sent back across the Southwest border to await their removal hearings under MPP.

In its October 2019 assessment⁷⁰ of the program, DHS lauded MPP as “an indispensable tool in addressing the ongoing crisis at the southern border and restoring integrity to the immigration system”, particularly as related to alien families. Asylum cases were expedited under the program, and MPP removed incentives for aliens to make weak or bogus protection claims when apprehended.⁷¹

That’s because many if not most of those aliens requesting asylum at the border aren’t seeking protection so much as they are coming to live and work here for the time (usually years⁷²) that it takes for their claims to be heard. Remain in Mexico denied them the ability to do so.

Returning those migrants to Mexico also enabled the Trump administration to comply with Congress’ directive to DHS⁷³ in section 235(b) of the INA⁷⁴ not to release inadmissible aliens stopped at the border and ports into the United States until they receive asylum or are removed, as described above.

DHS’s assessment of the program aside, the impact of MPP is clear from CBP’s own statistics. In May 2019⁷⁵, before MPP was fully implemented, Border Patrol agents at the Southwest border apprehended nearly 133,000 illegal entrants, 63.6 percent of whom (nearly 84,500) were adult aliens travelling with children in family units⁷⁶ (FMUs).

Four months later, in September 2019, apprehensions dropped to fewer than 41,000, fewer than 40 percent (15,824) of them in FMUs⁷⁷. That’s a four-month overall decline of just less than 70 percent, and an 81 percent decline in family apprehensions over that period.

Deterring adult migrants from bringing children with them when entering the United States not only advances border security, but also protects the migrants themselves, and in particular the children in those family units.

⁶⁹ *Fact Sheet: The “Migrant Protection Protocols”*. AMERICAN IMMIGRATION COUNCIL (Jan. 7, 2022). Source: <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

⁷⁰ *Assessment of the Migrant Protection Protocols (MPP)*. U.S. DEP’T OF HOMELAND SECURITY (October 28, 2019). Source: https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf.

⁷¹ *See id.*

⁷² *See Immigration Court Asylum Backlog*. TRAC IMMIGRATION (undated) (average days pending nationwide from court filing to asylum hearing is 1,424 days—nearly four than years—through the end of December 2023). Source: <https://trac.syr.edu/phptools/immigration/asylumbl/>.

⁷³ Arthur, Andrew. *DHS Can’t Just Release Illegal Migrants at the Border*. CENTER FOR IMMIGRATION STUDIES (Oct. 22, 2021). Source: <https://cis.org/Arthur/DHS-Cant-Just-Release-Illegal-Migrants-Border>.

⁷⁴ *See* secs. 235(b)(1)(B)(ii), 235(b)(1)(B)(iii)(IV), and 235(b)(2)(A) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

⁷⁵ *Southwest Border Migration FY 2019*. U.S. Customs and Border Protection (modified Nov. 14, 2019). Source: <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

⁷⁶ *Id.*

⁷⁷ *Id.*

As a bipartisan federal panel⁷⁸ tasked with examining a then-massive surge in family entries in FY 2018 and FY 2019⁷⁹ determined in an April 2019 report⁸⁰:

Migrant children are traumatized during their journey to and into the U.S. The journey from Central America through Mexico to remote regions of the U.S. border is a dangerous one for the children involved, as well as for their parent. There are credible reports that female parents of minor children have been raped, that many migrants are robbed, and that they and their child are held hostage and extorted for money.

....

Criminal migrant smuggling organizations are preying upon these desperate populations, encouraging their migration to the border despite the dangers, especially in remote places designed to overwhelm existing [U.S. Border Patrol] infrastructure, and extorting migrants along the way, thereby reaping millions of dollars for themselves and the drug cartels who also charge money to cross the border.

With respect to minors, the panel report explained: “In too many cases, children are being used as pawns by adult migrants and criminal smuggling organizations solely to gain entry into the United States. . . .”⁸¹

Apprehensions kept falling thereafter even prior to the implementation of Title 42 in March 2020⁸², to fewer than 30,000 in January 2020⁸³ (fewer than 5,200 in family units, 17.6 percent of the total), before rising slightly to just over 30,000 the next month (just 15.3 percent in FMUs).

PACR and HARP

⁷⁸ See Arthur, Andrew. *2019 Bipartisan Border Plan Would Solve Today's Migrant Crisis, Tell Biden, Mayorkas, and Congress: 'Read the damn report!'*. CENTER FOR IMMIGRATION STUDIES (Mar. 16, 2021) (“Karen Tandy, the chairwoman, was originally appointed to that position by Jeh Johnson, the last DHS secretary under the Obama/Biden administration. Jim Jones, chairman of Monarch Global Strategies, was initially appointed to the panel by the first Obama/Biden DHS Secretary Janet Napolitano. And Leon Fresco was a principal advisor to Sen. Chuck Schumer (D-N.Y.) when Schumer was chairman of the Senate Judiciary Subcommittee on Immigration. After that, he was deputy assistant attorney general for the Office of Immigration Litigation. In that role, he was the Obama/Biden administration's immigration lawyer at the Justice Department.”). Source: <https://cis.org/Arthur/2019-Bipartisan-Border-Plan-Would-Solve-Todays-Migrant-Crisis>.

⁷⁹ See *Total Family Unit Apprehensions By Month - FY 2018 and Total Family Unit Apprehensions By Month - FY 2019*. U.S. Border Patrol (undated) (107,212 FMU Border Patrol Southwest border apprehensions in FY 2018 and 473,682 FMU Border Patrol Southwest border apprehensions in FY 2019). Source: https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Total%20Monthly%20Family%20Unit%20Apprehensions%20by%20Sector%20%28FY%202013%20-%20FY%202019%29_1.pdf.

⁸⁰ *Final Emergency Interim Report, CBP Families and Children Care Panel*. U.S. DEP'T OF HOMELAND SECURITY, HOMELAND SECURITY ADVISORY COUNCIL (Apr. 16, 2019), at 6. Source: https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf.

⁸¹ *Id.* at 1.

⁸² Arthur, Andrew. *SCOTUS Keeps Title 42 Going — For Now*. CENTER FOR IMMIGRATION STUDIES (Dec. 28, 2022). Source: <https://cis.org/Arthur/SCOTUS-Keeps-Title-42-Going-Now>.

⁸³ *Southwest Border Migration FY 2020*. U.S. CUSTOMS AND BORDER PROTECTION (modified Sept. 19, 2023). Source: <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2020>.

To speed the review of credible fear claims by illegal entrants, the Trump administration implemented two separate border programs⁸⁴: Prompt Asylum Case Review (PACR⁸⁵), for aliens from Central America; and Humanitarian Asylum Review Program (HARP), for Mexican nationals. Under PACR and HARP, credible fear interviews were conducted while illegal entrants were in CBP custody.

All told, according to GAO, nearly 5,300 aliens⁸⁶ encountered by CBP at the Southwest border were subject to PACR and HARP through September 2020. Of that total, 1,210 received positive credible fear determinations and were sent to immigration court, while more than 3,700 were removed.⁸⁷

While those numbers are relatively small, by ensuring inadmissible applicants for removal would have their credible fear claims screened quickly while they were in custody, PACR and HARP preserved ICE detention resources while allowing CBP to employ Congress' expedited removal process⁸⁸. And because many of those aliens were removed before ICE had to release them, it lessened the likelihood that inadmissible aliens without asylum claims could exploit the system.

Asylum Reforms

Asylum is the most significant statutory exception to the limitations⁸⁹ Congress has placed in the INA on immigration to the United States. And it is likely the most abused.

As the Supreme Court has held, "Many ask for asylum, claiming that they would be persecuted if returned to their home countries. ... Most asylum claims, however, ultimately fail, and some are fraudulent."⁹⁰

According to the Department of Justice (DOJ)⁹¹, of the aliens subject to expedited removal between FY 2008 and FY 2019 who claimed a fear of harm or requested asylum, USCIS asylum

⁸⁴ Misra, Tanvi and DeChalus, Camila. *DHS expands programs that fast-track asylum process*. THE HILL (Feb. 26, 2020). Source: <https://rollcall.com/2020/02/26/dhs-expands-asylum-programs-that-fast-track-deportations/>.

⁸⁵ Montoya-Galvez, Camilo. *Program to expedite deportations of asylum-seekers at border expands*. CBS News (Dec. 31, 2019). Source: <https://www.cbsnews.com/news/immigration-program-expediting-deportations-of-asylum-seekers-at-border-expands/>.

⁸⁶ *See id.* ("DHS data indicate that CBP identified approximately 5,290 individuals who were eligible for screening under the pilot programs.")

⁸⁷ *Id.*

⁸⁸ *See* sec. 235(b)(1) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>. *See also infra*.

⁸⁹ *See* Tit. II, chap. 1 of the INA, sections 201 through 210. Source: <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8&served=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGloObGU4LXNlY3Rpb24xMjMx%7C%7C%7C%7Cfalse%7Cprelim&edition=prelim>.

⁹⁰ *DHS v. Thuraissigiam*, 591 U.S. ___, slip op. at 1 (2020). Source: https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf.

⁹¹ *Credible Fear and Asylum Process, Fiscal Year (FY) 2008 – FY 2019*. U.S. DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (generated Oct. 23, 2019). Source: <https://www.justice.gov/eoir/file/1216991/download>.

officers found that 81 percent had a credible fear of persecution or torture⁹², and 2 percent were determined to have a credible fear by immigration judges on review⁹³-- 83 percent in total.

Of those aliens determined to have a credible fear of persecution or torture, however, fewer than 17 percent⁹⁴ (14 percent of the total of aliens who had requested asylum or claimed a fear of harm) were ultimately granted asylum. By contrast, 32.5 percent of the aliens found to have a credible fear were ordered removed *in absentia* when they failed to appear in court⁹⁵.

With respect to fraud, evidence presented at a 2014 congressional hearing⁹⁶ revealed USCIS had determined “only 30 percent of asylum cases from a random sample were confirmed to be fraud-free”.⁹⁷

One of the reasons asylum is so susceptible to fraud is clear from the asylum statute, section 208 of the INA⁹⁸, itself. Clause (b)(1)(B)(ii)⁹⁹ therein, which governs the alien’s burden for obtaining that protection, states that:

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.

Thus, and logically (as persecutors are unlikely to provide corroborating evidence), extrinsic or documentary evidence is not necessarily required for an asylum applicant to establish his or her claim.

That doesn’t mean that the presentation of extrinsic evidence in this context is purely optional, because that clause¹⁰⁰ also makes clear that: “Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”

⁹² See sec. 235(b)(1)(B)(v) of the INA (2024) (defining “credible fear of persecution”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

⁹³ See sec. 235(b)(1)(B)(iii)(III) of the INA (2024) (“Review of determination. The Attorney General shall provide by regulation and upon the alien’s request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

⁹⁴ *Credible Fear and Asylum Process, Fiscal Year (FY) 2008 – FY 2019*. U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (generated Oct. 23, 2019). Source: <https://www.justice.gov/eoir/file/1216991/download>.

⁹⁵ *Id.*

⁹⁶ See Vaughan, Jessica. *House Hearing on Asylum Reveals Rampant Fraud, More Abuse of Executive Discretion*. CENTER FOR IMMIGRATION STUDIES (Feb. 11, 2014). Source: <https://cis.org/Vaughan/House-Hearing-Asylum-Reveals-Rampant-Fraud-More-Abuse-Executive-Discretion>.

⁹⁷ *Id.*

⁹⁸ Sec. 208 of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

⁹⁹ *Id.* at cl. (b)(1)(B)(ii).

¹⁰⁰ *Id.*

There are few restrictions¹⁰¹ barring aliens in the United States from seeking asylum. Notably, section 208(a)(1) of the INA¹⁰² states: “Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of such alien's status, may apply for asylum.”

The executive branch can implement immigration policy changes either through procedural rulemaking (by publishing new regulations) or binding precedential decisions¹⁰³ issued by the attorney general, whose determinations, under the INA, control “all questions of law”¹⁰⁴. With respect to asylum, the Trump administration used both.

Of course, regardless of which path an administration takes, the resulting policy is subject to judicial review. If either a precedent decision or a regulation is blocked by a district court (through injunction, vacatur, restraining order, or in the case of precedent, reversal), it can take years — absent a stay — for a final ruling to be issued by either a circuit court or the Supreme Court, during which the policy languishes.

In his June 2018 decision in *Matter of A-B*,¹⁰⁵ then-Attorney General Sessions provided bright-line rules for adjudicators (including immigration judges and asylum officers) to follow when considering asylum claims by aliens who assert they fear “persecution” at the hands of non-state criminal actors — usually gangs or spousal abusers. Those are among the most common border protection claims.

¹⁰¹ See section 208(a)(2) of the INA (2024) (“Exceptions. (A) Safe third country. Paragraph [208(a)(1) of the INA] shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States. (B) Time limit. Subject to subparagraph [208(a)(2)(D) of the INA], paragraph [208(a)(1) of the INA] shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States. (C) Previous asylum applications. Subject to subparagraph [208(a)(2)(D) of the INA], paragraph [208(a)(1) of the INA] shall not apply to an alien if the alien has previously applied for asylum and had such application denied. (D) Changed circumstances. An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph [208(a)(2)(B) of the INA] . . .”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

¹⁰² Sec. 208(a)(1) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

¹⁰³ Arthur, Andrew. *AG Certification Explained*. CENTER FOR IMMIGRATION STUDIES (Nov. 5, 2019). Source: <https://cis.org/Arthur/AG-Certification-Explained>.

¹⁰⁴ See sec. 103(a)(1) of the INA (2024) (“The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however*, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1103&num=0&edition=prelim>.

¹⁰⁵ *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018). Source: <https://www.justice.gov/eoir/page/file/1070865/download>. Vacated, *Matter of A-B*, 28 I&N Dec. 307 (A.G. 2021). Source: <https://www.justice.gov/eoir/page/file/1404796/download>.

That December, however, Judge Emmet Sullivan of the U.S. District Court for the District of Columbia permanently enjoined¹⁰⁶ that decision as it related to credible fear claims.

By statute¹⁰⁷, reviews of expedited removal procedures are within the sole jurisdiction of that court, but notably, Sessions' decision in *Matter of A-B-* did not directly involve an asylum claim by a border alien. The judge concluded, however, that his limited review authority gave him jurisdiction. The D.C. Circuit concurred, largely affirming that order in a July 2020 opinion.¹⁰⁸

In July 2019, the Trump administration published a "safe-third country" rule¹⁰⁹ that would have required illegal entrants and other aliens without proper documents at the Southwest border to apply for asylum or protection against torture in a third country where protection was available through which those aliens passed before seeking that protection in the United States.

Given that every country in the Western Hemisphere — save Cuba (an island) and Guyana (an isolated and largely coastal enclave) — grants some form of asylum protection¹¹⁰, it is not unreasonable to require foreign nationals to seek humanitarian protection in a country they pass through before they are allowed to apply for asylum in the United States.

Nonetheless, a U.S. district court judge in Oakland, Calif., quickly enjoined¹¹¹ that rule, just months after he blocked¹¹² a different Trump rule¹¹³ that rendered illegal entrants ineligible for asylum.

In any event, the Ninth Circuit affirmed the district court injunction of Trump's safe-third country rule in July 2020.¹¹⁴

Finally, in December 2020 — the month after Trump lost reelection — the administration published a regulation¹¹⁵ that would have (among other things) clarified and limited asylum

¹⁰⁶ See *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018). Source: <https://casetext.com/case/grace-v-whitaker>.

¹⁰⁷ Sec. 242(e)(3)(A) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1252&num=0&edition=prelim>.

¹⁰⁸ *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020). Source: <https://casetext.com/case/grace-v-barr>.

¹⁰⁹ *Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33829 (Jul. 16, 2019). Source: <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>.

¹¹⁰ *World: State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol - As of September 2012*. United Nations Office for the Coordination of Humanitarian Affairs (Sep. 11, 2012). Source: <https://reliefweb.int/map/world/world-state-parties-1951-convention-relating-status-refugees-and-or-its-1967-protocol>.

¹¹¹ *East Bay Sanctuary Covenant v. Barr*, 385 F.Supp.3d 922 (N.D. Cal. 2019). Source: https://scholar.google.com/scholar_case?case=15492460766902773338&hl=en&as_sdt=6&as_vis=1&oi=scholar.

¹¹² *East Bay Sanctuary Covenant v. Trump*, No. 18-cv-06810-JST, Order Granting Temporary Restraining Order; Order to Show Cause Re Preliminary Injunction (N.D. Cal. Nov. 19, 2018). Source: https://www.cand.uscourts.gov/wp-content/uploads/cases-of-interest/east-bay-sanctuary-v-trump-jst/C18-6810-JST_Order-Granting-TRO.pdf.

¹¹³ *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*. 83 Fed. Reg. 55934 (Nov. 9, 2018). Source: <https://www.govinfo.gov/content/pkg/FR-2018-11-09/pdf/2018-24594.pdf>.

¹¹⁴ *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832 (9th Cir. 2020). Source: https://scholar.google.com/scholar_case?case=717263077632091124&hl=en&as_sdt=6&as_vis=1&oi=scholar.

¹¹⁵ *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*. 85 Fed. Reg. 80274 (Dec. 11, 2020). Source: <https://www.federalregister.gov/documents/2020/12/11/2020-26875/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review>.

eligibility and raised the regulatory standard of proof for reasonable fear claims. It was enjoined¹¹⁶ less than a month later by a different district court judge, this one in San Francisco.

Diplomatic Efforts

No single other factor — including seasonal fluctuations — did more to improve border security and limit illegal entries than Remain in Mexico. That said, it wasn't the only executive authority the Trump administration brought to bear at the Southwest border.

Using his foreign policy power, Trump negotiated safe third country “Asylum Cooperative Agreements” (“ACAs”) with El Salvador, Guatemala, and Honduras¹¹⁷.

Those agreements would have enabled the United States to share its migrant burden with its regional partners by allowing DHS to send third-national asylum seekers to those countries to apply for protection.

While the ACAs with El Salvador and Honduras weren't implemented before the Covid-19 pandemic was announced in March 2020 (they came into force in December¹¹⁸ of that year), the United States did send more than 900 third-country nationals to Guatemala¹¹⁹ prior to the pandemic, most of them from El Salvador and Honduras.

That not only demonstrated that so-called “asylum seekers” could apply for protection closer to home, but it also signaled to would-be migrants that simply making it illegally to the United States was not a guarantee they would be able to remain.

As important, if not more so, was the diplomatic pressure that Trump brought to bear to force the Mexican government to secure its own southern border to transit by illegal “other than Mexican” (OTM) migrants.

As AP explained in December 2019¹²⁰, Trump “threatened crippling tariffs on all Mexican goods unless Mexico stepped up efforts to curb the flow of migrants. Mexico responded by deploying thousands of members of its newly formed National Guard along migration routes.” Illegal migrants can't cross the Southwest border if they are unable to get there, and due to the pressure that the Mexican government imposed, many couldn't.

¹¹⁶ *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966 (N.D. Cal. 2021). Source: <https://casetext.com/case/pangea-legal-servs-v-us-dept-of-homeland-sec-1>.

¹¹⁷ *Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*. U.S. Dep't of Homeland Security (undated). Source: https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.

¹¹⁸ *DHS Announces Guatemala, El Salvador, and Honduras Have Signed Asylum Cooperation Agreement*, U.S. Dep't of Homeland Security (Dec. 29, 2020). Source: <https://www.dhs.gov/news/2020/12/29/dhs-announces-guatemala-el-salvador-and-honduras-have-signed-asylum-cooperation>.

¹¹⁹ Sieff, Kevin and Sheridan, Mary Beth. *The U.S. sent Central American asylum seekers to Guatemala to seek refuge. None were granted asylum, report says*, WASHINGTON POST (Jan. 16, 2021). Source: https://www.washingtonpost.com/world/the_americas/asylum-migrants-trump-guatemala/2021/01/15/aeae4b84-56bc-11eb-a08b-f1381ef3d207_story.html.

¹²⁰ *What crackdown? Migrant smuggling business adapts, thrives*. ASSOCIATED PRESS (Dec. 19, 2019). Source: <https://apnews.com/article/us-news-ap-top-news-international-news-az-state-wire-immigration-202a751ac3873a802b5da8c04c69f2fd>.

IV. BIDEN ADMINISTRATION'S BORDER POLICIES AND MIGRANT RELEASES

Although as noted *infra*, Chief Scott blamed the rapid decline in border security under the Biden administration on “inexperienced political employees” who “ignored and stymied” what he referred to as “[c]ommon sense border security recommendations from experienced career professionals”¹²¹, they were plainly taking their lead from the White House.

Reversal of Trump Administration Border Policies

Notably, while Joe Biden had campaigned on reversing Trump’s border policies (including and especially MPP), as president-elect he explained he would end those policies “at a slower pace than he initially promised, to avoid winding up with ‘2 million people on our border’, and only after “‘setting up the guardrails’ to find a solution to the immigration issue”.¹²²

Despite that promise, once in office, Biden quickly ended nearly all the Trump policies that had created the border security that Scott described in the first place: PACR and HARP were ended by executive order on February 2, 2021¹²³, the Secretary of State announced¹²⁴ — “[i]n line with the President’s vision” — that the administration was suspending and terminating the ACAs four days later; Attorney General Merrick Garland vacated Sessions’ order in *Matter of A-B-* in June 2021¹²⁵, and DHS suspended new enrollments in MPP hours after the inauguration¹²⁶.

President Biden did not simply reverse Trump-era border security policies, however. In a break from every one of its predecessors, the Biden administration until late largely rejected any action that would deter illegal entrants as a border policy.

Nowhere is this shift better demonstrated than in an exchange between DHS Secretary Alejandro Mayorkas and Bret Baier, on the May 1, 2022, edition of “Fox News Sunday”.¹²⁷ Baier asked Mayorkas: “Is it the objective of the Biden administration to reduce, sharply reduce, the total number of illegal immigrants coming across the southern border? Is that the objective?”¹²⁸

¹²¹ Letter from Rodney S. Scott to Sens. Charles Schumer, Mitch McConnell, Gary Peters, and Rob Portman (Sep. 11, 2021).

Source: <https://justthenews.com/sites/default/files/2021-09/Honorable%20Rob%20Portman%20%20US%20Senate%20Security%20Concerns%20-%20Rodney%20Scott.pdf>.

¹²² Miroff, Nick, and Sacchetti, Maria. *Biden says he'll reverse Trump immigration policies but wants 'guardrails' first*.

WASHINGTON POST (Dec. 22, 2020). Source: https://www.washingtonpost.com/national/biden-immigration-policy-changes/2020/12/22/2eb9ef92-4400-11eb-8deb-b948d0931c16_story.html.

¹²³ Executive Order 14010, “Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border”, 86 Fed. Reg. 8267 (Feb. 2, 2021). Source: <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>.

¹²⁴ Blinken, Anthony J. *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras*. U.S. DEP’T OF STATE (Feb. 6, 2021). Source: <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

¹²⁵ *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021). Source: <https://www.justice.gov/eoir/page/file/1404796/download>.

¹²⁶ DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program. U.S. Dep’t of Homeland Security (Jan. 20, 2021). Source: <https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program>.

¹²⁷ Sec. Mayorkas: ‘I’m looking forward to testifying before the US Senate’. Fox News (May 1, 2022). Source:

<https://www.foxnews.com/video/6305481541112>.

¹²⁸ *Id.*

To which Mayorkas replied: “It is the objective of the Biden administration to make sure that we have safe, legal, and legal pathways to individuals to be able to access our legal system.”¹²⁹

By “access our legal system”, Mayorkas meant to “apply for asylum”, and in fact the Biden-Harris administration has treated most illegal entrants as “asylum seekers”, regardless of the strength of their claims or even whether they come seeking asylum at all.¹³⁰

In line with the administration's shift away from policies that would reduce the number of illegal immigrants coming across the border to one providing all migrants with "safe, legal, and legal pathways . . . to access our legal system", the administration also largely abandoned the key tools Congress has given the executive branch to deter illegal entrants—detention and prosecution.

Illegal entry is both a civil violation (subjecting the offender to removal) and a criminal offense, punishable as a misdemeanor carrying a sentence of up to six-months and a fine for the first offense and a felony subject to up to two years' imprisonment and a fine for subsequent offenses under section 275 of the INA.¹³¹

Criminal prosecutions under this provision peaked in 2018 and 2019 under Trump and then plummeted with the onset of the Covid-19 pandemic, which reduced detention space.¹³² Even as illegal entries surged under the Biden administration and pandemic-related restrictions on detention eased, however, the number of prosecutions for improper entry have remained low.¹³³

According to DOJ's Prosecuting Immigration Crimes Report (PICR)¹³⁴, in the first nine months of FY 2024, 4,718 defendants were referred to federal magistrate courts and 2,667 were referred to federal district courts for prosecution under section 275 of the INA, 7,385 referrals in total.

During that period, however, Border Patrol agents apprehended nearly 1.381 million illegal entrants¹³⁵, meaning that the referral rate for aliens who had improperly entered was just over .5 percent.

Southwest Border Releases Under the Biden Administration

129 *Id.*

¹³⁰ Arthur, Andrew. *Biden's Plan to Enable Everyone in the World to Apply for Asylum in the U.S.* CENTER FOR IMMIGRATION STUDIES (May 11, 2022). Source: <https://cis.org/Arthur/Bidens-Plan-Enable-Everyone-World-Apply-Asylum-US>.

131 Sec. 275(a) of the INA (2024). Source: <https://uscdo.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1325&num=0&edition=prelim:::text=Any%20individual%20who%20knowingly%20establishes,%2C%20%2C%2A7275%2C%2066%20Stat.> Accessed on 1 Mar. 2023.

¹³² *Major Swings in Immigration Criminal Prosecutions during Trump Administration*. TRAC IMMIGRATION (Dec. 18, 2020). Source: <https://trac.syr.edu/immigration/reports/633/>.

¹³³ *Criminal Immigration Referrals Up from the Border Patrol*. TRAC IMMIGRATION (Jul. 7, 2022). Source: <https://trac.syr.edu/immigration/reports/688/>.

¹³⁴ *Prosecuting Immigration Crimes Report (PICR)*. U.S. DEP'T OF JUSTICE (updated Jul. 9, 2024). Source: <https://www.justice.gov/usao/resources/PICReport>.

¹³⁵ **Nationwide Encounters.** U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>; **Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2021.** U.S. CUSTOMS AND BORDER PROTECTION (modified Jun. 17, 2024). Source: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021>.

The same is true of the Biden administration’s refusal to detain inadmissible alien applicants for admission—including, again, illegal entrants-- at the Southwest border.

Border Patrol agents at the Southwest border set new yearly records for migrant apprehensions the Biden-Harris administration, first in FY 2021, as agents apprehended nearly 1.66 million illegal migrants¹³⁶, and again in FY 2022, as apprehensions exceeded 2.2 million.¹³⁷

Despite that historically unprecedented surge in illegal migrants, however, the administration asked Congress to cut the number of beds DHS has available for immigration detainees, from 34,000 per day to 25,000 (a 26.5 percent reduction), in its FY 2024 budget request.¹³⁸

While the administration’s FY 2025 budget request¹³⁹ would have left the number of daily ICE detention beds static at 34,000, there are still too few available to comply with congressional mandates.

Instead of detaining those illegal “applicants for admission”—again, as Congress mandated—Biden almost categorically released the ones who were not been expelled under Title 42.

The Center has conservatively estimated¹⁴⁰ that DHS under the Biden administration released roughly 88.5 percent of all inadmissible applicants for admission encountered by CBP through the end of November 2023 who weren’t expelled under Title 42.

It should be noted that this figure includes more than 400,000 unaccompanied alien children (UACs) from “non-contiguous countries” (that is, every foreign country except Mexico and Canada) apprehended by Border Patrol at the Southwest border since February 2021.¹⁴¹

Under section 235 of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)¹⁴², DHS must transfer UACs from non-contiguous countries to the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) within 72 hours of encountering them, for placement with “sponsors” in the United States.

¹³⁶ Arthur, Andrew. *All-Time Record for Southwest Border Apprehensions in FY 2021*. CENTER FOR IMMIGRATION STUDIES (Oct. 22, 2021). Source: <https://cis.org/Arthur/AllTime-Record-Southwest-Border-Apprehensions-FY-2021>.

¹³⁷ ARTHUR, Andrew. *Late Night CBP ‘News Dump’ Reveals the Border’s in Freefall*. CENTER FOR IMMIGRATION STUDIES (Oct. 24, 2022). Source: <https://cis.org/Arthur/Late-Night-CBP-News-Dump-Reveals-Borders-Freefall>.

¹³⁸ See *U.S. Immigration and Customs Enforcement, Budget Overview*. U.S. Dep’t of Homeland Security (Mar. 2023), at 18 (“This program change reduces average daily population (ADP) by 9,000, from an ADP of 34,000 in the FY 2023 Enacted to an ADP of 25,000 (including 1,000 beds funded via fees).”). Source: https://www.dhs.gov/sites/default/files/2023-03/U.S.%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf.

¹³⁹ *FY 2025, Budget in Brief*. U.S. DEP’T OF HOMELAND SECURITY (undated), at 3. Source: https://www.dhs.gov/sites/default/files/2024-03/2024_0311_fy_2025_budget_in_brief.pdf.

¹⁴⁰ *Have 70 Percent — or 85 Percent — of Illegal Migrants Been Released Under Biden? Likely more. DHS Secretary Mayorkas ‘knows the data’ — and so do the smugglers*. CENTER FOR IMMIGRATION STUDIES (Jan. 12, 2024). Source: <https://cis.org/Arthur/Have-70-Percent-or-85-Percent-Illegal-Migrants-Been-Released-Under-Biden>.

¹⁴¹ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

¹⁴² Sec. 235, Pub. L. 110-457 (2008). Source: <https://www.congress.gov/bills/110th-congress/house-bill/7311/text>.

If those children were all in the same school district, it would be the third largest in the United States¹⁴³, ahead of the Chicago school district--which has more than 378,000 students-- in terms of enrollment. And that figure does not include children who entered in “family units”.

On October 5, Reuters reported that more than 500,000 “school-age migrant children have arrived in the U.S. since 2022”, an ambiguous figure that does include children in FMUs.¹⁴⁴

By my estimation¹⁴⁵, between UACs and children in FMUs, somewhere between 700,000 and more than 1 million school-aged migrant children have entered illegally in the past three fiscal years and been released into the United States.

Border Releases with Notices to Report, and on NTA/OR and Parole

Initially, Border Patrol under the Biden administration released many of the aliens who were not expelled under Title 42 with “Notices to Report” (NTRs), documents directing those migrants to appear at an ICE office near their intended destinations in the United States within 60 days, at which time they would be served with a “Notice to Appear” (NTA), the charging document in removal proceedings.¹⁴⁶

Not only were releases of illegal entrants without an NTA and a hearing date “unprecedented”¹⁴⁷, releasing aliens on NTRs isn’t sanctioned by the INA. Not surprisingly, many of those migrants released with NTRs failed to later appear.¹⁴⁸ By October 2021, DHS had phased out NTR releases¹⁴⁹, by which point¹⁵⁰ it had released 95,598 border migrants with Notices to Report.

But that did not mean Border Patrol agents and OFO officers at the Southwest border stopped releasing inadmissible applicants for admission in contravention of section 235(b) of the INA.

¹⁴³ *Top 10 Largest School Districts by Enrollment and Per Pupil Current Spending*. U.S. CENSUS BUREAU (revised Oct. 28, 2021). Source: <https://www.census.gov/library/visualizations/2019/comm/largest-school-districts.html>.

¹⁴⁴ Hesson, Ted, Cooke, Kristina, and Pell, M.B. *An American education: Classrooms reshaped by record migrant arrivals*. REUTERS (Oct. 5, 2024). Source: <https://www.reuters.com/investigations/an-american-education-classrooms-reshaped-by-record-migrant-arrivals-2024-10-05/>.

¹⁴⁵ Arthur, Andrew. *Reuters: 500K+ School-Age Migrant Children Have Arrived Since 2022, The real number is likely a few hundred thousand more, so expect your taxes to rise*. CENTER FOR IMMIGRATION STUDIES (Oct. 15, 2024). Source: <https://cis.org/Arthur/Reuters-500K-SchoolAge-Migrant-Children-Have-Arrived-2022>.

¹⁴⁶ Kight, Stef. *Scoop: 50,000 migrants released; few report to ICE*. AXIOS (Jul. 27, 2021). Source: <https://www.axios.com/2021/07/27/migrant-release-no-court-date-ice-dhs-immigration>.

¹⁴⁷ *Id.*

¹⁴⁸ Arthur, Andrew. *Sen. Ron Johnson Releases Explosive Information on Migrant No-Shows*. CENTER FOR IMMIGRATION STUDIES (Jan. 12, 2022). Source: <https://cis.org/Arthur/Sen-Ron-Johnson-Releases-Explosive-Information-Migrant-NoShows>.

¹⁴⁹ Alvarez, Priscilla. *DHS stops releasing some migrants without providing immigration court dates*. CNN (Nov. 16, 2021). Source: <https://www.cnn.com/2021/11/16/politics/dhs-migrants-paperwork-ice-notice-to-appear/index.html>.

¹⁵⁰ *See Texas v. Biden*, No. 2:21-cv-00067-Z, Defendants’ Monthly Report for November 2021 Plus Reporting Data Beginning January 2021, Exhibit A (N.D. Tex. Dec. 15, 2021). Source: <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.119.0.pdf>.

Since October 2021, the administration has been releasing border migrants encountered by CBP either on their own recognizance under section 236(a) of the INA¹⁵¹ with “Notices to Appear”¹⁵² (“NTAs”, the DHS charging documents placing aliens into removal proceedings)—a policy referred to as “NTA/OR” -- or on parole.

Agents began releasing illegal entrants at the Southwest border on NTA/OR on President Biden’s first day in office (January 20, 2021), and by the end of FY 2021, had released more than 154,000 of them in this manner.¹⁵³

Border Patrol agents at the Southwest border only started releasing illegal entrants on parole in August 2021¹⁵⁴, and had granted parole to more than 25,000 apprehended migrants there by the end of FY 2021.

In FY 2022, more than 378,000 illegal migrants apprehended by Border Patrol at the Southwest border were paroled into the United States, while nearly 311,000 others were released on NTA/OR.¹⁵⁵

¹⁵¹ See sec. 236(a) of the INA (2024) (“Arrest, detention, and release. On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—(1) may continue to detain the arrested alien; and (2) may release the alien on— (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole; but (3) may not provide the alien with work authorization (including an ‘employment authorized’ endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

¹⁵² See sec. 239(a)(1) of the INA (2024) (“Initiation of removal proceedings. (a) Notice to appear. (1) In general. In removal proceedings under [section 240 of the INA], written notice (in this section referred to as a ‘notice to appear’) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) specifying the following: (A) The nature of the proceedings against the alien. (B) The legal authority under which the proceedings are conducted. (C) The acts or conduct alleged to be in violation of law. (D) The charges against the alien and the statutory provisions alleged to have been violated. (E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection [239(b)(2) of the INA]. (F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under [section 240 of the INA]. (ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien’s address or telephone number. (iii) The consequences under [section 240(b)(5) of the INA] of failure to provide address and telephone information pursuant to this subparagraph. (G)(i) The time and place at which the proceedings will be held. (ii) The consequences under [section 240(b)(5) of the INA] of the failure, except under exceptional circumstances, to appear at such proceedings.”). Source: <https://uscode.house.gov/view.xhtml?req=title:8%20section:1229%20edition:prelim>.

¹⁵³ See *Texas v. Biden*, No. 2:21-cv-00067-Z, Defendants’ Monthly Report for November 2021 Plus Reporting Data Beginning January 2021, Exhibit A (N.D. Tex. Dec. 15, 2021). Source:

<https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.119.0.pdf>.

¹⁵⁴ See *Texas v. Biden*, No. 2:21-cv-00067-Z, Defendants’ Monthly Report for November 2021 Plus Reporting Data Beginning January 2021, Exhibit A (N.D. Tex. Dec. 15, 2021). Source:

<https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.119.0.pdf>.

¹⁵⁵ *Custody and Transfer Statistics FY2022, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 14, 2022). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>.

In FY 2023, Border Patrol agents paroled nearly 304,000 illegal migrants they apprehended at the Southwest border into the United States, and more than more than 793,000 others were released on their own recognizance with NTAs.¹⁵⁶

While Border Patrol releases have declined since DHS issued an interim final rule captioned “Securing the Border” on June 7, 2024¹⁵⁷, agents still released more than 840,000 migrants apprehended at the Southwest border on NTA/OR in the first 10 months of FY 2024¹⁵⁸, a figure that does not include aliens transferred to ICE who were subsequently released by that agency.

Lack of Statutory Authority for NTA/OR Releases of Border Migrants

Although CBP under the Biden administration has released hundreds of thousands of inadmissible applicants for admission under section 236(a) of the INA¹⁵⁹, that provision provides CBP no authority to release border migrants.

By its express terms, that section gives DHS officers authority to arrest aliens on warrants.¹⁶⁰ After arrest, pursuant to that statute, DHS can continue to detain such aliens or to release them on bond or conditional parole.¹⁶¹

But few if any illegal migrants apprehended at the Southwest border are arrested on warrant, for a simple reason: Border Patrol agents cannot and do not seek warrants to arrest migrants they see or know to have entered illegally at the border, because that would allow those aliens to abscond.

Congress gave Border Patrol agents the authority to make such warrantless arrests in section 287(a)(2) of the INA¹⁶². It states, in pertinent part:

Any officer or employee of the Service ... shall have power without warrant- to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation ... or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.

While agents and officers may subsequently issue a “Warrant for Arrest” for such aliens, that does not convert a warrantless arrest into an arrest on warrant that would allow for release under

¹⁵⁶ *Custody and Transfer Statistics FY2023, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Dec. 19, 2023). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.
¹⁵⁷ *Securing the Border*, 89 Fed. Reg. 48710-772 (Jun. 7, 2024). Source: <https://www.govinfo.gov/content/pkg/FR-2024-06-07/pdf/2024-12435.pdf>.

¹⁵⁸ *Custody and Transfer Statistics FY2024, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Aug. 16, 2024). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

¹⁵⁹ Sec. 236(a) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Sec. 287(a)(2) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=title:8%20section:1357%20edition:prelim>.

section 236(a) of the INA. Or, as one district court judge held¹⁶³ in March: “This sleight of hand — using an ‘arrest’ warrant as de facto ‘release’ warrant — is administrative sophistry at its worst.”

Biden Administration’s Parole Releases at the Border

Nor is there any authority for CBP to release hundreds of thousands of border migrants on parole¹⁶⁴, either.

By way of background, the Biden administration implemented two separate formal programs under which Border Patrol agents were directed to parole illegal entrants: “Parole+ATD” (parole under section 212(d)(5)(A)(1) of the INA plus so-called “alternatives to detention”¹⁶⁵); and “Parole with Conditions” (PWC).

Parole+ATD came to light in a suit¹⁶⁶ filed by the state of Florida in September 2021 captioned *Florida v. U.S. (Florida I)*. The state alleged¹⁶⁷ the administration was deliberately “ignoring” the congressional detention mandate in section 235(b) of the INA by releasing migrants apprehended at the border, directly resulting in fiscal harm to the state.

More than a year of discovery uncovered a November 2, 2021, memo¹⁶⁸ from then-Border Patrol Chief Raul Ortiz formally adopting Parole+ATD releases (although, as the court eventually found, the record established that Border Patrol “started using ‘parole’ as a means of improving ‘processing efficiencies’” that July)¹⁶⁹.

That November 2021 memo applied this parole policy only to aliens in family units, justifying its use on a “need to protect the workforce, migrants, and American public against the spread of COVID-19 that may be exacerbated by overcrowding in CBP facilities”¹⁷⁰. Parole+ATD then only applied in the Border Patrol’s Rio Grande Valley and Del Rio sectors, but the memo noted it could be extended to reduce crowding in CBP facilities elsewhere.

The court in *Florida I* explained that the November memo “concluded by stating that ‘when COVID-19 conditions eventually improve, it is expected that there will no longer be a need for this alternative pathway’”¹⁷¹.

¹⁶³ *Florida v. U.S.*, 3:21-cv-01066-TKW-ZCB, Opinion and Order, at 84 (N.D. Fla. Mar. 8, 2023) (Wetherell, J.). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf. See also “*Florida I*”, *supra*.

¹⁶⁴ See *infra*.

¹⁶⁵ See *Alternatives to Detention*. U.S. Immigration and Customs Enforcement (updated Jun. 24, 2024). Source: <https://www.ice.gov/features/atd>.

¹⁶⁶ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Complaint for Declaratory and Injunctive Relief (N.D. Fla. Sep. 28, 2021). Source: <https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.1.0.pdf>.

¹⁶⁷ See *id.* at 2.

¹⁶⁸ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 25-26 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 28-29.

¹⁷¹ *Id.*

Even though the administration announced in April 2022¹⁷² that it would be ending Covid-19-related Title 42 expulsion orders in late May, the Parole+ATD “pathway” remained.¹⁷³ In fact, the policy “was effectively reauthorized in a July 18, 2022, memorandum jointly issued by CBP and ICE titled ‘Policy on the Use of Parole Plus Alternatives to Detention to Decompress Border Locations’”¹⁷⁴.

There were any number of problems with Parole+ATD, not the least of that it created a massive backlog for ICE officers in locating paroled aliens and issuing Notices to Appear (“NTAs”, the charging documents in removal proceedings) to those released under that program and with NTRs.¹⁷⁵

As NBC News reported in February 2023¹⁷⁶:

Between late March 2021 and late January 2023, more than 800,000 migrants were released on Notices to Report or Parole Plus ATD. About 214,000 of them were eventually issued charging documents with court dates, according to data obtained by NBC News, meaning that roughly 588,000 did not know when or where to report for their asylum hearings.

How long would migrants have to wait for their NTAs? According to the New York Post¹⁷⁷, by the middle of March 2023, the New York City ICE office was “fully booked” for migrant call-in appointments through October 2032.

U.S. District Court Judge T. Kent Wetherell II, assigned to hear the state’s claims in *Florida I*, concluded in his March 8, 2023, order¹⁷⁸ vacating Parole+ATD that this policy was “contrary to law in three ways”:

(1) it does not contemplate a return to custody once the purposes of parole have been served; (2) it does not comply with the case-by-case requirement; and (3) it does not limit parole to urgent humanitarian reasons or significant public benefit.

No Return to Custody

¹⁷² See Arthur, Andrew. *Title 42 Reportedly to End May 23*. CENTER FOR IMMIGRATION STUDIES (Mar. 31, 2022). Source: <https://cis.org/Arthur/Title-42-Reportedly-End-May-23>.

¹⁷³ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 29-30 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

¹⁷⁴ *Id.* at 30.

¹⁷⁵ See *id.* at 34 (“ICE officials estimated that it would take nearly 3 years (and \$25 million) to clear the ‘backlog’ and issue NTAs to these 110,000 aliens if the Parole+ATD policy was stopped at that point. For every 30 days that the policy continued in place, approximately an additional year and \$8 million were added to the time and cost of clearing the backlog.”).

¹⁷⁶ Ainsley, Julia. *Nearly 600,000 migrants who crossed the border since March 2021 were released in the U.S. with no immigration court dates*. NBC News (Feb. 3, 2023). Source: <https://www.nbcnews.com/politics/immigration/nearly-600000-migrants-crossed-border-released-inside-us-rcna68687>.

¹⁷⁷ Nelson, Steven. *NYC ICE office ‘fully booked’ for migrant appointments through late 2032: document*. New York Post (Mar. 13, 2023). Source: <https://nypost.com/2023/03/13/nyc-ice-office-fully-booked-for-migrant-appointments-through-late-2032/>.

¹⁷⁸ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 88 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

As noted *infra*, the parole statute¹⁷⁹ requires that a parolee “be returned to the custody from which he was paroled” after the purpose of the parole has been satisfied.

During oral argument¹⁸⁰ in *Florida I*, the government admitted that “the ‘purpose’ of parole” in this context was to move “aliens out of CBP facilities faster than would occur if the alien were processed consistent with the requirements of” section 235 of the INA.

Referring to that admission at oral argument, the court held¹⁸¹:

*That being the case, the purpose of the parole is served when the alien has his first encounter with ICE. However, **nothing in the July Memo or the supplemental administrative record contemplates a return to custody at that time or any time thereafter** — indeed, the supplemental administrative record shows that aliens are all-but-guaranteed that they “will not be taken into custody” when they report to ICE for issuance of an NTA. [Emphasis added.]*

Thus, the administration was expressly violating the parole statute.

The parole statute also contemplates that the alien return to his or her “case” once the purpose of parole is completed¹⁸². As the judge noted¹⁸³, however, “the entire purpose of the Parole+ATD policy is to expedite the processing of aliens at CBP facilities without initiating an immigration proceeding against them”, and therefore the alien had no removal “case” to return to.

“Case-by-Case” Requirement for Parole

Judge Wetherell further held¹⁸⁴ that the Parole+ATD policy violated DHS’s duty under the parole statute¹⁸⁵ to assess the circumstances in individual parole cases on a “case-by-case” basis, in numerous ways.

First, although the July memo “pays lip service to assessments of individual aliens, it’s largely focused on DHS’s operational circumstances [its detention capacity] rather than an individual alien’s circumstances”.¹⁸⁶

¹⁷⁹ Sec. 212(d)(5)(A)(i) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

¹⁸⁰ See *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 89 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

¹⁸¹ *Id.* at 90.

¹⁸² Sec. 212(d)(5)(A)(i) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

¹⁸³ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 90 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

¹⁸⁴ *Id.* at 91.

¹⁸⁵ Sec. 212(d)(5)(A)(i) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

¹⁸⁶ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 91 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

Second, the sole focus of the case-by-case assessment under DHS's Parole+ATD policy is "whether the alien is a public safety risk or flight risk, not on whether the alien meets the exceedingly high parole standard".¹⁸⁷

Third, that memo "turns the parole standard on its head by providing ineligibility criteria rather than eligibility criteria. In other words, the July Memo essentially establishes a presumption of parole when the relevant 'triggers' are met".¹⁸⁸

The court also noted that Border Patrol's time estimate for completing the Parole+ATD process was "15 to 30 minutes", concluding that it would be "implausible" for agents to "meaningfully assess an alien's individual circumstances" in that brief period.¹⁸⁹

Urgent Humanitarian Reasons or Significant Public Benefit Requirement

Finally, the court held¹⁹⁰ that Parole+ATD policy violated the statutory requirement that parole be granted only "for urgent humanitarian reasons or significant public benefit".¹⁹¹

He concluded¹⁹²:

The primary "public benefit" that the Parole+ATD policy sought to achieve was speeding up the inspection mandated by [section 235 of the INA] to "decompress" overcrowded CBP facilities. However, even if there may be circumstances where an individual alien might be eligible for parole based on overcrowding and health and safety concerns, creating an entirely new "processing pathway" to avoid the process mandated by [section 235] is inconsistent with the narrow language in [the parole statute].

Florida II

On these and other bases, Judge Wetherell vacated DHS's Parole+ATD policy.¹⁹³

Judge Wetherell's order did stop Border Patrol from releasing migrants under this parole scheme, but only until May 10, 2023, the day before Title 42 ended.

That day, Chief Ortiz issued a memo¹⁹⁴ directing agents to implement a new policy, "Parole with Conditions" (PWC), purportedly to reduce overcrowding at Border Patrol processing facilities.

¹⁸⁷ *Id.* at 92.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 93.

¹⁹¹ Sec. 212(d)(5)(A)(i) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

¹⁹² *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 93-94 (N.D. Fla. Mar. 8, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.

¹⁹³ *Id.* at 108-109. See also Arthur, Andrew. *Federal Judge Vacates Biden's 'Parole+ATD' Border Release Policy*. CENTER FOR IMMIGRATION STUDIES (Mar. 10, 2023). Source: <https://cis.org/Arthur/Federal-Judge-Vacates-Bidens-ParoleATD-Border-Release-Policy>.

¹⁹⁴ Taer, Jennie. *EXCLUSIVE: Here Are The Docs Instructing Border Patrol To Release Waves Of Migrants Into The Country*. Daily Caller (May 11, 2023). Source: <https://dailycaller.com/2023/05/11/border-patrol-docs-migrants-title-42/>.

Under PWC, Border Patrol was again directed to release aliens in its custody on parole without issuing them NTAs and court dates, or as that memo put it “in advance of the issuance of an NTA”.¹⁹⁵

That policy sent the state of Florida back to court on May 10, 2023, to halt PWC parole releases, in a case captioned *Florida v. Mayorkas*¹⁹⁶ (*Florida II*).

Based on what little information it had about that policy (the memo hadn’t been publicly released yet), the state argued in its complaint¹⁹⁷ that the latest policy “may violate” the court’s March 8 vacatur of Parole+ATD in *Florida I*.

The state of Florida continued¹⁹⁸, however, noting: “But it is unquestionably cynical, in bad faith, and contrary to both the [INA] and the [Administrative Procedure Act, ‘APA’]. It is also, unfortunately, consistent with the game of whack-a-mole DHS has been playing with Florida and this court for almost two years.”

On these grounds, the state asked the district court for a temporary restraining order (TRO) to stop PWC releases.¹⁹⁹

Judge Wetherell was also assigned *Florida II*, and he concluded on May 11, 2023, that a TRO was in order²⁰⁰ given:

the challenged policy appears to be materially indistinguishable from the Parole+ATD policy vacated in [Florida I] — both in its purpose (reducing overcrowding at border patrol facilities) and manner of operation (releasing aliens into the country without first issuing a charging document placing them in immigration proceedings and simply directing the aliens to report to ICE within a specified period for further processing).

The administration sought a stay of the orders in *Florida I* and *Florida II*, which was denied²⁰¹ by the U.S. Court of Appeals for the Eleventh Circuit on June 5, 2023.

On February 13, 2024, the circuit court remanded²⁰² those cases back to Judge Wetherell for limited further consideration of whether he had jurisdiction to consider the state’s claims in light of the Supreme Court’s decision in *U.S. v. Texas*²⁰³

¹⁹⁵ *Id.*

¹⁹⁶ *Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB, Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, and Declaratory Relief (N.D. Fla. May 10, 2023). Source: <https://storage.courtlistener.com/recap/gov.uscourts.flnd.464923/gov.uscourts.flnd.464923.1.0.pdf>.

¹⁹⁷ *Id.* at 1.

¹⁹⁸ *Id.* at 1-2.

¹⁹⁹ *Id.* at 7-8.

²⁰⁰ *Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB, Temporary Restraining Order, at 8 (N.D. Fla. May 10, 2023). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.464923/gov.uscourts.flnd.464923.10.0_2.pdf.

²⁰¹ *Florida v. U.S.*, No. 23-11528, Order of the Court, (11th Cir. Jun. 5, 2023). Source: <https://law.justia.com/cases/federal/appellate-courts/ca11/23-11528/23-11528-2023-06-05.html>.

²⁰² *Florida v. U.S.*, No. 23-11528, Order of the Court (11th Cir. Feb. 13, 2024). Source: <https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/146127.pdf>.

²⁰³ *U.S. v. Texas*, 599 U.S. 670 (2023). Source: <https://supreme.justia.com/cases/federal/us/599/22-58/>.

A week later, Judge Wetherell issued an order²⁰⁴ concluding jurisdiction was proper. The cases remain on appeal.

The Largest Influx of Irregular Migrants in U.S. History

The Southwest border has experienced the largest influx of irregular migration in the nation's history since President Biden took office.²⁰⁵ Since February 2021, CBP there has encountered more than 8.8 million inadmissible applicants for admission at the Southwest border, 7.5 million-plus apprehended by Border Patrol agents after illegal entry and more than 1.32 million applicants for admission deemed inadmissible by CBP officers at the Southwest border ports.²⁰⁶

Fewer than 2.453 million of those encounters resulted in expulsion²⁰⁷ under orders²⁰⁸ issued by the Centers for Disease Control (CDC) pursuant to Title 42 of the U.S. Code²⁰⁹ in response to the Covid-19 pandemic.

Conversely, since February 2021, more than 6 million inadmissible applicants for admission encountered at the Southwest border during that period have been processed under the INA.²¹⁰ Not surprisingly, that massive surge in illegal migration has severely taxed CBP's limited resources, and the resources of the Border Patrol in particular.

²⁰⁴ *Florida v. U.S.*, Case 3:21-cv-01066-TKW-ZCB, Corrected Order Regarding Jurisdiction (N.D. Fla. Feb. 20, 2024). Source: <https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.180.0.pdf>.

²⁰⁵ *Compare Southwest Border Sectors, Total Encounters By Fiscal Year*. U.S. BORDER PATROL (undated) (covering FY 1960 to FY 2020). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/US59B8~1.PDF>. and *Southwest Border Migration FY 2020*. U.S. CUSTOMS AND BORDER PROTECTION (modified Sept. 19, 2023). Source: <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2020>. with *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Aug. 28, 2024) (covering FY 2021 to present). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

²⁰⁶ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>; *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2021*. U.S. CUSTOMS AND BORDER PROTECTION (modified Jun. 17, 2024). Source: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021>.

²⁰⁷ *Id.*

²⁰⁸ See, e.g., *Order Suspending the Introduction of Certain Persons from Countries Where a Communicable Disease Exists*. U.S. DEP'T OF HEALTH AND HUMAN SERVS., CENTERS FOR DISEASE CONTROL AND PREVENTION (Mar. 20, 2020). Source: https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf.

²⁰⁹ See *id.*; 42 U.S.C. § 265 (2023) ("Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose."). Source: [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:265%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:265%20edition:prelim)).

²¹⁰ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>; *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2021*. U.S. CUSTOMS AND BORDER PROTECTION (modified Jun. 17, 2024). Source: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2021>.

At the end of FY 2020 (the last year for which staffing statistics²¹¹ are available), there were fewer than 17,000 Border Patrol agents stationed along the 1,954-mile²¹² Southwest border.

On paper, that equals roughly 8.64 agents per mile, but in reality, agents work shifts of approximately 50 hours per week. That means fewer than 30 percent of those agents are on the line at any given time, reducing staffing down to about 2.57 agents per mile.

Even that figure, however, does not adequately represent the actual number of agents “on the line”—that is, actively preventing the illicit entry of drug- and human-traffickers and smugglers— at the border at any given time. That’s because of the demographics of those millions of illegal migrants and the manner in which they entered.

Under the current administration, migrants have crossed the border illegally in groups consisting of hundreds of individuals²¹³, an uncommon phenomenon in the past. Many if not most are so-called “give ups” (to contrast them with “got aways”²¹⁴), that is aliens who enter illegally and wait for agents to arrive in the (legitimate) hope they will be processed and released.

While agents expend fewer resources to pursue such give ups, multiple agents must be sent at a time to report to those crossing scenes and more to then transport, process, and care for migrant groups of that size, pulling agents “off the line” for indeterminate periods.

That is especially true in the case of large numbers of aliens travelling in “family units” and where apprehensions involve UACs.

FMUs and UACs are the most vulnerable migrants and given that most Border Patrol processing centers were built in the late 1990s and early 2000s, when nearly all illegal entrants were single adult males from Mexico (and thus are unsuitable for housing children and families for any extended period), agents must use special care to house and process them, and to segregate them from other migrants with potential criminal and predatory intent.

In FY 2021, Border Patrol agents set a record for UAC apprehensions at the Southwest border, encountering nearly 145,000 alien children²¹⁵ who were travelling alone. That was nearly twice as many UACs as in FY 2019²¹⁶, when agents apprehended just over 76,000 unaccompanied children at the Southwest border — a then-record.

²¹¹ See *Border Patrol Agent Nationwide Staffing by Fiscal Year*. U.S. BORDER PATROL (undated) (16,878 agents on the Southwest border in FY 2020). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202020%29%20%28508%29.pdf>.

²¹² *Border Wall System*. U.S. CUSTOMS AND BORDER PROTECTION (undated). Source: <https://www.cbp.gov/node/293681/printable/print>.

²¹³ See, e.g., Caralle, Katelyn. *The ticking border time bomb: 1,000 migrants in the largest caravan in HISTORY crosses the Rio Grande into El Paso - with huge numbers being released onto the streets and just nine days until Title 42 ends*. DAILY MAIL (Dec. 12, 2022). Source: <https://www.dailymail.co.uk/news/article-11529519/Largest-migrant-caravan-HISTORY-illegally-crosses-Rio-Grande-El-Paso.html>.

²¹⁴ See *infra*.

²¹⁵ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

²¹⁶ *Total Unaccompanied Children (0-17 Years Old) Apprehensions By Month - FY 2019*. U.S. BORDER PATROL (undated). Source: <https://www.cbp.gov/sites/default/files/assets/documents/2021->

That FY 2021 record was quickly broken, as agents caught an additional 149,000-plus UACs²¹⁷ at the Southwest border in FY 2022.

As for family units, agents apprehended more than 451,000 adults and children travelling in FMUs in FY 2021²¹⁸. While that represented fewer aliens in FMUs than the nearly 473,700 apprehended at the Southwest border in FY 2019²¹⁹ (a year in which more than 55 percent of Southwest border apprehensions involved aliens in FMUs), it was a 764-percent increase over FY 2021²²⁰ (when just over 52,200 illegal entrants in FMUs were apprehended there).

FMU apprehensions rose even further in FY 2023, when agents caught more than 631,000 adults and children who had crossed the Southwest border together illegally²²¹. In FY 2024²²², there were more than 555,000 Border Patrol Southwest border FMU apprehensions.

The illicit crossing of large groups of migrants together—and in particular groups including significant numbers of aliens in family units and/or unaccompanied alien children—isn't mere happenstance, as Chief Scott explained²²³:

[I]llegal entries are being scripted and controlled by Plaza Bosses that work directly for the transnational criminal organizations (TCO) to create controllable gaps in border security. These gaps are then exploited to easily smuggle contraband, criminals, or even potential terrorists into the U.S. at will. Even when [Border Patrol] detects the illegal entry, agents are spread so thin that they often lack the capability to make a timely interdiction.

“Got Aways”

As that excerpt from Chief Scott indicates, not all illegal entrants at the Southwest border want to be or are caught.

Increasingly under the first years of the Biden administration, hundreds of illegal entrants per day evaded apprehension by overwhelmed Border Patrol agents and made their way successfully into the interior of the United States. Those aliens are defined in statute as “got aways”²²⁴.

[Aug/U.S.%20Border%20Patrol%20Total%20Monthly%20UC%20Encounters%20by%20Sector%20%28FY%202010%20-%20FY%202020%29%20%28508%29a_0.pdf](#).

²¹⁷ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

²¹⁸ *Id.*

²¹⁹ *Southwest Border Migration FY 2019*. U.S. CUSTOMS AND BORDER PROTECTION (modified Nov. 14, 2019). Source: <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

²²⁰ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Aug. 28, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

²²¹ *Id.*

²²² *Id.*

²²³ *Letter from Rodney Scott to Sens. Charles Schumer, Mitch McConnell, Gary Peters, and Rob Portman* (Sept. 11, 2021). Source: <https://justthenews.com/sites/default/files/2021-09/Honorable%20Rob%20Portman%20%20US%20Senate%20Security%20Concerns%20-%20Rodney%20Scott.pdf>.

²²⁴ See 6 U.S.C. § 223(a)(3) (2024) (“Got away. The term ‘got away’ means an unlawful border crosser who- (A) is directly or indirectly observed making an unlawful entry into the United States; (B) is not apprehended; and (C) is not a turn back.”). Source: <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title6-section223&num=0&saved=%7CKHRpdGxIOiYgc2VidGlvbi9yMmMgZWVpdGlvbi9wcmVsaW0p%7C%7C%7C0%7Cfalse%7Cprelim>.

Congress added that definition to the U.S. Code by section 1092 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017)²²⁵, under the header “Border Security Metrics”, and is now codified at 6 U.S.C. §223²²⁶.

Section 1092 of NDAA 2017²²⁷ requires the DHS secretary to “develop metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry”, and to provide an annual report on the results to the GAO and to the Senate Homeland Security and Governmental Affairs and House Homeland Security Committees.

DHS filed the last such report, for FY 2022²²⁸, in July 2023, but it only includes “detected got away” statistics from FY 2011 through the end of FY 2021.²²⁹

It reveals that during that 11-year period, got-ways at the Southwest border peaked in FY 2013 (171,051), and remained roughly static at just over 101,000 between FY 2015 and FY 2017 before jumping again in FY 2018 (127,944) and FY 2019 (150,090), then dipping again in FY 2020 (135,593), roughly coinciding with the implementation of MPP and Title 42.²³⁰

In FY 2021, however, CBP detected more than 389,000 got aways at the Southwest border, 128 percent more than the previous record set in FY 2013²³¹.

Again, those are the last published got away numbers, but Fox News reported in May that there were an additional 606,131 known got aways in FY 2022, 670,674 in FY 2023, and more than 175,000 in FY 2024 as of the date of that report²³². And those are just the got aways DHS is aware of.

That’s roughly 1.8 to 1.9 million aliens who entered illegally since President Biden took office, and evaded apprehension, largely free from any official constraint — more people than residents of Phoenix, Ariz.²³³, America’s fifth-largest city.

“Biden-Harris Administration Announces New Border Enforcement Actions”

The Biden administration implemented two programs to allow inadmissible applicants to enter illegally through the ports of entry in lieu of entering illegally between the ports of entry,

²²⁵ Sec. 1092 of National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-840 (2016). Source: <https://www.congress.gov/bills/114/congress/senate-bill/2943/text>.

²²⁶ See 6 U.S.C. § 223(a)(3) (2024) Source:

<https://uscode.house.gov/view.xhtml?hl=false&edition=prelim®=granuleid%3AUSC-prelim-title6-section223&num=0&saved=%7CKHRpdGxIOiYgc2VidGlvbiovMIMgZWRRpdGlvbipwcmVsaW0p%7C%7C%7C0%7Cfalse%7Cprelim>.

²²⁷ Sec. 1092 of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-840 (2016). Source: <https://www.congress.gov/bills/114/congress/senate-bill/2943/text>.

²²⁸ Department of Homeland Security Border Security Metrics Report: 2022. U.S. DEPT OF HOMELAND SECURITY (Jul. 3, 2023). Source: https://ohss.dhs.gov/sites/default/files/2023-12/2023_0703_plcy_fiscal_year_2022_border_security_metrics_report_2021_data_0.pdf.

²²⁹ See *id.* at 18.

²³⁰ *Id.*

²³¹ *Id.*

²³² Shaw, Adam and Melugin, Bill. *New data reveals Illegal immigrants eluding Border Patrol spiked under Biden, surpassing predecessors*. FOX NEWS (May 15, 2024). Source: <https://www.foxnews.com/politics/new-data-reveals-illegal-immigrants-eluding-border-patrol-spiked-under-biden-surpassing-predecessors>.

²³³ QuickFacts. *Phoenix city, Arizona; United States*. U.S. CENSUS BUREAU (undated). Source: <https://www.census.gov/quickfacts/fact/table/phoenixcityarizona,philadelphiacitypennsylvania,US/BZA210222>.

summarized in a January 5 White House “fact sheet”²³⁴ captioned “Biden-Harris Administration Announces New Border Enforcement Actions”.

The CBP One App Interview Policy

According to that fact sheet:

When Title 42 eventually lifts, noncitizens located in Central and Northern Mexico seeking to enter the United States lawfully through a U.S. port of entry have access to the CBP One mobile application for scheduling an appointment to present themselves for inspection and to initiate a protection claim instead of coming directly to a port of entry to wait. This new feature will significantly reduce wait times and crowds at U.S. ports of entry and allow for safe, orderly, and humane processing.

For simplicity, I refer to this program as the “CBP One app interview policy” and note that many questionable statements of fact and law appear in that paragraph, though two in particular stick out.

First, as explained above, aliens at the ports of entry without proper admission documents are inadmissible to the United States under section 212(a)(7)(A)(i) of the INA and thus aren’t as a matter of law “seeking to enter the United States lawfully”.

Second, the CBP One app interview policy didn’t start “when Title 42 eventually lifted” (on May 11²³⁵); it was rolled out a week after that announcement on January 12, as CBP subsequently admitted²³⁶.

That said, here’s how it works: Any foreign national (either a Mexican national or OTM) can now download and access the CBP One mobile app²³⁷, which, as DHS explains, “serves as a single portal to a variety of CBP services”²³⁸.

Mexican nationals anywhere in the country, and OTMs in central and northern Mexico or in the southernmost Mexican states of Tabasco and Chiapas (bordering Guatemala), can then use the app to schedule an “appointment” to present themselves for inspection under section 235 of the

²³⁴ *FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions*. WHITE HOUSE (Jan. 5, 2023). Source: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>.

²³⁵ Krikorian, Mark and Bensman, Todd. 5/11: *The End of Title 42*. CENTER FOR IMMIGRATION STUDIES (May 11, 2023). Source: <https://cis.org/Parsing-Immigration-Policy/511-End-Title-42>.

²³⁶ See *CBP Releases May 2023 Monthly Operational Update*. U.S. CUSTOMS AND BORDER PROTECTION (Jun. 20, 2023) (“From January 12, when the scheduling function was introduced, until May 31, 2023, more than 106,000 individuals used the CBP One mobile application to schedule an appointment to present at a southwest border port of entry for inspection.”). Source: <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-may-2023-monthly-operational-update>.

²³⁷ *CBP One™ Mobile Application*. U.S. CUSTOMS AND BORDER PROTECTION (modified Aug. 16, 2024)). Source:

<https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

²³⁸ *Id.*

INA (or, as CBP has described it, “to be processed under Title 8”²³⁹, “Title 8” of the U.S. Code being the INA) at a Southwest border port.

By May 2023, DHS was making 1,000 CBP One app port appointment slots available daily, but on June 1, 2023²⁴⁰, the agency expanded that to 1,250 daily appointment slots. Later that month²⁴¹, the number of CBP One port interview slots was expanded further, to 1,450 per day—or 529,000-plus per year.

After CBP announced in August it would be extending CBP One appointment coverage to the two Mexican states bordering Guatemala, the Mexican National Institute of Migration (INM), declared²⁴² it would be launching a “safe mobility corridor” for OTMs travelling into the country from the south, one at Villahermosa in Tabasco and the other in Tapachula, Chiapas.

As the institute’s press release explains:

The INM will issue a Multiple Migration Form (FMM) valid for 20 days for those people with a confirmed CBP One appointment who choose to travel to the scheduled appointment location through the Emerging Safe Mobility Corridor, which will allow them to have regular stay status during their journey.

In a joint security effort, buses that are authorized to carry out the transfer will be accompanied by security institutions at the federal, state and municipal levels; in addition, food will be provided during the corresponding trips.

Thus, it appears the Mexican government is providing free bus transportation from its border with Guatemala to the U.S. Southwest border for OTM migrants who have scheduled port appointments using the CBP One app.

To assist the Mexican government in identifying OTM migrants who scheduled appointments using CBP One, on August 22, CBP announced²⁴³ it was “allow[ing] the Government of Mexico access to a tool which will permit certain Government of Mexico personnel to validate an individual’s CBP One appointment and change the locations in Mexico from which individuals can request appointments via CBP One”.

That effectively moves the U.S. Southwest border to Mexico’s border with Guatemala and places the Mexican government in charge of U.S. port protection. Provided OTMs can cross the

²³⁹ *CBP Releases May 2023 Monthly Operational Update*. U.S. CUSTOMS AND BORDER PROTECTION (Jun. 20, 2023) Source: <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-may-2023-monthly-operational-update>.

²⁴⁰ *Id.*

²⁴¹ *CBP One™ Appointments Increased to 1,450 Per Day*. U.S. Customs and Border Protection (Jun. 30, 2023). Source: <https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day>.

²⁴² *The Government of Mexico and the INM articulate an emerging safe mobility corridor for the transfer of foreign persons with a CBP One appointment*. INSTITUTO NACIONAL DE MIGRACION (Aug. 31, 2024). Source: <https://www.gob.mx/inm/prensa/el-gobierno-mexicano-y-el-inm-articulan-corredor-emergente-de-movilidad-segura-para-el-traslado-de-personas-extranjeras-con-cita-cbp-one>.

²⁴³ *Agency Information Collection Activities; Emergency Revision; Collection of Advance Information From Certain Undocumented Individuals on the Land Border*. 89 Fed. Reg. 67953 (Aug. 22, 2024). Source: <https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18847.pdf>.

southern Mexican border, they're all but certain of being allowed to enter the United States on CBP One parole.

This policy is illegal, for at least two reasons.

First, there is no authority in the INA for either the Biden administration or DHS to use the ports of entry to process facially inadmissible aliens.

In fact, section 2 of the Secure Fence Act of 2006²⁴⁴ directs the DHS secretary to “take all actions . . . necessary and appropriate to achieve and maintain operational control over the entire international land . . . borders of the United States”, defining the term “operation control” as the “prevention of all unlawful *entries* into the United States, including entries by . . . other unlawful aliens” (emphasis added).

This policy plainly violates that mandate, in that it facilitates the “unlawful entry” of “unlawful aliens”, i.e., aliens applying for admission without proper admission documents.

Second, and relatedly, the vast majority of inadmissible aliens who schedule appointments using the app are thereafter paroled into the United States, in violation of the strict limitations on that authority.

As the House Homeland Security Committee reported²⁴⁵ in October 2023: “Overall, 95.8 percent of all inadmissible aliens who scheduled appointments through the app during this time were ultimately issued a [NTA] and released into the United States on parole.”

That astronomically high parole rate suggests that DHS’s CBP One paroles suffer from the same legal infirmities Judge Wetherell identified in CBP’s Parole+ATD policy.

In addition to its illegality, the CBP One app interview policy undermines border security.

As noted *infra*, section 1092 of NDAA 2017²⁴⁶ established metrics for measuring border security between the ports, now codified at 6 U.S.C. §223²⁴⁷. Section 1092(c)(1) of NDAA 2017²⁴⁸ also establishes metrics Congress has deemed critical in assessing whether, and to what degree, DHS is securing the border *at* the ports of entry.

The first set of metrics, subparagraph (A)²⁴⁹, focuses exclusively on inadmissible applicants for admission, requiring the DHS secretary to report, on an annual basis, his:

²⁴⁴ Secure Fence Act of 2006, Pub. L. 109-367, at sec. 2 (Oct. 26, 2006). Source:

<https://www.congress.gov/109/plaws/publ367/PLAW-109publ367.pdf>.

²⁴⁵ *New Documents Obtained by Homeland Majority Detail Shocking Abuse of CBP One*. U.S. HOUSE OF REPS., COMM. ON HOMELAND SECURITY (Oct. 23, 2023). Source: <https://homeland.house.gov/2023/10/23/new-documents-obtained-by-homeland-majority-detail-shocking-abuse-of-cbp-one-app/>.

²⁴⁶ Sec. 1092 of National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-840 (2016). Source:

<https://www.congress.gov/bills/114/congress/senate/bills/2943/text>.

²⁴⁷ 6 U.S.C. § 223 (2024). Source: <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title6-section223&num=0&saved=%7CKHRpdGxIOjYgc2VjdGlvbjoyMjMgZWRRpdGlvpwcmVsaWOp%7C%7C0%7Cfalse%7Cprelim>.

²⁴⁸ *Id.* at para. (c)(1).

²⁴⁹ *Id.* at subpara. (c)(1)(A).

Estimates ... of . . . : (i) Total inadmissible travelers who attempt to, or successfully, enter the United States at a port of entry. (ii) The rate of refusals and interdictions for travelers who attempt to, or successfully, enter the United States at a port of entry. (iii) The number of unlawful entries at a port of entry.

The only reason aliens schedule interviews using the app is they are inadmissible to the United States under section 212(a)(7)(A)(i) of the INA because they lack proper admission documents.

Thus, the CBP One app interview policy boosts both the number of “inadmissible travelers who attempt to, or successfully, enter the United States” at the Southwest border ports of entry and “the rate of refusals and interdictions for travelers who attempt to, or successfully, enter the United States at a port of entry.”

In July 2024, CBP officers at the Southwest border ports of entry encountered nearly 48,000 inadmissible aliens²⁵⁰, a 160-percent increase compared to June 2022, before this policy took effect. That increase is largely driven by the tens of thousands of aliens per month taking advantage of the CBP One app interview policy.

And, because nearly all aliens who take advantage of that policy are allowed to enter the United States, “the number of unlawful entries at” the Southwest ports of entry is skyrocketing, and by Congress’ own metrics, the border is less secure.

Even putting aside Congress’ border security metrics, however, it is impossible for CBP officers at the ports to vet nearly 96 percent of the 1,450 aliens per day using the app for criminal histories abroad or terrorist intent in any meaningful way before paroling them into the United States.

In that vein, the DHS Office of Inspector General (DHS OIG) in August issued a report titled “CBP Did Not Thoroughly Plan for CBP One™ Risks, and Opportunities to Implement Improvements Exist”²⁵¹.

As DHS OIG explained therein:

Although CBP uses biographic and biometric information submitted into CBP One™ in advance to determine whether arriving noncitizens have derogatory records, it does not leverage the information to identify suspicious trends as part of its pre-arrival vetting procedures. Based on our analysis of CBP One™ data, we identified potentially unrelated noncitizens who repeatedly claimed identical intended U.S. residences. CBP currently does not have a mechanism to routinely analyze CBP One™ data submitted across the eligible POEs for trends, which

²⁵⁰ *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (revised Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

²⁵¹ *CBP Did Not Thoroughly Plan for CBP One™ Risks, and Opportunities to Implement Improvements Exist*. OIG-24-48. U.S. DEPT’ OF HOMELAND SECURITY, OFFICE OF THE INSPECTOR GEN. (Aug. 19, 2024). Source: <https://www.oig.dhs.gov/sites/default/files/assets/2024-08/OIG-24-48-Aug24.pdf>.

*may be useful intelligence to help guide front-line CBP officers when interviewing noncitizens during appointment processing.*²⁵² [Emphasis added.]

DHS OIG analyzed CBP data and concluded that nearly 209,000 of the just over 264,550 initial users (79 percent)²⁵³ gave the same intended address in the United States as at least one other user, “despite appearing to be unrelated”.

If that’s not suspicious enough, DHS OIG identified seven individual U.S. addresses that nearly 1,700 different app users had claimed as their intended destinations.²⁵⁴

This is indicative of fraud in a program that lacks statutory authority and that all but ensures the entry of inadmissible aliens, and in turn presents law-enforcement and national-security risks.

Those risks are heightened by the fact that CBP lacks the intelligence to properly vet those migrants. As the House Judiciary Committee explained in August:

Immigration authorities do not vet illegal aliens against databases in the aliens’ countries of origin. As a result, if there is derogatory information about an alien in that alien’s home country, the current checks are unlikely to reveal it. As former Border Patrol Chief Rodney Scott testified to [Congress] in 2023, the U.S. government has “very, very minuscule data” available when an alien arrives at the southwest border because “[c]rimes committed by a foreign national outside the U.S. rarely appear in [U.S.] databases.” [Emphasis added; footnotes omitted.]²⁵⁵

Those risks have already appeared. An August 5 report²⁵⁶ from the House Judiciary Committee revealed that eight Tajikistani nationals “with potential ISIS ties” were arrested by ICE in June 2024, three of whom “were released into the country after using the Biden-Harris-Administration’s CBP One phone application to schedule an appointment at a port of entry”.

Despite these issues, the administration is forcing OFO to vet and process those aliens, which means fewer CBP officers are available to screen vehicles for drugs and other contraband, and for smuggled and trafficked migrants. Even absent the port security metrics in section 1092 of NDAA 2017, the toll this scheme will impose on border security is clear and significant.

²⁵² *Id.* at “Highlights”.

²⁵³ *Id.* at 14.

²⁵⁴ *Id.*

²⁵⁵ *The Consequences of the Biden-Harris Administration’s Open-Borders Policies: The Cases of Four Illegal Aliens Who Viciously Attacked a Man on a Chicago Train*. U.S. HOUSE OF REPS., COMM. ON THE JUDICIARY (Aug. 21, 2024), at 7. Source: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/08-21-2024%20The%20Cases%20of%20Four%20Illegal%20Aliens%20Who%20Viciously%20Attacked%20a%20Man%20on%20a%20Chicago%20Train.pdf>.

²⁵⁶ *Terror at Our Door: How the Biden-Harris Administration’s Open-Borders Policies Undermine National Security and Endanger Americans*. U.S. HOUSE OF REPS., COMM. ON THE JUDICIARY (Aug. 5, 2024), at 3. Source: https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/FILE_6538.pdf.

Those are major vulnerabilities given that, according to CBP²⁵⁷, “more than 860,000 individuals have successfully scheduled appointments to present at ports of entry” as of the end of October.

As set forth above, the purpose of the inspection protocol Congress crafted in section 235 of the INA²⁵⁸, and CBP’s primary role in that process (both between the ports and at them), is to ensure inadmissible aliens are unable to enter unlawfully.

The administration’s CBP One app interview policy turns that process on its head by turning Congress’s port inspection protocol into a conduit enabling inadmissible applicants for admission *to enter illegally*.

The “Circumvention of Lawful Pathways” Rule

The offer of quick releases via the CBP One app interview policy is one carrot in the White House’s border plans. The first sticks the administration attempted to use to finally deter illegal entrants are a series of asylum restrictions for those who bypass the ports and enter illegally.

Those restrictions were included in a joint DOJ and DHS rule published on May 16, 2023²⁵⁹, captioned “Circumvention of Lawful Pathways”, or “the CLP rule”.

In contrast to aliens prescheduling their illegal entries at the ports via the CBP One app interview policy, whose fear claims are processed under extremely loose, pre-existing asylum and credible fear standards (to the degree they are assessed at all), the CLP rule imposes a rebuttable presumption that illegal crossers between the ports who failed to seek asylum on the way to the United States aren’t eligible for such protection.²⁶⁰

That “rebuttable presumption” is not absolute, however. There are three exceptions²⁶¹: one for aliens who scheduled port appointments using the CBP one app; a second for those who applied for asylum elsewhere unsuccessfully; and a third for those who unsuccessfully tried to use the app due to a serious technical or language-related obstacle.

Under the CLP rule, migrants can rebut that presumption by showing they have an acute medical emergency, “faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture, or murder”, or were a victim of trafficking.²⁶²

On May 11, 2023, DHS issued a “fact sheet”²⁶³ concerning its efforts under the CLP rule.

²⁵⁷ *CBP Releases October 2024 Monthly Update*. U.S. CUSTOMS AND BORDER PROTECTION (Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-october-2024-monthly-update>.

²⁵⁸ Sec. 235 of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>. See also *infra*.

²⁵⁹ *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314 (May 16, 2023). Source: <https://www.federalregister.gov/documents/2023/05/16/2023-10146/circumvention-of-lawful-pathways>.

²⁶⁰ See *id.*

²⁶¹ See *Fact Sheet: Circumvention of Lawful Pathways Final Rule*. U.S. DEP’T OF HOMELAND SECURITY (May 11, 2023). Source: <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>.

²⁶² *Id.*

²⁶³ Arthur, Andrew. *Border Fear Claim Denials Spike Under New Border Rules — Kind Of*. CENTER FOR IMMIGRATION STUDIES (Jul. 10, 2023). Source: <https://cis.org/Arthur/Border-Fear-Claim-Denials-Spike-Under-New-Border-Rules-Kind>.

According to the department, it subjected just 8,195 aliens to expedited removal processing under the CLP rule standards between May 12 and June 13.²⁶⁴ Of those, 3 percent established they were subject to an exception, 8 percent rebutted the presumption, and 88 percent (7,243 aliens) were subject to the presumption.²⁶⁵

Some 72 percent of those who qualified for an exception to the CLP rule asylum restrictions cleared the credible-fear bar, as did 77 percent of those who rebutted the presumption that they weren't eligible for asylum.²⁶⁶ Among those who were subject to the presumption, just 42 percent were found to have a credible fear under the heightened standards in the CLP rule.²⁶⁷

These statistics demonstrate two things: first, few illegal migrants are offering fear claims that hold up to any kind of serious scrutiny; and second, how rarely the Biden DHS was subjecting illegal entrants to expedited removal before.

“Processes for Cubans, Haitians, Nicaraguans, and Venezuelans”

The second border initiative the administration announced on January 5, 2023²⁶⁸ extended its October 2022 parole program for Venezuelan nationals²⁶⁹ to include Cuban, Haitian, and Nicaraguan, nationals, as well. That program is formally called “Processes for Cubans, Haitians, Nicaraguans, and Venezuelans”²⁷⁰, but is better known as “CHNV Parole”.

As the White House explained²⁷¹:

Today, the Biden Administration is announcing it will extend the successful Venezuela parole process and expand it to nationals of Nicaragua, Haiti, and Cuba. Up to 30,000 individuals per month from these four countries, who have an eligible sponsor and pass vetting and background checks, can come to the United States for a period of two years and receive work authorization. Individuals who irregularly cross the Panama, Mexico, or U.S. border after the date of this announcement will be ineligible for the parole process and will be subject to expulsion to Mexico, which will accept returns of 30,000 individuals per month from these four countries who fail to use these new pathways.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ See *East Bay Sanctuary Covenant v. Biden*, No. 4:18-cv-06810-JST, Declaration of Blas Nuñez-Neto (N.D. Cal. Jun. 16, 2023). Source: <https://storage.courtlistener.com/recap/gov.uscourts.cand.334557/gov.uscourts.cand.334557.176.2.pdf>.

²⁶⁷ *Id.*

²⁶⁸ FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions. WHITE HOUSE (Jan. 5, 2023). Source: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>.

²⁶⁹ See DHS Announces New Migration Enforcement Process for Venezuelans. U.S. DEP'T OF HOMELAND SECURITY (Oct. 12, 2022) (“Our comprehensive effort to reduce the irregular migration of Venezuelans also includes a new process to lawfully and safely bring up to 24,000 qualifying Venezuelans into the United States”). Source: <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>.

²⁷⁰ Processes for Cubans, Haitians, Nicaraguans, and Venezuelans. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Aug. 29, 2024). Source: <https://www.uscis.gov/CHNV>.

²⁷¹ FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions. WHITE HOUSE (Jan. 5, 2023). Source: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>.

As that excerpt reveals, there are again both carrots (the promise of at least two years to work and live in the United States) and sticks (potential removal to Mexico for illegal entry) for nationals of those four countries in that proposal, but a lot more of the former than the latter.

That's especially true given that on January 9, 2023, the administration published notices in the Federal Register on its implementation of this parole program for nationals of Venezuela²⁷², Nicaragua²⁷³, Haiti²⁷⁴, and Cuba²⁷⁵, which allow those CHNV nationals who bypass the parole program and enter illegally "a one-time option to voluntarily depart or voluntarily withdraw their application for admission to maintain eligibility to participate in this parole process".

That negates any border deterrence value CHNV parole had: if nationals of those countries enter illegally and aren't apprehended, they can remain indefinitely; but if they are apprehended, they can withdraw their applications for admission and get in line for a CBP One app interview or apply for parole under CHNV parole.

Nor is this program simply allowing migrants to escape persecution in the CHNV countries. As the Center discovered²⁷⁶ after a lengthy FOIA battle, beneficiaries are flying into the United States from 77 different countries, including Australia, Argentina, and Iceland.

Moreover, there are significant fraud concerns associated with CHNV parole.

To explain, it's important to note that the CHNV parole application is a multi-step process that begins when a "supporter" in the United States files an I-134A²⁷⁷, "Online Request to be a Supporter and Declaration of Financial Support", through a USCIS portal. In that form, the supporter agrees to financially support a given CHNV national.

Once USCIS confirms those supporters, it sends beneficiaries e-mails directing them to set up an online account attesting to eligibility and averring they're not inadmissible on medical grounds.

Beneficiaries are then sent to the CBP One app to upload photos and biographic information. At that point, they are notified through the online account whether CBP will give them permission to fly to the United States to seek parole at a port of entry.

²⁷² *Implementation of Changes to the Parole Process for Venezuelans*, 88 Fed. Reg. 1279 (Jan. 9, 2023). Source: <https://www.federalregister.gov/documents/2023/01/09/2023-00253/implementation-of-changes-to-the-parole-process-for-venezuelans>.

²⁷³ *Implementation of a Parole Process for Nicaraguans*, 88 Fed. Reg. 1255 (Jan. 9, 2023). Source: <https://www.federalregister.gov/documents/2023/01/09/2023-00254/implementation-of-a-parole-process-for-nicaraguans>.

²⁷⁴ *Implementation of a Parole Process for Haitians*, 88 Fed. Reg. 1243 (Jan. 9, 2023). Source: <https://www.federalregister.gov/documents/2023/01/09/2023-00255/implementation-of-a-parole-process-for-haitians>.

²⁷⁵ *Implementation of a Parole Process for Cubans*, 88 Fed. Reg. 1266 (Jan. 9, 2023). Source: <https://www.federalregister.gov/documents/2023/01/09/2023-00252/implementation-of-a-parole-process-for-cubans>.

²⁷⁶ Bensman, Todd. *New Data: Many Migrants in Biden's 'Humanitarian' Flights Scheme Coming in from Safe Countries and Vacation Wonderlands*. CENTER FOR IMMIGRATION STUDIES (Jun. 17, 2024). Source: <https://cis.org/Bensman/New-Data-Many-Migrants-Bidens-Humanitarian-Flights-Scheme-Coming-Safe-Countries-and-Vacation-Wonderlands>.

²⁷⁷ *I-134A, Online Request to be a Supporter and Declaration of Financial Support*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Apr. 3, 2024). Source: <https://www.uscis.gov/i-134a>.

On August 2, Fox News revealed²⁷⁸ that the program was placed on hold in July “after an internal report unearthed large amounts of fraud in applications for those sponsoring the applicants”.

The outlet explained that an internal report by USCIS’s Fraud Detection and National Security (FDNS) directorate concluded 100,948 CHNV supporter forms had been completed by 3,218 so-called “serial sponsors — those whose number appears on 20 or more forms”.

Worse, according to Fox News, FDNS also found that 24 of the 1,000 Social Security numbers most used by sponsors “belonged to a dead person. Meanwhile, 100 physical addresses were used between 124 and 739 times on over 19,000 forms”²⁷⁹.

Despite those indicia of fraud, however, DHS has resumed processing applicants for CHNV parole²⁸⁰. In a tweet²⁸¹, former USCIS Director Emilio Gonzalez contended the program was restarted notwithstanding its susceptibility to fraud because Mexican authorities complained there were “too many migrant camps” in the country.

That makes sense, given that congressional disclosures²⁸² reveal that 1.6 million inadmissible applicants for admission from the CHNV countries were awaiting travel authorizations under the program as of mid-October 2023. By this point, that figure likely well exceeds 2 million, despite the fact that 531,620 Cubans, Haitians, Nicaraguans, and Venezuelans had already arrived on CHNV parole as of the end of October²⁸³.

Why would supporters file fraudulent applications? That is unclear, but as the Center explained in August 2023²⁸⁴, CHNV parole is uniquely “ripe for human exploitation” by smugglers and sex- and human-traffickers who pose as would-be sponsors.

USCIS is plainly aware of these dangers, as it warns CHNV applicants they “are not obligated to repay, reimburse, work for, serve, marry, or otherwise compensate their supporter in exchange for filing Form I-134A on their behalf or for providing financial support while they are in the United States”²⁸⁵.

²⁷⁸ Shaw, Adam. *Biden admin freezes controversial migrant flight program after fraud revelations*. FOX NEWS (Aug. 2, 2024). Source: <https://www.foxnews.com/politics/biden-admin-freezes-controversial-migrant-flight-program-after-fraud-revelations>.
²⁷⁹ *Id.*

²⁸⁰ See *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Aug. 29, 2024) (“DHS has resumed processing of Advance Travel Authorizations (ATAs) in the parole processes for certain nationals of Cuba, Haiti, Nicaragua, and Venezuela (CHNV).”). Source: <https://www.uscis.gov/CHNV>.

²⁸¹ Gonzalez, Emilio. Source: <https://x.com/emiliogonzalez/status/1830931211625136256/photo/1>.

²⁸² *Chairman Green Blasts Biden-Harris Administration’s CHNV Mass-Parole Program Amid Horrific Crimes by Recent Parolees*. U.S. HOUSE OF REPS., COMM. ON HOMELAND SECURITY (Sept. 5, 2024). Source: <https://homeland.house.gov/2024/09/05/chairman-green-blasts-biden-harris-administrations-chnv-mass-parole-program-amid-horrific-crimes-by-recent-parolees/>.

²⁸³ *CBP Releases October 2024 Monthly Update*. U.S. CUSTOMS AND BORDER PROTECTION (Nov. 19, 2024). Source: <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-october-2024-monthly-update>.

²⁸⁴ Arthur, Andrew. *Biden’s CHNV Parole Program — Ripe for Human Exploitation*. CENTER FOR IMMIGRATION STUDIES (Aug. 25, 2023). Source: <https://cis.org/Arthur/Bidens-CHNV-Parole-Program-Ripe-Human-Exploitation>.

²⁸⁵ *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Aug. 29, 2024). Source: <https://www.uscis.gov/CHNV>.

In any event, but importantly, there's no authority for this programmatic parole program in the INA²⁸⁶, and not surprisingly, a 20-state coalition filed suit²⁸⁷ to block CHNV parole.

The state plaintiffs claimed that the administration “did not provide an opportunity for public comment” and failed to “undertake a formal notice-and-comment rulemaking process”²⁸⁸. Nor, they contended, did the departments seek their opinions about the plan before proceeding.²⁸⁹

The states also argued the administration failed to “explain or analyze” how it would remove aliens paroled through the program “after the end of any period of authorized parole, despite admitting general difficulty removing such aliens to their home countries presently”.

That is particularly salient given the requirement in the parole statute²⁹⁰ that every parolee “be returned to the custody from which he was paroled”.

Not only would it cost hundreds of millions of dollars to detain the 531,620 CHNV nationals who have been allowed to enter on parole at the end of their two-year parole periods, but USCIS doesn't even tell CHNV beneficiaries they'll ever be required to leave.

On the “Frequently Asked Questions” webpage²⁹¹ for the program, and one question asks: “If I am paroled into the United States through these processes, what happens when my 2-year period of parole ends?”

USCIS's response: “There are a full range of existing lawful immigration pathways, including an extension of parole, immigrant and nonimmigrant visas, asylum, and Temporary Protected Status (TPS), that certain parolees may be eligible for in accordance with U.S. laws.”²⁹² Absent from that list is “you will be taken into custody and removed”.

The states' points are valid, but on March 8, U.S. District Court Judge Drew Tipton issued an opinion and order²⁹³ dismissing the states' claims, finding they failed to establish standing to bring the suit. The states have appealed that order to the Fifth Circuit.

Finally, while USCIS claims CHNV parole applicants must “undergo and clear robust security vetting”, at least two migrants who entered under the program have been accused of committing high-profile sex offenses.

²⁸⁶ See Sec. 212(d)(5)(A)(i) of the INA (2023). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>. See also *infra*.

²⁸⁷ *Texas v. U.S. DHS*, 6:23-cv-00007, Complaint (S.D. Tex. Jan. 24, 2023). Source: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1903141/gov.uscourts.txsd.1903141.1.0.pdf>.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Sec. 212(d)(5)(A)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

²⁹¹ *Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Sept. 3, 2024). Source: <https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans>.

²⁹² *Id.*

²⁹³ *Texas v. U.S. DHS*, 6:23-cv-00007, Memorandum Opinion and Order (S.D. Tex. Mar. 8, 2024). Source: https://storage.courtlistener.com/recap/gov.uscourts.txsd.1903141/gov.uscourts.txsd.1903141.305.0_1.pdf.

In March, a Haitian national and CHNV beneficiary, local police arrested Cory Alvarez for aggravated rape of a 15-year-old girl in a Massachusetts migrant shelter²⁹⁴. A local judge refused to honor an ICE detainer for the alien, forcing the agency to take Alvarez into custody at his residence on August 13²⁹⁵.

In a Fox News report²⁹⁶ on that ICE arrest, the outlet quoted an agency official who complained:

As part of the Alvarez case, for months now, our office has repeatedly asked questions of state and federal officials about specifics of the CHNV process. We have received little to no answers. There is clearly a reason that the U.S. Department of Homeland Security has paused the issuance of travel authorizations for new CHNV beneficiaries while it undertakes a massive review of the process. [Emphasis added.]

Apparently, DHS won't share information about CHNV parole even with its own agencies.

Alvarez had a supporter who lived in New Jersey²⁹⁷. He apparently received little support, however, given he was living in a state-funded shelter in a different state where the attack purportedly took place.

On September 4, ICE arrested a second Haitian national, Akim Marc Desire, who also has been charged with sexually assaulting a minor in Massachusetts²⁹⁸. Reports indicate that Desire also entered under CHNV parole²⁹⁹.

Total Border and Port Releases of Inadmissible Aliens Under the Biden Administration

The Biden administration has failed to provide a total figure on the number of inadmissible applicants for admission it has released into contravention of the detention mandates in section 235(b) of the INA.

²⁹⁴ Melugin, Bill; Shaw, Adam; Jenkins, Griff; and Wehner, Greg. *Haitian migrant charged with rape of 15-year-old girl entered via controversial parole program: sources*. Fox News (Mar. 15, 2024). Source: <https://www.foxnews.com/politics/haitian-migrant-charged-rape-15-year-old-girl-entered-controversial-parole-program-sources>.

²⁹⁵ *ERO Boston arrests Haitian national accused of raping child in Massachusetts migrant shelter*. U.S. Immigration and Customs Enforcement (Aug. 13, 2024). Source: <https://www.ice.gov/news/releases/ero-boston-arrests-haitian-national-accused-raping-child-massachusetts-migrant>.

²⁹⁶ Hagstrom, Anders and Melugin, Bill. *ICE finds, arrests Haitian migrant who was released on \$500 bond after being charged with raping child in MA*. Fox News (Aug. 13, 2024). Source: <https://www.foxnews.com/us/ice-finds-arrests-haitian-migrant-who-released-500-bond-after-being-charged-raping-child-ma>.

²⁹⁷ See Melugin, Bill; Shaw, Adam; Jenkins, Griff; and Wehner, Greg. *Haitian migrant charged with rape of 15-year-old girl entered via controversial parole program: sources*. Fox News (Mar. 15, 2024) ("Alvarez's charges relate to a March incident in which he was accused of raping a 15-year-old girl while staying at a migrant hotel in Massachusetts."). Source: <https://www.foxnews.com/politics/haitian-migrant-charged-rape-15-year-old-girl-entered-controversial-parole-program-sources>.

²⁹⁸ *ERO Boston arrests Haitian national charged with sexually assaulting Massachusetts minor*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Sept. 4, 2024). Source: <https://www.ice.gov/news/releases/ero-boston-arrests-haitian-national-charged-sexually-assaulting-massachusetts-minor#:~:text=ERO%20Boston%20officers%20arrested%20Akim,of%20children%20in%20our%20community>.

²⁹⁹ *Haitian migrant accused of molesting child is in US via controversial Biden-Harris program*. WFIN (Sept. 4, 2024). Source: <https://wfin.com/fox-political-news/haitian-migrant-accused-of-molesting-child-is-in-us-via-controversial-biden-harris-program/>.

In June 2024, however, the Center determined that more than 2 million³⁰⁰ such aliens had been released into the United States since February 2021 just under DHS's limited parole authority, an incomplete total given that much of DHS's data was preliminary.

Adding just aliens who arrived under CHNV and the CBP One app interview policy since that figure was compiled to the earlier estimate brings the total of Biden administration paroles to just fewer than 2.2 million—again, likely an undercount.

In addition, CBP statistics reveal that Border Patrol agents released more than 2 million illegal migrants apprehended at the Southwest border on NTA/OR between February 2021 and the end of July³⁰¹ and 95,000-plus others³⁰² with NTRs.³⁰³

Those figures do not include more than 410,000 unaccompanied alien children encountered by CBP at the Southwest border between February 2021 and the end of July³⁰⁴, whom DHS is required by law³⁰⁵ to transfer to the HHS for placement with “sponsors” in the United States.

Nor does it include the dispositions of nearly 919,000 illegal migrants whom the DHS Office of Homeland Security Statistics (OHSS) reports³⁰⁶ Border Patrol transferred to ICE between February 2021 and the end of May—some or all of whom ICE thereafter released. Note that in the month of May 2022 alone, ICE released almost 9,950 of the fewer than 20,000 aliens it was holding who had first been encountered by CBP, just short of half.³⁰⁷

Nor does that total—or can it—include the 1.8 million-plus “got-aways” whom Fox News³⁰⁸ reported successfully evaded apprehension at the Southwest border and entered illegally.

³⁰⁰ See Arthur, Andrew. *Biden Has Paroled In Two Million-Plus Inadmissible Aliens*. Center for Immigration Studies (Jun. 21, 2024). Source: <https://cis.org/Arthur/Biden-Has-Paroled-Two-Million-Plus-Inadmissible-Aliens>.

³⁰¹ See *Custody and Transfer Statistics, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Aug. 16, 2024). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>; *Custody and Transfer Statistics Fiscal Year 2023, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Dec. 19, 2023). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2023>; *Custody and Transfer Statistics FY 2022, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Dec. 19, 2023). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy22>; *Custody and Transfer Statistics FY 2021, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified Jun. 5, 2024). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics-fy2021>.

³⁰² *Southwest Border: Challenges and Efforts Implementing New Processes for Noncitizen Families*. GOV'T ACCOUNTABILITY OFC. (Sept. 28, 2022), GAO-22-105456. Source: <https://www.gao.gov/products/gao-22-105456>.

³⁰³ Total figure: 2,004,965 Border Patrol NTA/OR releases at the Southwest border between February 2021 and the end of July 2024.

³⁰⁴ See *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified Aug. 28, 2024). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

³⁰⁵ See fn. 141, *infra*.

³⁰⁶ See *Immigration Enforcement and Legal Processes Monthly Tables*. U.S. DEP'T OF HOMELAND SECURITY, OFC. OF HOMELAND SECURITY STATISTICS (undated). Source: <https://ohss.dhs.gov/topics/immigration/immigration-enforcement/immigration-enforcement-and-legal-processes-monthly>.

³⁰⁷ *Biden v. Texas*, Case No. 2:21-cv-00067-Z, Defendants' Monthly Report for May 2022 (N.D. Tex. Jun. 15, 2022). Source: <https://storage.courtlistener.com/recap/gov.uscourts.txnd.346680/gov.uscourts.txnd.346680.140.2.pdf>.

³⁰⁸ Shaw, Adam and Melugin, Bill. *New data reveals illegal immigrants eluding Border Patrol spiked under Biden, surpassing predecessors*. FOX NEWS (May 15, 2024). Source: <https://www.foxnews.com/politics/new-data-reveals-illegal-immigrants-eluding-border-patrol-spiked-under-biden-surpassing-predecessors>.

That figure —purportedly based upon CBP statistics—is probably low, as the Congressional Budget Office (CBO) estimated³⁰⁹ in January that there were 860,000 got aways in FY 2023, not 670,674 as Fox News reported.

Given these statistics, the House Judiciary Committee was likely correct when it reported³¹⁰ in August that: “In less than four years, the Biden-Harris Administration has released into the United States more than 5.6 million illegal aliens, with another 1.9 million illegal alien ‘gotaways’ escaping into the country during the same time”.

V. ECONOMIC AND PUBLIC SAFETY IMPACTS OF BIDEN ADMINISTRATION MIGRANT RELEASES

Economic Impacts

As the Wall Street Journal has explained:

*Recent immigrants tend to earn less than U.S.-born workers because of their lower level of education, lack of English, and in some cases because they are working without permission. They might also compete with existing workers with less education and put downward pressure on their wages, too.*³¹¹

Similarly, at a September press conference, Federal Reserve Chairman Jerome Powell explained:

*[I]f you're having millions of people come into the labor force then, and you're creating a hundred thousand jobs, you're going to see unemployment go up. . . . We understand there's been quite an influx across the borders, and that has actually been one of the things that's allowed unemployment rate to rise, and the other thing is just the slower hiring rate. [Emphasis added.]*³¹²

Those wage declines and that increased unemployment, coupled with increasing fiscal burdens on state and local budgets³¹³ and on public and health services, are imposing real costs on working Americans.

Public Safety Impacts

Moreover, a number of illegal migrants apprehended at the Southwest border and released into the United States have been charged in connection with a number of recent high-profile crimes.

³⁰⁹ See *The Demographic Outlook: 2024 to 2054*. CONG. BUDGET OFF. (January 2024), at 21. Source:

<https://www.cbo.gov/system/files/2024-01/59697-Demographic-Outlook.pdf#page=9>.

³¹⁰ *The Consequences of the Biden-Harris Administration's Open-Borders Policies: The Cases of Four Illegal Aliens Who Viciously Attacked a Man on a Chicago Train*. U.S. HOUSE OF REPS., COMM. ON THE JUDICIARY (Aug. 21, 2024). Source:

<https://judiciary.house.gov/media/press-releases/consequences-biden-harris-administrations-open-borders-policies-cases-four>.

³¹¹ Kiernan, Paul. *How Immigration Remade the U.S. Labor Force*. Wall Street Journal (Sept. 4, 2024). Source:

<https://www.wsj.com/economy/how-immigration-remade-the-u-s-labor-force-716c18ee?st=eptpegps08ize7v>.

³¹² *Federal Reserve Chair Powell speaks after Fed lowers interest rates by half point*. CNBC TELEVISION (Sep. 18, 2024). Source:

<https://www.youtube.com/live/seEoCB97cds?t=1637s>.

³¹³ See Jacobs, Elizabeth. *Illegal Immigration Is Expensive*. CENTER FOR IMMIGRATION STUDIES (Aug. 31, 2024). Source:

<https://cis.org/Jacobs/Illegal-Immigration-Expensive>.

Jose Ibarra, a 26-year-old Venezuelan national charged with the February murder of 22-year-old Augusta University College of Nursing student Laken Riley in Athens, Ga., was apprehended after entering illegally in September 2022 and released.³¹⁴

Venezuelan nationals Johan Jose Martinez-Rangel, 22, and Franklin Jose Peña Ramos, 26, charged with capital murder in the June 16 killing of 12-year-old Houston resident Jocelyn Nungaray, entered the United States illegally.³¹⁵ Each was apprehended near El Paso, shortly after crossing, Martinez-Rangel on March 14 and Peña on May 28.

Angel Matias Castellanos-Orellana, a 19-year-old Honduran national arrested in Kenner, La., in February “in connection with the brutal assault of a 14-year-old girl and the ‘repeated stabbing of a man during a robbery’” had been apprehended by Border Patrol near Eagle Pass, Tex., last October.³¹⁶

Despite the fact that he claimed no fear of return, he was released on NTA/OR “due to ‘a lack of space” and told to report to ICE in New Orleans—despite the fact that detention space was available.

And those a just a few of many.

VI. AN ESTIMATE OF THE UNAUTHORIZED POPULATION AND ICE’S NON-DETAINED DOCKET

Due to these millions of migrant releases and got ways over the past four years, it is difficult to estimate the current size of the undocumented population in the United States.

Based on statistics from the Current Population Survey, however, my colleague Steven Camarota estimates³¹⁷ that the total population of aliens unlawfully present in the United States was 13.7 million as of January, and likely currently stands at or above 14 million.

Moreover, according to the ICE Annual Report for Fiscal Year 2023, as of October 3, 2023, there were 1,292,830 aliens on the agency’s non-detained docket who were under final orders of removal³¹⁸.

³¹⁴ Conklin, Audrey. *Laken Riley murder: Illegal immigrant suspect in Georgia college student slaying asks to hide certain evidence*. FOX NEWS (Aug. 30, 2024). Source: <https://www.foxnews.com/us/laken-riley-murder-illegal-immigrant-suspect-georgia-college-student-slaying-asks-hide-certain-evidence>.

³¹⁵ *Judge sets \$10M bond for second Venezuelan man accused of killing a 12-year-old Houston girl*. AP (Jun. 26, 2024). Source: <https://apnews.com/article/girl-murder-houston-undocumented-venezuelans-bond-22153232c69dbdb0ee62a5ffb19035e0>.

³¹⁶ *The Consequences of the Biden-Harris Administration’s Open-Borders Policies: The Case of the Illegal Alien Who Brutally Assaulted a Teenage Louisiana Girl*. U.S. HOUSE OF REPS., COMM. ON THE JUDICIARY (Sept. 3, 2024) at 5-6 (cleaned up). Source: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/09-03-2024%20The%20Case%20of%20the%20Illegal%20Alien%20Who%20Brutally%20Assaulted%20a%20Teenage%20Louisiana%20Girl.pdf>.

³¹⁷ Camarota, Steven. *Overview of Immigration Numbers*. CENTER FOR IMMIGRATION STUDIES (Nov. 27, 2024). Source: <https://cis.org/Camarota/Overview-Immigration-Numbers>.

³¹⁸ *Fiscal Year 2023 ICE Annual Report*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Dec. 29, 2023), at 23. Source: <https://www.ice.gov/doclib/eov/iceAnnualReportFY2023.pdf>.

The most recent iteration of that report for FY 2024 has yet to be released, but at present there are likely at least 1.4 million to 1.6 million aliens under final orders in the United States.

One of the aliens on the ICE docket under a final order is Shenghua Wen, a 41-year-old Chinese national who was recently arrested and charged with buying and shipping military materiel to North Korea.³¹⁹

The criminal complaint³²⁰ in his case indicates that he entered the United States on a student visa in December 2012, remained illegally after that visa expired in December 2013, and was ordered removed in 2018—but hasn’t left yet.

It should be noted that section 241(a)(1) of the INA³²¹ directs DHS to remove all aliens under final orders of removal within 90 days (a period designated therein as the “removal period”).

Moreover, section 241(a)(2)³²² of the INA directs the department to detain those aliens during the removal period, and further makes clear that “[u]nder no circumstance during the removal period shall” DHS “release an alien who has been found” removable under the criminal and national-security grounds of inadmissibility and deportability.

As the foregoing shows, however, DHS has failed to comply with those congressional limitations and mandates.

VII. WHAT IS “MASS DEPORTATION”?

All of this raises the (as-yet unanswered) question of how broad the president-elect’s proposed deportation program will be.

Securing the border will plainly be a top priority. Fox News reported on November 12³²³ that the Trump administration’s first immigration actions will involve curbing the number of illegal entrants, including by ending CHNV parole and expanding migrant detention.

President-elect Trump has already discussed efforts the Mexican and Canadian governments can take to deter migrants from crossing through those nations on their way to the United States with (respectively) Mexican President Claudia Sheinbaum³²⁴ and Canadian Prime Minister Justin Trudeau³²⁵.

³¹⁹ Legare, Robert. *U.S. charges Chinese national for allegedly exporting guns and ammo to North Korea*. CBS News (Dec. 3, 2024). Source: <https://www.cbsnews.com/news/shenghua-wen-north-korea-california/>.

³²⁰ *U.S. v. Wen*, Case No. 2:24-MJ-07105-DUTY, Criminal Complaint by Telephone or Other Reliable Means (C.D. Cal. Nov. 26, 2024), at 15.

³²¹ Sec. 241(a)(1) of the INA (2024). Source: [https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1231%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1231%20edition:prelim)).

³²² Sec. 241(a)(2) of the INA (2024). Source: [https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1231%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1231%20edition:prelim)).

³²³ Lee, Michael. *Trump likely to make several border security moves on first day, says expert*. Fox News (Nov. 12, 2024). Source: <https://www.foxnews.com/politics/trump-likely-make-several-border-security-moves-first-day-says-expert>.

³²⁴ Sheridan, Mary Beth and Masih, Niha. *Mexico’s president has ‘excellent’ talk with Trump, dismisses tariff threat*. WASHINGTON POST (Nov. 28, 2024). Source: <https://www.washingtonpost.com/world/2024/11/28/trump-mexico-president-talk-tariffs/>.

³²⁵ Gillies, Rob. *Trudeau told Trump Americans would also suffer if tariffs are imposed, a Canadian minister says*. ABC NEWS (Dec. 2, 2024). Source: <https://abcnews.go.com/International/wireStory/trudeau-told-trump-americans-suffer-tariffs-imposed-canadian-116388796>.

That leaves the question of what interior removal plans the president-elect is making to deport some, most, or all of the millions of aliens unlawfully present from the United States.

In a July statement, Trump campaign press secretary spokesman Karoline Leavitt told NBC News³²⁶: “A majority of Americans want mass deportations for illegal immigrants. ... On Day One back in the White House, President Trump will begin the largest criminal deportation operation of illegal immigrants and restore the rule of law.”

Similarly, during his October rally at Madison Square Garden in New York City, N.Y., then-candidate Trump announced³²⁷:

On Day 1, I will launch the largest deportation program in American history to get the criminals out. I will rescue every city and town that has been invaded and conquered, and we will put these vicious and bloodthirsty criminals in jail, then kick them the hell out of our country as fast as possible.

More recently, during a November 11 interview on Fox News³²⁸, Tom Homan—former ICE Acting Director and Trump’s “border czar” designee—told host Sean Hannity there are “over 1.5 million convicted criminal aliens in this country with orders for removal who we’ll be looking for”.

And as Homan told NewsNation on December 2:

The president has been very clear, so have I, that right out of the gate, we’re going to concentrate on public safety threats and national security threats. And we got plenty of them.

Because if you look at the stats, you compare the Trump administration to the Biden administration, the removal of criminal aliens has decreased 74%. We know a lot of criminals came across this border in the last four years. We’ve got a big block of criminal aliens we got to locate and remove from the country, and that’s why I’ve been pushing back on the sanctuary cities and the mayors and governors who are speaking out against it.

....

³²⁶ Strickler, Laura, Martinez, Didi, Atkins, Chloe, and Ainsley, Julia. *How would mass deportation of migrants under Trump actually work?* NBC News (Jul. 16, 2024). Source: <https://www.nbcnews.com/investigations/mass-deportation-migrants-trump-actually-work-rcna161637>.

³²⁷ Long, Colleen and Merica, Dan. *Trump on Day 1: Begin deportation push, pardon Jan. 6 rioters and make his criminal cases vanish.* AP (Nov. 12, 2024). Source: <https://apnews.com/article/trump-day-1-priorities-deportations-drilling-ukraine-6747c6e64b0440978f59450b928f61d1>.

³²⁸ *We’re going to find those who are here illegally, says incoming Trump ‘border czar’.* Fox News (Nov. 11, 2024). Source: <https://www.foxnews.com/video/6364573054112>.

*But . . . if you're in a country illegally, you're not off the table. It's not okay to be in this country legally. You enter the country illegally, which is a crime. You've been ordered removed by a judge, you got a problem.*³²⁹

Those statements suggest that the incoming administration is planning a removal program along the lines set forth in section 5 of Executive Order 13768³³⁰, which I will describe below.

VIII. PRIOR INTERIOR ENFORCEMENT GUIDELINES AND POLICIES

The question then is whether such a “mass deportation” program is possible. To answer that question, it is crucial to examine other immigration enforcement programs in the past.

Morton Memo of March 2, 2011

For most of the time immigration laws have been enforced in the United States, ICE — and its predecessor the INS — arrested, detained, and removed aliens who were excludable, deportable, or removable, without any particular focus on whether they were criminals or not.

That changed on March 2, 2011, when then-ICE Director John Morton issued a memorandum captioned “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens”³³¹ (the Morton memo).

In that memo, Morton contended that ICE only had the resources to remove 4 percent (400,000) of the aliens illegally present in the United States³³², and therefore the agency had to prioritize immigration enforcement.

The Morton memo identified three priorities for arrest, removal, detention, and removal, each of which had several “levels” and/or sub-priorities.

The first priority began with aliens who pose a danger to national security, including terrorists and spies.³³³ Criminal aliens were included, as well, “with a particular emphasis on violent criminals, felons, and repeat offenders”³³⁴.

Participants in organized criminal gangs aged 16 and above were a top priority, as were aliens with outstanding criminal warrants, and there was a catch-all for other aliens who posed a serious risk to public safety.

³²⁹ Djordjevik, Patrick. ‘Border Czar’ Tom Homan says US has ‘no other option’ than mass deportations. NEWSNATION (Dec. 2, 2024). Source: <https://www.newsnationnow.com/us-news/immigration/border-czar-tom-homan-deportations/>.

³³⁰ Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*. 82 Fed. Reg. 8799-8803 (Jan. 30, 2017). Source: <https://www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02102.pdf>.

³³¹ Morton, John. *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Mar. 2, 2011). Source: <https://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

³³² *Id.* at 1.

³³³ *Id.* at 1-2.

³³⁴ *Id.* at 2.

Criminals were broken down into three levels³³⁵: Level 1 was for aliens convicted of “aggravated felonies” as defined in section 101(a)(43) of the INA³³⁶, and aliens convicted of two or more crimes punishable by more than one year (other felonies). Level 2 included aliens convicted of one felony or three misdemeanors, and level 3 was for aliens convicted of a crime punishable by less than a year (a misdemeanor).

The second priority for enforcement under the Morton memo was recent illegal entrants.³³⁷ Interestingly, Morton explained this was necessary, in part, “to avoid a return to the prior practice commonly and historically referred to as ‘catch and release’”.

The third priority consisted of fugitive aliens (*i.e.*, aliens ordered removed who failed to depart), illegal re-entrants, and others who had “obstruct[ed] immigration controls”.³³⁸

Fugitive aliens and those who had reentered illegally fell into sub-priorities, more or less reflecting priorities one and two therein, with non-criminal fugitives and reentrants the lowest. Aliens who were admitted or gained immigration benefits via fraud rounded out the list.

Notably, the Morton memo stated: “Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States.”³³⁹ The priorities still took precedence, however, although headquarters approval was not required for action in non-priority cases.

Following the issuance of the Morton memo, ICE removals fell from 409,849 in FY 2012 to 315,943 in FY 2014³⁴⁰ — a 23 percent decrease. More importantly, however, ICE interior removals fell from 180,970 in FY 2012³⁴¹ to 102,224 in FY 2014, a decline of more than 43 percent.

Jeh Johnson Memo of November 20, 2014

The Morton memo was superseded by a November 20, 2014, memo issued by then-DHS Secretary Jeh Johnson, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants”³⁴² (the Jeh Johnson memo).

³³⁵ *Id.*

³³⁶ See sec. 101(a)(43) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

³³⁷ Morton, John. *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Mar. 2, 2011), at 2. Source: <https://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

³³⁸ *Id.* at 2-3.

³³⁹ *Id.*

³⁴⁰ FY 2016 ICE Immigration Removals. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (undated). Source: <https://www.ice.gov/remove/removal-statistics/2016>.

³⁴¹ ICE Enforcement and Removal Operations Report Fiscal Year 2015. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Dec. 22, 2015), at 8. Source: <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>.

³⁴² Johnson, Jeh. *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. U.S. DEPT OF HOMELAND SECURITY (Nov. 20, 2014). Source: https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion_0.pdf.

The Jeh Johnson memo pared down the enforcement priorities in the Morton memo, applying its own three priorities. Those priorities applied not only to ICE, but to CBP and USCIS, as well.

Again, Priority 1 began with national security threats, followed by aliens apprehended entering illegally and at the ports, gang members (with fairly significant restrictions), and aliens with aggravated felonies and non-immigration-related felonies.³⁴³

Those aliens were to be prioritized unless they were eligible for asylum or other relief, or unless a field-level supervisor determined that they would not pose a threat and should not be a priority.

The second priority³⁴⁴ was much more detailed. It began with aliens convicted of three or more misdemeanors that arose out of separate incidents other than “minor traffic offenses” or offenses for which the alien’s immigration status was “an essential element”.

Next³⁴⁵ were aliens convicted of what the memo described as “significant misdemeanors”, including domestic violence, sexual abuse or exploitation, burglary, firearms possession, drug trafficking or distribution, DUI, and any misdemeanor for which the alien was sentenced to 90 days or more.

The third subcategory in Priority 2 was aliens — regardless of where they were apprehended — who had entered or re-entered after January 1, 2014. The fourth included aliens who had “significantly abused the visa or visa waiver system”, in the opinion of field-level ICE, CBP, and USCIS supervisors.

There was a similar restriction to that in Priority 2 for aliens eligible for protection or relief, or whom a field-level supervisor determined did not constitute “a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.”

Priority 3³⁴⁶ for enforcement related to aliens ordered removed on or after January 1, 2014. Although those aliens had received due process, the Jeh Johnson memo nonetheless asserted: “Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly to aliens in this priority”.

There were opt-outs to enforcement for Priority 3 aliens who were eligible for relief (which they logically would have applied for and been denied already), and those who were “not a threat to the integrity of the immigration system”. Unlike in the case of Priority 2 aliens, though, that decision could be made by a street- or desk-level official.

Similar to the Morton memo, the Jeh Johnson memo stated: “Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein.”³⁴⁷

³⁴³ *Id.* at 3.

³⁴⁴ *See id.* at 3-4.

³⁴⁵ *Id.* at 4.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 5.

But, unlike under the Morton memo, the Jeh Johnson memo made clear that such determinations required ICE field-level (but not HQ) concurrence.

The Jeh Johnson memo drastically affected immigration enforcement.

ICE interior removals fell from (as noted) 102,224 in FY 2014³⁴⁸ to 69,478 in FY 2015 — a 32-percent decrease. They fell again in FY 2016³⁴⁹, to 65,332. Total removals (including aliens apprehended at the border) that year were 201,020³⁵⁰ — just more than half of the 400,000 Morton had asserted ICE could achieve.

EO 13768 of January 25, 2017

The then-incoming Trump administration scrapped the Jeh Johnson memo, but did not return to the status quo before the Morton memo. Rather, the new president crafted his own immigration enforcement priorities in a January 25, 2017, executive order, EO 13768, “Enhancing Public Safety in the Interior of the United States”.³⁵¹

That EO prioritized the removal of aliens removable under the criminal, national security, expedited removal, and fraud grounds of inadmissibility and deportability, as well as aliens who had committed, had been charged with, or had been convicted of crimes.³⁵²

In addition, aliens who defrauded any government agency or abused public benefits programs were also priorities for removal.

Finally, under that EO the removal of aliens under final orders of removal but who had failed to depart the United States, as well as aliens who posed a risk to national security or public safety, were also prioritized.

Aliens removable strictly on immigration violations status were not specifically prioritized, but nothing in that EO prevented ICE from arresting, detaining, or removing those aliens.

Between FY 2017 and FY 2020, ICE removed 935,346 aliens, 65 percent of whom had criminal arrests or convictions.³⁵³

Most of the remaining 35 percent of non-criminal removals involved aliens encountered at the border, but in every fiscal year under the Trump administration, more than 89 percent of interior removals involved aliens with criminal convictions or facing criminal charges.

The Inauguration Day 2021 Pekoske Memo

³⁴⁸ *ICE Enforcement and Removal Operations Report Fiscal Year 2015*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Dec. 22, 2015), at 8. Source: <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>.

³⁴⁹ *Fiscal Year 2016 ICE Enforcement and Removal Operations Report*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (undated), at 9. Source: <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf>.

³⁵⁰ *Id.* at 3.

³⁵¹ Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*. 82 Fed. Reg. 8799-8803 (Jan. 30, 2017). Source: <https://www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02102.pdf>.

³⁵² *Id.* at sec. 5, p. 8800.

³⁵³ Arthur, Andrew. *Misperceptions About ICE Enforcement Under Trump Warp Biden's Immigration Promises*. CENTER FOR IMMIGRATION STUDIES (Jan. 15, 2021). Source: <https://cis.org/Arthur/Misperceptions-About-ICE-Enforcement-Under-Trump-Warp-Bidens-Immigration-Promises>.

Shortly after President Biden was sworn in on January 20, 2021, Acting DHS Secretary David Pekoske issued a memo captioned “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities”³⁵⁴ (Pekoske memo).

The Pekoske memo announced a review of immigration-enforcement policies, as well as a 100-day hold on almost all removals from the United States (the latter quickly blocked³⁵⁵ by a federal judge).

Citing, once again, “limited resources”, the Pekoske memo restricted immigration enforcement to three specified “priorities”: spies, terrorists, and other threats to national security; aliens who entered illegally on or after November 1, 2020; and aliens convicted of aggravated felonies (again, as defined in section 101(a)(43) of the INA).³⁵⁶

Unlike its Obama-era predecessors, however, under the Pekoske memo, only aliens convicted of aggravated felonies and released after the date of that memo, and who were “determined pose a threat to public safety”, who were subject to arrest, detention, and prosecution.

Respectfully, in defining certain crimes as aggravated felonies, Congress has *already determined* that aliens convicted of those crimes “pose a threat to public safety” and already mandated their detention and prosecution. Nonetheless, the factors governing which aggravated felonies qualified as priorities were unclear from that memo.

Tae Johnson Memo of February 18, 2021

By its terms, the Pekoske memo was a placeholder until other enforcement guidelines were issued by DHS. Consequently, on February 18, 2021, then-Acting ICE Director Tae Johnson issued a new guidance memo, captioned “Interim Guidance: Civil Immigration Enforcement and Removal Priorities”³⁵⁷ (Tae Johnson memo).

The Tae Johnson memo slightly expanded the class of aliens deemed priorities for ICE enforcement under the Pekoske memo.

Threats to national security and border security were still priorities, but the Tae Johnson memo also included non-detained aggravated felons and certain gang members, provided they “pose[] a risk to public safety”³⁵⁸ (though it is hard to imagine many who don’t).

³⁵⁴ Pekoske, David. *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*. U.S. DEP’T OF HOMELAND SECURITY (Jan. 20, 2021). Source: https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf?fbclid=IwARQ-6DifCXLAvIEzR58LUK_Sw1uJORroFP4s7MvbBEvE8d9xF2MHYF3_fFE.

³⁵⁵ See Aguilar, Julian. *Federal judge prevents Biden administration from pausing deportations for two more weeks*. THE TEXAS TRIBUNE (Feb. 9, 2021). Source: <https://www.texastribune.org/2021/02/09/biden-deportation-moratorium-texas-judge/>.

³⁵⁶ Pekoske, David. *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*. U.S. DEP’T OF HOMELAND SECURITY (Jan. 20, 2021), at 2. Source: https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf?fbclid=IwARQ-6DifCXLAvIEzR58LUK_Sw1uJORroFP4s7MvbBEvE8d9xF2MHYF3_fFE.

³⁵⁷ Johnson, Tae D. *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Feb. 18, 2021). Source: https://www.ice.gov/doclib/news/releases/2021/021821_civil-immigration-enforcement_interim-guidance.pdf.

³⁵⁸ *Id.* at 4-5.

State of Texas v. U.S.

The Pekoske and Tae Johnson memos were challenged by the states of Texas and Louisiana in a case captioned *State of Texas v. U.S.*³⁵⁹

U.S. District Court Judge Drew Tipton was assigned to the case, and on August 19, he issued an order³⁶⁰ enjoining the restrictions in the Pekoske and Tae Johnson memos on immigration agents in their enforcement of the immigration laws against criminal aliens.

A month later, though, a three-judge panel of the Fifth Circuit limited the scope of that injunction.³⁶¹

In its decision, the Fifth Circuit noted³⁶² that new guidance would be issued by the end of September by DHS. That’s when things got interesting, because the states sought a rehearing of that decision before all 17 judges of the Fifth Circuit as a whole (en banc).

On November 30, 2021, the en banc panel of the Fifth Circuit granted the state’s request, vacating the limitations the three-judge circuit panel had placed on Judge Tipton’s original injunction.³⁶³

Secretary Alejandro Mayorkas’s September 30, 2021, “Guidelines for the Enforcement of Civil Immigration Law”

By that point, however, DHS had issued new immigration enforcement guidance.

Specifically, on September 30, 2021, DHS Secretary Alejandro Mayorkas issued a memo captioned “Guidelines for the Enforcement of Civil Immigration Law”³⁶⁴ (Mayorkas memo), which again placed restrictions on the ability of ICE officers and attorneys in the investigation, arrest, detention, prosecution, and deportation of removable aliens (collectively “enforcement action”).

Relying on what the memo described as DHS’s “prosecutorial discretion”, the Mayorkas memo directed ICE officers and attorneys to consider certain “aggravating” and “mitigating” factors before taking any enforcement action, with limited exceptions.³⁶⁵

The aggravating factors are general and objective, relating to aliens’ criminal offenses and prior criminal history.

³⁵⁹ *State of Texas v. U.S.*, Case No. 6:21-cv-00016, Complaint (S.D. Tex. Apr. 6, 2021). Source:

https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.1.0_1.pdf.

³⁶⁰ *State of Texas v. U.S.*, Case No. 6:21-cv-00016, Memorandum Opinion and Order (S.D. Tex. Aug. 19, 2021), at 157-58.

Source: https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.79.0_4.pdf.

³⁶¹ *State of Texas v. U.S.*, No. 21-40618, slip op. at 15 (5th Cir. Sept. 15, 2021). Source:

<https://cases.justia.com/federal/appellate-courts/ca5/21-40618/21-40618-2021-09-15.pdf?ts=1631727092>.

³⁶² *Id.* at 5.

³⁶³ *Texas v. U.S.*, No. 21-40618, On Petition for Rehearing En Banc, slip op. at 15 (5th Cir. Nov. 30, 2021) (en banc). Source:

<https://law.justia.com/cases/federal/appellate-courts/ca5/21-40618/21-40618-2021-11-30.html>.

³⁶⁴ *Guidelines for the Enforcement of Civil Immigration Law*. U.S. DEP’T OF HOMELAND SECURITY (Sept. 30, 2021). Source:

<https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

³⁶⁵ See *id.* at 3-4.

The mitigating factors, on the other hand, are more individualized and subjective, having to do with the alien's age, health, eligibility for relief from removal, and — interestingly — whether any of the alien's family members were in the military or worked for the government.

Among the issues with those guidelines is that they contravene two provisions of the INA mandating the detention of certain criminal aliens.

First, section 236(c) of the INA³⁶⁶ states DHS “shall take into custody” an alien removable on most criminal grounds “when the alien is released”.

Similarly, section 241(a) of the INA³⁶⁷ requires DHS to take aliens ordered removed into custody during the 90-day removal period, paragraph (2) therein states, “Under no circumstance during the removal period shall [DHS] release an alien who has been found” removable on any of the criminal grounds of removability.

Back to *State of Texas v. U.S.*

Because the Mayorkas guidelines frustrate those detention mandates, the plaintiff states in *State of Texas v. U.S.* filed an amended complaint with the district court to set them aside.³⁶⁸

In June 2022, Judge Tipton issued a Memorandum Opinion and Order enjoining the Mayorkas memo³⁶⁹. That injunction eventually made its way to the Supreme Court, where in June 2023 a majority of justices held that the states lacked standing to bring the case.³⁷⁰

In essence, the majority held there is no precedent for a plaintiff — even a state — to request that a third-party (here, a criminal alien) be prosecuted on either criminal or immigration grounds.

Justice Alito, in dissent, found:

*In order to reach this conclusion, the Court . . . holds that the only limit on the power of a President to disobey a law like the important provision at issue is Congress's power to employ the weapons of inter-branch warfare—withholding funds, impeachment and removal, etc. I would not blaze this unfortunate trail.*³⁷¹

Kerry Doyle Memo of April 3, 2022

While this litigation was playing out, on April 3, 2022, Kerry Doyle—ICE Principal Legal Advisor (PLA) and head of the agency's Office of the Principal Legal Advisor (OPLA), the cadre of lawyers who represent the United States in immigration court—issued a memo titled

³⁶⁶ Section 236(c) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

³⁶⁷ Section 241(a) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1231&num=0&edition=prelim>.

³⁶⁸ *State of Texas v. U.S.*, Case No. 6:21-cv-00016, First Amended Complaint (S.D. Tex. Oct. 22, 2021). Source: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.109.0.pdf>.

³⁶⁹ *State of Texas v. U.S.*, Case No. 6:21-cv-00016, Memorandum Opinion and Order (S.D. Tex. Jun. 10, 2022). Source: https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.240.0_4.pdf.

³⁷⁰ *U.S. v. Texas*, 599 U.S. 670 (2023). Source: https://www.supremecourt.gov/opinions/22pdf/22-58_1425.pdf.

³⁷¹ *Id.* at ____ Slip op., dissent at 1.

“Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion”³⁷² (Doyle memo).

The purpose of the Doyle memo was “to guide” OPLA attorneys “in appropriately executing DHS’s enforcement priorities and exercising prosecutorial discretion”³⁷³ under the Mayorkas memo, and it apparently remained in effect even while the Mayorkas memo was enjoined.

Among other things, the Doyle Memo says ICE attorneys are expected “to use their professional judgment to do justice in each case, whether the decision relates to: filing an NTA; moving to dismiss, administratively close, or continue proceedings; stipulating to issues, relief, or bond; or pursuing an appeal”.³⁷⁴

On October 24, 2024, the House Judiciary Committee issued an interim staff report³⁷⁵, which included the following findings:

- *Under the Biden-Harris Administration, more than 700,000 illegal aliens have had their cases dismissed, terminated, or administratively closed, allowing those aliens to stay in the country indefinitely without facing immigration consequences.*
- *For asylum decisions, the Executive Office for Immigration Review (EOIR), which houses the nation’s immigration courts, reported 109,089 cases as “not adjudicated” in fiscal year 2023, meaning that those cases were deemed “completed” but were largely terminated or dismissed and not adjudicated on the merits of the underlying claim.*
- *Through the first nine months of fiscal year 2024, the number of non-adjudicated asylum cases already eclipsed the 2023 record, with 109,568 asylum cases not adjudicated. By comparison, only 12,960 total asylum cases were reported as “not adjudicated” from fiscal year 2017 through fiscal year 2020 combined.*
- *[DHS] failed to file the necessary documentation to begin immigration court removal proceedings in roughly 200,000 additional cases, meaning that the overwhelming majority of those aliens can also remain in the U.S. indefinitely.*
- *An immigration court official admitted to the Committee and Subcommittee that decisions by the Biden-Harris DHS, such as DHS attorneys not appearing at scheduled hearings*

³⁷² Doyle, Kerry. *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 3, 2022). Source: https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

³⁷³ *Id.* at 1.

³⁷⁴ *Id.* at 9.

³⁷⁵ *Interim Staff Report. Quiet Amnesty: How the Biden-Harris Administration Uses the Nation’s Immigration Courts to Advance an Open-Borders Agenda*. U.S. HOUSE OF REPS., COMM. ON THE JUDICIARY (Oct. 24, 2024). Source: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-10-24%20Quiet%20Amnesty%20-%20How%20the%20Biden-Harris%20Administration%20Uses%20the%20Nation%20s%20Immigration%20Courts%20to%20Advance%20an%20Open-Borders%20Agenda.pdf>.

*and DHS failing to file proper paperwork with the courts, waste the immigration courts' time and resources and decrease efficiency.*³⁷⁶

The report largely blamed the Doyle memo for what it termed a “quiet amnesty” for those aliens whose cases were “dismissed, terminated, or administratively closed”, explaining:

*The Doyle Memo outlined how ICE attorneys “are expected to exercise discretion”—that is, move to dismiss immigration cases— “at all stages of the enforcement process.” In other words, ICE attorneys are expected to ensure that certain aliens' cases never move forward in immigration court . . .*³⁷⁷

The Factual and Legal Bases for the Mayorkas Memo

As noted, Secretary Mayorkas defended the enforcement restrictions in his September 2021 memo under the guise of prosecutorial discretion, the principle that law-enforcement officials have the inherent authority to *not* enforce the law.

In support of that point, DHS explained in a separate memo³⁷⁸ implementing those guidelines:

On his first day in office, President Biden affirmed that “advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government.” In the immigration enforcement context, scholars and professors have observed that prosecutorial discretion guidelines are essential to advancing this Administration's stated commitment to “advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”
[Footnotes omitted.]

In other words, the Biden administration’s DHS secretary equated immigration enforcement under the laws passed by Congress and codified in the INA with the worst instances of discrimination in our nation’s past.

IX. IMPACT OF THE BIDEN ADMINISTRATION’S ENFORCEMENT GUIDELINES

The Center has compared ICE criminal alien data under the three pre-Covid years of the Trump administration (FY 2017 to 2019) and the first three years of the Biden administration (FY 2021 to 2023) to assess the impact of the administration’s various enforcement guidance memos.³⁷⁹

We found that arrests of criminal aliens had declined 57 percent, that there was a 67 percent decrease in deportations of criminal aliens, and that ICE detainers of criminal aliens fell 44 percent during the Biden-Harris years.

³⁷⁶ *Id.* at 2 (footnotes omitted).

³⁷⁷ *Id.* at 5 (footnote omitted).

³⁷⁸ *Significant Considerations in Developing Updated Guidelines for the Enforcement of Civil Immigration Law*. U.S. Dep’t of Homeland Security (Sept. 30, 2021), at 7 (footnotes omitted). Source: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.122.7.pdf>.

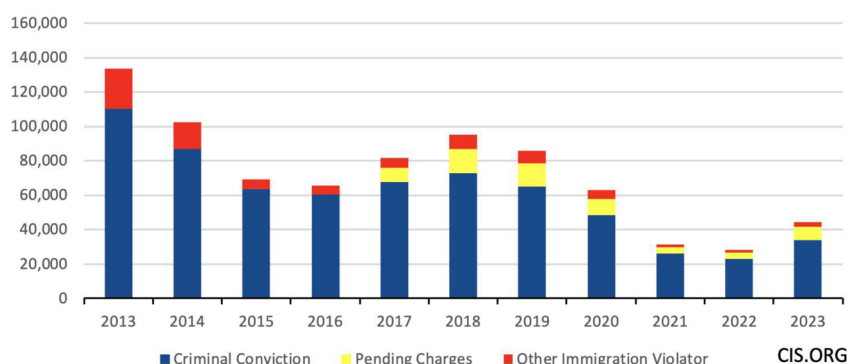
³⁷⁹ See Feere, Jon, *Three Years of Biden Immigration Policies Have Benefitted Criminal Aliens*, CENTER FOR IMMIGRATION STUDIES (Jan. 9, 2024). Source: <https://cis.org/Report/Three-Years-Biden-Immigration-Policies-Have-Benefitted-Criminal-Aliens>.

That decline in arrests covered every crime category identified by ICE and included a 63-percent decrease with respect to larcenies, 55 percent for burglaries, a 48-percent drop in assault cases, a 47-percent decline in burglary cases, and a 34-percent drop in aliens with kidnapping records.

As an aside, it should be noted the Mayorkas memo asserts—without reference or citation-- that “a categorical determination that a domestic violence offense compels apprehension and removal could make victims of domestic violence more reluctant to report the offense conduct”.³⁸⁰

That’s notable because under the Jeh Johnson memo, alien domestic violence offenders were a *priority* for enforcement³⁸¹, which is sensible given that the CDC has found that “over half of female homicide victims in the U.S. are killed by a current or former male intimate partner”³⁸².

In any event, the chart³⁸³ below compares ICE interior removals by criminality over the 11-year period from FY 2013 (in the middle of the Obama administration) to FY 2023 (the third partial year of the Biden administration):



X. IMPACT OF THE (SECOND) TRUMP ADMINISTRATION’S PLANS

It’s premature to assess any impacts the incoming Trump administration’s removal policies will have on alien families, our military, or the nation’s economy, because the parameters of those policies remain undefined.

³⁸⁰ *Guidelines for the Enforcement of Civil Immigration Law*. U.S. DEP’T OF HOMELAND SECURITY (Sept. 30, 2021), at 4. Source: <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

³⁸¹ See *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. U.S. DEP’T OF HOMELAND SECURITY (Nov. 20, 2014), at 4 (“aliens convicted of a ‘significant misdemeanor,’ which for these purposes is an offense of domestic violence”, are “Priority 2” misdemeanants). Source: https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

³⁸² Domonoske, Camila. *CDC: Half Of All Female Homicide Victims Are Killed By Intimate Partners*. NPR (Jul. 21, 2017). Source: <https://www.npr.org/sections/thetwo-way/2017/07/21/538518569/cdc-half-of-all-female-murder-victims-are-killed-by-intimate-partners>.

³⁸³ See Arthur, Andrew. *Two Graphs Explain Why Voters Want More Deportations*. CENTER FOR IMMIGRATION STUDIES (Sept. 25, 2024). Source: <https://cis.org/Arthur/Two-Graphs-Explain-Why-Voters-Want-More-Deportations>.

From the statements made by the president-elect, his spokesmen, and Homan, referenced above, however, it appears those policies as they relate to interior enforcement will—as under EO 13768—focus primarily on removable alien criminals, aliens who pose a threat to the national security, and aliens under final orders of removal.

That is not to say, however, that ICE officers and agents, and OPLA attorneys, will be forced to ignore the unlawful presence of or grant special benefits to other removable aliens—the fundamental premise of the Pekoske, Tae Johnson, Mayorkas, and Doyle memos (respectively).

If anything, those four Biden administration-era memos—and the Biden administration’s border policies generally—have created a significantly larger class of illegally present criminal aliens and aliens posing national-security risks that DHS under the incoming administration will be required to find, arrest, prosecute, and remove.

Such enforcement will likely prompt a significant and increasing number of aliens currently illegally present in the United States to leave voluntarily. Let me explain.

One 2021 study³⁸⁴ estimated that 340,000 undocumented Mexican nationals voluntarily emigrated from the United States between 2018 to 2019 alone-- a figure that did not include aliens of other nationalities-- and stricter enforcement could³⁸⁵ (and likely would) encourage such trends.

Economic Costs

Even assuming the incoming administration plans a more expansive removal program, however, it’s questionable whether such a program would impose greater costs on the public fisc than it would save taxpayers.

A recent post³⁸⁶ from the American Enterprise Institute (AEI) explained that the cost of illegal immigration to the United States at the federal, state, and local levels was “at least \$150.7 billion” annually, or roughly \$957 per year per taxpayer “after factoring in taxes paid by illegal aliens”.

AEI further concluded³⁸⁷ that “using existing estimates of the net lifetime fiscal impact (taxes paid minus costs) of immigrants by education indicates that the fiscal drain created by the average illegal immigrant is \$68,000.”

³⁸⁴ Warren, Robert. In 2019, the US Undocumented Population Continued a Decade-Long Decline and the Foreign-Born Population Neared Zero Growth. SAGE JOURNALS (Apr. 26, 2021). Source: <https://journals.sagepub.com/doi/full/10.1177/2331502421993746#body-ref-fn2-2331502421993746>.

³⁸⁵ See Van Hook, Jennifer, Gelatt, Julia, and Ruiz Soto, Ariel G. *A Turning Point for the Unauthorized Immigrant Population in the United States*. MIGRATION POLICY INST. (Sept. 2023) (“Multiple factors go into whether the U.S. unauthorized immigrant population has grown since mid-2021. . . . At the same time, emigration could also rise, driven by migrants’ decisions to return home or by stricter enforcement policies, offsetting the increases.”). Source: <https://www.migrationpolicy.org/news/turning-point-us-unauthorized-immigrant-population>.

³⁸⁶ Weidinger, Matt. *Key Data on Federal Benefits Paid to Illegal Immigrant Households*. AMERICAN ENTERPRISE INST. (Nov. 7, 2024). Source: <https://www.aei.org/opportunity-social-mobility/key-data-on-federal-benefits-paid-to-illegal-immigrant-households/>.

³⁸⁷ *Id.*

By contrast, as the Center has reported³⁸⁸:

In April 2017, ICE estimated that the average cost per deportation was \$10,854 in FY 2016. This figure includes “all costs necessary to identify, apprehend, detain, process through immigration court, and remove an alien.” Based on this description, the estimate seems comprehensive, including the costs for both Enforcement and Removal Operations (ERO), which does most of the immigration removal work, and [OPLA]. These two entities comprise the overwhelming share of spending on removals.

Thus, removing aliens unlawfully present in the United States would create a significant net fiscal benefit for U.S. taxpayers.

With respect to any “devastation” to our economy in that scenario, I presume such claims relate to a purported worker shortage that would develop if a large proportion of the currently present undocumented population were to be removed from the country.

According to the Pew Research Center³⁸⁹, there were approximately 8.3 million unauthorized immigrants in the U.S. workforce in 2022, representing 4.8 percent of the total U.S. workforce. Surprisingly, those unauthorized workers actually constitute .7 percent less of the total domestic workforce than those workers constituted in 2007, according to Pew.

But there are plenty of available American workers (both citizens and lawful immigrants) who aren’t in the labor force to fill that gap, however. As the Center explained in August 2023³⁹⁰:

Using a broad definition of working age (16 to 64), the share of U.S.-born men in the labor force was 77.5 percent in April 2023, nearly the same as in 2019, pre-Covid. But this is significantly lower than the 83.1 percent in April 2000 and the 88.7 percent in 1960.

....

If the same share of U.S.-born men (16 to 64) were in the labor force in 2023 as in 1960 there would be 9.5 million more U.S.-born men in the labor force. Even if the share returned to the 2000 level, it would still add 4.8 million men to the labor force.

The number of U.S.-born men (16 to 64) not in the labor force increased by 13.8 million from 1960 to 2023. At the same time the number of working-age immigrant men in the labor force increased by 13.7 million.

³⁸⁸ Camarota, Steven A. *Deportation vs. the Cost of Letting Illegal Immigrants Stay*. CENTER FOR IMMIGRATION STUDIES (Aug. 3, 2017) (footnotes omitted). Source: <https://cis.org/Report/Deportation-vs-Cost-Letting-Illegal-Immigrants-Stay#5>.

³⁸⁹ Passel, Jeffrey S. and Krogstad, Jens Manuel. *What we know about unauthorized immigrants living in the U.S.* PEW RESEARCH CTR. (Jul. 22, 2024). Source: <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/#:~:text=Unauthorized%20immigrants%20in%20the%20labor,the%20U.S.%20workforce%20in%202022>.

³⁹⁰ Camarota, Steven A. and Ziegler, Karen. *Working-Age, but Not Working*. CENTER FOR IMMIGRATION STUDIES (Aug. 21, 2023). Source: <https://cis.org/Report/WorkingAge-Not-Working>.

With respect to the social costs of millions of Americans being outside the workforce, that analysis continued:

It should be obvious that being in the labor force significantly increases income and dramatically reduces the risk of being in poverty. There is also good evidence that not working is associated with a deterioration in mental health. In addition, being out of the labor force is linked with declining physical well-being. Research shows that not working has a negative effect on the incidence of obesity and the associated health problems this creates. Perhaps most important, there seems to be a strong association between not working and so-called “deaths of despair”, including suicide, drug overdose, and destructive levels of alcohol consumption and death from poisoning.

Two things are clear from that analysis: (1) too many American workers are no longer in the workforce; and (2) it is in the interests of the United States to ensure working-age American workers are able to find employment for reasonable wages in safe working conditions.

In fact, the INA explicitly limits the number of lawful immigrants who may be admitted to the United States to those ends. Specifically, section 212(a)(5)(A)(i) of the INA³⁹¹ states:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

*(I) **there are not sufficient workers who are able, willing, qualified (or equally qualified....) and available** at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and*

*(II) **the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.***
[Emphasis added.]

The deleterious impact of large-scale immigration on the domestic workforce is not unique to the United States. Consider the following, from an address given by British Prime Minister Keir Starmer—head of the Labour Party—on the issue of migration on November 28:

When we came into office – we immediately conducted an audit of public finances. And we found a £22 billion black hole.

*Now – the independent Office of National Statistics [ONS] has conducted vital work on the state of immigration. As the ONS sets out, **nearly one million people came to Britain in the year ending June 2023. That is four times the migration levels compared with 2019.***

³⁹¹ Sec. 212(a)(5)(A)(i) of the INA (2024). Source:

....

But what we didn't hear, what the British people are owed, is an explanation. Because a failure on this scale isn't just bad luck. It isn't a global trend or taking your eye off the ball. No – this a different order of failure. This happened by design, not accident. Policies were reformed, deliberately to liberalise immigration.

....

Brexit was used for that purpose, to turn Britain into a one-nation experiment in open borders. Global Britain – remember that slogan, that is what they meant. A policy with no support.

Well that's unforgivable. And mark my words – this government will turn the page.

That begins in the economy. Because you cannot separate this failure from their refusal to do the hard yards on skills, on welfare reform, on giving our young people opportunities, rather than the easy answers of looking overseas.

Because clearly – the vast majority of people who entered this country did so to plug gaps in our workforce, skills shortages across the country, which have left our economy hopelessly reliant on immigration. 2.8 million people out of work on long-term sickness – a problem ignored, left to fester. One in 8 young people not in employment or education or training. Sectors of our economy, like engineering, where apprenticeships have almost halved in the last decade, while visas have doubled.³⁹² [Emphasis added; cleaned up.]

Such impacts of mass immigration on the domestic workforce in this country used to be a bipartisan issue. Consider the following, from President Bill Clinton's 1995 State of the Union address:

All Americans, not only in the States most heavily affected but in every place in this country, are rightly disturbed by the large numbers of illegal aliens entering our country. The jobs they hold might otherwise be held by citizens or legal immigrants. The public service they use impose burdens on our taxpayers. [Emphasis added]³⁹³

Clinton continued:

That's why our administration has moved aggressively to secure our borders more by hiring a record number of new border guards, by deporting twice as many criminal aliens as ever before, by cracking down on illegal hiring, by

³⁹² PM speech on migration: 28 November 2024. Prime Minister Keir Starmer makes a speech on migration at 10 Downing Street. Gov.UK. Source: <https://www.gov.uk/government/speeches/pm-speech-on-migration-28-november-2024>.

³⁹³ President Bill Clinton, State of the Union Address (Jan. 24, 1995). Source: <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-state-the-union-11>.

*barring welfare benefits to illegal aliens. In the budget I will present to you, we will try to do more to speed the deportation of illegal aliens who are arrested for crimes, to better identify illegal aliens in the workplace as recommended by the commission headed by former Congresswoman Barbara Jordan. We are a nation of immigrants. But we are also a nation of laws. It is wrong and ultimately self-defeating for a nation of immigrants to permit the kind of abuse of our immigration laws we have seen in recent years, and we must do more to stop it. [Emphasis added.]*³⁹⁴

Speaking of Barbara Jordan, here's what she told Congress in September 1994 in her role as the chairman of the U.S. Commission on Immigration Reform:

*Simply put, if we cannot demagnetize our economy for illegal aliens who come here to seek jobs, we cannot control illegal immigration. If we cannot control illegal immigration, we cannot sustain our national interest in legal immigration. Those who come here illegally, and those who hire them, will destroy the credibility of our immigration policies and their implementation. In the course of that, I fear, they will destroy our commitment to immigration itself.*³⁹⁵
[Emphasis added.]

“Family Separation”

Again, the exact parameters of the incoming administration's immigration plans are unknown, but regardless some number of unauthorized aliens with U.S. citizen and lawful resident spouses, or U.S. citizen and lawful resident children, could be removed.

Such “family separations” are a fact of life in many non-immigration scenarios: when parents and spouses divorce; are incarcerated; are deployed in the armed services; or die.

Congress has already considered such impacts in the immigration context in section 240A(b) of the INA³⁹⁶, which provides a form of relief (cancellation of removal and lawful permanent residence) for aliens in removal proceedings with immediate relatives who are citizens and lawful permanent residents.

³⁹⁴ *Id.*

³⁹⁵ Testimony of Barbara Jordan, Chair, U.S. Commission on Immigration Reform, Before the U.S. House of Reps., Comm. on the Judiciary, Subcomm. on International Law, Immigration and Refugees (Sept. 29, 1994), at 2. Source: <https://books.google.com/books?id=IWndDyAdbmC&pg=PA27&lpg=PA27&dq=%22if+we+cannot+control+illegal+immigration,+we+cannot+sustain+our+national+interest+in+legal+immigration.+Those+who+come+here+illegally,+and+those+who+hire+them,+will+destroy+the+credibility+of+our+immigration+policies+and+their+implementation.+In+the+course+of+that,+I+fear,+they+will+destroy+our+commitment+to+immigration+itself.%22&source=bl&ots=8ZGxlv27S&sig=ACfU3U09s4jFJQta6WbuKVON6knVcUWlCg&hl=en&sa=X&ved=2ahUKEwIKw8WkhrGHAXW078kDHWdtCYQ6AF6BAGlEAM#v=onepage&q=%22if%20we%20cannot%20control%20illegal%20immigration%2C%20we%20cannot%20sustain%20our%20national%20interest%20in%20legal%20immigration.%20Those%20who%20come%20here%20illegally%2C%20and%20those%20who%20hire%20them%2C%20will%20destroy%20the%20credibility%20of%20our%20immigration%20policies%20and%20their%20implementation.%20In%20the%20course%20of%20that%2C%20I%20fear%2C%20they%20will%20destroy%20our%20commitment%20to%20immigration%20itself.%22&f=false>

³⁹⁶ Section 240A(b) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229b&num=0&edition=prelim>.

It is commonly known as “42B cancellation” after its DOJ application form³⁹⁷, and in section 240A(b) of the INA, Congress made that relief available for up to 4,000 applicants³⁹⁸ annually.

In addition to that annual cap, 42B relief comes with a number of exceptions, most notably that it can only be granted to aliens present here for 10 years or more prior to filing that application.³⁹⁹

Further, to be granted 42B cancellation, the alien must establish that his or her removal “would result in *exceptional and extremely unusual hardship* to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence”⁴⁰⁰ (emphasis added).

If “exceptional and extremely unusual hardship” sounds like a heavy burden, that’s by design.

This 42B cancellation replaced a similar form of relief for aliens unlawfully present known as “suspension of deportation”.⁴⁰¹

Suspension only required aliens to show that they had been here for seven years and that their deportation would result in extreme hardship to themselves or a qualifying U.S. citizen or lawful permanent resident (LPR) relative.

To say that this “extreme hardship” standard for suspension was weakened over the years would be an understatement.

In its 1996 decision in *Matter of O-J-O*,⁴⁰² for example, the Board of Immigration Appeals (BIA) granted suspension to a 24-year-old Nicaraguan national who, among other equities was “an avid fan of softball and baseball” and “participate[d] as a player in local softball and baseball leagues”⁴⁰³.

³⁹⁷ See Form EOIR-42B, *Application for Cancellation of Removal and Adjustment for Certain Nonpermanent Residents*, U.S. DEP’t OF JUSTICE, EXEC. OFF. FOR IMMIGRATION REVIEW (rev. Feb. 2022). Source: <https://www.justice.gov/eoir/page/file/904291/dl>.

³⁹⁸ See section 240A(e)(1) of the INA (2024) (“Subject to paragraphs (2) and (3), the Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section [244(a) of the INA] (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment, or such suspension and adjustment, and whether such an alien had previously applied for suspension of deportation under such [section 244(a) of the INA]. The numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien, under this section or such [section 244(a) of the INA].” Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229b&num=0&edition=prelim>.

³⁹⁹ *Id.* at subpara. (b)(1)(A).

⁴⁰⁰ *Id.* at subpara. (b)(1)(D).

⁴⁰¹ See *suspension of deportation*. LEGAL INFORMATION INST. (updated Apr. 2022) (“Suspension of deportation is a relief rule for aliens in deportation proceedings under the Immigration and Nationality Act (INA) of 1952, which authorizes an immigration judge the discretion to relieve aliens of deportations. This rule was repealed under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 and replaced with 2 types of cancellation of removal (to permanent/nonpermanent residents) under INA of 1997.”). Source:

https://www.law.cornell.edu/wex/suspension_of_deportation.

⁴⁰² *Matter of O-J-O*, 21 I&N Dec. 381 (BIA 1996). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3280.pdf>.

⁴⁰³ *Id.* at 382.

Congress specifically referenced the BIA's "hardship" finding in *Matter of O-J-O-* in the IIRIRA conference report⁴⁰⁴ to explain why it was replacing suspension with 42B cancellation in the INA.

There is also a specific provision at section 245(i) of the INA⁴⁰⁵ that permits aliens who entered or worked unlawfully or who failed to maintain lawful status to adjust status to lawful permanent resident, which could benefit alien spouses of United States citizens and LPRs facing removal.

Notably, however, that relief only applies to aliens who were the beneficiaries of immigrant visa petitions or labor certification applications filed on or before April 1, 2001.⁴⁰⁶

Congress set that date in 2000⁴⁰⁷, and despite efforts to extend it, has not amended it since.⁴⁰⁸

Thus, any hardship removable aliens and their LPR family members would suffer under any Trump administration enforcement policies would be solely due to decisions made by Congress, not the executive branch, assuming those policies enforce Congress's dictates in the INA.

The Military

The president-elect has indicated⁴⁰⁹ that there will be a role for the U.S. military in his immigration-enforcement plans.

⁴⁰⁴ See H. Rept. 104-828 (Sep. 24, 1996), at 213 ("The managers have deliberately changed the required showing of hardship from 'extreme hardship' to 'exceptional and extremely unusual hardship' to emphasize that the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which ordinarily would be expected to result from the alien's deportation. The 'extreme hardship' standard has been weakened by recent administrative decisions holding that forced removal of an alien who has become 'acclimated' to the United States would constitute a hardship sufficient to support a grant of suspension of deportation. See *Matter of O-J-O-*, Int. Dec. 3280 (BIA 1996)."). Source: <https://www.congress.gov/congressional-report/104th-congress/house-report/828/1?outputFormat=pdf>.

⁴⁰⁵ Sec. 245(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1255&num=0&edition=prelim>.

⁴⁰⁶ See *id.* at subpara (i)(1)(B).

⁴⁰⁷ See *Green Card through INA 245(i) Adjustment*. U.S. CITIZENSHIP AND IMMIGRATION SERVS. (updated Oct. 11, 2024) ("Section 245(i) of the Immigration and Nationality Act (INA), as amended by the Legal Immigration Family Equity (LIFE) Act and LIFE Act Amendments of 2000 (Pub. L. 106-553 and -554), enables certain individuals who are present in the United States who would not normally qualify to apply for adjustment of status in the United States to obtain lawful permanent residence (get a Green Card) regardless of: The manner they entered the United States; Working in the United States without authorization; or Failing to continuously maintain lawful status since entry."). Source: <https://www.uscis.gov/green-card/green-card-eligibility/green-card-through-ina-245i-adjustment>.

⁴⁰⁸ See *245(i) Extension Left Unfinished*. CQ ALMANAC (2002) ("The House easily passed a four-month extension in May, but the proposal stalled in the Senate, where many wanted to give the program a longer life span. The Senate passed an extension through April 2002 on Sept. 6, and that version was scheduled for floor action Sept. 11, when the Capitol was evacuated. The vote was never taken. The White House supported attaching the extension to the fiscal 2002 Commerce-Justice-State (CJS) spending bill. The Senate version of the bill contained a permanent extension of 245(i) that was opposed by House conservatives. House Judiciary Chairman F. James Sensenbrenner Jr., R-Wis., said the 245(i) bill should go through regular order and asked his Republican colleagues to drop it from the CJS conference report, which they reluctantly did. (Appropriations, p. 2-9)"). Source: <https://library.cqpress.com/cqalmanac/document.php?id=cqal01-106-6376-328253>.

⁴⁰⁹ See Diamante, Reena. *Trump's pledge to use military for immigration plan sparks legal, political debate*. SPECTRUM NEWS (Nov. 28, 2024). Source: <https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2024/11/28/donald-trump-us-military-immigration-mass-deportation>.

Again, what role the military will play, if any, is unclear, but it should be noted that military assets have been used at various times by the past four administrations, and under the Carter and Reagan administrations, as well.

In May 2006, President George W. Bush launched “Operation Jump Start”⁴¹⁰, “a plan to use National Guard troops to assist the Border Patrol in restoring order” to the Southwest border.

As the National Guard has explained:

*For the next two years, up to 6,000 National Guard soldiers and airmen at a time rotated in contingents throughout the Southwest. They monitored electronic surveillance systems, manned isolated outposts, and flew helicopters equipped with sophisticated radar systems, their presence freeing up hundreds of Border Patrol agents to perform the actual apprehension of illegal migrants and drugs. Guard engineers built dozens of roads, particularly in the mountains of southeastern Arizona, increasing the Border Patrol’s mobility and earning the gratitude of its agents, who still patrol this rugged country on horseback as they have done since the 1920s.*⁴¹¹

Similarly, in July 2010, President Obama initiated “Operation Phalanx”⁴¹². As the U.S. Army explained in May 2011:

Operation Phalanx is the successor operation to Operation Jump Start, which was declared by former President Bush authorizing up to 6,000 National Guard Soldiers and Airmen from 2006 through 2008. Operation Phalanx, scheduled to end in June 2011, provides support primarily from the Southwest Border States of California, Arizona, New Mexico, and Texas.

....

*The National Guard Soldiers and Airmen assigned to Operation Phalanx have been serving as a force multiplier for the U.S. Border Patrol by spotting border intrusions and providing technical support. The National Guard has performed tasks such as ground surveillance, criminal investigative analysis, command and control, mobile communications, transportation, logistics, and training support.*⁴¹³

Thereafter, during a surge in unaccompanied alien children and family migrants in 2014, the Obama administration placed more than 7,700 migrant children on three military bases (Fort Sill

⁴¹⁰ Operation Jump Start. NATIONAL GUARD (undated). Source: <https://www.nationalguard.mil/Resources/Image-Gallery/Historical-Paintings/Heritage-Series/Jump-Start/>.

⁴¹¹ *Id.*

⁴¹² Shoichet, Catherine E. *Trump says he’ll send the military to the border. Bush and Obama did, too.* CNN POLITICS (Apr. 4, 2018). Source: <https://www.cnn.com/2018/04/03/politics/border-troops-deployed-obama-bush/index.html>.

⁴¹³ Army National Guard Operation Phalanx. U.S. ARMY (May 19, 2011). Source: https://www.army.mil/article/56819/army_national_guard_operation_phalanx.

in Lawton, Okla., Lackland Air Force Base near San Antonio, Tex. and Naval Base Ventura County in California) under the supervision of HHS.⁴¹⁴

That was not the first time that migrants were housed on military facilities. According to CRS:

In 1991, the United States opened a refugee center at Naval Station Guantanamo Bay in Cuba for Haitians fleeing their country by boat in the aftermath of a coup. At one point, nearly 13,000 Haitians were housed there. The refugee center closed in July 1993 but it was reopened in June 1994 to again house Haitian refugees fleeing their country. In August 1994, the United States reversed a previous policy allowing Cuban refugees into the United States and required instead that they be brought to Guantanamo Bay. Approximately 12,000 Haitians and 33,000 Cubans were housed at Guantanamo Bay in September of 1994. The refugee camp closed in February 1996.

....

Starting in April 1980, Eglin Air Force Base, FL, Fort Indiantown Gap, PA, Fort McCoy, WI, and Fort Chaffee, AR, were used as refugee resettlement centers to house an influx of Cuban refugees who arrived in the United States via the “Mariel Boatlift.” By October 1980, Eglin Air Force Base, Fort Indiantown Gap, and Fort McCoy were closed and their remaining refugees were transferred to Fort Chaffee. Fort Chaffee housed 25,390 refugees, of whom about 5,800 had been transferred from Fort McCoy, Eglin Air Force Base, and Fort Indiantown Gap. The refugee center at Fort Chaffee closed in February 1982.⁴¹⁵

In April 2018, President Trump issued a “Memorandum on Securing the Southern Border of the United States”⁴¹⁶, which stated:

The Secretary of Defense shall support the Department of Homeland Security in securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country. The Secretary of Defense shall request use of National Guard personnel to assist in fulfilling this mission, pursuant to section 502 of title 32, United States Code, and may use such other authorities as appropriate and consistent with applicable law.

⁴¹⁴ Rogers, David. *Kid shelters at military posts to close*. POLITICO (Aug. 4, 2014). Source: <https://www.politico.com/story/2014/08/border-children-no-military-facility-housing-109692>.

⁴¹⁵ *History of Use of U.S. Military Bases to House Immigrants and Refugees*. CONG. RESEARCH SERV. (Jul. 26, 2018). Source: <https://crsreports.congress.gov/product/pdf/IN/IN10937>.

⁴¹⁶ Trump, Donald J. *Memorandum on Securing the Southern Border of the United States*. THE AMERICAN PRESIDENCY PROJECT (Apr. 4, 2018). Source: <https://www.presidency.ucsb.edu/documents/memorandum-securing-the-southern-border-the-united-states>.

That led to “Operation Guardian Support”, under which thousands of National Guard troops were deployed⁴¹⁷ by their respective state governors to the border, again to fill support roles.

By that October, the Department of Defense (DoD) launched “Operation Faithful Patriot”, under which activity duty troops were deployed to the border to provide DHS “with ‘planning assistance, engineering support, fixed and rotary wing aviation support to move personnel’ as well as medical assistance, temporary housing and protective equipment for border patrol members”.⁴¹⁸

In February 2019, President Trump issued Presidential Proclamation (PP) 9844, “Declaring a National Emergency Concerning the Southern Border of the United States”.⁴¹⁹ It directed:

*The Secretary of Defense, or the Secretary of each relevant military department, as appropriate and consistent with applicable law, [to] order as many units or members of the Ready Reserve to active duty as the Secretary concerned, in the Secretary’s discretion, determines to be appropriate to assist and support the activities of the Secretary of Homeland Security at the southern border.*⁴²⁰

Ten days later, DHS asked DoD for assistance in constructing “fences [,] roads, and lighting” within 11 specified project areas, “to block drug-smuggling corridors across the international boundary between the United States and Mexico.”⁴²¹

The reprogramming of DoD funds for fence and infrastructure construction went through various legal actions but was eventually allowed to proceed by the Supreme Court.⁴²²

PP 9844 was terminated by President Biden on Inauguration Day 2021, when he issued PP 10142, “Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction”.⁴²³

In that proclamation, Biden also paused work⁴²⁴ on the Southwest Border Wall System⁴²⁵.

⁴¹⁷ See *Mission at the Border*. U.S. DEP’T OF DEFENSE (Oct. 24, 2018). Source: <https://www.defense.gov/News/News-Stories/Article/Article/1671555/mission-at-the-border/>.

⁴¹⁸ Shane III, Leo and Copp, Tara. *Forces headed to border to confront migrant caravan could total ‘in the thousands’*. MILITARY TIMES (Oct. 29, 2018). Source: <https://www.militarytimes.com/news/pentagon-congress/2018/10/29/white-house-plan-to-send-5000-troops-to-the-mexican-border-catches-pentagon-off-guard/>.

⁴¹⁹ *Presidential Proclamation 9884, Declaring a National Emergency Concerning the Southern Border of the United States*. 84 Fed. Reg. 4949-50 (Feb. 15, 2019). Source: <https://www.govinfo.gov/content/pkg/FR-2019-02-20/pdf/2019-03011.pdf>.

⁴²⁰ *Id.* at sec. 1.

⁴²¹ Arthur, Andrew. *Republican Senators Ask GAO to Review Biden Border Wall Freeze*. CENTER FOR IMMIGRATION STUDIES (Mar. 25, 2021). Source: <https://cis.org/Arthur/Republican-Senators-Ask-GAO-Review-Biden-Border-Wall-Freeze>.

⁴²² *Id.*

⁴²³ *Presidential Proclamation 10142, Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction*. 86 Fed. Reg. 7225-27 (Jan. 20, 2021). Source: <https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01922.pdf>.

⁴²⁴ *Id.*, at sec. 1.

⁴²⁵ *Border Wall System*. U.S. CUSTOMS AND BORDER PROTECTION (modified Sep. 6, 2024). Source: <https://www.cbp.gov/border-security/along-us-borders/border-wall-system>.

In May 2023, however, Biden administration Defense Secretary Lloyd Austin approved a DHS request to send 1,500 active-duty troops to the Southwest border.⁴²⁶

In March, DoD reported:

Defense support to civil authorities is an important DOD activity, supporting the American public and U.S. partners in responding to disasters, public health emergencies and border security, so long as these activities do not impair warfighting readiness, [Rebecca Zimmerman, Acting Assistant Secretary of Defense for Homeland Defense and Hemispheric Affairs and Principal Deputy Assistant Secretary of Defense for Homeland Defense and Hemispheric Affairs] noted.

*Today between 2,500 and 3,000 military personnel are deployed to the Southwest border, supporting U.S. Customs and Border Protection activities. DOD has supported this mission for 18 of the last 21 years, she said.*⁴²⁷

CONCLUSION

In her November 29, 2023, Memorandum Opinion and Order in *Texas v. U.S. DHS*⁴²⁸, U.S. District Court Judge Alia Moses explained:

*The U.S.-Mexico border presents a unique challenge that is equal parts puzzling to outsiders and frustrating to locals. **The immigration system at the heart of it all, dysfunctional and flawed as it is, would work if properly implemented. Instead, the status quo is a harmful mixture of political rancor, ego, and economic and geopolitical realities that serves no one.** So destructive is its nature that the nation cannot help but be transfixed by, but simultaneously unable to correct, the present condition. [Emphasis added.]*

Note that this order favored the Biden administration, allowing it to continue to cut concertina wire barriers Texas had erected along the Rio Grande to prevent the unlawful entry of migrants. But that didn't mean the court was happy or agreed with the administration's actions.

Respectfully, many Americans who've watched the pendular gyrations of sundry immigration policies over the past three administrations would concur with her conclusions about "the status quo".

⁴²⁶ Garamone, Jim. *Austin Approves Homeland Security Request for Troops at Border*. DOD News (May 2, 2023). Source: <https://www.defense.gov/News/News-Stories/Article/Article/3382272/austin-approves-homeland-security-request-for-troops-at-border/>.

⁴²⁷ Vergun, David. *Leaders Discuss Security Priorities for Western Hemisphere*. DOD News (Mar. 12, 2024). Source: <https://www.defense.gov/News/News-Stories/Article/Article/3704761/leaders-discuss-security-priorities-for-western-hemisphere/>.

⁴²⁸ *Texas v. U.S. DHS*, Case No. DR-23-CV-00055-AM, Memorandum Opinion and Order, at 6 (W.D. Tex. Nov. 29, 2023) (Moses, J.). Source: <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Concertina%20Wire%20PI%20Denial%20File%20Stamped.pdf>.

Under our Constitution, Congress has plenary authority to make rules concerning the admission of aliens, their presence in the United States, and their removal from this country. It is the role of the executive branch to carry out those rules, consistent with due process.

I concur with Judge Moses's conclusion that our immigration system would work if it were properly implemented. Unfortunately, past administrations have stepped out of their constitutional role and applied our immigration laws not as written, but instead as they believe Congress should have acted.

Arguments can be made that the immigration laws Congress has written are unduly harsh and unfair, that they fail to recognize economic realities, and that they are in need of amendment.

In response to such arguments, I would offer the words of President Ulysses S. Grant in his first inaugural address⁴²⁹:

I shall on all subjects have a policy to recommend, but none to enforce against the will of the people. Laws are to govern all alike — those opposed as well as those who favor them. I know no method to secure the repeal of bad or obnoxious laws so effective as their stringent execution.

Thank you, and I look forward to your questions.

⁴²⁹ Ulysses S. Grant, First Inaugural Address, March 4, 1869. LIBRARY OF CONGRESS (undated). Source: <https://www.loc.gov/item/today-in-history/april-27/#:~:text=I%20shall%20on%20all%20subjects,Ulysses%20S.>

**Testimony of Retired Major General Randy Manner
before the Senate Judiciary Committee
“How Mass Deportations Will Separate American Families, Harm our Armed Forces, and
Devastate Our Economy”
December 10, 2024**

Introduction

Chairman Durbin, Ranking Member Graham, Members of the Committee, I thank you for your invitation to speak today on the unintended negative impacts on our military if they are used in any mass deportation operation.

For over 35 years, I served our nation in both the regular Army and in the National Guard as both a part time citizen soldier and a full-time Title 10 officer after being mobilized in September, 2001. Prior to retiring from the Army as a Major General, I served as the Deputy Commanding General of the United States 3rd Army in Kuwait, as the Acting Vice Chief of the National Guard Bureau, and as the Acting and Deputy Director of the Defense Threat Reduction Agency. Throughout my career, I was very honored to lead both active duty and National Guard organizations and have seen the best that our nation had to offer from our active duty and reserve component Soldiers, Sailors, Airmen and Marines. To clarify, the opinions I am sharing with you today are my own, and I am not representing or speaking on behalf of any part of the Department of Defense or any other organization.

During the three and a half decades that I served, as well as since I retired from active duty, I have never been prouder of our military. It is a force that is both respected by allied military forces and people around the world who desire to live in peace and without oppression, and also feared by our enemies and those who might want to do us harm. I want to thank each of you, as U.S. Senators, both in this room and those who have served in the Senate in the past, for supporting our military and veterans with your votes for the budgets for the Departments of Defense and Veterans Affairs. Without Congressional support, we would not have such a highly trained, equipped, manned, and respected force to deter war and prepare for combat.

Our military members come from all 54 states and territories and the District of Columbia. They come from rural areas, small and large towns, and cities. They come from conservative, moderate, and liberal families and have a variety of educational experiences and backgrounds. They represent every ethnic group, religion, and sexual orientation. They reflect America. Before joining up, few of them have traveled extensively outside of their communities; in many cases, they have had little interaction with Americans who are different from those they grew up with. When these Americans come together in the military, they are molded into a coherent team that is expected to demonstrate and live by the values which make America great: duty, honor, integrity, respect, selfless service, loyalty, personal courage, and excellence.

Military members learn that it doesn't matter what your politics are, where you come from, the color or your skin, or your religion. What matters is that they can count on you to do your job when all hell breaks loose, so everyone gets to come home together.

Today, this respected institution and the values it embodies face a serious threat. President-elect Donald Trump has announced his intent to utilize the U.S. military in his mass deportation plan. This would fundamentally shift the role of the military from national defense to include domestic law enforcement, raising serious legal, operational, and ethical concerns. Traditionally, immigration enforcement has been handled by the civilian federal law enforcement agencies of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). The military, on the other hand, is tasked with defending the nation against external threats, not policing domestic civilian populations. Placing our military at the center of these efforts could cause significant harm to both the institution of our armed forces and to servicemembers themselves.

As this committee examines the impact of using the military as part of the mass deportation operation, there are four concerns I want to raise:

1. The impact on military readiness;
2. The risks of utilizing the military for a law enforcement or immigration enforcement mission for which they have virtually no training or experience;
3. The negative impact on servicemembers' morale and on recruitment and retention; and
4. The significant impact this could have on reducing the public's trust in our men and women who serve in uniform, as well as on their families and on veterans.

Military involvement in mass deportation efforts would undermine readiness by pulling resources away from critical defense priorities

Utilizing military assets in mass deportations would detract from the military's core mission of national defense. Our military is already engaged in over 160 countries around the world. As part of its role in the reserve component, National Guard units regularly deploy overseas in active-duty status working alongside regular U.S. and partner nation units. At home, they are conducting homeland defense missions, responding to hurricanes, flooding, and forest fires, and training to be ready for all contingencies. National Guard personnel maintain civilian careers and lives and patriotically devote on average 39 days per year to creatively train on military skills.

National Guard units are already spread thin and have virtually no time for additional missions or training. While National Guard units continue to assist CBP at the border, as former Chief of the National Guard Bureau General Daniel Hokanson has stated, these deployments serve no military value and detract from the National Guard's core mission.

Through both law and regulation, regular and reserve military forces have a more restrictive definition of their mission compared to the National Guard. The mission of the Department of Defense is simple: provide combat-credible military forces needed to deter war and protect the security of our nation. Additional training or deployments to support deportation operations in lieu of devoting the time, money, and effort needed to prepare for combat would absolutely harm operational readiness and reduce the military's ability to counter adversaries or respond to crises. Our active duty military needs to continue to prioritize responding to potential threats from near-peer competitors like China and Russia, strengthening interoperability with allies and partners, and taking care of our servicemembers and their families.

Members of the military are not trained in civilian law enforcement because it is not a military function

Immigration enforcement is the responsibility of federal law enforcement agencies like ICE and CBP. These agencies are specifically trained on the applicable federal and state laws and work alongside state and local law enforcement pursuant to statutorily authorized agreements. ICE and CBP personnel also regularly interact with migrants and U.S. citizens. They are trained in the protection of civil rights and civil liberties, the appropriate application of immigration law, and care of migrants in custody.

The military is designed to defend against external threats, not police its own citizens. This separation is foundational. The Posse Comitatus Act specifically limits the military's role in domestic law enforcement for this very reason, to keep military operations separate from civilian policing. The U.S. military is the best trained in the world for its warfighting mission, but is neither trained nor equipped for immigration enforcement or detention.

It is important to understand that ICE and CBP officers receive extensive training on how to deal effectively and safely with civilians in the United States and in contrast our military members receive zero. This is a critical reflection of the fact that immigration operations are not a U.S. military mission as directed by the Commander of USNORTHCOM.

While a very small number of National Guard units do conduct four to eight hours of civil disturbance training annually, the vast majority of National Guard and virtually all active duty units are not trained for situations where they may be engaged in domestic law enforcement activities. Decades ago, particularly after the tragedy at Kent State in Ohio and during the domestically turbulent and divisive 1960s and early 1970s, Civil Disturbance Training for Guard units was much more common. The number of Guard units who participate in this training has significantly declined over the decades due to the growing professionalism and capabilities of state and local police forces, and the difficult realization that a mere 8 hours of Civil Disturbance Training was completely inadequate for most Guardsmen to accomplish that mission successfully and safely.

The shift from a warfighting mission to law enforcement, immigration enforcement, or detention mission increases the risk of significant and potentially deadly mistakes in a charged operational environment.

Military involvement in mass deportation efforts would harm recruitment and retention

The military is already facing its most challenging recruitment environment in 50 years. Domestic involvement of the military in politically-charged deportation efforts will only add to those challenges. These controversial actions would be highly visible, would separate families, and would create instability in communities throughout the United States as doctors, teachers, and storekeepers were pulled away for additional National Guard deployments for long periods of time.

Mass deportation efforts of this scale also sends a message to non-U.S. citizen servicemembers with lawful status. Immigrants have served in the U.S. military since the founding of our country. Since 2002, [187,000 service members have been naturalized](#). As the Deputy Commanding General of the U.S. Third Army, I have personally administered the oath of U.S. citizenship to dozens of military members in a combat zone. I shared their tears of pride as they could say for the first time, “I am an American . . .” About 5,000 permanent residents enlist each year. It is not just a question of morale; military readiness and effectiveness also depend on the well-being and resilience of these service members, as well as servicemembers’ families — approximately 26% of military spouses are foreign born. Above all, mass deportation will have profound impacts on mixed-status families, where some members are undocumented while others are citizens or legal residents.

When the public sees the military as a domestic political tool, it harms morale, unit cohesion, and effectiveness. Negative public perception of the military deters potential recruits. Highly politicized domestic actions will exacerbate the ongoing quality-of-life challenges for military families and harm retention efforts. Keeping skilled service members preserves institutional knowledge and expertise, which is crucial for successful military operations.

Just a few weeks ago, I spoke to a young person who, after years of eagerness to serve in the military, was having second thoughts. He expressed grave concerns over what the military (and he) may be asked to do in the next few years in America, specifically citing the reports that the military may be part of domestic law enforcement operations. He is greatly concerned with how the military would be politicized and perceived by a deeply divided nation. Sadly, I know these feelings are increasingly common among both potential recruits and current servicemembers. We owe it to our fellow Americans to keep the military out of controversial domestic law enforcement activities such as a mass deportation operation.

Military involvement in mass deportation efforts would undermine public trust in the armed forces and our veterans.

The U.S. military is one of our country's finest institutions. Public trust in the military, however, has increased and declined in response to societal shifts. Involvement in the military in politically-charged issues like mass deportations would create ethical concerns and risks, harming this trust. After a natural disaster, most people welcome National Guard units in their communities to help save lives and distribute badly needed food and water. In contrast, when many people see the Guard involved with immigration enforcement and detention of their neighbors, these National Guard members may be placed in an impossible, politically-fraught position, eroding domestic civil-military relations. These divisions and perceptions may follow these National Guard personnel returning to civilian life. Unfortunately, negative public perceptions of the military can affect how veterans are perceived and treated, as well. And, as noted above, this widening of the military-civilian divide increasingly impacts the ability to effectively recruit and sustain the force, which has direct consequences for our national security.

Conclusion

Any deployment or operation comes with risks that must be evaluated. The armed forces exist to defend the country, not to police its citizens or to enforce controversial and politically-charged immigration policies. Putting the military in the center of deportation efforts, where they have little to no training, would heighten the risks to our servicemembers and to our military readiness. It also would undermine civil-military relations and the long-term health of the military. These risks and unintended consequences are too high and I urge any future presidential administration to keep immigration enforcement and our military separate.

Senate Judiciary Committee

Patty Morin's Written Testimony

Chairman, Ranking Members, and Members of Congress: Good morning!

My name is Patricia Morin. Thank you for this opportunity to speak on behalf of my family and my daughter Rachel Morin, who was brutally raped and murdered at the hands of an illegal immigrant. This is her story.

The American people need to hear, know, and understand the truth of the horrendous war zone we call the southern border.

President Joe Biden and Vice President Kamala Harris's open border policy is having a devastating impact across our great nation. I live 1,800 miles from the southern border in a small town in northern Maryland. Yet a man who was wanted for murder in El Salvador made his way to my community... and ambushed my daughter on a quaint walking trail in broad daylight.

I'm here today to make sure that my daughter is remembered as more than a victim. I hope that her story will be the wake-up call that this country needs to secure its borders and protect American citizens.

As a child, Rachel was imaginative, kind, and upbeat - qualities she brought with her into adulthood. She was a loving daughter and formed strong bonds with her siblings. She was funny and exuberant, with an infectious laugh.

Life wasn't always easy for Rachel. She had a speech impediment growing up, which led to a lot of bullying. She did not let that challenge slow her down or define her worth. It made her even more sensitive and loving towards others who felt unloved.

As a mother, Rachel was playful and silly. She often laughed, joked, and played with her kids like she was a kid, too. This is pretty remarkable when you consider that Rachel was a mother of five, which is a tremendous responsibility.

Holidays and celebrations were very important to Rachel. She went all out to decorate and create memorable and magical moments for her children. Those efforts are

especially meaningful now since memories are all that her children have left of their mother.

Rachel created meaningful connections with her kids through everyday activities as well. She believed in health and movement. Walks, swimming, working out, and bike rides were always part of Rachel's routine.

She grew up walking the quaint "Ma & Pa" trail near our house. We always thought of the trail as a safe haven to get outside and find peace in nature. It never occurred to us that a predator would target Rachel while she was jogging on that bright, sunny day in August 2023.

The circumstances of Rachel's death triggered extreme shock and denial for our family.

We felt heartbroken at the severity and cruelty of the crime.

We experienced extreme terror and nightmares for months. To this day, we still do not feel completely safe in our own homes and community.

We are grieving the loss of Rachel's life and the future that was taken from her. That trauma is different for every member of the family. I lost my daughter, and I am heartbroken for her children. Rachel's siblings are mourning the bright light that Rachel brought to our family. The most traumatic impact is on Rachel's five children, each of whom is struggling to figure out how to cope without their mom.

Rachel's eldest daughter, who just had a baby this month, navigates that path into womanhood and motherhood without her mother. Her baby's birth is another milestone Rachel can't share with us, and that sadness underscores every life event now.

The circumstances of Rachel's death compounded our grief. It took months for investigators to find Rachel's killer. While that process played out, our family endured false accusations and assaults on our character. Instead of lifting us up, some community members froze us out. Relatives lost jobs because some community members thought it was bad business to mix with a family amid a murder investigation.

We felt helpless and defeated as the months passed without an arrest. Finally, police released a sketch of the suspect, which renewed our hope. We made commercials, distributed flyers, and did countless interviews to bring attention to the case. The

nationwide manhunt ultimately led police to an El Salvadoran national. This suspected gang member was arrested at a bar in Tulsa, Oklahoma, and extradited to Maryland.

We felt relieved when the suspect was finally caught. But that relief quickly turned to horror and outrage when we learned that the suspect was an illegal immigrant. This man was wanted for killing a woman in his home country when he walked into ours.

What's worse is that border patrol would have known that if they had followed the law and swabbed him for DNA the first three times he tried to get into this country. They just turned him around and allowed him to come back again and again until he finally got through the border.

Border patrol let a man with an open interpol warrant for murder walk right into our country to continue his crime spree. The open border policy of Joe Biden and Kamala Harris caused my daughter's death. It allowed a dangerous man to flee his home country to avoid capture and bring his reign of terror to American citizens. Not only did this man brutalize my daughter. He's also accused of attacking a nine-year-old girl in California. Who knows what else he did while traveling from coast to coast?

American citizens are not safe because Joe Biden and Kamala Harris removed the policies and safeguards that keep criminals out of our country. Their failed open border policies have led to two murders by illegal immigrants in my small town alone.

I really want you to hear my words and take to heart what I and other families across America are saying. Please hear our cries for help! You each have taken an oath...an oath to serve our nation and the citizens who make it great. Protect Americans by securing our borders.

We are losing American mothers, daughters, and children to criminals. These deaths are 100 percent preventable. Let's use our resources to protect Americans and welcome immigrants who choose to enter our country legally. This makes much more sense than spending taxpayer money to feed, house, and provide medical care to illegal immigrants.

The Biden /Harris administration has turned a deaf ear to the people they swore to protect. Please don't do the same. It's common sense to screen the people entering our country to ensure that they are here to contribute to our society rather than debase it and harm our citizens.

Do this for Rachel. Please.



U.S. Senate
Committee on the Judiciary
“How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy”

December 10, 2024

Testimony of Aaron Reichlin-Melnick
Senior Fellow
American Immigration Council

Chairman Durbin, Ranking Member Graham and distinguished members of the Committee:

My name is Aaron Reichlin-Melnick, and I currently serve as a Senior Fellow at the American Immigration Council, a non-profit organization that envisions a nation where immigrants are embraced, communities are enriched, and justice prevails for all. We strive to create a society that values immigrants as vital contributors and where everyone is afforded an equal opportunity to thrive socially, economically, and culturally. We do this by shaping immigration policies and practices at the federal, state, and local levels through educating decisionmakers and the public and advancing sensible policy solutions through research and advocacy.

The Council has long studied the population of immigrants in the United States, of all immigration statuses. On our website, we maintain an interactive map called “Map the Impact” showing the demographic characteristics of immigrants in each state, county, major metro area, and congressional district, as well as data on the demographic profile and economic contributions of undocumented immigrants.¹

Today, there are at least 13 million undocumented people living in the United States.² President-elect Trump promises to carry out a mass deportation campaign with the stated intent of arresting and deporting every one of them. So, who are we talking about? While most people entered without inspection across the U.S.-Mexico border, millions entered with a visa and then overstayed.³ Over 8.6 million entered the country before 2009, meaning they have now lived here for a minimum of 15 years.⁴

¹ American Immigration Council, “Map the Impact,” <https://data.americanimmigrationcouncil.org/map-the-impact/>.

² Using American Community Survey data, we estimate that there were 10.99 million undocumented immigrants in the country as of 2022. DHS data shows that over 2.5 million people were released after crossing the southern border either at or between a port of entry since January 2023. U.S. Dep’t of Homeland Sec., Office of Homeland Security Statistics, “Immigration Enforcement and Legal Processes Monthly Tables,” <https://ohss.dhs.gov/topics/immigration/immigration-enforcement/immigration-enforcement-and-legal-processes-monthly>, last updated October 29, 2024. Roughly 500,000 additional people entered through the CHNV parole program over that period. Without more recent Census data, we do not know the total of undocumented immigrants that left the country in 2023 and 2024, so it is not possible to provide an exact estimate of the undocumented population as of today.

³ Congressional Research Service, “Nonimmigrant Overstays: Overview and Policy Issues,” November 21, 2023, <https://sgp.fas.org/crs/homsec/R47848.pdf>.

⁴ U.S. Dep’t of Homeland Sec., Office of Homeland Security Statistics, “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018–January 2022,” April 2024, at 4 <https://ohss.dhs.gov/sites/default/files/2024->

Nearly five million have been here for a minimum of 25 years, and nearly 1.5 million have been here for a minimum of 35 years.⁵ Without a path to permanent legal status, they have spent decades living in limbo; living, working, and often raising a family. They have become integral parts of their communities, and yet the law prevents them from securing the necessary paperwork that can make it formal.

Undocumented people are part of nearly every community and institution in the country. Over 100,000 undocumented children graduate from an American high school each year.⁶ We estimate that there were 408,000 undocumented college students in 2021.⁷ As of 2022, we estimate that there were roughly 1.7 million undocumented immigrants with a bachelor's degree or higher.⁸

Undocumented immigrants are also parents, spouses, and family members to millions of U.S. citizens and lawful permanent residents. Over 11.3 million U.S. citizens, plus an additional 2.4 million people with lawful permanent residency, live with someone who is undocumented (most often a member of their family).⁹ Nationwide, more than one in 13 children in K-12 education has at least one parent who is undocumented; in Nevada, one in every seven, in Texas, one in every eight, and in California, one in every 11.¹⁰

While President-elect Trump talks about targeting “criminal immigrants,” over 90 percent have no prior criminal record whatsoever.¹¹ Of the minority that do, the most common prior convictions are traffic offenses.¹² Efforts to ramp up arrests for a mass deportation campaign would therefore necessarily sweep up thousands of people who have no or minimal criminal histories. In October, the Council published an analysis of 42 years of demographic data confirming that there is no statistically significant correlation between the immigrant share of the population and the total crime rate in any state.¹³

Instead of mass deportation, Congress could create a new path to permanent legal status allowing undocumented people already living here to file an application, pay a fee, and get some form of permanent status. The Council has studied the impact of the creation of a path to legal status for the undocumented population. In 2013, we examined the impact of the 1986 path to legal status created by the Immigration Reform and Control Act (IRCA) and concluded that legalization “would be the cheapest

[06/2024_0418_chss_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25F2%2580%2593january-2022.pdf](#).

⁵ Ibid.

⁶ Fwd.US, “The Post-DACA Generation is Here,” May 23, 2023, <https://www.fwd.us/news/undocumented-high-school-graduates/>.

⁷ American Immigration Council, “Undocumented College Students,” August 2, 2023, <https://www.americanimmigrationcouncil.org/research/undocumented-college-students-2023>.

⁸ American Immigration Council, “Mass Deportation: Devastating Costs to America, Its Budget and Economy,” October 2, 2024, <https://www.americanimmigrationcouncil.org/research/mass-deportation>.

⁹ Fwd.US, “New data analysis shows 28 million people, including nearly 20 million Latinos, are at risk of family separation in 2025,” October 24, 2024, <https://www.fwd.us/news/mixed-status-families-oct/>.

¹⁰ Pew Research Center, “Unauthorized immigrants and characteristics for states, 2022,” https://www.pewresearch.org/wp-content/uploads/sites/20/2024/07/SR_24.07.22_unauthorized-immigrants_table-3.xlsx.

¹¹ Muzafer Chishti and Michelle Mittelstadt, “Unauthorized Immigrants with Criminal Convictions: Who Might Be a Priority for Removal?” *Migration Policy Institute*, November 2016, <https://www.migrationpolicy.org/news/unauthorized-immigrants-criminal-convictions-who-might-be-priority-removal>.

¹² This is based on the profile of criminal records of individuals arrested by ICE. See, e.g., U.S. Immigration and Customs Enforcement, “U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report,” 2020, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

¹³ American Immigration Council, “Debunking the Myth of Immigrants and Crime,” October 17, 2024, <https://www.americanimmigrationcouncil.org/research/debunking-myth-immigrants-and-crime>.

federal workforce development and anti-poverty program for children in history.”¹⁴ Economists agree that a path to legal status “is not only a humanitarian act; it is also a form of economic stimulus” that will “generate more tax revenue for federal, state, and local governments, as well as more consumer spending which sustains more jobs in U.S. businesses,” which “would benefit everyone by growing the economy and expanding the labor market.”¹⁵ And we examined data from both the government and the academy showing that legalization programs do not drive increased migration, and if properly designed may actually reduce migration at the border.¹⁶

Despite the economic benefits of legalization, President-elect Trump plans to pursue mass deportations of millions of undocumented people. This year, the Council studied the impact of taking the country down this path.¹⁷ In our October 2024 study, “Mass Deportation: Devastating Costs to America, Its Budget and Economy,” we examined the fiscal and economic impacts of mass deportations of the estimated 11 million undocumented immigrants present in the U.S. as of 2022, as well as the 2.3 million individuals who entered the country and were placed into removal proceedings from January 2023 through April 2024.¹⁸

Our analysis concludes that beyond the enormous human toll that mass deportations would take on the U.S., mass deportations would also impose extraordinary economic and fiscal damage to our country. Mass deportations would cost U.S. taxpayers hundreds of billions of dollars, with an estimated cost of an 11-year operation to arrest, detain, process, and deport one million people per year at \$88 billion.¹⁹

Mass deportations would also cause economic chaos. As millions are expelled, the U.S. population and labor force would shrink. So too would the economy. Prices would rise in sectors with significant undocumented workforces, including construction, agriculture, and hospitality. Building, maintaining, and repairing houses would become more expensive, as would groceries, restaurants, travel, and childcare. Every American would feel the pinch of inflation.

Overall, we estimate that a successful mass deportation campaign would lead to a loss in total GDP of 4.2 percent to 6.8 percent; in comparison, the GDP dropped by 4.3 percent during the Great Recession.²⁰ And just like that period, many Americans would lose their jobs. Even an *attempt* to deport millions of people will have repercussions for local economies. After all, undocumented immigrants are not just producers, they are also consumers. Collectively, they hold \$256.8 billion in annual purchasing power. If millions of

¹⁴ Dr. Sherrie A. Kossoudji, “Back to the Future: The Impact of Legalization Then and Now,” American Immigration Council, January 31, 2013, <https://www.americanimmigrationcouncil.org/research/back-future-impact-legalization-then-and-now>.

¹⁵ American Immigration Council, “An Immigration Stimulus: The Economic Benefits of a Legalization Program for Unauthorized Immigrants,” April 2013, https://www.americanimmigrationcouncil.org/sites/default/files/research/legalization_0.pdf.

¹⁶ American Immigration Council, “Built to Last: How Immigration Reform Can Deter Unauthorized Immigration,” May 2013, https://www.americanimmigrationcouncil.org/sites/default/files/research/built_to_last_how_immigration_reform_can_deter_unauthorized_immigration.pdf.

¹⁷ Portions of the aforementioned report are reproduced in this testimony.

¹⁸ American Immigration Council, “Mass Deportation: Devastating Costs to America, Its Budget and Economy,” October 2, 2024, <https://www.americanimmigrationcouncil.org/research/mass-deportation>.

¹⁹ Ibid.

²⁰ John Weinberg, “The Great Recession and its Aftermath,” Federal Reserve History, November 22, 2013, <https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath>.

people are deported or otherwise forced to leave, American businesses will close not just from a lack of workers, but also from a lack of customers.

A large-scale mass deportation campaign will also increase labor exploitation during the years in which it is carried out. Unscrupulous employers will dangle deportation over any of their workers who dare to push back, and will have the full force of the U.S. government to back up their threats.

This country is at a crossroads. In one direction, we can crack down on unscrupulous employers, strengthen millions of families, and build American prosperity. In the other direction, we can crash the American economy, break up families, and take a hammer to the foundations of our society. Faced with this choice, we should pick the path that leads to a brighter future for all.

Fiscal Costs of Mass Deportation

In calculating the costs to the U.S. government of mass deportation, we divided the removal process into four stages: arrest, detention, legal processing, and removal. For each of these stages, we examined a wide variety of government and public sources, including presidential budgets, congressional appropriations reports, official DHS documents, and testimony of government officials, to produce an estimate for the cost to the taxpayers for each step in this process.

We acknowledge that it is impossible to fully model the governmental costs of any effort to carry out the largest deportation operation in human history, given the number of variables involved and the scale of operations. The most significant variables for any such operation would be time and capital investment. A single operation aiming to deport 13.3 million people would unfold differently, and with different results and costs, than a longer operation carried out over the course of multiple years. We conclude that a single mass deportation operation to deport 13.3 million people, presuming all costs remain the same as today, would cost at least \$315 billion dollars.

By contrast, a protracted operation would require sustained investment in detention centers and immigration courtrooms that would have to remain in operation for over a decade. Inflation would also increase costs on an annual basis. Even assuming that 20 percent of the undocumented population would “self-deport” under a yearslong mass-deportation regime, we estimate the ultimate cost of such a longer operation would average out to \$88 billion annually, for a total cost of \$967.9 billion over the course of more than a decade. A summary of our findings is below.

Arrests:

- ICE arrest operations are target-based and begin when a person is identified through a database hit as the person is taken into local, state, or federal custody. There is no modern history of indiscriminate “papers, please” raids on immigrant communities, although ICE has often carried out large-scale worksite raids which involve the arrest of all workers at a target site who cannot establish their status.
- Only 18 percent of ICE arrests from 2015 through 2021 occurred “at large” in the community. The remaining 82 percent were custodial arrests which occurred inside of a local, state, or federal jail. Custodial arrests are easier in localities which cooperate with ICE.

- We calculate that the average cost of one custodial arrest is \$3,600, compared to \$6,650 for one “at-large” arrest. ICE averages fewer than 30,000 “at-large” arrests per year.
- We calculate that arresting one million people per year would cost \$7 billion annually and require hiring roughly 31,000 new ICE employees.

Detention

- Many immigrants are eligible for release on bond at the discretion of ICE agents and immigration judges, while others are subject to “mandatory detention” and may only be released on ICE’s discretion. However, ICE has never had the capacity to detain everyone.
- Currently, ICE is budgeted for 41,500 detention beds. Over 90 percent of ICE detention beds are operated by private prison companies or rented in state or local jails.
- The average daily cost of a standard detention bed was \$187 in FY 2023. The daily cost of a bed in a “soft-sided” facility in FY 2023 was \$317. When ICE still operated family detention centers, the inflation-adjusted cost of a single bed was \$349.
- We calculate that building and maintaining sufficient detention capacity to detain one million people per year would cost \$66.2 billion annually.

Legal Processing

- Before any person can be deported, the government must obtain a final order of removal or grant authorization to voluntarily depart. While DHS may rapidly issue removal orders to some recent border crossers, those arrested in the interior generally must be placed into removal proceedings and see an immigration judge.
- The immigration court system is operated by the Department of Justice, while ICE acts as prosecutors. As of October 2024, there were 735 immigration judges nationwide overseeing 3.7 million cases, which take two to six years on average.
- The government estimates that it would cost \$1.8 million for every new judge (accounting for associated support staff and necessary space and equipment).
- We calculate that hiring sufficient immigration judges and ICE prosecutors to generate one million removal orders per year would cost \$12.6 billion annually.

Removals

- After a person has been ordered deported, the government must carry out the removal. Some individuals are permitted to depart via commercial flight, but most deportations are carried out with the targets held in detention and then put on a removal flight or bused to a port of entry.
- ICE uses almost exclusively charter services to carry out removals, with over 93 percent of ICE’s Transportation and Removal Program budget going to private contractors.
- Deportations are carried out pursuant to repatriation agreements and require cooperation from receiving countries. Some countries refuse all or most deportations, including China, India,

Russia, and Venezuela. If deportation is not foreseeable, a person with a final order of removal may only be detained more than six months if ICE proves they would pose a danger if released.

- **We calculate that conducting one million removals per year would cost \$2.1 billion annually.**

We emphasize that our estimate is likely conservative, as we were unable to estimate several costs for aspects of this process which we know would be required, including the hiring costs of tens of thousands of agents, the costs of capital investments necessary to increase the ICE Air Operations charter aircraft capacity, legal costs, and a myriad of other ancillary costs necessary to ramp up federal immigration enforcement operations to the scale necessary to actually deport the entire undocumented population.

Economic Impacts of Mass Deportation

Beyond the direct costs of the largest law enforcement operation in history, mass deportation would profoundly damage the U.S. economy. We used data from the most recent American Community Survey to estimate the economic impacts of deporting the 11 million undocumented people in the country as of 2022.

First, mass deportations would exacerbate ongoing U.S. labor shortages.²¹ In 2022, nearly 90 percent of undocumented immigrants were of working age, compared to 61.3 percent of the U.S.-born population aged between 16 and 64, so undocumented immigrants are more likely to actively participate in the labor force. Losing these working-age undocumented immigrants would worsen the severe workforce challenges that many industries have already been struggling with in the past few years.

The impact of mass deportations would be concentrated in several key U.S. industries. The construction and agriculture industries would lose at least one in eight workers, while in hospitality, about one in 14 workers would be deported due to their undocumented status. Within those industries, some trades would be hit harder than others. According to the U.S. Department of Agriculture, 42 percent of farmworkers are undocumented.²² Our own analysis suggests that nearly one third of workers in major construction trades, such as plasterers, roofers, and painters, are undocumented. Similarly, 28 percent of agricultural graders and sorters, and a quarter of household cleaners, are undocumented.

The impact of losing these workers would be devastating. Labor shortages in the construction industry are already high, with the industry projecting a need to hire an additional 454,000 new workers in 2025 just to keep up with demand.²³ The construction workforce is already looking at the possibility of a “foreboding exodus of experience” as the median age of construction workers rises;²⁴ deporting an additional 1.5 million workers could destabilize the industry, rapidly increasing prices for construction labor and causing some construction firms to go under. Not only would the price of new houses rise, but so too would the price of maintenance and repair. These impacts would be felt not only by homeowners and

²¹ See Stephanie Ferguson Melhorn, “Understanding America’s Labor Shortage,” U.S. Chamber of Commerce, November 22, 2024 (“Right now, the latest data shows that we have 8 million job openings in the U.S. but only 6.8 million unemployed workers.”)

²² U.S. Dep’t of Agriculture, “Farm Labor,” last updated December 6, 2024, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#legalstatus>.

²³ Associated Builders and Contractors, “ABC: 2024 Construction Workforce Shortage Tops Half a Million,” January 31, 2024, <https://www.abc.org/News-Media/News-Releases/abc-2024-construction-workforce-shortage-tops-half-a-million>.

²⁴ Zachary Phillips, “Construction’s age problem: A foreboding exodus of experience,” *Construction Dive*, May 25, 2023, <https://www.constructiondive.com/news/construction-labor-retirement-recruiting-dei/651184/>.

likely home buyers, but also by the U.S. government, which would be required to spend more on any of its own construction projects, more on disaster recovery, and more on basic maintenance of any U.S. government property.

As prices rise and businesses falter, Americans would lose jobs. A recent study also found that for every 500,000 immigrants removed from the labor market due to deportation, U.S.-born workers lose 44,000 jobs.²⁵ Using that metric, deportation of 11 million undocumented immigrants could cause a loss of 968,000 jobs held by U.S. citizens.

Mass deportation would also reduce the overall size of the U.S. economy. Among the deported would be one million undocumented immigrant entrepreneurs, who generated \$27.1 billion in total business income in 2022. Losing the 157,800 undocumented entrepreneurs in neighborhood businesses would lead to disruptions to services that have become an integral part of community life and provide local jobs for Americans. We also find that undocumented immigrant households have a combined purchasing power of \$256.8 billion. This is money that goes into the economy and stimulates broader economic growth. After all, undocumented immigrants not only produce goods; they also consume goods, and that money goes back into the U.S. economy. Mass deportation would disrupt this economic behavior and damage the economy.

Mass deportation would also deprive federal, state, and local governments of billions in tax contributions from undocumented households. In 2022 alone, undocumented immigrant households paid \$46.8 billion in federal taxes and \$29.3 billion in state and local taxes.

Yet undocumented immigrants are unable to benefit from many of the programs they pay into, including Social Security, Medicare, and unemployment insurance. The U.S. would lose out on key contributions undocumented households make to social safety net programs annually, including \$22.6 billion to Social Security and \$5.7 billion to Medicare. As the U.S. population ages, the loss of these payments would make it increasingly challenging to keep social safety net programs solvent.

Beyond broader economic impacts, millions of families would feel the pinch caused by deportation. Deporting undocumented immigrants would separate four million mixed-status families, affecting 8.5 million U.S. citizens with undocumented family members (5.1 million of whom are U.S. citizen children). Many of those who would be deported are breadwinners, and mass deportations would slash the income of their households by an average of 62.7 percent (\$51,200 per year). In many cases, U.S. citizens may choose to leave as well to remain with a loved one who was being deported, which would make the economic impact even worse.

Taken together, we calculate that mass deportation would lead to a loss of 4.2 percent to 6.8 percent of annual U.S. GDP, or \$1.1 trillion to \$1.7 trillion in 2022 dollars. In comparison, the U.S. GDP shrunk by 4.3 percent during the Great Recession between 2007 and 2009. The negative impact would be the most significant in California, Texas, and Florida, the three states that were home to 47.2 percent of the country's undocumented immigrants in 2022 and where one in every 20 residents would be deported.

²⁵ Chloe East, "The labor market impact of deportations," *Brookings*, September 18, 2024, <https://www.brookings.edu/articles/the-labor-market-impact-of-deportations/>.

The Trump Administration Should Respect Congress's Enforcement Funding Decisions

Given that mass deportations would require these enormous sums, it remains unclear where a future Trump administration would obtain funding for these operations without substantial support from Congress. These funding concerns are particularly significant given the Trump campaign's suggestion that the administration is aiming to "start with" the deportation of one million people, which we estimate will cost \$88 billion per year.²⁶

In his first term, President Trump reprogrammed roughly \$10 billion in Department of Defense funding to build border barriers and associated infrastructure, despite Congress having refused to provide that funding itself.²⁷ This funding took directly from military projects. For example, when President Trump took \$3.8 billion from the Department of Defense in 2020, the Air Force and Navy lost over \$1.4 billion combined which had been provided by Congress to procure aircraft, and the National Guard and Army Reserve lost \$1.3 billion for equipment.²⁸

Loss of this funding delayed many vital infrastructure projects on U.S. military bases, including a loss of \$402 million in funding for Camp Santiago in Puerto Rico,²⁹ which had suffered significant damage from Hurricane Maria in 2017 and needed extensive work to rebuild and hurricane-proof the base.³⁰ At Fort Campbell along the Kentucky-Tennessee border, the Trump administration's effort halted the construction of a new middle school meant for military families, even though the old school was woefully inadequate, , another example of the way these cuts hurt military life and operations across the board.³¹

During his first term in office, President Trump also took \$155 million from FEMA's Disaster Relief Fund in 2019 to increase immigration detention above the level for which Congress had appropriated funding.³² This funding grab came on top of \$9.8 million transferred from FEMA for similar purposes in 2018.³³ These uses of reprogramming threaten to undermine Congress's power of the purse and have real impact on Americans who were relying on the funding for the purposes intended under the law.

Conclusion

The options are clear. If we go down the path of mass deportations, the entire country will suffer. Millions of mixed-status families will be torn apart or forced to leave, and millions of people will be kicked out of

²⁶ Ivan Pereira, "JD Vance says mass deportations should 'start with 1 million,' defends 'thought experiment' giving parents extra votes," *ABC News*, August 11, 2024, <https://abcnews.go.com/Politics/jd-vance-mass-deportations-start-1-million-defends/story?id=112739447>.

²⁷ Congressional Research Service, "FY2020 Defense Reprogrammings for Wall Funding: Background," March 24, 2020, <https://crsreports.congress.gov/product/pdf/N/IN11274>.

²⁸ *Ibid.*

²⁹ Congressional Research Service, "Military Funding for Southwest Border Barriers," updated September 27, 2019, <https://crsreports.congress.gov/product/pdf/R/R45937>.

³⁰ Paul Sonne, "To pay for Trump's wall, a hurricane-wrecked base in Puerto Rico loses funding," *Washington Post*, September 19, 2019, https://www.washingtonpost.com/world/national-security/at-half-ruined-puerto-rico-base-hurricane-recovery-funds-pulled-for-trumps-wall/2019/09/19/173ad4f4-d63c-11e9-ab26-e6dbec45d3_story.html.

³¹ Helene Cooper, "No New School at Fort Campbell: The Money Went to Trump's Border Wall," *New York Times*, September 5, 2019, <https://www.nytimes.com/2019/09/05/us/trump-border-wall-military-families.html>.

³² Holmes Lybrand, "Fact check: Does Trump's reallocation of FEMA funds take money from Puerto Rico?" *CNN*, August 29, 2019, <https://www.cnn.com/2019/08/29/politics/fema-puerto-rico-disaster-funding-hurricane-donald-trump-fact-check/index.html>.

³³ Camila Domonoske, "Trump Administration Transferred \$9.8 Million From FEMA To ICE," *NPR*, September 12, 2018, <https://www.npr.org/2018/09/12/647021316/trump-administration-transferred-9-8-million-from-fema-to-ice>.

their jobs and the lives they've made here for decades. In the wake of their removal, the economy will shrink. Prices will rise across most sectors, and may increase the most in construction, agriculture, and hospitality. As inflation rises and the economy shrinks, businesses will go under, workers will lose their jobs, and we will become poorer both as a nation and as individuals. We would also leave a permanent stain on this country's legacy and undermine our credibility around the world. Who would ever trust the United States to talk about human rights if we forcibly evict millions of people at the point of a gun?

By contrast, if Congress passes a path to permanent legal status, we can benefit as a nation. Bringing millions of people out of the shadows will allow them to obtain stability, fight against exploitation, and contribute even more to this country. Rather than self-sabotage, we should follow the proud tradition of this nation and give people a real chance to come into compliance with the law rather than bring down the hammer.

**Testimony of Foday Turay before the Senate Judiciary Committee
“How Mass Deportations Will Separate American Families, Harm our Armed Forces, and
Devastate Our Economy ”**

December 10, 2024

Chairman Durbin, Ranking Member Graham, and Members of the Committee, good morning and thank you all for inviting me to speak with you today. My name is Foday Turay. I am a DACA recipient, a prosecutor, a husband, and a dad. I am also, without a question, a patriot. My love for this country stems from my elementary school days, when I recited the Pledge of Allegiance with all my classmates each morning. In fact, I did not understand that my immigration status differed from theirs until I was near the end of my high school career.

My family – like so many generations of people before me – came to the United States in search of freedom and safety. I was born in Sierra Leone at a time of great civil unrest. When I was four years old, my father was killed, and my mother, grandmother, and I fled to Guinea. My mother was able to migrate to the United States, but I stayed behind with my grandmother. Sadly, my grandmother became ill and died shortly after my mother left. I was able to come to the United States on my seventh(7th) birthday in 2003. I have been here ever since.

I learned that I was undocumented when I tried to get a driver's license. It was one of the worst days of my life. The path I had outlined in my head of law school and being an attorney suddenly seemed impossible. Still, I never wavered in my faith and hope in this country. I was thrown a lifeline when DACA was announced in 2012. The day I received my work permit and social security number was one of my best childhood memories because I finally had an identity in the country that I had come to love. Thanks to DACA, I was able to attend college, but because of my immigration status, I had no access to scholarships or financial aid. I worked for Uber eats to make ends meet, bringing my textbooks with me on food order runs. My hard work paid off: I earned a full merit scholarship to Penn State Dickinson Law, where I received my J.D. in 2023. I now work full-time for the District Attorney's office in Philadelphia, where I help victims of crime navigate a complex legal system.

During this time, my roots in this country have only grown deeper. I met and married my beautiful wife, Jaxhiel, a U.S. citizen who is here today with me and whose own family members are serving and have served the country in the military. We are proud homeowners, and we're parents to a beautiful 18-month-old baby boy.

The opportunity to address all of you on behalf of hundreds of thousands of DACA recipients and undocumented spouses like me is not one I take for granted. I have lived in this country for 21 years, my wife and I have spent the past years building community in this great country, and we are worried about what the future might bring if we are ripped away from these communities. For me, the consequences are felt on three levels: personally, at a community level, and at a societal level.

On a personal level: My family – all of whom are now U.S. citizens – is here. If I were to be deported to Sierra Leone, not only would I be completely unfamiliar with the culture, but I would also have no family there, and very little connection to any community networks, to help sustain me. In addition, while my wife and I are equal partners in life, I am blessed to be the breadwinner in our family. If I were to be deported, my wife and our son would likely need to rely on government assistance to make ends meet. My young son would also be without a father, which would be devastating for him, Jaxhiel, and me. My deportation would result in significant stress and strain for my wife's entire family as well, not to mention for my own U.S. citizen mother. My wife is the caregiver for her mother, who is legally disabled and has a brain tumor that requires a chemotherapy injection once a month to stop it from growing. Our two-income household allows my wife to care for her mother without the burden of obtaining another job. If I were to be deported, my wife's brother, who is currently serving in the Marines, would be hindered from reenlisting in order to help support their mother. Deportation does not only impact the individual, but it also has consequences for all the U.S. citizens who have built their lives around an undocumented individual.

My case is not unusual: DACA recipients have established deep ties to this nation. The average DACA recipient [entered](#) the country at 7 years old. DACA recipients such as I have called the United States home for decades. Our lives have become deeply rooted with other U.S. citizens who depend on our income and contribution at home and in our community. My wife, who was born and raised here, should not have to choose between caring for her mother or continuing to build a family with me. My brother-in-law should not have to choose between reenlisting in the Marines next year after years in service or risk his mother suffering due to my wife not being able to care for their mother. The devastation caused by deportation affects not only mixed-status families but also the communities they serve.

On a community level: I'm a taxpayer and city employee in Philadelphia serving as an Assistant District Attorney. A significant portion of my wages are allocated toward taxes. As a homeowner, I also pay property tax, all of which I am happy to do, as I know those taxes help fund my

community's roads, schools, and the overall well-being of U.S. citizens. If I were to be ripped from my community, the taxes I pay would go with me. My wife and I are both devout Christians, with strong ties to our church and extended families. Furthermore, I am an active member of American Families United, an organization that advocates for undocumented spouses of U.S. citizens. Finally, the people of Philadelphia would be hurt if I were to disappear: victims of crime whose cases I prosecute would lose an ally in their fight for justice, and the cases I've built would suffer.

In fact, I am not the only DACA recipient in my office. My friend and colleague, Reyna, has reworked entire segments of our criminal justice IT infrastructure, allowing us to better monitor our cases and serve the people of Philadelphia. She has built the infrastructure behind an entirely new case management system set to be launched next year, which will make life easier for all of us prosecutors. Our work matters not just to immigrants, but to everyone.

DACA recipients [pay](#) an estimated \$6.2 billion in federal taxes and \$3.3 billion in state and local taxes each year. These are critical revenues that help support social welfare programs that many U.S. citizens rely on. Nearly 50% of DACA recipients have at least one child in the home. By deporting DACA recipients, the country is removing tax-paying revenue while increasing the number of U.S. citizen children and spouses of DACA recipients, such as my wife and son, who may have to rely on social welfare programs as a result of one fewer income in the home.

On a societal level, mass deportations would be devastating. As a prosecutor, I've seen firsthand how delicate the ties between law enforcement and immigrant communities can be. If immigrants are afraid to cooperate with police or prosecutors as victims of – or witnesses to – crime because they are afraid of deportation, we all suffer. When you have ICE agents patrolling courthouses and police stations, you are creating a category of people who are less willing to report crime and less willing to cooperate with law enforcement in solving crimes. When fear of deportation spreads through the communities, especially in mixed-status communities such as Philadelphia, citizens become less safe because you have an increase in unsolved crimes and less prosecution.

Prosecutors like me are less able find a witness willing to testify due to fear of deportation. These policies could have the effect of increasing crime while hindering our ability to prosecute. I know others who work as teachers, doctors, nurses, or entrepreneurs whose communities would face similar ripple effects if they were snatched from this country.

I dream of a future unencumbered by my immigration status. I hope to one day serve our nation at the federal level. I long for the day when I can live without fear that I will be torn away from my son, just as my father was so cruelly taken from me. While DACA has been a lifeline, I hope for a day when I do not have to live in fear of a Fifth Circuit ruling or an Executive Branch decree. I live for the day I no longer must survive on a subscription plan.

While we do not know what the next administration will bring, we do know that mass deportations don't just hurt immigrants. They hurt all of us: our families, our community, and our society. We owe it to ourselves and to our country to think beyond a mindset of scarcity and fear, and to instead develop plans to ensure that immigrants can remain here.

Until that day comes, I will continue to contribute everything I can to the people of Philadelphia, to my faith community, and to my family. I strongly believe that a pathway to citizenship for Dreamers and border security can coexist. This body can change the lives of Dreamers by coming together and allowing us to live our lives and continue to contribute to our community without fear of deportation. After over a decade of paying taxes, I dream of a day when I no longer have to reject applying for a position not because of my immigration status. Thank you all so much for your time and attention to this critical issue.

Senator Charles E. Grassley Questions for the Record
Senate Committee on the Judiciary
How Mass Deportations Will Separate American Families,
Harm Our Armed Forces, and Devastate Our Economy
December 10, 2024

Questions for Mr. Art Arthur

1. In general, what percent of illegal immigrants show up for their court dates and what factors affect the likelihood of these individuals showing up for their appearance in court?

According to statistics¹ from the Executive Office for Immigration Review (EOIR), the Department of Justice (DOJ) component that oversees the immigration courts, 34 percent of initial case completions (ICCs) in immigration court in FY 2024 (222,223 cases) resulted *in absentia* orders of removal. That is lower than the 50 percent *in absentia* rate in FY 2020 (87,906), as well as the *in absentia* rate for every fiscal year between FY 2015 (43 percent) and FY 2020, but higher than the *in absentia* rate in FY 2021 (10 percent), FY 2022 (22 percent), or FY 2023 (33 percent).

That said, the combined number of *in absentia* orders in the past two fiscal years (2023 and 2024, 382,378) exceeds the total number of respondents ordered removed *in absentia* in the six fiscal years 2015 to 2020 combined (339,873).

The *in absentia* rate for FY 2022 to FY 2024 likely would have been much higher but for hundreds of thousands of immigration court cases that were closed or otherwise dispensed of in lieu of completion over the past three-plus fiscal years.

As a recent interim staff report² from the House Judiciary Committee explains: “Under the Biden-Harris Administration, more than 700,000 illegal aliens have had their cases dismissed,

¹ *Comparison of In Absentia Rates*. U.S. DEP’T OF JUSTICE, EXEC. OFC. FOR IMMIGRATION REVIEW (generated Oct. 10, 2024). Source: <https://www.justice.gov/eoir/media/1344906/dl?inline>.

² *Interim Staff Report. Quiet Amnesty: How the Biden-Harris Administration Uses the Nation’s Immigration Courts to Advance an Open-Borders Agenda*. U.S. HOUSE OF REPS., COMM. ON THE JUDICIARY (Oct. 24, 2024). Source: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-10-24%20Quiet%20Amnesty%20-%20How%20the%20Biden-Harris%20Administration%20Uses%20the%20Nation%27s%20Immigration%20Courts%20to%20Advance%20an%20Open-Borders%20Agenda.pdf>.

terminated, or administratively closed, allowing those aliens to stay in the country indefinitely without facing immigration consequences.”

The majority of those dismissals, terminations, and closures were due³ to an April 2022 memorandum issued by Kerry Doyle—ICE’s Principal Legal Advisor (PLA) and the head of the agency’s Office of the Principal Legal Advisor (“OPLA”)—titled “Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion”⁴ (Doyle Memo).

Those OPLA lawyers represent the interests of the United States in immigration court, and the purpose of the Doyle Memo was “to guide” them “in appropriately executing DHS’s enforcement priorities and exercising prosecutorial discretion”⁵ under a September 30, 2021, memo issued by DHS Secretary Alejandro Mayorkas, captioned “Guidelines for the Enforcement of Civil Immigration Law”⁶ (Mayorkas Memo).

Despite that purpose, and notably, the Doyle Memo apparently remained in effect even while the Mayorkas memo was enjoined.⁷

Among other things, the Doyle Memo states that ICE attorneys are expected “to use their professional judgment to do justice in each case, whether the decision relates to: filing an NTA; moving to dismiss, administratively close, or continue proceedings; stipulating to issues, relief, or bond; or pursuing an appeal”.⁸

³ See *id.* at 5 (“On April 3, 2022, Kerry Doyle, the DHS official who at the time oversaw the ICE attorneys who are supposed to represent the U.S. government’s interests in immigration court, issued a memorandum (“Doyle Memo”) to ICE attorneys directing them to promote closure and dismissal of cases, particularly given the immigration court backlog. The Doyle Memo outlined how ICE attorneys “are expected to exercise discretion”—that is, move to dismiss immigration cases—“at all stages of the enforcement process.” In other words, ICE attorneys are expected to ensure that certain aliens’ cases never move forward in immigration court so the Biden-Harris Administration may achieve its open-borders agenda.”).

⁴ Doyle, Kerry. *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 3, 2022). Source: https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

⁵ *Id.* at 1.

⁶ Mayorkas, Alejandro. *Guidelines for the Enforcement of Civil Immigration Law*. U.S. DEP’T OF HOMELAND SECURITY (Sept. 30, 2021). Source: <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

⁷ See *State of Texas v. U.S.*, Case No. 6:21-cv-00016, Memorandum Opinion and Order (S.D. Tex. Jun. 10, 2022). Source: https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.240.0_4.pdf.

⁸ Doyle, Kerry. *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 3, 2022), at 9. Source: https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

Few aliens with valid and/or meritorious asylum claims would seek or agree to a dismissal, termination, or closure of their cases because it would delay the asylum grant that would allow them to live and work here permanently,⁹ obtain lawful permanent residence¹⁰, and bring other family members to the United States¹¹. To obtain those benefits, aliens with valid and meritorious claims must appear for their removal hearings and therefore have every incentive to do so.

Thus, the 700,000-plus respondents whose cases were dismissed, terminated, or closed likely had weak or non-existent claims for immigration relief, and if their cases had not been dismissed, terminated, or closed, many would not have appeared and the *in absentia* rate almost definitely would have been higher.

The committee may also want to examine whether immigration judges consistently issued *in absentia* removal orders in cases in which respondents failed to appear, as the Immigration and Nationality Act (INA) mandates.

Specifically, section 240(b)(5)(A) of the INA¹² states:

*Any alien who, after written notice required under paragraph (1) or (2) of [section 239(a) of the INA] has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, **shall be ordered removed in absentia** if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in [subsection 240(e)(2) of the INA]). The written notice by [DHS] shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under [section 239(a)(1)(F) of the INA]. [Emphasis added.]*

The low *in absentia* rates for FY 2021 and FY 2022 suggest that in lieu of issuing *in absentia* removal orders under section 240(b)(5)(A) of the INA, courts may have been continuing cases (either *sua sponte* or at OPLA's request) for reservice of hearing notices to give respondents a

⁹ Sec. 208(c)(1) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

¹⁰ Sec. 209(b) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1159&num=0&edition=prelim>.

¹¹ See sec. 208(b)(3)(A) of the INA (2024) ("A spouse or child (as defined in [section 101(b)(1)(A), (B), (C), (D), or (E) of the INA]) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien."). Source:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

¹² Sec. 240(b)(5)(A) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

second chance to appear or simply closing them, though there is no publicly available evidence of that fact.

The key factor that affects the likelihood that respondents will appear for removal hearings is the likelihood that they will be granted relief from removal, usually asylum. As the Board of Immigration Appeals (BIA) explained in *Matter of Andrade*¹³:

A respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief.

Thus, if an illegal migrant files a frivolous, bogus, or otherwise non-meritorious application solely in order to be released into the United States, it is less likely that the alien will appear.

To illustrate this point, consider a chart¹⁴ EOIR has published that contains case outcomes involving border migrants subject to expedited removal who made credible-fear claims between FY 2008 and the fourth quarter (Q4) of FY 2019.

During that period, 83 percent of those aliens were found to have a credible fear. Despite that finding, nearly 46 percent (38/83) of those who were released after that credible fear finding never applied for asylum and 32.5 percent (27/83) were ordered removed *in absentia* when they failed to appear in court.¹⁵

By contrast, fewer than 17 percent of those border aliens who were found to have a credible fear between FY 2008 and Q4 in FY 2019 (14/83) were ultimately granted asylum.¹⁶

The key reason the expedited removal provisions in section 235(b)(1) of the INA mandate detention¹⁷ for “inadmissible applicants for admission” who lack proper documents (including

¹³ *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987). Source:

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3037.pdf>.

¹⁴ *Credible Fear and Asylum Process: Fiscal Year (FY) 2008 – FY 2019*. U.S. DEP’T OF JUSTICE, EXEC. OFC. FOR IMMIGRATION REVIEW (generated Oct. 23, 2019). Source: <https://www.justice.gov/eoir/file/1216991/dl?inline>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See sec. 235(b)(1)(B)(ii) of the INA (2024) (expedited removal; “If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum”); sec. 235(b)(1)(B)(iii)(IV) of the INA (2024) (expedited removal; “Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>

illegal entrants) is to deter aliens from entering illegally and then falsely claiming asylum after apprehension solely to live and work in the United States.

As the House Judiciary Committee explained in its committee report¹⁸ for H.R. 2202, the “Immigration in the National Interest Act”, a bill that would become the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”, which amended section 235 of the INA to create expedited removal¹⁹):

*Existing procedures to deny entry to and to remove illegal aliens from the United States are cumbersome and duplicative. Removal of aliens who enter the United States illegally, even those who are ordered deported after a full due process hearing, is an all-too-rare event. **The asylum system has been abused by those who seek to use it as a means of “backdoor” immigration.** (Emphasis added.)*

The committee report continues:

*The number of asylum applications has increased more dramatically, from approximately 30,000 in the early 1980s to 150,000 per year by the early 1990s. Most of these were meritless applications filed by illegal aliens in order to prolong their stay in the U.S. and to receive work authorization. Thus, abuse of the asylum system has had a profound effect on illegal immigration. (Emphasis added.)*²⁰

Similarly, it found:

*The asylum system established in the 1980 Refugee Act has provided protection to thousands of legitimate claimants, but has been subject to abuse by tens of thousands more who filed non-legitimate claims simply in order to extend their stay in the U.S. and to receive work authorization. (Emphasis added.)*²¹

2. For those illegal immigrants who fail to show up to their immigration court date, what happens to their case and how are they removed?

¹⁸ H. Rep. No. 104-469 (1996) at 107. Source: [https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf?_cf_chl_jschl_tk=_pmd_iWTm.Kk8_IdFyTs7HsFLgckD7nCKiLG8IU04ZWl70t0-1634044319-0-ggNtZGzNAmWjcnBsZQrR](https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf?_cf_chl_jschl_tk=_pmd_iWTm.Kk8_IdFyTs7HsFLgckD7nCKiLG8IU04ZWl70t0-1634044319-0-ggNtZGzNAmWjcnBsZQrR;).

¹⁹ See Tit. III, sec. 302 of the Illegal Immigration Reform and Immigrant Responsibility Act, Div. C of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208 (1996), 110 Stat. 3009–579 to 584. Source: <https://www.congress.gov/104/plaws/publ208/PLAW-104publ208.pdf>.

²⁰ H. Rep. No. 104-469 (1996) at 131. Source: https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf?_cf_chl_jschl_tk=_pmd_iWTm.Kk8_IdFyTs7HsFLgckD7nCKiLG8IU04ZWl70t0-1634044319-0-ggNtZGzNAmWjcnBsZQrR.

²¹ *Id.* at 139.

Section 241(a)(1) of the INA²² directs DHS to remove all aliens under final orders of removal—including aliens ordered removed *in absentia*-- within 90 days (a period designated therein as the “removal period”).

Moreover, section 241(a)(2)²³ of the INA directs the department to detain those aliens during the removal period, and further makes clear that “[u]nder no circumstance during the removal period shall” DHS “release an alien who has been found” removable under the criminal and national-security grounds of inadmissibility and deportability.

That said, traditionally few aliens ordered removed have been detained or deported within that 90-day removal period.

Removal of aliens ordered deported *in absentia* is a particular challenge because many of them have moved without providing either DHS or EOIR with an updated address, and ICE lacks the resources to locate and detain most of them.

While aliens apprehended after entering the United States illegally after November 1, 2020, are technically a “priority” for arrest, detention, and removal under the Mayorkas Memo²⁴, nothing suggests that ICE has actually detained, let alone removed, recent illegal border crossers who were ordered removed generally, or ordered removed *in absentia* in particular.

As of October 3, 2023, ICE Enforcement Removal Operations (ERO) had a docket of nearly 5 million cases²⁵ (up from 3.26 million cases in FY 2020²⁶), 1,292,830 of whom were under final orders of removal.²⁷ Logically, a significant number of those aliens under final orders of removal on the ICE ERO non-detained docket were ordered removed *in absentia*, if not the majority.

²² Sec. 241(a)(1) of the INA (2024). Source:

[https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1231%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1231%20edition:prelim)).

²³ Sec. 241(a)(2) of the INA (2024). Source:

[https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1231%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1231%20edition:prelim)).

²⁴ Mayorkas, Alejandro. *Guidelines for the Enforcement of Civil Immigration Law*. U.S. DEPT OF HOMELAND SECURITY (Sept. 30, 2021), at 4. Source: <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

²⁵ *Fiscal Year 2023 ICE Annual Report*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Dec. 29, 2023), at 23. Source: <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf>.

²⁶ *U.S. Immigration and Customs Enforcement, Fiscal Year 2020 Enforcement and Removal Operations Report*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (UNDATED). Source: <https://www.ice.gov/doclib/news/library/reports/annual-report/eroReportFY2020.pdf>.

²⁷ *Fiscal Year 2023 ICE Annual Report*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Dec. 29, 2023), at 23. Source: <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf>.

3. Are immigration judges and courts working as efficiently as they could be?

No. There are numerous impediments that prevent the nation's approximately 735 immigration judges²⁸ from working as efficiently as they could be.

The biggest impediment to efficiency is a lack of resources, followed by an unmet need bright-line rules governing asylum and continuances.

Section 208(d)(5)(A) of the INA²⁹ states that "in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed".

According to TRAC Immigration³⁰, however, the immigration courts suffered an average asylum backlog of 1,424 days (nearly four years) from the filing of the asylum application as of December 2023.

As of the end of FY 2024, there were 1,478,623 asylum applications³¹ pending before the nation's (as noted) approximately 735 immigration judges—an average of more than 2,000 cases per immigration judge.

That's not sustainable, and it is incumbent upon Congress and the incoming administration to significantly expand the number of immigration judges and support staff, courtrooms, and OPLA attorneys to handle the backlog.

Resources are not the only issue, however.

Under current law, aliens must establish either past persecution or a well-founded fear of future persecution based on race, religion, nationality, membership in a particular social group, or political opinion to be granted asylum³².

²⁸ *Immigration Judge (U) Hiring*. U.S. DEP'T OF JUSTICE, EXEC. OFC. FOR IMMIGRATION REVIEW (generated Oct. 2024). Source: <https://www.justice.gov/eoir/media/1344911/di?inline>.

²⁹ Sec. 208(d)(5)(A) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

³⁰ *Immigration Court Asylum Backlog*. TRAC IMMIGRATION (undated). Source: <https://trac.syr.edu/phptools/immigration/asylumbl/>.

³¹ *Total Asylum Applications*. U.S. DEP'T OF JUSTICE, EXEC. OFC. FOR IMMIGRATION REVIEW (generated Oct. 10, 2024). Source: <https://www.justice.gov/eoir/media/1344871/di?inline>.

³² See sec. 208(b)(1)(B)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

As I have explained elsewhere:

The "well-founded fear" bar is not a high one. The regulation governing asylum eligibility explains:

An applicant has a well-founded fear of persecution if:

- (A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and*
- (C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.*

The first and third factors above are subjective, that is, individual to the applicant. The second is objective, meaning that the adjudicator must conclude that such persecution would occur, not just that the applicant thinks it would.

In INS v. Cardoza-Fonseca, the Supreme Court fleshed out the parameters of this standard: "One can certainly have a well founded [sic] fear of an event happening when there is less than a 50% chance of the occurrence taking place." In fact, the Court suggested that a 10-percent likelihood of persecution may be sufficient.

. . . .

As noted, to be granted asylum or withholding of removal, an alien must show a nexus between a statutorily protected ground (race, religion, nationality, membership in a particular social group, and political opinion) and the harm inflicted on the applicant or that the applicant fears.

Harm may be inflicted for many reasons, and sometimes, for no reason at all. The Attorney General has explained the process by which an adjudicator analyzes an asylum claim:

The prototypical refugee flees her home country because the government has persecuted her—either directly through its own actions or indirectly by being unwilling or unable to prevent the misconduct of non-government actors—based upon a statutorily protected ground. Where the persecutor is not part of the government, the immigration judge must consider both the reason for the harm inflicted on the asylum applicant and the government's role in sponsoring or enabling such actions. An alien may suffer threats and violence in a foreign country for any number of reasons relating to her social, economic, family, or other personal circumstances. Yet the asylum statute does not provide redress for all misfortune. It applies when persecution arises on account of membership in a protected group and the victim may not find protection except by taking refuge in another country.

As the foregoing demonstrates, it is not always easy for an adjudicator to determine whether alleged harm was inflicted or is feared on account of one of the statutorily protected grounds. It is particularly difficult as it relates to two of those grounds, “membership in a particular social group” and “political opinion”, the precise definition of which can be vague and somewhat protean. Yet another difficulty arises where harm may be inflicted for several different reasons, so-called “mixed motive” cases, as the Conference Report for the REAL ID Act made clear:

The INA requires all aliens seeking asylum to establish that they suffered or fear persecution “on account of” one of five factors: race, religion, nationality, membership in a particular social group, or political opinion. As the Supreme Court has held: “since the statute makes motive critical, [an asylum applicant] must provide some evidence of it, direct or circumstantial.” . . .

In explaining the Supreme Court’s decision [in Cardoza-Fonseca], the Ninth Circuit stated:

[I]n those cases in which a persecuted activity could stem from many causes, some protected by the statute and others unprotected, the victim must tie the persecution to a protected cause. To do this, the victim needs to show the persecutor had a protected basis (such as the victim’s political opinion) in mind in undertaking the persecution.” . . . The BIA has explained the alien’s burden as follows: an asylum applicant “bear[s] the burden of establishing facts on which a reasonable person would fear that the danger arises on account of” one of the five protected factors. . . . The main issue in assessing motivation in an asylum context occurs in so-called “mixed motive” cases, where there is more than one possible motive for harm, one protected, others not.

To address this dilemma, the REAL ID Act added a new section 208(b)(1)(B)(i) to the INA, which states:

*The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of [section 101(a)(42)(A) of the INA]. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion **was or will be at least one central reason for persecuting the applicant.** [Emphasis added.]*

Even that definition, however, failed to resolve issues with the vague nature of certain of the statutory factors themselves. This is a significant issue because the adjudicator of an application for asylum . . . must generally make those determinations fairly quickly.

. . . .

As explained above, adjudicators rely on “bright-line rules” to follow in making determinations in cases involving applications for asylum . . . For decades,

*however, such rules have been lacking, or rules were in effect only to be overturned or modified by circuit courts.*³³

As the foregoing demonstrates, bright-line rules are needed to guide immigration judges' adjudications of asylum claims premised upon "membership in a particular social group" and "political opinion"—otherwise undefined terms in the INA and yet the basis of most asylum claims.

While DHS and DOJ under the first Trump administration attempted to implement such rules by regulation and precedent, those actions were either enjoined or revoked by the Biden-Harris administration.

A lack of bright-line rules governing continuances is also an impediment to efficiency in the immigration courts.

As the Supreme Court has recognized: "One illegally present in the United States who wishes to remain already has a substantial incentive to prolong litigation in order to delay physical deportation for as long as possible."³⁴ Thus, non-detained respondents have every reason to engage in dilatory tactics, such as requesting lengthy and serial continuances, which allow them to remain and work here indefinitely.

Continuances are the biggest impediment to immigration court efficiency.

As the Government Accountability Office (GAO) reported in June 2017³⁵, the immigration court backlog increased from approximately 212,000 cases pending at the start of FY 2006, when the median pending time for those cases was 198 days, to 437,000 pending cases at the start of FY 2015, when the median pending time was 404 days.

Worse, the number of cases the immigration courts "completed annually declined by 31 percent between [FY] 2006 and [FY] 2015 — from 287,000 cases completed in [FY] 2006 to about

³³ Arthur, Andrew. *Comments in Response to 'Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review', 85 Fed Reg. 36264-36306 (June 15, 2020)*. CENTER FOR IMMIGRATION STUDIES (Jul. 16, 2020), at 3-9 (footnotes omitted). Source: <https://cis.org/Regulatory-Comments/Comments-Response-Procedures-Asylum-and-Withholding-Removal-Credible-Fear-and-Reasonable-Fear-Review>.

³⁴ *INS v. Rios-Pineda*, 471 U.S. 444, 450 (1985). Source: <https://supreme.justia.com/cases/federal/us/471/444/#opinions>.

³⁵ *Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges*, GAO-17-438. GOV'T ACCOUNTABILITY OFC. (Jun. 1, 2017). Source: <https://www.gao.gov/products/gao-17-438>.

199,000 completed in [FY] 2015”³⁶, even though the number of immigration judges (IJs) increased 17 percent over that period³⁷.

Why were there more immigration judges and fewer case completions? Among other factors, GAO explained that “continuances increased by 23 percent from [FY] 2006 to [FY] 2015,”³⁸ and “immigration judge-related continuances increased by 54 percent from about 47,000 continuances issued in [FY] 2006 to approximately 72,000 continuances issued in [FY] 2015.”³⁹

And according to GAO, OPLA attorneys and others complained that the “frequent use of continuances [by immigration judges] resulted in delays and increased case lengths that contributed to the backlog.”

By regulation⁴⁰, immigration judges can grant a motion for a continuance “for good cause shown”, but there is no definition of what constitutes “good cause”.

In November 2020, EOIR under the Trump administration issued proposed rules⁴¹ that would have provided immigration judges with needed guidance on granting continuances, but those rules have languished under the Biden-Harris administration.

Regardless, additional guidance would enable immigration judges to control their dockets more efficiently.

4. What are a few ways these immigration courts could be more efficient on their own?

Strict compliance with Congress’s directives in section 240 of the INA, which governs removal proceedings, would make the immigration courts more efficient. That is particularly true when it comes to complying with Congress’s directives on the issuance of *in absentia* removal orders.⁴²

Additional training on “best practices” for controlling each judge’s docket could also result in greater efficiencies.

³⁶ *Id.* at 22.

³⁷ *Id.* at 23.

³⁸ *Id.* “Highlights”.

³⁹ *Id.* at 68.

⁴⁰ 8 CFR § 1003.29 (2024). Source: <https://www.law.cornell.edu/cfr/text/8/1003.29>.

⁴¹ *Good Cause for a Continuance in Immigration Proceedings*. 85 Fed. Reg. 75925-41 (Nov. 27, 2020). Source: <https://www.govinfo.gov/content/pkg/FR-2020-11-27/pdf/2020-25931.pdf>.

⁴² Sec. 240(b)(5)(A) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>; see also n. 12 *infra*.

The BIA (the administrative appellate tribunal in removal proceedings, which is also in EOIR) and the Attorney General⁴³ could also issue precedential decisions setting forth bright-line rules on asylum and continuances that would curb the submission of frivolous and non-meritorious claims and tamp down on dilatory practices and tactics.

5. What changes might Congress want to consider to improve the efficiency of immigration courts and address the long backlog of cases?

Congress could amend the definition of the term “refugee” in section 101(a)(42) of the INA⁴⁴, and the asylum standard in section 208(b)(1)(B)(i) of the INA⁴⁵ to clarify what is and isn’t a “particular social group” and a “political opinion” for purposes of asylum protection. That would enable immigration judges to adjudicate asylum applications more quickly.

In addition, it could amend section 208(a)(1) of the INA⁴⁶ to bar aliens who passed through a third country that grants humanitarian protection (as all in the Western Hemisphere do, save Cuba and Grenada-- both islands, and Guyana, a coastal enclave⁴⁷) without first applying for such protection from applying for asylum here.

Alternatively, it could amend section 208(a)(1) of the INA to bar aliens who have entered illegally from seeking asylum.

Congress could also improve efficiency by amending section 240 of the INA, to limit the availability of continuances in removal proceedings.

⁴³ See Arthur, Andrew. *AG Certification Explained*. CENTER FOR IMMIGRATION STUDIES (Nov. 5, 2019) ([T]here are three categories of cases that the [Attorney General, “AG”] may review on certification: (1) cases that the AG directs be referred to him; (2) cases that the BIA refers to the AG for consideration; and (3) cases that the Department of Homeland Security (DHS) refers to the AG for review.”). Source: <https://cis.org/Arthur/AG-Certification-Explained>.

⁴⁴ Sec. 101(a)(42)(A) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

⁴⁵ Sec. 208(b)(1)(B)(i) of the INA (2024). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

⁴⁶ See sec. 208(a)(1) of the INA (2024) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, [section 235(b) of the INA]. Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim> .

⁴⁷ *World: State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol - As of September 2012*. ReliefWeb (Sep. 11, 2012). Source: <https://reliefweb.int/map/world/world-state-parties-1951-convention-relating-status-refugees-andor-its-1967-protocol>.

Given that Congress has already set a time limit for immigration-court consideration of asylum claims⁴⁸, it would be reasonable for Congress to also set limits on removal proceedings generally.

Finally, Congress could expedite removal cases by providing ICE with additional immigration-detention resources.

The INA mandates that many aliens-- including aliens apprehended entering illegally⁴⁹, aliens deemed inadmissible at the ports of entry⁵⁰, aliens removable on certain criminal grounds of inadmissibility and deportability⁵¹, aliens under final orders of removal⁵², and aliens ordered removed on criminal grounds⁵³-- be detained and not released until they are removed or alternatively admitted or granted immigration relief.

Notably, 8 U.S.C. § 1368(b)(1)⁵⁴ requires the DHS secretary to file semi-annual reports with this committee and with the House Committee on the Judiciary “estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain” aliens whose detention is mandated under the preceding provisions.

To the best of my knowledge, however, DHS under the current administration has failed to comply with that requirement, but it should be required to do so.

⁴⁸ See sec. 208(d)(5)(A)(iii) of the INA (2024) (“in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

⁴⁹ See sec. 235(b)(1)(B)(ii) of the INA (2024) (expedited removal; “If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum”); sec. 235(b)(1)(B)(iii)(IV) of the INA (2024) (expedited removal; “Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); sec. 235(b)(2) of the INA (2024) (“Inspection of other aliens”; “Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under” section 240 of the INA). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

⁵⁰ See *id.*

⁵¹ See sec. 236(c) of the INA (2024) (“Detention of criminal aliens”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

⁵² See sec. 241(a)(2) of the INA (2024) (“During the removal period, [DHS] shall detain the alien.”). Source: <https://uscode.house.gov/view.xhtml?req=title:8%20section:1231%20edition:prelim>.

⁵³ See *id.* (“Under no circumstance during the removal period shall [DHS] release an alien who has been found inadmissible under [section 212(a)(2) or 212(a)(3)(B) of the INA] or deportable under [section 237(a)(2) or 237(a)(4)(B) of the INA]”).

⁵⁴ 8 U.S.C. § 1368(b)(1) (2024). Source: <https://www.law.cornell.edu/uscode/text/8/1368>.

Removal proceedings involving detained aliens proceed much more expeditiously than those involving aliens who are not in detention. As explained above, as of the end of December 2023, it took almost four years for an asylum claim filed by a non-detained respondent to be heard on average, whereas the median completion time for a detained case is currently 46 days.⁵⁵

Even that 46-day median completion time is excessive by historical standards. As recently as FY 2014, the median completion time for a detained case was less than a month⁵⁶, and in FY 2009 it was 8 days.⁵⁷

When respondents know they will be detained and will not be released, they are much less likely to file dilatory motions or frivolous or otherwise non-meritorious applications that will ultimately prove fruitless and simply extend detention, while immigration judges logically have an interest in ensuring detained respondents are not held in custody for extended periods and that their cases are completed as quickly as possible, consistent with due process.

The increased likelihood of detention also makes it less likely that migrants will enter the United States illegally or seek admission without proper documents. As one federal district court judge explained in a March 2023 order⁵⁸:

There were undoubtedly geopolitical and other factors that contributed to the surge of aliens at the Southwest Border, but Defendants' [officials in the Biden administration's DHS] position that the crisis at the border is not largely of their own making because of their more lenient detention policies is divorced from reality and belied by the evidence. Indeed, the more persuasive evidence establishes that Defendants effectively incentivized what they call "irregular migration" that has been ongoing since early 2021 by establishing policies and practices that all-but-guaranteed that the vast majority of aliens arriving at the Southwest Border who were not excluded under the Title 42 Order would not be detained and would instead be quickly released into the country where they would be allowed to stay (often for five years or more) while their asylum claims were processed or their removal proceedings ran their course—assuming, of course, that the aliens do not simply abscond before even being placed in removal proceedings, as many thousands have done. [Emphasis added.]

⁵⁵ *Median Completion Times for Detained Cases*. U.S. DEP'T OF JUSTICE, EXEC. OFC. FOR IMMIGRATION REVIEW (generated Oct. 10, 2024). Source: <https://www.justice.gov/eoir/media/1344866/dl?inline>.

⁵⁶ See *Median Completion Times for Detained Cases*. U.S. Dep't of Justice, Exec. Ofc. for Immigration Review (generated Apr. 30, 2018) (median completion time was 29 days in FY 2014). Source: <https://www.justice.gov/eoir/page/file/1060891/dl>.

⁵⁷ *Id.*

⁵⁸ *Florida v. U.S.*, No. 3:21-cv-01066-TKW-EMT, Opinion and Order, at 21-22 (N.D. Fla. Mar. 8, 2023) (Wetherell, J.). Source: https://storage.courtlistener.com/recap/gov.uscourts.flnd.405819/gov.uscourts.flnd.405819.157.0_1.pdf.



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Submitted to U.S. Senate Committee on the Judiciary
"How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy"

Tuesday, December 10, 2024 at 10:00AM

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

Thank you for the opportunity to submit a written statement on behalf of the Immigrant Legal Resource Center (ILRC). We respectfully request that this statement be made part of the record for the December 10, 2024, Senate Committee on the Judiciary's hearing.

Introduction

The Immigrant Legal Resource Center (ILRC) is a national immigrants rights' organization. The ILRC is dedicated to working with and educating immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. The ILRC provides immigration legal trainings, technical assistance, and educational materials, and engages in advocacy and immigrant civic engagement to advance immigrant rights. The ILRC publishes expert immigration practice manuals used by legal services providers nationwide. We also conduct immigration law training on emerging issues, policy updates, and effective practices. By providing education and leadership development, the ILRC helps immigrant communities and organizations advocate for improved policies, better access to services, and safer communities. ILRC attorneys are experts in the field of immigration law. Through our advocacy work at local, state, and federal levels, we work to ensure that policies and procedures impacting immigrant communities are fair and just.

Mass Deportations and the Weaponization of the Criminal Legal System

In light of our commitment to justice for all immigrant communities, we are deeply concerned to hear the President-elect threatening to unleash terror on communities through draconian enforcement tactics and mass deportations of immigrants. The ILRC encourages Members of Congress to stand against this violence against our communities. The demonization and dehumanization of immigrants by the president-elect are an effort to sow fear and division. Mass deportations will make it impossible for our community members to thrive and live with safety and dignity.

The incoming administration has repeatedly announced plans for mass deportations, beginning Day 1 in office. A mass deportation effort of this scale will require the use of state and local law enforcement and the National Guard to engage in arrest, detention and deportation of

immigrants¹. Unfortunately, the blueprint for weaponization of the criminal legal system and local and state law enforcement has already been created by Texas Governor, Greg Abbott through Operation Lone Star (OLS). Since March 2021, Governor Abbott's Operation Lone Star has dramatically increased the state infrastructure to criminalize and deport individuals.

Operation Lone Star

Operation Lone Star has had a devastating impact on Texas and has influenced state legislatures across this country. As of August 2024, at least [62 counties](#) are complicit with this operation, which has resulted in the criminalization of more than 10,000 asylum seekers and immigrant residents in the state². There are also two processing centers and three jails in Texas dedicated to incarcerating people arrested under OLS³. OLS has also dramatically expanded the military presence in the border region of Texas by deploying thousands of in-state and out-of-state National Guard soldiers⁴. OLS cost Texas taxpayers \$11 billion dollars as of August 2024.

Through a web of repressive laws, OLS has criminalized providing transportation to undocumented people in Texas, and has made it a state crime to migrate without authorization. The state legislature has weaponized the state law enforcement infrastructure and criminal legal system to serve as another layer of immigration enforcement. They coordinate with CBP and ICE and also conduct their own independent enforcement, prosecution and incarceration. The deployment of state law enforcement officers engaging in immigration arrests will be the engine of the mass deportations the President-elect has promised. The ILRC has been fighting OLS through advocacy at the state and local level to expose the cruelty, harm and wastefulness of this racist program.

Unfortunately, the OLS blueprint has already been duplicated by several other states passing anti-immigrant bills that would require local law enforcement to engage in immigration enforcement.⁵ These copycat bills have spread across the United States, ⁶ mandating that local law enforcement officers divert their resources to engage in the racist policing practices used by ICE to arrest and deport immigrants. Congress must stand strong against the weaponization of the criminal legal system against immigrants and the deputization of local law enforcement to engage in the President-elect's planned mass deportations.

Recommendations

In light of the looming threat of mass deportations, Members of Congress must stand with immigrant communities by making sure federal tax dollars are used to make communities stronger, not for turning in our neighbors to ICE. We recommend that Congress implement the following recommendations:

- 1) significantly decrease funding allocated to ICE and CBP for detention and deportation;
- 2) issue restrictions on the ability to reprogram funds allocated to other DHS component agencies for the purposes of enforcement and border wall construction; and

¹ <https://apnews.com/article/trump-mass-deportations-immigration-844f3050ba99552b900ed9f3a1dec22d>

² www.endlonestar.com

³ www.endlonestar.com

⁴ www.endlonestar.com

⁵ <https://www.npr.org/2024/12/02/nx-s1-5203151/local-police-face-pressure-to-help-carry-out-migrant-deportations>

⁶ <https://www.ilrc.org/state-map-immigration-enforcement-2024>

- 3) protect federal funding supporting jurisdictions with sanctuary policies.

Conclusion

We encourage Congress to take meaningful steps to bar the incoming administration from unleashing their racist mass deportation agenda against communities through oversight and protection of Congressionally appropriated funds. Thank you for your consideration for any questions please contact Policy Attorney & Strategist, Nithya Nathan-Pineau, nnathan-pineau@ilrc.org

Sincerely,
Nithya Nathan-Pineau
Immigrant Legal Resource Center

December 10, 2024

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6250

Re: Hearing Titled "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy"

Dear Members of the Committee:

Thank you for holding today's hearing to consider the devastating impact of the incoming administration's plans to conduct mass deportations. President-elect Trump [has promised to](#) build massive detention camps, conduct sweeping raids, and forcibly remove beloved and longstanding members of our communities from our country. These plans will tear families apart, devastating countless communities and industries across the country. As you prepare to defend against this expected harm, our 124 civil rights, human rights, faith-based, children's rights, and immigrant rights organizations implore you to recognize the role of Congress in enabling or preventing these operations and take appropriate action to defend immigrant communities in ongoing funding and budget negotiations.

Throughout the coming months, there will be multiple opportunities for members to restrict resources for the abusive immigration enforcement programs that would drive mass deportations. Fiscal Year (FY) 2025 funding levels remain unresolved, with negotiations likely to be extended into the next Congress. Meanwhile, we expect to see the Trump administration weaponize the budget reconciliation process in an effort to extract the exorbitant taxpayer dollars needed to implement his enforcement plans. Our communities need Congress to act as the first line of defense and to use its budgetary, fiscal, and authorizing power to deny the next administration the funding necessary to carry out their inhumane and costly attack on immigrants.

For years, our organizations have urged Congress to reduce immigration enforcement funding, understanding the resulting harm and trauma inflicted on immigrant communities. It is now more urgent than ever to put an end to the pattern of continuous wasteful spending that has already allowed the funding for agencies responsible for immigration enforcement to skyrocket by over 200% since 2003. Additionally, we urge Congress to protect against the incoming administration subverting Congressional intent by restricting the Department of Homeland Security's (DHS) authority to transfer or reprogram funding for the purposes of operationalizing mass deportations. Advocates have long [sounded the alarm](#) at the agencies' [consistent disregard](#) for and [manipulation of Congressional appropriations](#), and we expect these tactics to continue at increasingly obscene levels. Congress must exert its authority to hold these agencies accountable.

Federal funds will be pivotal in deciding the scope of the harm the next administration will be able to inflict on immigrant communities. Our communities need funding for housing, education, and other social needs, not the proposed catastrophic enforcement and deportation dragnet. As stewards of these vital resources, members of Congress must inhibit President-elect Trump's draconian plans for mass deportations through the budget and appropriations process for the well-being and safety of all our communities.

Sincerely,

1. 18 Million Rising
2. ACLAMO
3. American Civil Liberties Union (ACLU)
4. Avodah
5. AAPI New Jersey
6. Afghans For A Better Tomorrow
7. African Communities Together (ACT)
8. ALEPH: Alliance for Jewish Renewal
9. Alliance San Diego
10. American Families United
11. American Friends Service Committee (AFSC)
12. Americans for Immigrant Justice
13. Amnesty International USA
14. ANAR
15. Asian American Legal Defense and Education Fund
16. Asian Americans Advancing Justice | AAJC
17. Asian Americans Advancing Justice Southern California
18. Asylum Seeker Advocacy Project (ASAP)
19. Ayuda
20. Bend the Arc: Jewish Action
21. Bend The Arc: Jewish Action California
22. Bend the Arc: Jewish Action Champaign Urbana
23. Bend the Arc: Jewish Action Long Island
24. Bend the Arc: Jewish Action Maryland
25. Bend the Arc: Jewish Action Memphis
26. Bend the Arc: Jewish Action Ohio
27. Bend The Arc: Jewish Action Pittsburgh
28. Bend the Arc: Jewish Action Riverdale
29. Borderlands Resource Initiative
30. Border Workers United
31. CASA
32. CATA - The Farmworker Support Committee
33. Center for Gender & Refugee Studies
34. Center for Law and Social Policy (CLASP)
35. Center for Popular Democracy

36. Church World Service
37. Coalición de Derechos Humanos
38. Coalition for Humane Immigrant Rights (CHIRLA)
39. Coalition on Human Needs
40. Communities United for Status & Protection (CUSP)
41. Comunidad Maya Pixan Ixim
42. Detention Watch Network
43. DIRE Legal Services
44. Disciples Home Missions
45. Dorothy Day Catholic Worker, Washington DC
46. Drug Policy Alliance
47. Equality Labs
48. First Friends of New Jersey & New York
49. Florence Immigrant and Refugee Rights Project
50. Food Justice DMV
51. Freedom for Immigrants
52. Free Migration Project
53. H-CAN Immigration & Refugees group
54. Immigrant Defenders Law Center
55. Immigrant Defense Project
56. Immigrant Freedom Fund (CO)
57. Immigrant Justice Committee, Plymouth Congregational Church, Minneapolis
58. Immigrant Justice Network
59. Immigrant Legal Resource Center
60. Immigration Hub
61. Indivisible
62. International Refugee Assistance Project
63. Japanese American Citizens League
64. Jesuit Social Research Institute
65. Jewish Community Action
66. Jewish Council on Urban Affairs
67. Jews For Racial & Economic Justice (JFREJ)
68. Justice for Migrant Women
69. Just Neighbors
70. Keshet
71. LatinoJustice PRLDEF
72. Lazos America Unida
73. Louisiana Advocates for Immigrants in Detention
74. Make the Road NY
75. Mi Familia Vota
76. MomsRising
77. MoveOn
78. Muslim Advocates
79. Mutual Aid Immigration Network

80. National Immigrant Justice Center
81. National Immigration Law Center
82. National Immigration Project
83. National Korean American Service & Education Consortium (NAKASEC)
84. National Latina Institute for Reproductive Justice
85. National LGBTQ Task Force Action Fund
86. National Organization for Women
87. National Partnership for New Americans
88. National Priorities Project at the Institute for Policy Studies
89. NETWORK Lobby for Catholic Social Justice
90. Never Again Action
91. New Jersey Alliance for Immigrant Justice
92. New Jersey Consortium for Immigrant Children
93. New Labor
94. New York Jewish Agenda
95. NextGen America
96. NM Comunidades en Accion Y de Fe (NM CAFE)
97. Northern New Jersey Sanctuary Coalition
98. Oregon Project Voice
99. Palestinian American Community Center
100. Pennsylvania Immigration Coalition
101. Public Counsel
102. Refugee Support Network, RSN
103. Robert F. Kennedy Human Rights
104. Rocky Mountain Immigrant Advocacy Network
105. San Diego Immigrant Rights Consortium (SDIRC)
106. Showing Up for Racial Justice
107. Sisters of Mercy of the Americas - Justice Team
108. Social Workers for Immigration Justice
109. Sojourners
110. Southern Border Communities Coalition
111. SPAN Parent Advocacy Network
112. T'ruah: The Rabbinic Call for Human Rights
113. The Advocates for Human Rights
114. The Restaurant Opportunities Centers United (ROC United)
115. The Shalom Center
116. The Southern Poverty Law Center
117. The Workers Circle
118. Unitarian Universalists for Social Justice
119. United African Organization
120. United We Dream
121. Vecindarios901
122. Wind of the Spirit Immigrant Resource Center
123. Witness at the Border

Veronica Orellana Duran

Age: 24 | **Pronouns:** She/Her

City: Worthington, MN

Origin: El Salvador

Arrived in the U.S.: 2003, at age 3



My name is Veronica Orellana Duran. I'm 24 years old, and I currently live in Worthington, Minnesota. As a labor organizer, I focus on empowering meatpacking workers in southern Minnesota, helping them recognize their collective power and advocate for better working conditions and rights. My passion for this work stems from my own experiences growing up in a mixed-status immigrant family and witnessing the challenges faced by my community.

I spent my early years in Omaha, Nebraska, and later moved to Worthington, Minnesota. School was a challenging adjustment, as Spanish was my first language, and I was often placed in ESL classes despite understanding English. As one of only a few brown kids in my class, I felt isolated, especially when pulled from free-time activities to attend these lessons. Over time, Worthington's growing immigrant community brought me comfort, and I began to find my place.

A pivotal moment came during middle school, when my family and community were shaken by an immigration raid at a local meatpacking plant. I vividly remember the fear that gripped my family—shopping trips halted, doors stayed locked, and many avoided work or public spaces. That experience left an indelible mark on me and sparked my interest in immigration rights. At just 13 years old, I dreamed of becoming an immigration lawyer to help families like mine.

However, as I learned more about the barriers undocumented students face—limited access to financial aid, inability to work legally, and the extensive time and resources required to pursue law school—I realized that dream might not be feasible. Instead, I turned to activism and organizing.

When DACA was announced in 2012, it was life-changing. After years of feeling isolated and unsure of my future, I discovered I wasn't alone. Knowing that hundreds of thousands of young people like me could benefit from DACA brought a sense of hope. I applied as soon as I was eligible, and when I received my work permit, I cried tears of relief and joy. My first job felt like a milestone, marking the start of a new chapter in my life.

Today, I focus on organizing within the labor movement, working to ensure meatpacking workers in Worthington recognize their collective power. For me, a pathway to citizenship is the ultimate dream. It would mean stability, security, and the ability to plan for a future without fear. While that dream still feels out of reach, I remain committed to the fight, knowing that every step we take lays the foundation for future generations to build upon. Together, we can create a future where everyone, regardless of status, has the opportunity to thrive.

Maricruz Lozano Rios

Age: 26 | **Pronouns:** She/Her/Ella

Hometown: Minneapolis, MN

Origin: Estado de Mexico

Arrived in the U.S.: 1998, at age 2



My name is Maricruz Lozano Rios. I live in Minneapolis and work as a Program Manager at the YWCA Saint Paul, where I lead youth leadership development programs, empowering young people to engage in policy, civic action, and community change.

My parents left behind a difficult life in Mexico to seek better opportunities. My mother, a young parent at just 16, faced immense challenges but brought us to Minnesota with the support of family already settled here. For most of my childhood, I didn't know I was undocumented. My mom, fearful for our safety, kept it a secret until I was a teenager. When DACA was announced, she explained our status and encouraged us to apply. I'll never forget how she saved every document, always holding onto hope for our future.

Finding out about my undocumented status was devastating. It brought on stress, sleepless nights, and a profound fear for my future. I questioned whether I'd ever be able to go to college, pursue a career, or achieve my dreams. But my path changed when I met Emilia Gonzales Avalos, a mentor who taught me that my status didn't define my worth or my ability to create change. Her guidance set me on a course of political engagement and advocacy.

Since receiving DACA, my life has transformed. I was able to access internships, participate in educational programs, and pursue my associate's degree in Education Foundations. I've worked tirelessly to advocate for undocumented students and mixed-status families, championing financial aid reform and educational equity. My work has allowed me to connect with youth across Minnesota, teaching them how to advocate for their communities and engage with the legislative process.

Today, I collaborate with the Governor's Office through the Young Women's Initiative, helping young women create policy agendas and launch impactful projects. Despite my success, I dream of more—a pathway to citizenship that would give me the security to plan for a permanent future here. Like so many undocumented individuals, I long for the chance to own a home, further my education, and build a stable life.

Being undocumented means constantly living with uncertainty. It's difficult to dream big when the foundation of your life feels shaky. Still, I believe in the power of our communities. I've seen how young people rise to the occasion when given the tools and knowledge to advocate for themselves. My story is a testament to the resilience of immigrant communities, and it's my hope that one day, everyone—regardless of their status—will have the opportunity to thrive.

Brenda Compean Morales

Age: 31 | **Pronouns:** She/Her

Hometown: Golden Valley, MN

Origin: Estado de Mexico

Arrived in the U.S.: August 1995, at age 2



My name is Brenda Compean Morales. Today, I serve as a Public Engagement Coordinator at MN DOT, where I work to bridge the gap between government and community, ensuring that diverse voices are heard and reflected in projects. My journey has been shaped by *resilience*—resilience I developed as part of a mixed-status family and as a DACA recipient, navigating the challenges that come with it.

My parents emigrated from Mexico in the 1990s, seeking better opportunities for our family. Minnesota is where they planted roots. They've worked hard to build a life here—they pay taxes, own a home, and contribute deeply to our community. Families like mine contribute \$222 million annually in state and local taxes in Minnesota, and nationally, undocumented immigrants like my parents contribute over \$11 billion every year, according to the Institute on Taxation and Economic Policy (ITEP). We're proud to be part of that investment in our shared future.

But life as a DACA recipient isn't without its challenges. The uncertainty of DACA's future and the constant fear of family separation weigh heavily on us. Despite those fears, I focused on excelling in school, graduating from high school with a 3.8 GPA. I'll never forget my senior year, when the DREAM Act failed. I was devastated. But thanks to a caring school counselor, I found a way to access higher education through PSEO options and scholarships. That lifeline gave me the chance to earn my degree and find meaningful work.

Since then, I've worked hard to give back to the community that has supported me. I've coordinated census outreach to underserved communities, managed COVID-19 vaccination efforts for BIPOC residents, and built partnerships to deliver resources to neighborhoods that need them most.

DACA has been life-changing for me. It's allowed me to drive, work, and even visit my grandmother in Mexico for the first time in decades. Still, I dream of a pathway to citizenship—not just for me, but for my family and others like us. Citizenship would give me the security to plan for a future here, in the only home I've ever known. I dream of purchasing a home where my one-year-old daughter can grow up and thrive.

I'm proud of what I've achieved, but I know it's only possible because of the sacrifices my parents made and the opportunities they sought in Minnesota. Our story is one of resilience, hard work, and hope—and it's proof that immigrant communities not only enrich the social fabric of this state but also invest deeply in its economy and future.

Sonia Romero Rodriguez

Age: 33 | **Pronouns:** She/Her

Hometown: Saint Paul, MN

Origin: Puebla, Mexico

Arrived in the U.S.: 1991, at six months old



My name is Sonia Romero Rodriguez. Growing up, I always knew I was undocumented. It wasn't a surprise or something I discovered later. That awareness shaped many of my experiences, especially as I grew older. I remember the first time someone asked me why I didn't have a driver's license yet. I lied, because I didn't know how people would react if I told them I was undocumented.

In high school, the challenges of my status became more apparent. While my sister, a U.S. citizen, could access financial aid for college, I had to navigate everything on my own. When I asked about enrolling, colleges didn't know what to do with undocumented students. Some suggested I apply as an international student, but the tuition rates were unaffordable.

I started at a community college, then transferred to Augsburg University thanks to their support for undocumented students. Even with scholarships and my parents' help, it was tough. My family worked hard, and we made sacrifices to cover costs. My senior year was particularly uncertain—I was weighing my options, even considering leaving the country.

Then DACA happened. It was a lifeline, allowing me to work legally and get a job right after graduation. That job gave me some stability, but the constant uncertainty of DACA—its legal challenges and temporary nature—felt like mental torture. There were nights I couldn't sleep, wondering if I'd be forced to leave the only home I've ever known.

DACA has helped me build a life here, but it's not enough. I still feel like I'm waiting for permission to fully belong. A pathway to citizenship would mean finally being able to plan for the future without fear. It would mean relief, security, and being recognized as a full member of the community I've called home since childhood.

Despite these challenges, I've found ways to contribute and make a difference. I've worked with inspiring leaders like Representatives Aisha Gomez, Athena Hollins, and Hodan Hassan. Their strength and compassion motivate me to bring my perspective to the work I do, whether it's advocating for equity, helping others share their stories, or fostering understanding.

I'm proud of how far I've come and what I've achieved, but I know that my story is just one of many. We're all human, trying to survive and thrive. All I want is to live a normal life, free of the constant fear that DACA might end or that my family could be torn apart. I hope my story can help others see the humanity behind the policies and remind them that we're all part of this community, contributing and striving for a better future.

"12/20/2024 SJC Mass Deportation Hearing Written Testimony"

As a former WWII prisoner, I know the damage the Special War Problems Division and the Alien Enemies Act cause. After our release, my father spent the rest of his life working doggedly, trying to make up for the lost years spent incarcerated. I had nightmares well into my teens, all centered on losing my family forever. Many years later, when I asked my eighty three year-old mother questions about the experience, it took over a month to collect a coherent history. All too often, she couldn't speak for tears.

My family, all seven of us, lived in Costa Rica. When WWII broke out, a secret U.S. government program, the Special Problems Division, was formed to evaluate the dangerousness of German (and Japanese and Italian) Latin Americans. My father and uncle were both German, so they were declared a risk to the U.S. They were brought to the United States, along with their wives and children on the U.S.A.T. *Puebla* in January 1943.

When we arrived in San Pedro, California we were held in a holding facility on Terminal Island. At that point the Alien Enemy Act was used to detain us. We were declared to have entered the country illegally, allowing our indefinite detention or deportation to Germany.

We spent fifteen months in the Crystal City, Texas Family Internment Camp. My uncle, his Costa Rican born wife and daughter then were sent to Germany. My father, my American-born mother, my sister and I (also U.S. citizens) were released "on parole," to live near U.S. family members.

Now our President-elect proposes mass deportations of people residing in the U.S. illegally. The pain to families will be immeasurable. These "illegals" are mothers, fathers, sisters, brothers. All they want is a chance.

I am sickened that we, as a country, would even entertain the idea. Instead, Congress should craft a comprehensive plan to reform border policies and provide clear paths to citizenship. The Alien Enemies Act should be repealed. It is outdated and targets people purely by their ancestry.

Thank you for the opportunity to give testimony about how my family lived through the last use of the Alien Enemy Act in WWII.

Sincerely,

Heidi Gurcke Donald



www.theyoungcenter.org

Chicago, IL | Harlingen, TX | Houston, TX | Los Angeles, CA |
New York, NY | Phoenix, AZ | San Antonio, TX |
Washington, DC | Grand Rapids, MI | New Jersey |

Statement to the Senate Committee on the Judiciary pertaining to its [hearing](#) entitled “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy” on Tuesday, December 10, 2024

All children deserve a safe journey to adulthood, supported by loving family and community members. Family integrity is a central component of a child’s well-being and should be a core national value no matter who resides in the White House, walks the halls of Congress, or sits on the highest Courts. [Deportations fracture families and leave children forever changed](#). The Young Center for Immigrant Children’s Rights is dismayed to hear calls for mass deportation, which threaten widespread family separations and harm to children.

The Young Center for Immigrant Children’s Rights protects and advances the rights and best interests of immigrant children according to the Convention on the Rights of the Child and state and federal law. As a champion for the best interests of children, our mission is to ensure that children are treated as children in every decision. The Young Center is appointed by the federal government to serve as independent Child Advocate, akin to a guardian ad litem, for children who come to the United States alone or separated from family. The concerns we share today are grounded in our experiences serving children separated from their families.

A child’s separation from their parents is a deeply traumatizing experience. Family separation can carry long-lasting physical and emotional consequences well beyond the period of separation. This is well-documented by [experts in child welfare, youth justice and child health, development, and safety](#). In 2017, Young Center staff working on separations caused by the Trump administration’s Zero Tolerance policy reported cases of children sobbing for hours, losing their language skills, and starting to bed-wet for the first time in years. Child-serving institutions including the [American Psychological Association](#) and [American Academy of Pediatrics](#) echoed these horrors.

We are concerned for the millions of children at risk of family separation under a mass deportation plan. The potential scope of family separations under a mass deportation plan is staggering: About [5.1 million U.S. citizen children](#) live with an undocumented family member. Children need to be cared for by their loving caregivers [to grow and support their healthy development](#). And children’s well-being is connected to parents’ well-being. For children, having an incarcerated parent is an “adverse childhood experience” (ACE). [Children often suffer](#) social, emotional, health, financial and educational consequences as a result of that imprisonment. The detention or deportation of a parent is associated with mental health as well as developmental delays, long-term physical health conditions, lower academic performance and increased poverty rates. Furthermore, the fear of immigration enforcements [chills families](#) from seeking health care and [accessing the life-saving public benefits](#) programs they are eligible to receive. Fear of separation and deportation even [discourages children from attending school](#).

Congress must oppose and refuse to fund any policy of mass deportations and family separation.

Congress must also oppose any proposal to detain children together with their parents. Since their establishment, [conditions of custody in U.S. Customs and Border Patrol \(CBP\) stations have been poor](#), often in violation of their own standards. Facilities are overcrowded, temperatures unbearable, medical care is inadequate, and the quality of food is poor. Detention is simply no place for children and families. Families belong together, safe and free in community.



**Written Statement Of
Danny Woodward, Policy Attorney
Texas Civil Rights Project**

For a Hearing on

**How Mass Deportations Will Separate American Families, Harm Our Armed
Forces, and Devastate Our Economy**

Submitted to U.S. Senate Committee on the Judiciary on December 16, 2024

Hearing on December 10, 2024

The Texas Civil Rights Project (TCRP) submits this testimony to the Senate Judiciary Committee on the topic of "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy." As a legal advocacy organization dedicated to advancing the rights and dignity of all people in Texas, including undocumented people, TCRP has witnessed firsthand how Texas has deployed the Texas National Guard to enforce State border and immigration policies.

Texas's actions have resulted in serious harm to local communities and other individuals who have interacted with the National Guard, as well as decreased military readiness and grave morale problems. It is our imperative to warn the Committee of the dangers of expanding and replicating these disastrous policies elsewhere.

We are concerned that using military personnel to implement the incoming administration's mass deportation program will lead to the devastation we have seen in Texas spreading across the nation. We write now to inform you of those problems and urge policymakers to pursue a different course.

The problems we have seen in Texas flow from a foundational flaw in the policy: military units are designed and trained to fight external, martial threats, not to perform domestic policing of civilians. Deploying armed soldiers on our streets to enforce civil immigration law will change the fundamental relationship between our armed forces



and our civil society. We are concerned that this is a change that will cause irreparable harm and take decades to walk back.

I. Background

For nearly four years, Texas has been a test lab for the kind of border and immigration policies that the incoming administration has promised to implement. In March 2021, Governor Greg Abbott announced an initiative called Operation Lone Star (OLS) to “combat the smuggling of people and drugs into Texas” by “integrat[ing] the [Department of Public Safety] with the Texas National Guard and deploy[ing] air, ground, marine, and tactical border security assets to high threat areas.” In May 2021, the Governor expanded OLS by issuing a disaster declaration claiming that “the ongoing surge of individuals unlawfully crossing the Texas-Mexico border poses an ongoing and imminent threat of widespread and severe damage, injury, and loss of life and property.”¹

A major component of OLS has been the deployment of National Guard soldiers along the border. Since 2021, the State has engaged roughly 13,500 of its roughly 24,000-member military under OLS, with 4,751 on active deployment in September 2024.² Eighteen other states have deployed state active duty National Guard soldiers to the effort as well.³ At one point in 2022, Texas and its state partners mobilized about 10,000 soldiers under OLS.⁴

II. Operation Lone Star demonstrates that it is inappropriate for military units to conduct civil immigration enforcement.

United States Military forces are trained specifically for overseas combat and support missions. The National Guard is also trained for short-term disaster response. They

¹ Gov. Greg Abbott, Proclamation by the Governor of the State of Texas, May 31, 2021, https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf.

² *Hearings on Support for Border Sec. Pers. Before the Senate Comm. on Border Sec.*, 88th Interim Sess. 2:47:3–2:49:50 (Tex. 2024) (statement of Thomas Suelzer, Adjutant Gen. of the State of Tex.), <https://www.senate.texas.gov/videoplayer.php?vid=20570&lang=en>.

³ *Id.* at 3:09:40.

⁴ Will Martin, *Southwest border mission spurs ‘mixed feelings’ among guardsmen*, Reserve & National Guard Magazine (Feb. 1, 2023), <https://reservenationalguard.com/reserve-guard-deployment/southwest-border-mission-spurs-mixed-feelings-among-guardsmen/>.



are neither trained nor equipped to enforce civil or criminal law within the United States. Congress recognized this principle when it passed the Posse Comitatus Act, which punishes any actor who uses most branches of the armed forces from executing U.S. law.⁵ The National Guard is not included in the act so that it can be deployed to respond to emergencies, however, the principles underlying the act apply to the enforcement of civil immigration law.

The experience of Texas under OLS illustrates why military forces should not be used to enforce laws within the U.S. Texas National Guard units are not trained to enforce civil immigration law or police the movements of migrants seeking to turn themselves in to federal authorities. Absent training to the contrary, individual soldiers are left to decide for themselves how to implement their mission of deterring migrants. The result has been soldiers physically and verbally abusing migrants, routinely firing less-lethal weapons at people who posed no risk, and the National Guard conducting unlawful intelligence gathering on U.S. soil. Deploying military units to conduct mass deportations will only send military forces across the U.S. who are trained for purposes completely misaligned with the goal of safely applying civil law. The result will be the violation of the rights of people across the nation.

A. The misuse of the Texas National Guard has resulted in grave abuse of migrants at the border.

Part of the Texas National Guard's mission under Operation Lone Star is to deter migrants who have already crossed the physical U.S.-Mexico border from turning themselves over to federal immigration authorities. While the Texas Military Department has a clear use of force policy, soldiers have reported frustration with the policies, feeling like they were "vague and inconsistently applied" and allowed soldiers with animus against migrants to commit abuse.⁶ Further, an extraordinary number of violent incidents demonstrate that the soldiers are not equipped to safely interact with civilian migrants.

⁵ 18 U.S.C. § 1385.

⁶ Matt Shuham, *Accounts Of Abuse Emerge At The Texas Border*, HuffPost (Oct. 11, 2024), https://www.huffpost.com/entry/operation-lone-star-abuse-migrants-asylum-seekers-border_n_6708831be4b0c34b3eba6b5f.



The violent and abusive incidents committed under OLS demonstrate why a military force like the Texas National Guard should not conduct civil immigration enforcement.

Stories of Military Abuse at the Texas Border.

For example, TCRP interviewed a man who fled Venezuela after the government threatened him. He took his wife and young children and headed north. In April 2024, they ended up in Juarez, Mexico, where they hoped to cross the border and turn themselves over to Border Patrol in El Paso to request asylum. Instead, after they crossed the river, they were confronted by Texas National Guard soldiers who subjected them to a horrifying course of verbal and physical abuse over roughly six hours.

The abuse started just minutes after they crossed the river when a guard member drove up, cursed at them, and called them "fucking rats." The family then walked for a while toward Gate 36 in the border wall, hoping to find a Border Patrol agent. Instead, they saw Texas soldiers forcing other migrants back through the razor wire.

The family feared they would also be forced back across the river and into the hands of cartels, so they ran to the border wall. A soldier came towards the group trying to get them away from the wall. Afraid, the father held his son close to his chest. The soldier smashed the butt of his rifle into the father's chin.

The family continued to cling to the border wall for safety. A female guard member told the family not to grab the wall because the soldiers had orders to break their arms. She also said they would shoot them if they ran. Another soldier pointed his rifle at them, loaded it with bullets, and told them "if you run, we have the right to shoot." The father asked if the soldier planned to shoot him and his son. The soldier said, "that is the order."

Eventually, the soldiers told the family that they could go to Gate 36, but they had only 15 seconds to run the remaining 400-500 meters. The family took off running and the soldiers drove alongside them, blasting music, taking pictures, and laughing. After this final humiliation, the family made it to a federal officer who processed and detained them.



This is not an isolated incident. Other advocates and reporters have documented many other instances of serious abuse by the Texas National Guard. The Washington Office on Latin America has collected a number of the document incidents, such as:

- On August 5, 2024 in Eagle Pass, local news outlets and video footage indicated that members of the Texas National Guard used tear gas against a group of Venezuelan migrants, including three children, after they crossed the Rio Grande. The video shows guardsmen firing projectiles at the family from behind the coils of concertina wire that separated them. "After the attack, the children began to cry and vomit," local news reported.⁷
- In August 2024, a representative of an El Paso migrant shelter reported having received guests who told of verbal and physical abuse of adults and minors committed by Texas forces along the borderline, including being cursed at, kicked, choked, hit with the butt of a rifle, and being recorded while forced to run as a humiliation tactic. They also reported the case of a Texas officer throwing a person's phone into the river after [the person] attempted to record abusive behavior. Some officers remove or cover their name badges and hide their faces, making it difficult to identify perpetrators.⁸
- In February 2024, journalists reported Texas National Guard soldiers pushing migrants, including a woman with a baby, back across the Mexican border near El Paso while shouting profanities. When journalists recorded the incidents, guards changed their behavior but pointed lasers at journalists and their equipment.⁹
- In a video published on October 3, 2023 by Al Jazeera, a Texas National Guard member in El Paso was seen standing over a prone man struggling to pass under concertina wire. The guard member taunted and abused the man, saying, "I have no mercy, animals" and stomping on the man's hands.¹⁰

It is important to note that the Texas National Guard never arrested these migrants because the National Guard does not have the authority to arrest people for crossing

⁷ Adam Isacson & Ana Lucia Verduzco, *Soldiers Confronting Migrants: Texas's Dangerous Precedent*, Washington Office on Latin America (Sept. 12, 2024), <https://www.wola.org/analysis/soldiers-confronting-migrants-texas-dangerous-precedent/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*



the border on federal property when on state active duty. Instead, with orders only to deter migrants, these soldiers took matters into their own hands.

Most soldiers deployed under OLS do not abuse migrants. Many have acted heroically and rescued people who were at risk of drowning or having medical emergencies. Specialist Bishop Evans gave his own life when he drowned in the Rio Grande while trying to rescue two migrants.¹¹

Still, any military force rapidly deployed to conduct mass deportations in towns and cities across the U.S. will, like the Texas National Guard, not have proper training on how to interact with civilians or how to identify if a person may be legally subject to deportation. Americans will wake up to find thousands of armed soldiers fanning out across the country hunting for undocumented people. While not every soldier abuses migrants, any abuse of migrants is unacceptable, and continued misapplication of military force on communities will certainly result in a percentage of soldiers acting aggressively. Others will make mistakes. Everyday Americans will pay the price for our failure to implement reasonable administrative processes for migration.

B. Texas National Guard soldiers have repeatedly fired less-lethal weapons at civilians who posed no risk.

Numerous documented reports of Texas National Guard soldiers shooting migrants with less-lethal weapons in apparent violation of Texas Military Department policy further show why it is inappropriate to deploy military forces for civilian immigration enforcement. National Guard soldiers deployed under Operation Lone Star are issued pepper ball guns that fire balls that release a pepper spray-like chemical on impact. The Adjutant General of the Texas Military Department, Major General Thomas M. Suelzer, has explained that soldiers are trained to fire at an inanimate object near people, rather than target people directly. "We specifically train them: Do not shoot directly at an individual because if hit in the wrong place, it can cause serious bodily injury."¹²

¹¹ Shuham, *supra* note 6.

¹² *Id.*



Stories of military abuse of "less lethal" weapons at the Texas Border.

Despite this directive, advocates and media have documented numerous instances of soldiers firing indiscriminately towards groups of migrants that included children. In some cases, the soldiers shot directly at and hit people. Here are a few examples compiled by Human Rights Watch and the Washington Office on Latin America:

- On September 7, three witnesses interviewed by Human Rights Watch said they saw a Texas National Guard member in a boat fire four or five times at a migrant who had crossed onto the United States side of the Rio Grande river, near Shelby Park in Eagle Pass, Texas. The witnesses said the migrant was in or near the razor wire on the US side of the river and did not do anything threatening. The witnesses said the projectiles directly struck the migrant, who fell, did not get up, and did not receive aid from the soldiers nearby.¹³
- In late May 2024, a group of migrants encamped on the Ciudad Juárez side of the border, across from El Paso, told EFE that Texas personnel fired rubber bullets and pepper balls across the river at them, even while they slept. The migrants stated that nighttime attacks were the most common and aggressive. They displayed bruises and unruptured projectiles.¹⁴
- "An unidentified Venezuelan man said two pepper balls struck him in the neck and side after he crossed the Rio Grande to plead with the soldiers to let families come across the razor wire."¹⁵
- In early May 2024, Noticias Telemundo shared a video, taken from the Mexican side, of national guardsmen firing rubber bullets at migrants through the concertina-wire fencing. Some migrants yelled to the soldiers that children were present.¹⁶

These incidents show that the Texas National Guard—like other military forces—is not trained to interact with unarmed civilians. Domestic deployment of combat-trained soldiers at scale is inappropriate and likely to result in severe violations of civil and human rights.

¹³ *Texas National Guard Firing Pepper Spray Projectiles at Migrants*, Human Rights Watch (Sept. 25, 2024), <https://www.hrw.org/news/2024/09/25/texas-national-guard-firing-pepper-spray-projectiles-migrants>.

¹⁴ Isacson & Verduzco *supra* note 7.

¹⁵ *Id.*

¹⁶ *Id.*



C. The misapplication of the Texas National Guard for domestic operations resulted in illegal intelligence operations.

The Texas National Guard has also collected intelligence in direct contravention of federal secrecy laws. The National Guard created an OLS intelligence unit to help keep deployment informed about potential migrant surges.¹⁷ The activities included infiltrating WhatsApp groups and interacting with foreign nationals—an activity prohibited by federal secrecy laws.¹⁸ Under National Guard regulations, National Guard members on state deployment are not allowed to do foreign intelligence work or utilize Department of Defense tools or methods to collect intelligence.¹⁹

One soldier pointed to the danger of unleashing trained intelligence soldiers on U.S. soil: “You give intel soldiers enough tools—we’re violating many constitutional rights very quickly.”²⁰

If the administration deploys military units within the U.S. to participate in mass deportations, there is a dire risk that these military units will do what they are trained to do: behave like soldiers. The results would be grave constitutional violations throughout the U.S., for both immigrants and citizens. Such a grave threat to every American’s rights demonstrates why the federal government should not deploy troops trained for foreign combat to conduct domestic civil police missions.

III. Operation Lone Star has turned Texas communities into military zones.

The large-scale deployment of soldiers to the Texas border has made Texas border communities feel like occupied territory rather than American towns. Using military units to conduct mass deportations risks turning the entire country into a military zone.

The City of Eagle Pass is the best-known example of OLS’s militarization of an entire community. National Guard soldiers have deployed en masse to the city of 30,000

¹⁷ Davis Winkie and James Barragán *Texas Guardsmen spied on migrants via WhatsApp, mishandled secret docs*, Army Times & Tex. Tribune (Aug. 29, 2023), <https://www.armytimes.com/news/your-army/2023/08/29/texas-guardsmen-spied-on-migrants-via-whatsapp-mishandled-secret-docs/>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*



people, installing razor wire and a border wall of shipping containers along the river.²¹ Soldiers now patrol on foot, humvee, helicopter, and boats.²² In January 2024, Governor Abbott used a disaster declaration to seize control of Shelby Park, the city's main public outdoor space, over the protests of city leaders.²³ National Guard soldiers and other State security officers quickly moved in and closed access off to the public and even federal Border Patrol.²⁴ In effect, the Texas military shut the residents of Eagle Pass off from their own park, treating Eagle Pass like foreign occupied territory.

Perhaps nothing illustrates this better than Governor Abbott's decision to call a new facility to house soldiers in Eagle Pass a "Forward Operating Base." Using the military to effectuate mass deportations will similarly result in leaders seeing communities across the country as places to invade and hold rather than places where people live, work, and raise families.

Furthermore, the National Guard has now installed over 100 miles of razor wire across Texas,²⁵ including between Texas and New Mexico.²⁶ People, including children, routinely get injured in the razor wire,²⁷ and TCRP has spoken to people in El Paso who report that local residents regularly find neighborhood pets caught in the wire. Elsewhere, the National Guard cleared and leveled a 170-acre island in the Rio

²¹ Alejandro Serrano, *Eagle Pass residents have mixed feelings about sharing their city with the National Guard*, The Tex. Tribune (Jul. 15, 2024), <https://www.texastribune.org/2024/07/15/texas-mexico-border-national-guard-migrants-eagle-pass/>.

²² *Id.*

²³ Uriel J. Garcia, *Texas officers take "full control" of Eagle Pass park against city's wishes*, The Tex. Tribune (Jan. 11, 2024), <https://www.texastribune.org/2024/01/11/texas-border-eagle-pass-park-seized-dps-immigration/>.

²⁴ *Id.*

²⁵ Press Release, Office of the Texas Governor, *Texas Deploys More Than 100 Miles Of Razor Wire To Secure Border*, Apr. 4, 2024, <https://gov.texas.gov/news/post/texas-deploys-more-than-100-miles-of-razor-wire-to-secureborder>.

²⁶ Uriel J. Garcia, *Texas strings concertina wire along New Mexico border to deter migrants*, The Tex. Tribune (Oct. 17, 2023), <https://www.texastribune.org/2023/10/17/texas-border-new-mexico-concertina-wire-abbott/>.

²⁷ Benjamin Wermund, *Texas troopers treated 133 migrants for injuries from razor wire over two months this summer*, Hous. Chron. (Aug. 31, 2023), <https://www.houstonchronicle.com/politics/texas/article/border-wireinjuries-18336354.php>.



Grande, creating a no-man's-land that one advocate called "an ecological and human rights disaster."²⁸

OLS militarization has endangered and even killed Texans. Between March 2021 and July 2023, high speed pursuits in OLS counties killed at least seventy-four people and injured 189.²⁹ Sixty-eight percent of all vehicle pursuits in Texas now occur in OLS counties—which represent only thirteen percent of the state's population. Eighty-one percent of these pursuits occurred because of a traffic violation, ninety-seven percent of which were traffic misdemeanors.³⁰ In one instance, State police chased a suspect through Kinney County at speeds over 115 miles per hour.³¹ In another instance, a high-speed chase killed a seven-year-old girl—an innocent bystander.³²

These pursuits cause lasting damage to Texas communities. In the aftermath of the shooting at Robb Elementary School in Uvalde, investigators identified the frequency of school lockdowns resulting from high-speed chases connected to OLS as one reason for the insufficient security response.³³ One report noted that chases became a "daily occurrence" in the Uvalde area after March 2021, when OLS began.³⁴ Uvalde schools were locked down forty-seven times after February 2022. Ninety percent of those lockdowns occurred because of high-speed chases.³⁵

Under OLS, Texas forces have also harassed U.S. citizens. On October 12, 2023, the Ayala family was returning from visiting family in Ciudad Juarez when State security

²⁸ Xavier Alvarez, *Border expert: Texas' actions at Fronzon Island interferes with federal immigration policy*, MyRGV (Feb. 16, 2024), <https://myrgv.com/local-news/2024/02/16/border-expert-texas-actions-at-fronzon-island-interferes-with-federal-immigration-policy/>.

²⁹ "So Much Blood on the Ground": Dangerous and Deadly Vehicle Pursuits under Texas' Operation Lone Star, Human Rights Watch (Nov. 27, 2023), <https://www.hrw.org/report/2023/11/27/so-much-blood-ground-dangerous-and-deadly-vehicle-pursuits-under-texas-operation>.

³⁰ *Id.*

³¹ Randy Clark, *Suspected Migrant Smuggler Leads Texas Cops on 115 MPH Pursuit Near Border*, Breitbart (Jun. 23, 2023), <https://www.breitbart.com/border/2023/06/20/watch-suspected-migrant-smuggler-leads-texas-cops-on-115-mph-pursuit-near-border/>.

³² Human Rights Watch *supra* note 29.

³³ Texas House of Representatives, Investigative Committee on the Robb Elementary Shooting, A Report to the House of Representatives 88th Texas Legislature, 6 (Jul. 17, 2022), https://house.texas.gov/_media/pdf/committees/reports/87interim/Robb-Elementary-Investigative-Committee-Report.pdf.

³⁴ *Id.* at 22–23.

³⁵ *Id.*



vehicles boxed them in and forced them off the road in El Paso.³⁶ The family was terrified when they saw men in uniform pointing semi-automatic weapons at them.³⁷ The officers damaged the Ayalas' car, and the sixty-seven-year-old grandmother still has lingering back pain.³⁸

This is what it looks like when the government uses military and other security forces to conduct civil immigration enforcement in U.S. communities. We expect similar results across the country if the federal government deploys the military for mass deportations.

IV. Operation Lone Star has weakened the Texas National Guard's readiness and resulted in lives lost to suicide.

Texas's deployment of the National Guard under Operation Lone Star was fraught with missteps and logistical problems from the very beginning. These problems damaged morale and hurt the organization's readiness as a fighting force. Mobilizing military units across the U.S. for mass deportations would likely have a similar impact on military readiness.

In September 2021, Texas rapidly expanded the OLS National Guard deployment from 1,000 volunteers to a mandatory mobilization of 10,000 soldiers.³⁹ Many were given only days' notice for a mission that was expected to last a year. In early 2022, soldiers reported problems with their pay, shortages with critical equipment such as cold weather gear and medical equipment, and others reported substandard living conditions such as being packed into crowded trailers.⁴⁰ Many noted that the problems were predictable, given that the force encountered similar issues during a deployment in the wake of Hurricane Harvey.⁴¹

³⁶ Angela Kocherga, *Family held at gunpoint by DPS in mistaken Operation Lone Star stop, El Pasoans say*, KTEP (Dec. 22, 2023), <https://www.ktep.org/2023-12-22/family-held-at-gunpoint-by-dps-in-mistaken-operation-lone-star-stop-el-pasoans-say>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Davis Winkie and James Barragán, *Haste and planning failures doomed Operation Lone Star's troops to suffer*, Army Times & Tex. Tribune (Aug. 29, 2023), <https://www.armytimes.com/news/your-army/2022/02/01/haste-and-planning-failures-doomed-operation-lone-stars-troops-to-suffer/>.

⁴⁰ *Id.*

⁴¹ *Id.*



Half of soldiers who responded to a January 2022 survey expressed skepticism or frustration with OLS and how it was planned and executed.⁴² One said, "I'm wasting time watching the grass grow at my [observation] point [along the border], while my civilian job is dying on the vine."⁴³ A number of cyber airmen who were deployed near Brownsville told media that they would either quit after their contracts or request assignments away from the Texas National Guard.⁴⁴

Furthermore, OLS harmed readiness by removing soldiers from their "organic" units, the groups they train with while not deployed, and mixing them into ad hoc units on the border, under different chains of command.⁴⁵

Worse, seventeen soldiers have died under OLS for reasons including suicide, rescuing migrants, and negligent discharge of a weapon.⁴⁶ Four soldiers took their own lives during an eight-week span in late 2021 and early 2022.⁴⁷ An investigation into the death of Bishop Evans, who drowned while heroically trying to rescue two migrants, found that he was not outfitted with a flotation device because the National Guard was experiencing procurement delays with the devices.⁴⁸

The Texas National Guard's many problems during OLS demonstrate why using armed forces to implement a mass deportation policy will harm military readiness. American military forces are not designed to conduct civil law enforcement missions on U.S. soil. Asking them to do so hurts morale and distracts them from their readiness

⁴² Davis Winkie, James Barragán, Chris Essig, & Rachel S. Cohen, *Troops slam Operation Lone Star in leaked survey*, Army Times & Tex. Tribune (Feb. 24, 2022), <https://www.armytimes.com/news/your-army/2022/02/24/troops-slam-operation-lone-star-in-leaked-survey/>.

⁴³ *Id.*

⁴⁴ Winkie & Barragán *supra* note 39.

⁴⁵ Shuham *supra* note 6.

⁴⁶ Gabriella Alcorta-Solorio, *17 Guardsmen have died on Gov. Greg Abbott's controversial border mission, soldiers speak out*, Texas Public Radio (Aug. 31, 2024), <https://www.tpr.org/news/2024-08-31/17-guardsmen-have-died-on-gov-greg-abbotts-controversial-border-mission-soldiers-speak-out>.

⁴⁷ Davis Winkie and James Barragán, *Another National Guard soldier working Operation Lone Star dies by suspected suicide*, Army Times & Tex. Tribune (Oct. 6, 2022), <https://www.texastribune.org/2022/10/04/texas-national-guard-suicide-operation-lone-star/>.

⁴⁸ Davis Winkie and James Barragán, *Months-long flotation device delay preceded Texas soldier's drowning*, Army Times & Tex. Tribune (Apr. 27, 2022), <https://www.armytimes.com/news/your-army/2022/04/27/months-long-flotation-device-delay-preceded-texas-soldiers-drowning/>.



to deploy abroad. The former chief of the National Guard Bureau, General Daniel Hokanson, made exactly this point when he said "there is no military training value" to national guard border deployments because ultimately they are "a law enforcement mission under the Department of Homeland Security."⁴⁹

Deploying military forces to conduct domestic civilian operations risks distracting our armed forces in a time of global instability. Should the unthinkable happen and the U.S. is attacked by a foreign adversary, our military will not be able to respond effectively if units are busy enforcing immigration law. We urge the committee and other policymakers to consider this serious risk before deploying the military on our streets.

V. Conclusion

In sum, the Texas example of the past four years shows why the government should not use the military for civil immigration enforcement. Our military is designed to defend our nation from external threats, not to enforce civil law within our borders. Deploying the military in our towns and cities risks grievous civil and human rights violations, turning our communities into military zones, and misappropriating soldiers from their purpose as military forces. For these reasons, we strongly urge this committee to stand resolute against any plans that involve using military assets for mass deportations or other civil law enforcement activities.

⁴⁹ Connor O'Brien, 'No military training value': Guard chief dings Trump, Biden border missions, Politico (Jun. 18, 2024), <https://www.politico.com/news/2024/06/18/guard-chief-dings-trump-biden-border-missions-00163900>.

***US Senate Judiciary Committee
How Mass Deportations Will Separate American Families, Harm Our Armed
Forces, and Devastate Our Economy Hearing December 10, 2024***

**Statement of Karen Ebel, President
German American Internee Coalition**

Thank you for the opportunity to provide testimony regarding the mass deportation proposed by the incoming Trump administration, specifically with respect to the arcane, arbitrary Alien Enemies Act of 1798 ("[AEA](#)"). Such a law should not be considered for use against our immigrant population. The German American Internee Coalition ("[GAIC](#)") opposes the use of the AEA for mass deportation and fully supports its repeal.

The AEA is a wartime authority focused on non-citizens born in a country with which the US is officially at war. In the 20th century, it was administered by the US Department of Justice ("DoJ") and was used to target aliens during both world wars, but particularly during World War II. It has no Constitutional guardrails. A harsh law like this was never intended to be used in the context of immigration laws outside of a time of war. It should not be used even during wartime.

Wartime Treatment Study Act

The German immigrant experience is an example of what can happen when this law is unleashed. It is described in detail in my attached 2009 testimony before the [Hearing](#) on the Treatment of Latin Americans of Japanese Descent, European Americans and Jewish Refugees during World War II by the US Government before the House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law. That 2009 statement is submitted in conjunction with this testimony.

Those testifying in 2009 were primarily interested in the bringing attention to the exigencies of AEA internment, hoping for official acknowledgement of their experience by the US government. We wanted to ensure what happened in WWII would not happen again. Many, including myself, had been working for years for passage of the Wartime Treatment Study Act ("[WSTA](#)"), a bill sponsored by Sen. Russell Feingold of Wisconsin several times, to no avail. That act would have created a commission to study many aspects of the wartime treatment of European Americans and Latin Americans, as well as the World War II treatment of Jewish refugees. By studying the AEA's application, we hoped it could lead to repeal of this arcane law.

Of course, the AEA has not been repealed. Now, once again, it has reared its ugly head in the context of threatened mass deportations by the next President. As noted, the AEA has always been understood to be a wartime authority and correctly so. Even its use in war was unnecessarily broad and cruel.

World War II Overview

After Pearl Harbor, President Franklin D. Roosevelt issued three [Proclamations](#) under the AEA, each respectively targeting Japanese, German and Italian aliens, who had come here seeking a better life. Many, including German-born Jews, sought to escape the authoritarian wave in Europe. Regardless, per the Presidential Proclamations, they were all deemed “enemy aliens” by virtue of their birth place. The US government then had plenary authority over a million people who were permanent resident aliens: approximately 600,000 Italians, 300,000 Germans and 100,000 Japanese.

Immediately, now the “enemy,” these immigrants were required to file as “enemy aliens,” fingerprinted, issued enemy alien IDs, had to turn over certain personal property, including cameras and radios, and their travel was restricted.

There were coastal exclusion zones created (later to be expanded upon by Executive Order 9066 and applied heartlessly to the Japanese American community) and the so-called enemy aliens had to leave their homes or could not work. This threw immigrant communities, many including mixed families of aliens, citizens and naturalized citizens, into turmoil. The initial undertaking alone required a huge effort and expense, but it was only a part of the law’s application. Worst of all, enemy aliens were subject summary apprehension and internment for the duration of the war if an enemy alien was deemed potentially dangerous to the peace and security of the United States.

Hundreds and hundreds were arrested in the first sweep. But the arbitrary arrests did not stop, continuing for the duration of the war. No one knew when a loved one might be arrested, why, where they might be taken or for how long. Many in immigrant communities lived in fear.

Internment of thousands was based largely upon uncorroborated, hearsay evidence gathered by the FBI and other intelligence agencies. It was indiscriminate, so indiscriminate, some German-born Jews who had fled Germany, clearly seeking asylum, were arrested and interned.

Neighbors were encouraged to be vigilant and report on their neighbors. Community members eyed each other with suspicion. Homes were raided and many ransacked. Fathers, mothers and sometimes both were arrested and disappeared. Sometimes children left after the arrests had to fend for themselves. Some were placed in orphanages. Families were torn apart and lives disrupted, many irreparably. Family members left at home were shunned due to fear of the FBI and spite. Newspapers published stories and incriminating lists. Many families lost their homes. Some relied on other family members who could afford to support them.

For those arrested, the DoJ instituted very limited due process protections, developed and applied at its option. Prior to hearings, detainees were held in custody for weeks in temporary detention centers, including immigration stations, convents, jails and hospitals, but also at Ellis Island. Frequently, their families had no idea where they were for weeks. The hearings took place before DOJ-constituted civilian hearing boards with little or no notice. Those arrested

were subject to hostile questioning and treated as spies. This could be by the local prosecuting US Attorney, who was assisted by the investigating FBI agents.

The intimidated, frequently semi-fluent accused had no right to counsel, could not contest the proceedings or question their accusers. Hearing board recommendations were forwarded to the DOJ's Alien Enemy Control Unit ("AECU") for a final determination that could take weeks or months. Once accused and in the DOJ web of suspicion, it was hard to escape.

Internees remained in custody nervously awaiting DOJ's order: unconditional release, parole or internment. Policy dictated that the AECU resolve what it deemed to be questionable hearing board recommendations in favor of internment. Based on AECU recommendations, the Attorney General issued internment orders for the duration of the war. Internees were moved frequently, shipped off to distant camps, with no notice to their families. But even those camps, operated by both the DOJ and the Army, took time to create given the deluge of arrests. Eventually, a [family camp](#) was established in Crystal City, Texas, that family members could apply to in order to join fathers and/or mothers, those options were limited. At least 50 detention and internment [locations](#), from Texas to California, Tennessee to Montana have been identified, but only with much research, for this remains a shadowy aspect of the home front history during the war. Ironically, the site used for the longest time of all was [Ellis Island](#)—from December 1941 until 1948.

There was no actual process to get released, although some internees got rehearings for unknown reasons. They might get released and paroled, or they might not. They would not know why. Once accused and in the DOJ web of suspicion, it was hard to escape.

Some were deported, some were pressured to repatriate to their war-torn homelands and, in the case of Germans and Japanese, many were exchanged for Americans. Pressured by the US, Latin American governments arrested thousands of German and Japanese Latin Americans and shipped them to the US, where they were considered illegals and interned: 4050 Germans and over 2000 Japanese were shipped in stark conditions to the United States and interned. Of the Germans, at least 2,650 US and Latin American resident immigrants of German ethnicity and their native-born children were later exchanged for Americans and Latin Americans held in Germany.

After release, internees had to rebuild their lives and the legacy of their internment haunted them for years, both economically and emotionally. Having been treated as the enemy by a country they loved was hard to accept. It was a dark time for these families, a time that has long been in the shadows of our history. Not taught in history classes, it was rarely if ever discussed at home because of undeserved shame, related pain and, in many cases, because internees were required to swear that their internment would not be discussed upon release. Certainly, my father never revealed his experience to his children until the end of his life.

Max Ebel

In September 1942, my 23-year-old father was arrested at gunpoint after living in Boston for 5 years. He was interned for almost two years. He had mailed his intention to become a citizen on Dec. 5, 1941, after going through the naturalization process. He had already registered for the draft, as required. His citizenship dreams came crashing down three days later when he was deemed an enemy alien. Having left Germany filled with hope, he could never have imagined what would happen to him here.

My grandfather, a WWI veteran, left Germany in 1929, divorced his wife, was naturalized. Food was scarce and my father, one of three, even got rickets due to malnutrition. In 1936, there was great pressure on young men to join the Hitler Youth. Max refused repeatedly and got into a bad knife fight. He needed to leave for his own safety. He joined his father in 1937 at 16. He enthusiastically embraced freedom here. But in September 1942, he was arrested, held in a Boston immigration station for three months, had a so-called hearing, was ordered interned and sent off to Ellis Island.

From there Max was sent to Army camps at Ft Meade, MD and Tullahoma, TN, finally landing for about a year in Bismarck, ND at an old Army fort taken over by DoJ. The internees were always shipped by rail, under guard, like the prisoners they were. His journal from that time contained little, but on the day of his arrival in Bismarck he wrote: this is hell.

My father volunteered to work on the Northern Pacific Railroad. Men were needed because so many were off fighting. He and about 100 others lived over the winter in boxcars under guard, but he was happy to be outside barbed wire. Finally granted a rehearing, release was recommended. The hearing board's order noted that members did not understand why he was interned. He was drafted out of the camp, but failed his physical. A couple months later, he was paroled until 1945 and went back to Boston, with a variety of restrictions. He never could bring himself to talk about his internment until his 80s. Never having seen any documentation, his internment was a mystery to him. Once I managed to obtain it, it was a shattering read filled with uncorroborated suspicions written by FBI agents with a job to do. Bad as it was for him, he was a young man when he was interned. For [families](#), torn asunder, some shipped back to Germany, it was far, far worse.

We were at war, but the treatment of these immigrant families was inexcusable. Our civil liberties are precious and must be protected. Untold Americans have fought and died to preserve them. The AEA is arbitrary and inhumane. It has no place in our democracy. It most certainly should not be used against immigrants. It discriminates against our most basic characteristic – our ethnicity and our race. It is, at its root, utterly Unamerican. It must be repealed.

December 19, 2024



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

**Statement of the American Immigration Lawyers Association
Submitted to the Senate Judiciary Committee for the December 10, 2024 hearing
“How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and
Devastate Our Economy”**

December 10, 2024

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The American Immigration Lawyers Association (AILA), the national bar association of over 16,000 immigration attorneys and law professors, submits this statement to express its concern and opposition to reports of how the Trump administration will engage in massive enforcement operations with the goal of deporting every undocumented person from the country. AILA members practice in every state and frequently assist individuals, families, and businesses impacted by immigration enforcement actions.

The Judiciary Committee hearing is timely given statements by the President-elect and other spokespersons that his administration will conduct wide-spread campaigns to deport millions of undocumented people and will mobilize not only federal immigration authorities but also the national guard and local law enforcement. AILA urges the incoming administration to consider other strategies for managing immigration that will be more effective while still ensuring the people subject to enforcement are treated fairly, humanely and in accordance with the principles of due process guaranteed in the Constitution.

Widespread enforcement operations will have devastating consequences for American businesses, schools, and municipalities, and will not serve America's national interests. Immigrants, including people who are undocumented and their U.S. citizen family members, are essential to our nation. Immigrants live in big cities and small towns in every region. They have children who attend schools and families that worship in temples, churches and mosques. From an economic perspective, immigrants sustain American businesses through their work in every industry and economic sector. In particular, undocumented individuals represent 4.8 percent of the overall U.S. workforce; in the agricultural industry, 13.7 percent of the workforce; in construction, 12.1 percent; and in hospitality, 7.1 percent.¹ The majority pay taxes that, in turn, fund the local education systems and social services in the communities in which they live.

Large-scale enforcement actions will devastate the economy and have the most severe

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consequences on the people being targeted and their families, many who have resided in America for years and have contributed to our country's strength and prosperity. The people who will be targeted will suffer enormous hardship, including apprehensions at their homes, workplaces or in public spaces, detention in jail-like facilities, and ultimately deportation and separation from their families and community. The incoming administration's mass deportation plan will not only harm the direct targets of the actions but also cause chaos and sow fear in American cities and communities.

In economic terms, the nationwide impact of large-scale enforcement actions will be severe. By removing people from their homes and communities, the government will potentially reduce the overall median incomes for mixed-status households by 47 percent, literally driving millions of U.S. citizens into poverty.² There are at least 4 million mixed status families living in the country that would be impacted by mass deportations; this figure includes over 5 million children.³ This will lead to foreclosures on mortgages and evictions of U.S. citizens and many people who rely on the income of their immigrant and undocumented family members.

A report by the American Immigration Council concluded that deportation of approximately 13 million people who are likely to be targeted by the incoming administration would result in massive labor shortages and a dramatic reduction in the U.S. gross domestic product by over \$1.1 trillion.⁴ Furthermore, such widespread enforcement actions would dramatically reduce U.S. tax revenue: In 2022, undocumented individuals paid \$46.8 billion in federal taxes and \$29.3 billion in state and local taxes.

Our nation's elected leaders must urgently reform the immigration system, but attempting the costly deportation of millions of people is not the solution. Instead, the incoming administration should focus on enforcement strategies that are effective, fair and humane. The management of migration into and out of the country will be more effectively accomplished by properly resourcing federal immigration agencies to conduct the necessary enforcement functions and to efficiently process visas and other immigration applications. Immigration is a resource that needs to be controlled in an orderly manner to meet the interests of the country and to ensure the success and continuing prosperity of the nation.

¹ National Immigration Forum, "Mass Deportation in the U.S.: explainer", September 30, 2024. And <https://www.newamericaneconomy.org/issues/undocumented-immigrants/>.

² National Immigration Forum, "Mass Deportation in the U.S.: explainer", September 30, 2024. And <https://www.newamericaneconomy.org/issues/undocumented-immigrants/>.

³ American Immigration Council, "Mass Deportation: Devastating Costs to America, Its Budget and Economy", October 2024.

⁴ American Immigration Council, "Mass Deportation: Devastating Costs to America, Its Budget and Economy", October 2024.

ALLIANCE FOR IMMIGRANT SURVIVORS

Joint Statement to the U.S. Senate Committee on the Judiciary: "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy"

December 19, 2024

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

The Alliance for Immigrant Survivors (AIS), a national network dedicated to defending immigrant survivors of gender-based violence, urges the Senate Judiciary Committee to consider the devastating and lethal impact of mass deportation policies on survivors. Behind every deportation policy are real human stories of survival, resilience, and impossible decisions. We respectfully request that this statement be incorporated into the record for the December 10, 2024, U.S. Senate Committee on the Judiciary hearing, "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy." Today, we share Lucy's story, with her permission and her name changed for privacy, to illustrate these harms and amplify the voices of advocates who witness how such policies deter survivors from seeking help, endangering them and their communities.

Lucy, a young woman from Mexico, is one of many survivors served by Esperanza United's family advocacy program in Minnesota. Promised a job by a "friend," Lucy was instead trapped in a small apartment, where the "friend" not only stole her passport and earnings but also repeatedly sexually assaulted her. After enduring this abuse, Lucy escaped barefoot into the harsh Minnesota winter. Now, while waiting for her U-visa to be processed, she faces severe challenges: no work authorization, no driver's license, and limited access to mental health care.

Esperanza United advocates working directly with survivors in Minnesota report that many, like Lucy, hesitate to seek help because of a deep fear of deportation. This fear is not just a personal concern but a harsh reality—**65% of immigrant survivors have shared that their abuser used the threat of deportation as a powerful tool of control**¹. Advocates have seen survivors pull back from legal cases or avoid medical care, convinced that any involvement with government agencies or systems will put their immigration status at risk.

As the Senate considers the impacts of mass deportation and detention, it is crucial to recognize the compounded threats survivors like Lucy face. When policies frame immigrants as criminals, it reinforces the threats of deportation abusers use to control victims, discouraging them from reporting abuse or seeking help. These policies trap survivors in life-threatening situations. By prioritizing human dignity and safety, we can strengthen communities and ensure survivors are not silenced by fear.

¹ Erez, E. & Ammar, N. (2003). Violence Against Immigrant Women and Systemic Responses: An Exploratory Study. National Network on Behalf of Battered Immigrant Women, *National Institute of Justice Report* grant # 98-WT-VX-0030.

Voices of Alliance for Immigrant Survivors Co-Chairs:***The Weaponization of Immigration Status***

"For victims of domestic violence, sexual assault, and other forms of gender-based violence, unstable or dependent immigration status creates a devastating power imbalance that emboldens harm-doers and silences victims. Abusers exploit this legal vulnerability, weaponizing the fear of deportation to prevent survivors from seeking safety or reporting abuse. Survivors often face impossible choices—endure continued violence or risk separation from their families and communities. With reports of impending large-scale immigration enforcement activities, advocates in AAPI and immigrant communities are deeply alarmed that such actions will drive survivors further into the shadows, allowing abuse to persist unchecked and unpunished."

-Grace Huang, Director of Policy, Asian Pacific Institute on Gender-Based Violence

The Legal Right to Asylum

"All survivors, regardless of their background, deserve to live in safety and with dignity. Survivors of GBV and other abuses abroad whose lives and safety are at grave risk may feel that their only path to safety is to flee to the U.S. to seek asylum given their own country's inability or unwillingness to protect women from violence. And they have the legal right to do so. The deportation of immigrant survivors can be a death sentence when they are re-victimized by those who targeted them in the past. Justice and safety for all survivors includes giving them their day in court under our laws and mass, indiscriminate deportation will deny immigrant survivors that right and send them back to harm."

- Archi Pyati, CEO, Tahirih Justice Center

Mass Deportation Harms Survivors

"Survivors are present in every immigrant community and already face daunting barriers to accessing the relief for which they are eligible under the immigration law. Mass deportation measures sow chaos and instability, further threatening the safety, security, and dignity of immigrant survivors of violence."

- Kirsten Rambo, Executive Director, ASISTA Immigration Assistance

The Fear of Seeking Help

"Undocumented survivors of gender-based violence face impossible choices. Deportation threats force them to decide between silence and seeking safety—a choice no one should have to make. These threats isolate survivors, embolden abusers, and erode trust in systems meant to protect them. Our communities deserve solutions that prioritize safety, dignity, and justice."

- Patti Tototzintle, President and CEO, Esperanza United

Thank you for your consideration.

Respectfully submitted by the Alliance for Immigrant Survivors



Formerly known as CAIR Coalition.

Written Statement for the Senate Judiciary Committee:

The Human and Financial Costs of Mass Deportation and the Need for Legal Representation

December 6, 2024

Chairman, Ranking Member, and Distinguished Members of the Committee,

I am submitting this statement to express urgent concerns regarding the incoming Trump administration's proposed mass deportation policies under Project 2025 and to emphasize the critical need for legal representation for immigrants facing deportation. These policies threaten to destabilize our communities, separate families, and subject vulnerable people to potentially harmful and unconstitutional treatment. As an organization committed to defending the rights of immigrants, Amica Center strongly believes that providing legal counsel for noncitizens facing deportation is essential to ensuring that due process and human dignity are upheld.

The Threat of Mass Deportation

The concept of "mass deportation" is not theoretical; it is a direct and growing threat. President-elect Trump's plan, which includes expanding immigration detention, initiating large-scale raids, and implementing expedited removal procedures, would affect millions of immigrants and their families—many of whom have lived in the United States for decades, contributing to our communities in countless ways.

The Human and Financial Costs of Mass Deportation

The human cost of mass deportation is incalculable. The separation of families, the disruption of children's lives, and the trauma caused to millions of people would tear apart the very fabric of our society. These policies would disproportionately affect long-term immigrant residents, who have often lived in the United States for years and established deep roots in their communities.

In addition to the devastating social impact, mass deportation would impose a significant financial burden on the federal government and taxpayers. Estimates suggest that deporting one million people annually could cost the U.S. government up to \$88 billion each year, and nearly a

trillion over a decade.¹ Mass deportation would also result in a loss of 4.2 percent to 6.8 percent of the annual U.S. GDP, a rate similar to how the U.S. GDP shrunk by 4.3 percent during the 2007-2009 recession.²

These negative financial impacts would include costs related to expanding immigration detention facilities and infrastructure, increasing law enforcement personnel, and bolstering the immigration court system. The average daily rate for detention is \$236.52 per person.³ These resources could be better spent on improving public services, streamlining legal processes, such as by reducing the backlog, and other critical needs. Moreover, diverting resources from first responders and the military to carry out mass deportation would endanger national security.

Finally, it is important to note that despite claims to the contrary, the vast majority of immigrants are not a security threat. Studies have shown that immigrants are less likely to be incarcerated and that immigrant communities have lower crime rates than native-born citizens.⁴

Mass Detention and Denial of Legal Counsel

Currently, there are approximately 37,000 individuals detained by U.S. Immigration and Customs Enforcement (ICE).⁵ Under mass deportation policies, that number is expected to increase significantly. However, one of the most disturbing aspects of these policies is that there is no right to a public defender in immigration court. Unlike in criminal court, noncitizens facing deportation have no guaranteed access to government-appointed counsel. As a result, many of them must navigate the complex and often incomprehensible immigration system alone—despite the stakes being their right to remain in the country they call home, and in many cases, persecution, torture, or death.

Without adequate legal representation, the vast majority of individuals who are detained will face deportation without a fair hearing, in violation of due process. For example, young children and individuals with mental disabilities who are detained have no way to effectively self-advocate without counsel.

¹ American Immigration Council, Mass Deportation; Devastating Costs to America, its Budget and Economy, Oct. 2, 2024, available at: <https://www.americanimmigrationcouncil.org/research/mass-deportation>

² *Id.*

³ *Id.*

⁴ See, e.g., Stanford Institute for Economic Policy Research, “The mythical tie between immigration and crime,” July 21, 2023, available at: <https://siepr.stanford.edu/news/mythical-tie-between-immigration-and-crime>; American Immigration Council, “The Criminalization of Immigration in the United States,” July 13, 2015, available at: <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>.

⁵ National Immigrant Justice Center, Policy Brief | Snapshot of ICE Detention: Inhumane Conditions and Alarming Expansion, Sept. 20, 2024, available at: <https://immigrantjustice.org/research-items/policy-brief-snapshot-ice-detention-inhumane-conditions-and-alarming-expansion>

In addition, the expansion of expedited removal procedures would allow ICE to detain and deport noncitizens without a hearing or legal counsel. Under these policies, individuals who may have legitimate claims to remain in the United States could be deported with little to no opportunity to seek help from an attorney, undermining their constitutional right to due process. Mass, expedited deportations with little to no guardrails will also risk the erroneous removal of U.S. citizens, particularly those that have cognitive and mental health disabilities. With no counsel, citizens who are wrongly detained and subject to deportation have little way to effectively fight back.

At Amica Center, we have seen firsthand the importance of providing legal representation for individuals facing deportation. We often serve as the last line of defense for individuals, including children, detained by the government. However, the challenge we face in meeting the growing demand for legal services is immense, and without proper funding, it will only worsen as mass deportation policies are implemented.

Raids and Racial Profiling

Another disturbing feature of mass deportation would be the use of large-scale raids. These raids would target workplaces, schools, places of worship, courthouses, and other public spaces. They would harm families, businesses, and local communities. To carry out such operations, the Trump administration would need to rely on local law enforcement to cooperate with federal immigration agencies like ICE and expedited removal without due process protections. This would violate the rights of countless individuals and encourage racial profiling.

Our Solution: The Need for Direct Legal Representation and Due Process

Access to legal representation is the cornerstone of any fair judicial process. Unfortunately, immigrants facing deportation often do not have access to the legal assistance they need. This lack of counsel leaves them vulnerable to unjust deportations, separating families and stripping them of their rights.

Amica Center and other advocacy organizations are committed to providing direct legal representation for immigrants facing deportation. Our legal teams will continue to serve as a crucial line of defense, offering pro bono counsel, support, and litigation to challenge the unjust policies being put forward under the second Trump Administration.

To ensure that we can continue this vital work, we need the support of the federal government to fund legal services programs, ensure that immigrants have access to counsel, and help protect the rights guaranteed to immigrants, their families, and our communities. We are committed to fighting back, just as we successfully challenged the Asylum Transit Ban during the first Trump administration, and we are prepared to take similar action in the courts if necessary.

How the Committee Can Help

We urge the Senate Judiciary Committee to take the following actions:

1. **Secure funding** for legal assistance programs to ensure that immigrants facing deportation have access to counsel and fair hearings.
2. **Support legislation** that guarantees due process for noncitizens, ensuring that no one is deported without a fair opportunity to present their case.
3. **Oppose harmful budget cuts** that threaten funding for legal assistance and defense programs and other resources for immigrant communities.

Conclusion

Mass deportation is not only a threat to the millions of noncitizens and their families and communities who will be harmed, but also to the principles of fairness, justice, and due process that are foundational to our nation. We must act now to ensure that all people, regardless of their immigration status, have access to legal representation and the opportunity to remain with their families and communities.

Amica Center stands ready to continue its work in defense of immigrant rights, but we cannot do so without the necessary resources and support. We urge the Committee to prioritize the protection of immigrant communities and the preservation of due process for all.

Thank you for your time and consideration.



Michael Lukens
Executive Director
Amica Center for Immigrant Rights
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**Statement for the Record from the Asian Pacific Institute on Gender-Based Violence
Submitted to U.S. Senate Committee on the Judiciary**

***“How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and
Devastate Our Economy”***

Tuesday, December 12, 2024 at 10:00AM

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

Thank you for the opportunity to submit a written statement on behalf of the Asian Pacific Institute on Gender-Based Violence (“API-GBV”). We appreciate the opportunity to submit this testimony relating to how the mass deportations impacts victims of gender-based violence, particularly from Asian, Asian American, and Pacific Islander (“AAPI”) communities. We respectfully request that this statement be made part of the record for the December 12, 2024 U.S. Senate Committee on the Judiciary hearing, “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy.”

The Asian Pacific Institute on Gender-Based Violence (“API-GBV”), is a national resource center on domestic violence, sexual assault, human trafficking, and other forms of gender-based violence, serving a national network of advocates and community-based programs that work with AAPI survivors of gender-based violence. API-GBV promotes culturally relevant intervention and prevention, provides expert consultation, technical assistance and training, and conducts and disseminates critical research; and works to inform public policy. We focus on promoting policies that support the safety, autonomy, and well-being of survivors of gender-based violence, including policies that impact survivors’ access to economic security, health, housing, human services, education, training, employment, childcare, and to stable immigration status. API-GBV works with to support domestic violence, sexual assault, and human trafficking victim advocates and their coalitions by providing up-to-date information about policy changes and their particular impacts on the safety-planning that victim advocates engage in with survivors to mitigate risks to their well-being.

Recent announcements of impending mass deportations have increased levels of fear across communities¹, impacting the ability of immigrant survivors of domestic violence, sexual assault, human trafficking, and other forms of gender-based violence throughout the country to seek safety from abuse or exploitation. The reluctance to seek help will have long term impacts on AAPI, immigrant and refugee communities, and communities at large.

¹ Hackman, M., and Findell, E. (Dec. 6, 2024). Migrants Prepare for Mass Deportation: ‘Should I Just Kiss My Husband Goodbye?’ *The Wall Street Journal*, retrieved from <https://www.wsj.com/politics/policy/migrant-fears-trump-mass-deportation-campaign-212f761b?>

Like in *all* communities, immigrant and refugee community members experience physical and sexual violence.² Immigrant and refugee victims tend to stay in abusive relationships longer and sustain more severe physical and emotional harm than other intimate partner violence victims in the United States.³ Among intimate partner homicide victims in the United States, immigrant victims are disproportionately represented compared to their representation in the U.S. population.⁴ According to a review of 147,902 intimate partner homicides from 2003-2013 across 19 U.S. states, foreign-born victims were more likely than U.S. born victims to be associated with intimate partner violence related deaths. In addition, foreign-born women killed by their intimate partners were more likely than U.S. born women to be married, young, and killed by a young partner who strangled, suffocated, or stabbed them.⁵

For victims of domestic violence, sexual assault, and other forms of gender-based violence, insecure immigration status (including those with lawful status dependent on a family member or employer sponsor) or the lack of stable immigration status puts them in a disempowering position that prevents them from taking steps that can help them address the victimization, such as accessing law enforcement or social services.⁶

One of the most daunting challenges for many immigrant victims is how those who victimize them exploit their legal vulnerability with threats of deportation. Research conducted among immigrant victims from diverse countries of origin across the U.S. found that 65% of immigrant victims reported that their abusive partner used some form of a threat of deportation after arrival in the U.S. as a form of abuse.⁷ Similarly, in a review of approximately 3500 granted domestic violence protection orders, of petitioners who mentioned immigration issues, their petition narratives included threats to contact authorities to interfere with an ongoing immigration process, deportation threats, and threats that would separate families.⁸ These immigration-related threats prevented them from leaving the violent partner, seeking help, or reporting the abuse.⁹ With the widespread reports of impending large-scale immigration enforcement activities, advocates who work in AAPI and immigrant communities are deeply concerned that victims will

² Leung, P., and Cheung, M., (2008). A prevalence study on partner abuse in six Asian American ethnic groups in the USA *International Social Work*, 51; 635.

³ Amanor-Boadu, Y., Messing, J. T., Stith, S. M., Anderson, J. R., O'Sullivan, C., & Campbell, J. C. (2012). Immigrant and non-immigrant women: Factors that predict leaving an abusive relationship. *Violence Against Women*, 18, 611-633.

⁴ Runner, M., Yoshihama, M., & Novick, S. (2009). Intimate partner violence in immigrant and refugee communities: Challenges, promising practices and recommendations. Robert Wood Foundation, retrieved from: <https://folio.iupui.edu/bitstream/handle/10244/788/ipvreport20090331.pdf?sequence=1>

⁵ Sabri, B., Campbell, J., & Messing, J., (2018). Intimate Partner Homicides in the United States, 2003-2013: A Comparison of Immigrants and Nonimmigrant Victims. *Journal of Interpersonal Violence*, 1-23.

⁶ Liang, B., Goodman, L., Tummala-Narra, P., & Weintraub, S., (2005). A Theoretical Framework for Understanding Help-Seeking Processes Among Survivors of Intimate Partner Violence, *American Journal of Community Psychology*, 36, 71-84.

⁷ Erez, E. & Ammar, N. (2003). Violence Against Immigrant Women and Systemic Responses: An Exploratory Study. National Network on Behalf of Battered Immigrant Women, *National Institute of Justice Report* grant # 98-WT-VX-0030.

⁸ Alsinai, A., Reygers, M., DiMascolo, L., Kafka, J., Rowhani-Rahbar, A., Adhia, A., Bowen, D., Shanahan, S., Dalve, K., & Ellyson, A. M. (2023). Use of immigration status for coercive control in domestic violence protection orders. *Frontiers in sociology*, 8, 1146102. <https://doi.org/10.3389/fsoc.2023.1146102>

⁹ *Id.*

be even less inclined to report domestic violence, sexual assault, human trafficking, or other forms of violence, allowing abuse and violence to continue with impunity.

In particular, the prospect of hundreds of thousands of individuals who currently have protection against deportation in the forms of Temporary Protected Status, Deferred Enforced Departure, or Deferred Action losing their immigration status, will place them at increased risk of exploitation or abuse, and increase disincentives to access help lest they are more likely to come to the attention of ICE officials.

Some immigration protections exist for those who are victimized. For example, Congress has provided for immigration protections in the Violence Against Women Act (VAWA)¹⁰ and the Victims of Trafficking Protection Act (VTPA),¹¹ to reduce the likelihood of coercion and control. As noted in VAWA's legislative history, the "[l]aw fosters domestic violence in such situations by placing full and complete control of the alien spouse's ability to gain permanent legal status in the hands of the citizen ... Consequently, a battered spouse may be deterred from taking action to protect himself or herself, such as filing a civil protection order, filing criminal charges or calling the police, because of the threat or fear of deportation."¹² Congress continued to strengthen the immigration protections in VAWA in 2000,¹³ 2005¹⁴, and 2013.¹⁵

Despite the existence of victim related immigration protections, there continue to be barriers for victims in accessing them. Immigrant and refugee victims may be brought to or may arrive in an unfamiliar environment where they do not know the language, culture, and the physical geographic area, and may recognize only a few people.¹⁶ In these circumstances, it is easier for violent partners or traffickers to control their victims' lives, both physically, and emotionally. Due to lack of transportation or because they may live in isolated areas, immigrant and refugee victims may rely solely on their violent partner or traffickers to provide for opportunities to interact with others. They may know very few people and have very few people to talk to. As a result, violent partners or abusers of these victims are better able control finances and limit connections to others who could assist in providing emotional and possibly legal support to victims. Isolation is a significant reason that immigrant victims are unable to seek assistance.¹⁷ As victim advocates, we are deeply troubled by the prospect of the removal of large numbers of people who appear to be without clear legal immigration status, i.e., "mass deportations." While many victims may be eligible for such status, they are simply either are unaware of their eligibility, or who may actually do have legal status but do not have documentation due to the isolation or coercion of their abusers or traffickers. It is a virtual certainty that victims who either

¹⁰ Violence Against Women Act of 1994, P.L. No. 103-322, 108 Stat. 1902-1955 (1994)

¹¹ Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386.

¹² H.R. Rep. No. 103-395 p. 26 (1993)

¹³ VTPA, *supra* note 10.

¹⁴ Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 (2005)

¹⁵ Violence Against Women Reauthorization Act of 2013, P.L., 113-4, 127 Stat. 54 (2013)

¹⁶ Kasturirangan, A., Krishnan, S., and Riger, S., (2004) The Impact of Culture and Minority Status on Women's Experience of Domestic Violence, *Trauma Violence & Abuse* 5, 318-332.

¹⁷ Bui, H. N. (2003). Help-seeking behavior among abused immigrant women. *Violence Against Women*, 9(2), 207-239.

have, or are eligible for victim related immigration protections will be deported, and will face increased trauma and/or violence as a result. Their children and/or family members will likely lose a safe adult, exacerbating the trauma and/or violence they have experienced.

Furthermore, even immigrant and refugee survivors who are eligible for survivor-related or humanitarian protections face ongoing risk of abuse or exploitation, hunger, homelessness, or continued trauma due to extensive USCIS case backlogs and protracted processing times. For example, crime victims have an average of a 4 1/2-year wait for employment authorization based on Bona Fide Determinations in pending U visa (crime victim) petitions.¹⁸ Such extensive delays undermine the purpose and effectiveness of VAWA and the VTPA provisions, including civil and criminal legal protections. Timely access to employment authorization increases victims' financial and housing stability, their willingness to contact law enforcement to address abuse, and their willingness to seek court remedies to protect their children.¹⁹

Congress' failure to act to modernize the immigration system by strengthening or increasing lawful pathways to immigrate, as well as provide sufficient resources to process immigration applications in a timely manner has contributed to the ongoing power imbalance that endangers immigrant victims and communities at large.

We urge Congress to refrain from enacting legislation and supporting policies that increase the barriers to vulnerable victims seeking help, that exacerbates trauma by keeping them trapped in abusive relationships or exploitative situations, that aid and abet abusers' or harm-doers' threats that victims will be deported if they seek help will be actualized, or that undermines the critical work of local programs seeking to prevent and intervene to interrupt violence and trauma in our communities.

Conclusion

In sum, **we urge Congress** to reject proposals that support "mass deportation," such as terminating administrative remedies for over a million individuals, and to finally modernize our outdated immigration system, to consider the **needs of vulnerable survivors and their families**, and to pass legislation that works to strengthen communities and families. Thank you for your consideration. Please feel free to contact me with questions or concerns at ghuang@api-gbv.org.

Sincerely,



Grace Huang
Director of Policy
Asian Pacific Institute on Gender-Based Violence

¹⁸ See, Form I-918 at <https://egov.uscis.gov/processing-times/>

¹⁹ Her Justice (2023), Stories from Immigrant Survivors of Gender-Based Violence; The Impact of Work Authorization, Retrieved from: <https://herjustice.org/wp-content/uploads/2023/11/Her-Justice-Policy-Report-Impact-of-Work-Authorization.pdf>

**STATEMENT OF THE BRENNAN CENTER FOR JUSTICE
AT NEW YORK UNIVERSITY SCHOOL OF LAW**

BEFORE THE

UNITED STATES SENATE JUDICIARY COMMITTEE

HEARING ON

**HOW MASS DEPORTATIONS WILL SEPARATE AMERICAN FAMILIES,
HARM OUR ARMED FORCES, AND DEVASTATE OUR ECONOMY**

DECEMBER 10, 2024

Introduction

The Brennan Center for Justice at New York University School of Law¹ respectfully submits this statement for inclusion in the record of the Senate Judiciary Committee’s December 10, 2024 hearing titled “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy.” At the hearing, witnesses gave powerful testimony regarding the widespread negative effects that would flow from mass deportations. This statement provides a legal perspective, elucidating the statutory authorities that President-elect Donald Trump might invoke to involve military personnel in the detention and deportation of immigrants. It explains what these authorities permit, identifies relevant limitations on their use, and describes legislative reforms that would help prevent abuses.

By way of background, the Brennan Center is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. In December 2018, the Center completed a two-year intensive research project on the legal framework for national emergencies. We began our study of emergency powers by researching the history of the National Emergencies Act of 1976. We then catalogued all the statutory powers that become available to the president when a national emergency is declared, and for each such power, we determined when and under what circumstances it had been invoked. We published this compendium online² along with a list of national emergency declarations issued since the National Emergencies Act went into effect.³ (We have updated these resources on an ongoing basis as new emergency powers are enacted and national emergency declarations are issued or terminated.)

Shortly thereafter, we embarked on a set of research projects to examine the authorities governing domestic deployment of the military in emergency situations. This work led to the publication in 2020 of a report on martial law—i.e., the displacement of civilian government by military authority—in which we concluded that current law would not authorize the imposition of martial law by the president.⁴ In 2022, we followed up with a legislative proposal to reform the Insurrection Act,⁵ a law that gives the president dangerously broad discretion to deploy

¹ This statement is submitted on behalf of a Center affiliated with New York University School of Law but does not purport to represent the school’s institutional views on this topic. More information about the Brennan Center’s work can be found at <http://www.brennancenter.org>.

² *A Guide to Emergency Powers and Their Use*, BRENNAN CTR. FOR JUST. (last updated June 11, 2024), <https://www.brennancenter.org/analysis/emergency-powers>.

³ *Declared National Emergencies Under the National Emergencies Act*, BRENNAN CTR. FOR JUST. (last updated Dec. 2, 2024), <https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act>.

⁴ JOSEPH NUNN, *MARTIAL LAW IN THE UNITED STATES: ITS MEANING, ITS HISTORY, AND WHY THE PRESIDENT CAN’T DECLARE IT* (2020), <https://www.brennancenter.org/our-work/research-reports/martial-law-united-states-its-meaning-its-history-and-why-president-cant>.

⁵ *The Insurrection Act: Its History, Its Flaws, and. proposal for Reform: Hearing Before the U.S. House Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol*, 117th Cong. (2022) (statement of Elizabeth Goitein and Joseph Nunn, Brennan Ctr. for Just.), <https://www.brennancenter.org/our-work/research-reports/statement-january-6th-committee-reforming-insurrection-act>.

federal troops to suppress civil unrest or to enforce the law when it is being obstructed. And this year, we published a report on the Posse Comitatus Act, the foundational law that limits military involvement in civilian law enforcement, examining its many exceptions and loopholes and proposing reforms to strengthen it. We also published a report on a related topic: the Alien Enemies Act, which does not itself authorize domestic deployment but is a wartime authority that confers vast detention and deportation powers on the president.

Based on this research and on events of the past few years, the Brennan Center has concluded that the laws governing emergency powers and domestic deployment of the military are in urgent need of reform. These authorities are highly susceptible to abuse, and they could be exploited to undermine our democracy and our liberties. At the same time, none of these authorities gives presidents carte blanche to do as they please whenever they claim that an emergency exists. This statement will identify relevant limits on the use of emergency and domestic deployment authorities to engage in mass deportations.

I. National Emergencies Act

President-elect Trump has indicated that he will declare a national emergency to assist in mass deportations.⁶ As discussed herein, a declaration of national emergency gives presidents potent powers in a wide range of areas. When it comes to immigration enforcement, however, the small number of authorities that Trump could conceivably invoke largely amplify resources rather than providing additional substantive powers. The potential for these authorities to be used in service of mass deportations is nonetheless concerning, as is a 1983 Supreme Court ruling that left Congress with little practical ability to rein in abuses. Congress should pass existing bipartisan legislation to restore that ability.

A. The Role and Source of Emergency Powers in the United States

Emergency powers have existed in countries around the world for hundreds of years. They are based on a simple premise: Because emergencies are, by definition, unforeseeable and unforeseen, existing laws might not be sufficient to respond to them, and amending the law to provide greater powers might take too long or do damage to principles held sacrosanct in ordinary times. Emergency powers thus give the government—usually, the head of state—a temporary boost in power until the crisis passes or there is time to change the law through normal legislative processes.⁷

Unlike the modern constitutions of most countries,⁸ the U.S. Constitution includes no separate regime for emergencies. It does include a handful of specific crisis-response provisions,

⁶ Charlie Savage and Michael Gold, *Trump Confirms Plans to Use the Military to Assist in Mass Deportations*, N.Y. TIMES (Nov. 18, 2024), <https://www.nytimes.com/2024/11/18/us/politics/trump-military-mass-deportation.html>.

⁷ See generally John Ferejohn and Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 INT'L J. CONST. L. 210 (2004); Jules Lobel, *Emergency Power and the Decline of Liberalism*, 98 YALE L.J. 1385 (1989).

⁸ A review of current constitutions reveals that at least 175 countries' constitutions have provisions for governing in emergencies. See *Topic and Keyword Search s.v. "emergency"*, CONSTITUTE, https://www.constituteproject.org/constitutions?lang=en&q=emergency&status=in_force&status=is_draft (last visited Dec. 19, 2024).

but these powers are given to Congress, not to the president. Most notably, Congress may suspend the writ of *habeas corpus* “when in Cases of Rebellion or Invasion the public Safety may require it,”⁹ and Congress has the power “to provide for calling forth the Militia to execute the laws of the Union, suppress Insurrections and repel Invasions.”¹⁰

Although Article II of the Constitution, which sets forth the powers of the president, confers no explicit emergency powers, there are implied powers accompanying some of its express provisions. Most notably, the Commander-in-Chief power entails the authority to defend the United States against sudden attack, even without prior congressional authorization,¹¹ and to manage the conduct of war. The Supreme Court has also asserted (somewhat controversially) that the president is the “sole organ of the federal government in the field of international relations,”¹² although the scope of this exclusive power in the international-relations field remains unclear.

Broader claims that presidents have inherent constitutional powers to do whatever they consider necessary in an emergency have been soundly rejected by the Supreme Court. The government advanced a version of this theory to justify President Truman’s seizure of U.S. steel mills during the Korean War. The Supreme Court invalidated the president’s action, and Justice Jackson, in his famous concurrence, observed: “[T]he Constitution did not contemplate that the title Commander in Chief of the Army and Navy will constitute him also Commander in Chief of the country, its industries and its inhabitants.”¹³

Accordingly, since the founding of the nation, Congress has been the primary source of the president’s emergency powers. It has periodically legislated standby authorities that the president may activate when certain types of emergencies occur.¹⁴ Critically, none of these powers allows the president to make law in his own right—i.e., to create an alternative set of rules that violate statutes or go beyond the authority they provide. Under the statutory emergency powers regime, the president is strictly limited to the powers that Congress has granted to him in advance.

B. The National Emergencies Act: A Failed Attempt to Rein in Presidential Uses of Emergency Powers

Although statutory emergency powers have existed since the country’s founding, the process by which presidents avail themselves of such powers has evolved over time. The current system for national emergencies—in which the president declares a national emergency, and the declaration unlocks statutory powers that would otherwise lie dormant—dates back to President Woodrow Wilson.¹⁵ It developed organically, and for several decades there was no single law that

⁹ U.S. Const. art. I, § 9, cl. 2.

¹⁰ U.S. Const. art. I, § 8, cl. 15.

¹¹ See LOUIS FISHER, *PRESIDENTIAL WAR POWER* 8–10 (2d ed. 2004).

¹² *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936).

¹³ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 643–44 (1952) (Jackson, J., concurring) (emphasis in original).

¹⁴ See HAROLD C. RELYEA, *CONG. RSCH. SERV., REPORT NO. 98-505, NATIONAL EMERGENCY POWERS* 5 (2007).

¹⁵ *Id.* at 7.

governed the process. Presidents did not have to identify what powers they would invoke or keep Congress informed of their actions, and states of emergency could last indefinitely.

In the 1970s, several scandals involving executive branch overreach—including Watergate, the bombing of Cambodia, and domestic spying by the CIA—prompted Congress to take a hard look at executive power, and to enact several laws aimed at reasserting Congress’s role as a co-equal branch of government and a check on executive authority.¹⁶ It was in this context that a special Senate committee was formed to examine presidential use of emergency powers. The committee learned that four clearly outdated states of emergency were still in effect, providing access to literally hundreds of statutory emergency powers that allowed the president to “manage every aspect of the lives of all American citizens.”¹⁷

The committee’s work culminated in the introduction and passage of the National Emergencies Act of 1976, which went into effect two years later.¹⁸ The clear purpose of the law, evident in every facet of the legislative history, was to place limits on presidential use of emergency powers.¹⁹ It included three primary constraints. First, it provided that states of emergency would terminate after a year unless renewed by the president.²⁰ Second, it *allowed* Congress to terminate states of emergency at any time through a concurrent resolution—a so-called “legislative veto” that would take effect without the president’s signature.²¹ Third, it *required* Congress to meet every six months while an emergency declaration was in effect to “consider a vote” on whether to end the emergency.²²

Unfortunately, the National Emergencies Act has not served as the strong check on executive action that Congress intended. Renewal of emergency declarations after one year, intended to be the exception, has become the default. Most of the emergencies declared since the National Emergencies Act was passed are still in effect. The average length of emergencies has been close to a decade, with more than 30 emergencies lasting even longer. The longest-running declaration of emergency was issued by President Jimmy Carter in 1979 in response to the Iranian hostage crisis and remains in place today.²³

Congress, for its part, has not exercised its intended role as a check on presidential power. In 1983, the Supreme Court ruled that concurrent resolutions are unconstitutional.²⁴ Congress’s solution was to substitute a joint resolution as the mechanism for terminating emergencies.²⁵ Like any other legislation, a joint resolution must be signed into law by the president. If the president

¹⁶ See generally Thomas E. Cronin, *A Resurgent Congress and the Imperial Presidency*, 95 POL. SCI. Q. 209 (1980).

¹⁷ S. Comm. on Government Operations and the Spec. Comm. on National Emergencies and Delegated Emergency Powers, *The National Emergencies Act* (Pub. L. 94-412) *Source Book: Legislative History, Text, and Other Documents* 20 (1976) (hereinafter “Spec. Comm. on National Emergencies Source Book”).

¹⁸ National Emergencies Act, Pub. L. No. 94-412, 90 Stat. 1255 (1976).

¹⁹ Spec. Comm. on National Emergencies Source Book, 50.

²⁰ *Id.* § 202(d) (codified at 50 U.S.C. § 1622(d)).

²¹ *Id.* § 202 (codified as amended at 50 U.S.C. § 1622).

²² *Id.* § 202(b) (codified at 50 U.S.C. § 1622(b)).

²³ See BRENNAN CTR. FOR JUST., *Declared National Emergencies*, *supra* note 3.

²⁴ See *INS v. Chadha*, 462 U.S. 919, 954–55 (1983).

²⁵ See 50 U.S.C. § 1622(a)(1).

vetoes the resolution, Congress can override the veto only with a two-thirds vote by both houses. This change greatly diluted the role of Congress as envisioned in the original Act.

Moreover, until recently, Congress demonstrated little interest in exercising the powers it gave itself. The Act requires Congress to meet every six months while an emergency is in place to consider a vote on whether to end the emergency. States of emergency have been in place throughout the 46 years the law has been in effect, which means Congress should have met more than 90 times to review existing states of emergency. Before 2019, however, only one resolution to end a state of emergency had ever been introduced, and the emergency declaration at issue was revoked before Congress could vote on it.²⁶

After President Trump declared a national emergency in February 2019 to secure funding for constructing a wall along the southern border, Congress twice voted to terminate the declaration.²⁷ President Trump vetoed the resolution both times,²⁸ however, and Congress was unable to muster the two-thirds majority necessary to override the veto.²⁹ In March of last year, Congress voted to terminate the national emergency declaration regarding the COVID-19 pandemic.³⁰ President Joe Biden, who had already pledged to end the declaration in May, signed the bill into law;³¹ had he issued a veto, it is unlikely the House could have overridden it.³²

National emergencies are thus easy to declare and hard to stop—and they grant access to a rich well of powers, most of which become available regardless of whether they are relevant to the emergency at hand. The Brennan Center has identified 150 authorities that may be invoked in a declared national emergency.³³ While some of these are measured and sensible, others seem like the stuff of authoritarian regimes. For example, merely by signing a declaration of national emergency, the president may take over or shut down radio stations;³⁴ if the president goes further and declares a “threat of war,” he may take over or shut down facilities for wire communication—a provision that arguably could allow him to assert control over U.S.-based

²⁶ See Tamara Keith, *If Trump Declares an Emergency to Build the Wall, Congress Can Block Him*, NPR (Feb. 11, 2019), <https://www.npr.org/2019/02/11/693128901/if-trump-declares-an-emergency-to-build-the-wall-congress-can-block-him>.

²⁷ H.J. Res. 46, 116th Cong. (Mar. 2019); S.J. Res. 54, 116th Cong. (Sep. 2019).

²⁸ President Trump, *Veto Message to the House of Representatives for H.J. Res. 46*, TRUMP WHITE HOUSE ARCHIVE (March 15, 2019).

<https://trumpwhitehouse.archives.gov/briefings-statements/veto-message-house-representatives-h-j-res-46/>.

President Trump, *S.J. Res. 54 Veto Message*, TRUMP WHITE HOUSE ARCHIVE (Oct. 15, 2019),

<https://trumpwhitehouse.archives.gov/presidential-actions/s-j-res-54-veto-message/>.

²⁹ H.J. Res. 46, 116th Cong. (override failed in House, Mar. 26, 2019); S.J. Res. 54, 116th Cong. (override failed in Senate, Oct. 17, 2019).

³⁰ H.J. Res. 7, 118th Cong. (2023).

³¹ White House, “Bill Signed: H.J. Res. 7,” April 10, 2023,

<https://www.whitehouse.gov/briefing-room/legislation/2023/04/10/bill-signed-h-j-res-7/>.

³² The vote in the House was 220-210, which falls well short of the two-thirds majority necessary to override a veto.

See Ben Leonard, *House Votes to End Covid Public Health Emergency*, POLITICO (Jan. 31, 2023),

<https://www.politico.com/news/2023/01/31/house-end-covid-public-health-emergency-00080507>.

³³ See BRENNAN CTR. FOR JUST., *A Guide to Emergency Powers and Their Use*, *supra* note 2.

³⁴ See 47 U.S.C. § 606(c).

Internet traffic.³⁵ Other powers would allow the president or members of the president's administration to freeze Americans' assets and bank accounts,³⁶ to exercise broad and unspecified powers over domestic transportation,³⁷ and to detail members of the U.S. armed forces to any country.³⁸

C. How Trump Might Try to Use a National Emergency Declaration to Assist in Mass Deportations, and the Limitations on Such Use

President-elect Trump has indicated that he will declare a national emergency as part of his mass deportation plans,³⁹ but he has not specified which emergency powers he intends to invoke. Although national emergency declarations unlock sweeping powers across a wide range of subject areas, none of them is designed to facilitate deportation or otherwise enhance immigration enforcement authority in the interior of the country. That said, two of the emergency powers previously deployed for border security purposes could, in theory, be used for immigration enforcement more broadly.

First, in 2021, President Biden declared a national emergency to address international drug trafficking.⁴⁰ In 2023, pursuant to that declaration, Biden invoked 10 U.S.C. § 12302, which allows him to call up members of the reserve components of the armed forces, including the National Guard, during a national emergency.⁴¹ At the time, there were already 2,500 federalized National Guard forces assisting the Department of Homeland Security at the border, and they were soon joined by 1,500 active-duty armed forces.⁴² (It is unclear how many reservists, if any, were mobilized under the emergency declaration.) Trump could conceivably invoke this same power to call up reservists to assist with deportation efforts.

There is a critical limitation, however, on any such deployment. Section 12302 is not an exception to the Posse Comitatus Act (discussed in Part II.A., below), as it does not expressly authorize federal armed forces to participate directly in core law enforcement activities. Accordingly, service members called up under this authority would not be able to apprehend or detain migrants; they would be limited to providing indirect support to the Department of Homeland Security. Moreover, the forms of support that they could offer would be limited, as discussed in Part II.B., below.

A second potentially relevant emergency power is 10 U.S.C. § 2808, a law that applies during a national emergency “that requires use of the armed forces.”⁴³ It allows the secretary of

³⁵ See 47 U.S.C. § 606(d); see also Elizabeth Goitein, *The Alarming Scope of the President's Emergency Powers*, ATLANTIC (Jan./Feb. 2019),

<https://www.theatlantic.com/magazine/archive/2019/01/presidential-emergency-powers/576418/>.

³⁶ See 50 U.S.C. §§ 1701 *et seq.*

³⁷ See 49 U.S.C. § 114(g).

³⁸ See 10 U.S.C. § 712(a)(3).

³⁹ Charlie Savage and Michael Gold, *Trump Confirms Plans to Use the Military*, *supra* note 6.

⁴⁰ Exec. Order No. 14059, 86 F.R. 71549 (2021).

⁴¹ Exec. Order No. 14097, 88 F.R. 26471 (2023).

⁴² Alex Horton and Nick Miroff, *Biden Orders 1,500 More Troops to Mexico Border Amid Migration Surge*, WASH. POST (May 2, 2023) <https://www.washingtonpost.com/national-security/2023/05/02/biden-border-us-troops/>.

⁴³ 10 U.S.C. § 2808.

defense to undertake military construction projects that are necessary to support such use of the armed forces, using unobligated funds appropriated for military construction projects that have been canceled or downgraded. President Trump declared a national emergency and invoked this provision in 2019 to secure funding for the border wall after Congress had refused to allocate the funds he requested. As observers have noted,⁴⁴ Trump might invoke this authority again, both to continue construction of the border wall and to construct or adapt military bases to serve as immigrant detention facilities.

Any such use, however, might well run afoul of the law. Although courts have been reluctant to probe whether a state of emergency exists, they can and do review whether actions taken pursuant to an emergency declaration are authorized by the specific powers invoked.⁴⁵ Several courts struck down President Trump's use of 10 U.S.C. § 2808 to build the border wall.⁴⁶ There were various reasons for their rulings, but a key finding was that construction of the border wall was not "necessary to support [the] use of the armed forces," as required by the statute—rather, the armed forces were being used to support the construction of the wall. Although the Supreme Court vacated these decisions after President Biden terminated the border wall emergency declaration, using the military to construct detention facilities would face similar legal challenges and would be impermissible under the logic of these rulings.

D. What Congress Can Do: Reform of the National Emergencies Act

The potential for President-elect Trump to use emergency powers for mass deportations is not the only cause for concern when it comes to the National Emergencies Act. The powers available during a declared national emergency could be deployed to undermine democracy itself. As reported by various outlets in 2022, allies of President Trump advocated that he invoke a range of emergency powers to overturn the results of the 2020 presidential election. For instance, they urged him to declare a national emergency and invoke the International Emergency Economic Powers Act in order to seize voting machines.⁴⁷

For reasons the Brennan Center has laid out, none of these suggestions would have provided a legal basis for overturning the election results.⁴⁸ Had President Trump nonetheless implemented these measures, they undoubtedly would have disrupted the transition of power even further, and created even greater chaos and (potentially) violence, than the insurrection of

⁴⁴ Chris Mirasola, *How Can Trump Deploy the Military at the Southern Border?*, LAWFARE (Nov. 19, 2024)

<https://www.lawfaremedia.org/article/how-can-trump-deploy-the-military-at-the-southern-border>.

⁴⁵ See, e.g., *Biden v. Nebraska*, 143 S.Ct. 2355 (2023) (holding that the HEROES Act, an emergency power invoked by President Biden pursuant to the COVID-19 national emergency declaration, does not authorize forgiveness of student loan debt).

⁴⁶ See *Sierra Club v. Trump*, No. 19-cv-00892-HSG, 2019 WL 2715422 (N.D. Cal. 2019); *California v. Trump*, 407 F. Supp. 3d 869 (N.D. Cal. 2019); *El Paso County v. Trump*, 408 F.Supp. 3d 840 (W.D. Tx. 2019).

⁴⁷ See Betsy Woodruff Swan, *Read the Never-Issued Trump Order that Would Have Seized Voting Machines*, POLITICO (Jan. 21, 2022),

<https://www.politico.com/news/2022/01/21/read-the-never-issued-trump-order-that-would-have-seized-voting-machines-527572>.

⁴⁸ See Joseph Nunn and Andrew Boyle, *There Are No Extraordinary Powers a President Can Use to Reverse an Election*, BRENNAN CTR. FOR JUST., March 3, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/there-are-no-extraordinary-powers-president-can-use-reverse-election>.

January 6 on its own. Moreover, while there are no emergency powers that allow a president to change the outcome of an election, some of the authorities that become available in a declared national emergency could be used to undermine the fairness of the election itself—e.g., by creating conditions that make it harder for people to vote.⁴⁹

It is incumbent on Congress to prevent these types of abuse. Following President Trump’s border wall declaration, several lawmakers introduced bills to amend the National Emergencies Act. Most of them contained the same central reform: a presidentially declared national emergency would automatically terminate after 30 days (or a similarly short period) unless Congress voted to approve the declaration. Expedited procedures would enable Congress to move quickly; they would also allow any member to force a vote and would prohibit filibusters in the Senate. This would ensure that the emergency declaration would not expire through obstructionism or inertia, and that the outcome would reflect the will of a majority of Congress. If Congress approved the declaration, it could stay in place for up to a year; if the president wished to renew it, each yearly renewal would again require Congress’s approval.

This approach, versions of which are used by many other countries,⁵⁰ is more consistent with the core purpose of emergency powers. It would give the president ready access to enhanced authorities when they are most needed—i.e., when the emergency is in progress and Congress has not had time to address it. Once Congress has had time to act, however—and history shows that Congress can act quite swiftly in the face of true emergencies⁵¹—it should be Congress’s decision as to whether emergency authorities are a good fit for the crisis at hand. Critically, that would remove the perverse incentive that exists when the government actor who declares the emergency is the same one who receives additional powers.

There is remarkably broad bipartisan support for this approach. A bill featuring this reform, the ARTICLE ONE Act,⁵² was reported out of the House Transportation and Infrastructure Committee (which has jurisdiction over the National Emergencies Act) by a unanimous voice vote in September of this year.⁵³ That same month, another bill featuring this reform (along with other reforms to emergency powers), the REPUBLIC Act,⁵⁴ was reported out of the Senate Homeland Security and Governmental Affairs Committee by a vote of 13–1.⁵⁵ These votes follow multiple committee hearings in recent years in which there was unanimity on both sides of the aisle about the need for reforms to bolster Congress’s role as a check against

⁴⁹ See Goitein, *The Alarming Scope of the President’s Emergency Powers*, *supra* note 35, at 46–47.

⁵⁰ See, e.g., Spanish Constitution, § 116, https://www.constituteproject.org/constitution/Spain_2011?lang=en; Constitution of the Fifth Republic (France) art. 36, https://www.constituteproject.org/constitution/France_2008?lang=en; Constitution of Greece art. 48, https://www.constituteproject.org/constitution/Greece_2008?lang=en.

⁵¹ For instance, within weeks of the attacks of 9/11, Congress passed the USA PATRIOT Act, sweeping legislation that ran 342 pages and made changes to more than 15 different laws. Lisa Finnegan Abdolian and Harold Takooshian, *The USA PATRIOT Act: Civil Liberties, the Media, and Public Opinion*, 30 *FORDHAM URB. L.J.* 1429 (2003).

⁵² ARTICLE ONE Act, H.R. 3988, 118th Cong. (2023).

⁵³ Bob Bauer and Jack Goldsmith, *Emergency Powers Reform Advances*, *LAWFARE* (Oct. 1, 2024), <https://www.lawfaremedia.org/article/emergency-powers-reform-advances>.

⁵⁴ REPUBLIC Act, S. 4373, 118th Cong. (2024).

⁵⁵ Bauer and Goldsmith, *Emergency Powers Reform Advances*, *supra* note 53.

abuse of emergency powers.⁵⁶ Legislative reform of the National Emergencies Act has thus become a question of “when,” rather than “if” or “how.”

II. Authorities for Domestic Deployment of the Military

In addition to 10 U.S.C. § 12302, discussed above, there are several legal authorities that permit domestic deployment of the military, including deployments to support or engage in civilian law enforcement. For each of these, there are important limitations on what they would permit if invoked in the context of mass deportations, as well as legal challenges that could be brought. But there is also a pressing need for Congress to reform some of these authorities to make it harder for a president to abuse them or exploit them for routine law enforcement.

A. The Baseline: The Posse Comitatus Act

The use of federal troops as a domestic police force is in tension with both constitutional principles and long-standing American traditions, which were informed by the British government’s heavy-handed use of the military to police the colonies in the years leading up to the American Revolution. But while the Constitution limits military involvement in civilian affairs in various ways, it does not entirely bar the federal armed forces from conducting law enforcement activities. A partial prohibition comes instead from a law passed by Congress in 1878: the Posse Comitatus Act.

The Posse Comitatus Act prohibits federal armed forces from acting “as a posse comitatus or otherwise execut[ing] the laws”—i.e., from participating in civilian law enforcement activities, whether criminal or civil—unless “expressly authorized” by Congress or the Constitution.⁵⁷ The Department of Justice has concluded that the Constitution gives the president the “inherent” power to unilaterally deploy the military for law enforcement purposes in some circumstances⁵⁸—for instance, to protect federal personnel or property.⁵⁹ A straightforward reading of the Constitution, however, reveals no *express* authorization for such deployments. Accordingly, any military action that relies solely on these “inherent” powers should be deemed to violate the Posse Comitatus Act, and should be sustained only if it falls within the president’s “conclusive and preclusive” sphere of authority (per Justice Robert Jackson’s concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*).⁶⁰

⁵⁶ *Restoring Congressional Oversight Over Emergency Powers: Exploring Options to Reform the National Emergencies Act: Hearings Before the Comm. on Homeland Sec. and Gov’t Aff.*, 118th Cong. (2024); *Never Ending Emergencies – An Examination of the National Emergencies Act: Hearings Before the Subcomm. on Econ. Dev., Pub. Bldgs., and Emergency Mgmt. of the H. Comm. on Transp. and Infrastructure*, 118th Cong. (2023); *Examining Potential Reforms of Emergency Powers: Subcomm. on the Const., C.R., and C.L. of the H. Comm. on Judiciary*, 117th Cong. (2022).

⁵⁷ 18 U.S.C. § 1385.

⁵⁸ *Law Relating to Civil Disturbances*, Op. O.L.C. (1975), https://www.justice.gov/d9/pages/attachments/2022/09/02/la_19750106_law_relating_to_civil_disturbances_0.pdf.

⁵⁹ 32 C.F.R. § 215.4.

⁶⁰ *Youngstown Sheet & Tube Co.*, 343 U.S. at 637–38 (1952) (Jackson, J., concurring).

The Posse Comitatus Act is a critical protection for democracy and civil liberties. And yet, as set forth in a recent Brennan Center report, it is riddled with exceptions and loopholes that render it vulnerable to circumvention.⁶¹ As relevant here:

- Courts have construed the Posse Comitatus Act to prohibit only direct participation in core law enforcement activities, such as arrests, searches, and seizures. A wide range of indirect support to law enforcement—including conducting reconnaissance, sharing intelligence, and providing/maintaining military equipment—is considered permissible under the Act.
- On its face, the Posse Comitatus Act applies only to federal armed forces. It does not bind the National Guard unless the Guard has been called into federal service. As discussed in Part II.C.2., below, the National Guard may perform federal missions under Title 32 without being federalized.
- There are many statutory exceptions to the Posse Comitatus Act—most importantly, the Insurrection Act, discussed in Part II.D., below.

As a result of these and other gaps in the law’s coverage, the Posse Comitatus Act has long operated more as a norm than as a hard-and-fast rule. That poses serious risks in an era in which we can no longer rely on norms and tradition to constrain executive action. The Brennan Center’s report includes a proposal for legislative reform of the Act that would limit exceptions, eliminate loopholes, and create effective enforcement mechanisms.⁶²

B. Title 10 Chapter 15 (Military Support for Civilian Law Enforcement Agencies) and Its Limitations

As noted, courts have held that the Posse Comitatus Act does not apply when federal forces provide indirect support to law enforcement without directly participating in core law enforcement activities. Drawing on the case law in this area, Congress has authorized a wide array of indirect support through Chapter 15 of Title 10.

Most notably, provisions in this Chapter allow the Department of Defense to make military equipment, bases, training, and expert advice available to civilian law enforcement agencies, whether federal, state, or local.⁶³ Military personnel may also operate equipment under specified circumstances.⁶⁴ The Department of Defense may provide additional forms of support, such as transportation of personnel and aerial and ground reconnaissance, for law enforcement agencies’ counterdrug activities or activities to counter transnational organized crime.⁶⁵

⁶¹ See generally JOSEPH NUNN, LIMITING THE MILITARY’S ROLE IN LAW ENFORCEMENT (2024), <https://www.brennancenter.org/our-work/policy-solutions/limiting-militarys-role-law-enforcement>.

⁶² *Id.*

⁶³ 10 U.S.C. §§ 272–73.

⁶⁴ 10 U.S.C. § 274.

⁶⁵ 10 U.S.C. § 284.

These authorities have long been used to enable Department of Defense support of the Department of Homeland Security's activities at the southern border.⁶⁶ President-elect Trump could use them to expand support at the border, for instance by having troops build immigrant detention facilities. He could also direct the Department of Defense to support the Department of Homeland Security's enforcement activities in the interior of the country, most likely through the provision of military facilities and equipment and, in some circumstances, through assigning military personnel to operate that equipment.

There would be limitations on such uses, however. As with the powers available in a national emergency, the authorities contained in Chapter 15 do not create exceptions to the Posse Comitatus Act. Indeed, Chapter 15 includes an express statement that its provisions do not authorize military participation in arrests, seizures, or similar activities.⁶⁷

Chapter 15 also prohibits the provision of support to civilian law enforcement agencies "if the provision of such support will adversely affect the military preparedness of the United States."⁶⁸ As Major General Randy Manner testified in this Committee's December 10, 2024 hearing, involving the military in immigration enforcement would do exactly that. In his words, "Additional training or deployments to support deportation operations in lieu of devoting the time, money, and effort needed to prepare for combat would absolutely harm operational readiness and reduce the military's ability to counter adversaries or respond to crises."⁶⁹

In addition, Chapter 15 authorizes only certain types of military support to law enforcement. For instance, while the Department of Defense may provide equipment to law enforcement agencies, the use of military personnel to operate that equipment is limited to specific situations. To name one limitation that is particularly relevant to immigration enforcement, military personnel may operate equipment to address only *criminal* violations of immigration or counternarcotics laws.⁷⁰ Being present in the United States without documentation is not itself a crime.⁷¹

Notwithstanding these limitations, Chapter 15—reflecting the courts' broad reading of what constitutes "indirect" support—permits federal armed forces to be intricately involved in civilian law enforcement efforts in a way that presents many of the same dangers as "direct" participation. The Brennan Center's recent report on the Posse Comitatus Act thus recommends that Congress dispense with the amorphous distinction between direct and indirect participation in law enforcement activities, as well as eliminating or narrowing statutory exceptions that are outdated or overbroad.⁷²

⁶⁶ Military Support for Customs and Border Protection Along the Southern Border Under the Posse Comitatus Act, Op. O.L.C. (2021), <https://www.justice.gov/olc/file/1357086/dl?inline>.

⁶⁷ 10 U.S.C. § 275.

⁶⁸ 10 U.S.C. § 276.

⁶⁹ *How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy: Hearing Before S. Comm. on the Judiciary*, 118th Cong. (2024) (statement of Major General Randy Manner).

⁷⁰ 10 U.S.C. § 274(b)(1)(A).

⁷¹ Laura Jarrett, *Are Undocumented Immigrants Committing a Crime? Not Necessarily*, CNN (Feb. 24, 2017), <https://www.cnn.com/2017/02/24/politics/undocumented-immigrants-not-necessarily-criminal/index.html>.

⁷² NUNN, LIMITING THE MILITARY'S ROLE IN LAW ENFORCEMENT 13, *supra* note 61.

C. Deployment of the National Guard Under Title 32

Another way in which the military has been used for border security is deployment of the National Guard in Title 32 status—specifically, under 32 U.S.C. § 502(f)(2)(A). As explained below, this authority permits the National Guard to perform federal missions, and to be paid with federal funds, even while serving under the command and control of state governors. Because the National Guard is not “federalized” in this status, the Posse Comitatus Act does not apply. This authority could conceivably be used to involve the National Guard in deportations, albeit with important constraints.

1. National Guard Statuses

The National Guard is the modern incarnation of the state militias that predate and are also sanctioned by the Constitution.⁷³ A unique creation of both federal and state law, the Guard usually operates under state or territorial command and control. But because it can be called into federal service, it is principally governed by federal law and subject to comprehensive regulation by the Department of Defense through the National Guard Bureau. The federal government also provides the vast majority of the Guard’s funding.

Members of the National Guard are subject to the Posse Comitatus Act only when they are called into federal service, or “federalized,” by the president.⁷⁴ At all other times, members of each state and territory’s Army and Air National Guard (excluding those of the District of Columbia.⁷⁵) serve under their governor’s command and control. Thus, they are not “part of the Army ... [or] the Air Force” for the purposes of the Posse Comitatus Act.⁷⁶

While the question of whether the Guard has been called into federal service—and thus made subject to the Posse Comitatus Act—is binary, there are three different “duty statuses” in which members of the Guard may serve at any given moment. First, in “State Active Duty” status, National Guard troops carry out a state- or territory-defined mission at that jurisdiction’s own expense, serving under the command and control of their state or territorial governor.⁷⁷ In these operations, governors are largely free to use their Guard forces as they see fit, free from the constraints of the Posse Comitatus Act.

⁷³ *Maryland v. United States*, 381 U.S. 41, 46 (1965).

⁷⁴ *Gilbert v. United States*, 165 F.3d 470, 473 (6th Cir. 1999); *United States v. Hutchings*, 127 F.3d 1255, 1258 (10th Cir. 1997); *United States v. Benish*, 5 F.3d 20, 25-26 (3d Cir. 1993); *United States v. Kylo*, 809 F. Supp. 787, 792-793 (D. Ore. 1992), *aff’d* 190 F.3d 1041 (9th Cir. 1999), *rev’d on other grounds* 533 U.S. 27 (2001); *Wallace v. State*, 933 P.2d 1157, 1160 (Alaska App. 1997). *But see* *United States v. Banks*, 383 F. Supp. 368, 376 (D.S.D. 1974); *United States v. Jaramillo*, 380 F. Supp. 1375, 1380-381 (D.Neb. 1974); *United States v. McArthur*, 419 F. Supp. 186, 193 n.3 (D.N.D. 1976).

⁷⁵ The District of Columbia National Guard is permanently under the command and control of the president. *See* NUNN, *LIMITING THE MILITARY’S ROLE IN LAW ENFORCEMENT* 7-8, *supra* note 61.

⁷⁶ *See* *Perpich v. Department of Defense*, 496 U.S. 334 (1990).

⁷⁷ *See* Steve Vladeck, *Why Were Out-of-State National Guard Units in Washington, D.C.? The Justice Department’s Troubling Explanation*, LAWFARE (June 9, 2020), <https://www.lawfareblog.com/why-were-out-state-national-guard-units-washington-dc-justice-departments-troubling-explanation>; Steven B. Rich, *The National Guard, Drug Interdiction and Counterdrug Activities, and Posse Comitatus: The Meaning and Implications of In Federal Service*, 1994 ARMY L. 35 (1994).

Second, in “Title 32” (or “hybrid”) status, National Guard troops remain, in principle, under the command and control of the state governor, but they are paid by the federal government and receive federal benefits.⁷⁸ Title 32 status is used to fulfill the Guard’s federally mandated training requirements, as well as to authorize federal payment for certain state-initiated operations such as drug interdiction.⁷⁹ As explained below, however, Guard troops in Title 32 status may also be deployed for “operations or missions” requested by the president or Secretary of Defense.⁸⁰ Despite the fact that Guard members in this status may be performing fundamentally *federal* missions and are on the federal payroll, they are not subject to the Posse Comitatus Act, because they remain, at least in principle, under state command and control.⁸¹

Finally, when federalized, National Guard units operate in “Title 10” status.⁸² In this status, National Guard personnel serve under the president’s command and control, are paid with federal funds, receive federal benefits, and are used for federal missions up to and including deployment overseas. For all intents and purposes, they temporarily become part of the federal military. As a consequence, federalized National Guard personnel are bound by the Posse Comitatus Act unless a statutory exception applies.

2. 32 U.S.C. § 502(f)(2)(A) and Its Use for Border Security

The primary statute that authorizes National Guard operations in Title 32 status is 32 U.S.C. § 502. This provision was originally enacted—and Title 32 status was created—in the 1950s to allow Congress to foot the bill for the substantial training requirements it imposes on states’ National Guards. Over time, the purposes for which Title 32 status may be used have expanded to include operational missions, including those undertaken at the president’s direct request.

As befits a statute primarily concerned with National Guard training, the bulk of § 502 is devoted to “required drills and field exercises”—the particulars of how often and in what manner Guard units are required to train each year.⁸³ Subsection (f), however, is not so limited. Specifically, § 502(f)(1), which was added in 1964,⁸⁴ allows National Guard personnel to be ordered to perform “training or *other duty*” (emphasis added) beyond the training regime established by the preceding provisions of the statute.⁸⁵ Section 502(f)(2)(A), which was added in 2006,⁸⁶ further provides that this “training or other duty” may include “[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.”

⁷⁸ See 32 U.S.C. § 502. National Guard personnel operating in Title 32 status are to remain under state command and control per 32 U.S.C. § 101(19). See Vladeck, *Why Were Out-of-State National Guard Units in Washington, D.C.?*, *supra* note 77.

⁷⁹ See 32 U.S.C. § 112.

⁸⁰ 32 U.S.C. § 502(f).

⁸¹ Goitein and Nunn, *Statement to the U.S. House Select Comm. to Investigate the Jan. 6th Attack*, *supra* note 5, at 30.

⁸² 10 U.S.C. §§ 12401-12407. See Vladeck, *Why Were Out-of-State National Guard Units in Washington, D.C.?*, *supra* note 77.

⁸³ 32 U.S.C. § 502(a)-(e).

⁸⁴ Pub.L. 88-621, § 1(1), Oct. 3, 1964, 78 Stat. 999.

⁸⁵ 32 U.S.C. § 502(f)(1).

⁸⁶ Pub.L. 109-364, Div. A, Title V, § 525(c), Oct. 17, 2006, 120 Stat. 2195.

Under this authority, Presidents George W. Bush, Barack Obama, and Trump requested the deployment of thousands of National Guard troops to the southern border. (Trump also deployed active-duty armed forces; President Biden did the same, and he federalized the National Guard forces.)⁸⁷ Although National Guard forces in Title 32 status are not subject to the Posse Comitatus Act, they have not directly participated in core law enforcement activities during these deployments. Instead, they have provided support to the Department of Homeland Security in the form of surveillance, transportation, the provision of equipment, and the erection of barriers.

3. How Trump Might Try to Use 32 U.S.C. § 502(f)(2)(A) to Assist in Mass Deportations, and the Limitations on Such Use

President-elect Trump could seek to expand the use of National Guard forces at the border under 32 U.S.C. § 502(f)(2)(A) by involving them directly in the apprehension and detention of migrants. He also could request that governors use their National Guard forces either to provide support for, or to directly engage in, immigration enforcement activities in the interior of the country.

There would be several limitations on this power, however. First and foremost, the president or secretary of defense cannot directly order National Guard personnel to duty under § 502(f)(2)(A), and a governor is under no obligation to acquiesce to a request for troops.⁸⁸ In June of 2020, for instance, President Trump asked 15 state governors to send their National Guard troops to Washington, D.C., to join forces with the D.C. National Guard in suppressing protests against the police killing of George Floyd. Eleven governors agreed to this request; four declined.⁸⁹

Moreover, § 502(f)(2)(A) would not authorize a governor to send his or her National Guard forces into another state without that state's consent. U.S. states are sovereign entities,⁹⁰ although their sovereignty is limited and made subordinate to the federal government under the Constitution. Like foreign sovereigns, their sovereignty is territorially defined.⁹¹ As the Supreme Court explained on multiple occasions in the early republic, "the jurisdiction of a state is coextensive with its territory, coextensive with its legislative power."⁹²

It is a function of the states' co-equal and territorially limited sovereignty that one state's courts cannot reach into another and exercise jurisdiction over individuals there, unless those individuals have sufficient "minimum contacts" with the forum state.⁹³ For the same reason, a

⁸⁷ Joseph Nunn, *As Title 42 Comes to an End, So Should Military Operations at the US-Mexico Border*, JUST SECURITY (May 19, 2023), <https://www.justsecurity.org/86625/as-title-42-comes-to-an-end-so-should-military-operations-at-the-us-mexico-border/>.

⁸⁸ This reading is confirmed by 32 U.S.C. § 328, which makes clear that a governor is the party empowered to order National Guard troops to duty under § 502(f).

⁸⁹ Alan Suderman, *Some Governors Balk at Trump Request to Send Troops to DC*, YAHOO! NEWS (June 2, 2020), <https://shorturl.at/nvslJ>.

⁹⁰ *Alden v. Maine*, 527 U.S. 706 (1999).

⁹¹ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

⁹² *Rhode Island v. Massachusetts*, 37 U.S. 657, 733 (1838).

⁹³ *World-Wide Volkswagen Corp.*, 444 U.S. at 561.

state may not, solely under its own authority, deploy its National Guard forces into another state without that state's permission. Simply put, U.S. states may not invade one another. And because National Guard forces are under state command and control when operating in Title 32 status, they are acting as state officials,⁹⁴ even if they are pursuing a federal mission. Accordingly, it would violate the Constitution for a governor to send his or her Guard forces into a nonconsenting state.

Even when a governor agrees to use his or her National Guard forces to perform a federal mission, there may be limits on those deployments. The Department of Justice takes the position that the words “other duty” can essentially mean *any* duty—that under § 502(f)(2)(A), National Guard troops provided by a willing governor may be used to perform any mission the president could request, including ones that involve National Guard participation in civilian law enforcement activities.⁹⁵ But there is a strong argument, based on the provision's legislative history and its placement in the U.S. Code, that the intent of § 502(f)(2)(A) was more narrow—i.e., to facilitate federal payment for homeland defense and other activities authorized under separate provisions of Title 32, as well as traditional Guard missions like natural disaster response.⁹⁶

4. What Congress Can Do: Reform of 32 U.S.C. § 502(f)(2)(A)

Congress could head off potential abuses of 32 U.S.C. § 502(f)(2)(A), for immigration enforcement or other purposes, by making express some of its implied limits.

First, Congress should clarify that governors may not send their National Guard forces into other states without the receiving states' consent. An amendment to this effect, sponsored by Rep. Mikie Sherrill, was incorporated into the House versions of both the FY 2021 and FY 2022 National Defense Authorization Acts. The Biden administration objected to the provision on the ground that it would allow state officials (the governors of the receiving states) to veto the deployment of Guard forces to perform duties on federal lands or in federal facilities. But § 502(f)(2)(A) unambiguously gives *sending* states the right to refuse a requested mission, so it already provides the veto power denounced by the administration. More fundamentally, the

⁹⁴ *Gilbert v. United States*, 165 F.3d 470 (6th Cir. 1999).

⁹⁵ Letter from William P. Barr, Attorney General, to Muriel Bowser, Mayor, Washington, DC, posted on TWITTER, Jun. 9, 2020, <https://twitter.com/kerrikupecdoj/status/1270487263324049410> (“At the direction of the President, the Secretary of Defense... requested assistance from out-of-state National Guard personnel, pursuant to 32 U.S.C. § 502(f), which authorizes States to send forces to assist the ‘[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.’”).

⁹⁶ See Joseph Numn, *Section 502(f) Is Not a Blank Check*, LAWFARE (Oct. 17, 2024), [https://www.lawfaremedia.org/article/section-502\(f\)-is-not-a-blank-check](https://www.lawfaremedia.org/article/section-502(f)-is-not-a-blank-check). In addition, as state officers, National Guard forces would need federal authorization to engage in immigration enforcement, as this responsibility is committed to federal agencies by law. Such authorization could potentially come in the form of deputation by the U.S. Marshals Service. See 28 C.F.R. § 0.112. Alternatively, states could enter into (or amend existing) “287(g)” federal-state agreements, which allow state officials to serve as immigration officers. See 8 U.S.C. § 1357(g).

administration's objection ignores the constitutional constraints on National Guard forces operating under state authority.⁹⁷

Second, Congress should amend § 502(f)(2)(A) to make clear that it does not authorize National Guard forces to perform literally any mission or operation requested by the president or secretary of defense. When Guard forces perform federal missions under parameters set by the Department of Defense, many of the concerns that underlie the Posse Comitatus Act come into play, even if Guard forces remain—at least nominally—under state command and control. An open-ended authorization to perform *any* federal mission thus creates an enormous end-run around the Posse Comitatus Act and its principles. Congress can address this problem by more narrowly defining the missions or operations that fall within § 502(f)(2)(A), either listing or excluding specific categories. Alternatively, Congress could require that when the National Guard performs a federal mission under § 502(f)(2)(A), it is subject to the Posse Comitatus Act and thus restricted from direct participation in law enforcement unless expressly authorized by statute.

D. The Insurrection Act

President-elect Trump has stated that he will invoke the Insurrection Act to facilitate military involvement in mass deportations.⁹⁸ There is no question that this dangerous law gives the president broad powers with few checks against abuse, and that it is in urgent need of reform. But its use for immigration enforcement would be both unprecedented and a clear abuse of the law.

1. Strong Powers, Weak Safeguards

This Insurrection Act of 1807—in fact, an amalgamation of laws passed between 1792 and 1874⁹⁹—authorizes the president to deploy federal armed forces and use them to quell civil unrest or enforce the law in a crisis. As such, it is the most significant and far-reaching exception to the Posse Comitatus Act. Federal troops activated under this law, including federalized National Guard forces, may be deployed into any state without triggering the sovereignty concerns raised by a nonconsensual interstate deployment under Title 32. Moreover, only one of the law's three provisions requires a request by the state; the other two provisions permit deployment over a state's objections.

The use of the military as a domestic police force represents a sharp departure from core constitutional values. The framers understood that military interference in civilian affairs threatens democracy and individual liberty, and they were careful to subordinate the military to civilian authorities. But they also recognized that a true crisis might necessitate military

⁹⁷ Joseph Nunn and Elizabeth Goitein, *The Biden Administration's Senseless Opposition to Congress's Effort to Prevent Abusive National Guard Deployments*, JUST SECURITY (July 28, 2022), <https://www.justsecurity.org/82531/biden-senseless-opposition-abusive-national-guard/>.

⁹⁸ Charlie Savage, Maggie Haberman, and Jonathan Swan, *Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump's 2025 Immigration Plans*, N.Y. TIMES (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html>.

⁹⁹ See Elizabeth Goitein and Joseph Nunn, *An Army Turned Inward: Reforming the Insurrection Act to Guard Against Abuse*, 13 J. NAT'L SEC. L. & POL'Y 355, 362 (2023).

intervention. They left it to Congress to strike a judicious balance between these competing considerations.¹⁰⁰

The Insurrection Act fails utterly in this task. Its text is archaic, vague, and overbroad, granting the president sweeping powers to use troops for domestic law enforcement. For instance, one of its provisions permits deployment to suppress any “unlawful combination” or “conspiracy” that “opposes or obstructs the execution of the laws of the United States.”¹⁰¹ Taken literally, this would allow the president to deploy federal forces in response to two people conspiring to intimidate a witness in a federal trial. A more realistic (and worrisome) abuse scenario would involve the use of troops to suppress an unpermitted but peaceful protest against a controversial executive order.

The Insurrection Act allows the president to respond to the triggering event “by using the militia or the armed forces, or both, or *by any other means*” (emphasis added).¹⁰² This alarming delegation of seemingly unlimited power explains why the Oath Keepers and similar groups believed that President Trump would draft them into service by invoking the Insurrection Act on January 6.¹⁰³ Congress has defined “militia” to include “all able-bodied males at least 17 years of age and . . . under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.”¹⁰⁴ A substantial portion of white supremacist organizations’ members would likely meet that definition, and at least in theory, the others could be mobilized under the “any other means” language.

Despite this extraordinary delegation of power, the Insurrection Act in its current form contains virtually no checks against abuse. Previous versions of the law required advance judicial sign-off and placed time limits on the use of troops to enforce the law absent congressional approval. But Congress removed those provisions, leaving no express role for the other branches of government.¹⁰⁵ The Supreme Court has held that the statute generally gives the president unreviewable discretion to decide whether deployment is warranted.¹⁰⁶

Such a vast delegation of authority was dangerous at any time in our nation’s history. In the modern era, it is also entirely unjustified. Most of the law’s provisions were designed for the Civil War and the terrorist insurgency that followed in the former Confederacy. These threats were extinguished long ago, yet the powers crafted to address them have lingered, virtually unchanged, for 150 years. Furthermore, when the law was last amended, police departments were still in their infancy and federal law enforcement was all but nonexistent.¹⁰⁷ Many situations that might have required assistance from the military in the 18th and 19th centuries would be

¹⁰⁰ See U.S. Const. art. I, § 8, cl. 15 (empowering Congress to “provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions”).

¹⁰¹ 10 U.S.C. § 253.

¹⁰² *Id.*

¹⁰³ Alan Feuer, *Oath Keepers Leader Sought to Ask Trump to Unleash His Militia*, N.Y. TIMES (May 4, 2022), <https://www.nytimes.com/2022/05/04/us/politics/oath-keepers-jan-6-riot.html>.

¹⁰⁴ 10 U.S.C. § 246.

¹⁰⁵ See Goitein and Nunn, *An Army Turned Inward* at 363, 365, *supra* note 99.

¹⁰⁶ See *Martin v. Mott*, 25 U.S. 19, 30 (1827).

¹⁰⁷ See Goitein and Nunn, *An Army Turned Inward* at 372, *supra* note 99.

well within the capacity of today's law enforcement to handle. In short, nothing about the Insurrection Act is tailored to the needs of the United States in 2024.

That is not to say that military intervention in domestic crises is never appropriate. In the late 1950s and early 1960s, for instance, Presidents Dwight D. Eisenhower and John F. Kennedy both invoked the Insurrection Act to enforce federal court orders desegregating schools in the South. Other presidents, however, have used the law to break strikes and subdue labor movements.¹⁰⁸ And in the weeks leading up to January 6, President Trump's allies urged him to invoke the Insurrection Act as part of a strategy to overturn the election results.¹⁰⁹

Indeed, it would have been frighteningly easy for President Trump to invoke the law on January 6 to shut down Congress, thus delaying or preventing certification of the vote on the pretext of keeping the peace. Although he ultimately did not pursue this course of action, he has threatened to use the Insurrection Act in a variety of inappropriate ways in his second term, including invoking it on "Day One" to quash any protests against his taking office;¹¹⁰ deploying the military to cities like New York and Chicago, which he described as "crime dens";¹¹¹ and, as relevant here, using the military to detain and deport immigrants.

2. How Trump Might Try to Use the Insurrection Act to Assist in Mass Deportations, and the Limitations on Such Use

President-elect Trump has not specified what role federal armed forces would play in deportations if deployed under the Insurrection Act. At least in theory, however, they could engage directly in core law enforcement activities, such as apprehending immigrants, detaining them, and removing them from the United States, and they could do so in any state—with or without the consent of the state's governor.

Such a use of the law would be unprecedented. Although some past uses of the Insurrection Act have been questionable, it has never been deployed for a routine law enforcement purpose such as immigration enforcement. Indeed, it has been used to *protect* immigrants: in 1885, President Grover Cleveland invoked the law to suppress violent white mobs that were attempting to drive Chinese immigrants out of Tacoma and Seattle, Washington.¹¹² Furthermore, with the exception of the Civil War and its aftermath—a crisis unique in this country's history—the law has never been used for an operation approaching the scale of a nationwide mass deportation effort.

¹⁰⁸ See Goitein and Nunn, *An Army Turned Inward* at 367, *supra* note 99.

¹⁰⁹ See Jacqueline Alemany, Josh Dawsey, and Tom Hamburger, *Talk of Martial Law, Insurrection Act Draws Notice of Jan. 6 Committee*, WASH. POST (April 27, 2022), <https://www.washingtonpost.com/politics/2022/04/27/talk-martial-law-insurrection-act-draws-notice-jan-6-committee/>.

¹¹⁰ Isaac Arnsdorf, Josh Dawsey, and Devlin Barrett, *Trump and Allies Plot Revenge, Justice Department Control in a Second Term*, WASH. POST (Nov. 6, 2023), <https://www.washingtonpost.com/politics/2023/11/05/trump-revenge-second-term/>.

¹¹¹ Gary Fields, *Trump Hints at Expanded Role for the Military within the U.S. A Legacy Law Gives Him Few Guardrails*, ASSOCIATED PRESS (Nov. 27, 2023), <https://apnews.com/article/trump-military-insurrection-act-2024-election-03858b6291e4721991b5a18c2dfb3c36>.

¹¹² See Grover Cleveland, *Proclamation 274*, 24 Stat. 1027 (Nov. 7, 1885); Grover Cleveland, *Proclamation 275*, 24 Stat. 1028 (Feb. 9, 1886).

Invoking the Insurrection Act in this context might well cross a legal line. Although the Supreme Court held in *Martin v. Mott* (1827) that the Insurrection Act did not permit judicial review of a president's decision to deploy troops,¹¹³ there are important caveats to this ruling. First, language in *Martin* and in later decisions—most notably, the 1932 case *Sterling v. Constantin*—suggests that there might be a “bad faith” exception to the general rule of non-reviewability, and that courts may step in if the president has exceeded a “permitted range of honest judgment.”¹¹⁴ Second, Congress has extensively amended the law since the *Martin* decision. Courts could conclude that the revised law, which includes much more detailed criteria for deployment, allows for judicial review in at least some circumstances beyond the “bad faith” scenario.

If courts determine that they may review whether deployment criteria are met, they should adopt long-standing interpretations of the Department of Justice's Office of Legal Counsel (OLC) that construe those criteria narrowly, in keeping with constitutional principles and tradition.¹¹⁵ According to these interpretations, invocation of the Insurrection Act must be a “last resort,” occurring only when a state requests assistance to put down an insurrection; when necessary to enforce a federal court order; or when “state and local law enforcement have completely broken down.”¹¹⁶ None of these conditions is present here.

Even if courts determine that they may not review the president's decision to deploy troops, they are clearly empowered to review whether the troops' actions pursuant to deployment are lawful. As the Court affirmed in *Sterling*: “What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.”¹¹⁷ The Insurrection Act does not (and could not) authorize the violation of constitutional rights; nor may troops violate other federal laws or exceed the scope of the authorization provided by the Insurrection Act. For instance, a 1975 Department of Justice memorandum suggested that prolonged military detention under the Insurrection Act would be unconstitutional,¹¹⁸ and the same memorandum questioned whether the Insurrection Act authorizes federal troops to conduct arrests.¹¹⁹

3. What Congress Can Do: Reform of the Insurrection Act

Although courts should step in to curtail a manifest abuse of the Insurrection Act, there is no guarantee that they will do so. The fundamental problem with the law is that its text does not match the underlying intent, which was to provide for domestic deployment of the U.S. military only in acute crises—those on a level with an insurrection against federal or state governments.

¹¹³ *Martin*, 25 U.S. 19 (1827).

¹¹⁴ 287 U.S. 378, 399.

¹¹⁵ Laura A. Dickinson, *How the Insurrection Act (Properly Understood) Limits Domestic Deployments of the U.S. Military*, LAWFARE (Sept. 12, 2024)

[https://www.lawfaremedia.org/article/how-the-insurrection-act-\(properly-understood\)-limits-domestic-deployments-of-the-u.s.-military](https://www.lawfaremedia.org/article/how-the-insurrection-act-(properly-understood)-limits-domestic-deployments-of-the-u.s.-military).

¹¹⁶ Use of Marshals, Troops, and Other Federal Personnel for Law Enforcement in Mississippi, Op. O.L.C. (1964),

<https://ftp.fas.org/agency/doi/olc/marshals.pdf>.

¹¹⁷ 287 U.S. at 401.

¹¹⁸ Law Relating to Civil Disturbances, Op. O.L.C., *supra* note 58.

¹¹⁹ *Id.*

To ensure that presidents cannot exploit the law for political gain or other improper purposes, Congress must enact comprehensive reform.

In September 2022, the Brennan Center submitted a statement to the House Select Committee to Investigate the January 6th Attack on the United States Capitol addressing the Insurrection Act. The statement included a legislative reform proposal, developed in consultation with numerous experts and several allied organizations, that would meaningfully guard against abuse of the powers conferred by the Act while preserving the ability to deploy troops in a true crisis.¹²⁰

First, the proposal more specifically and narrowly defines both the criteria for deployment and what the president may do in response. For instance, while an insurrection against federal or state government would always warrant deployment, obstruction of federal law would trigger deployment authority only if it deprived a group or class of people of their constitutional rights—explicitly including the right to vote—or if it created an immediate threat to public safety that could not be handled by state or federal law enforcement. In responding to such crises, the president could deploy active-duty armed services or call the National Guard into federal service, but could not deputize private citizens to act as soldiers. Moreover, the proposal would clarify that the Insurrection Act does not authorize the suspension of habeas corpus—holding people without trial—or the complete displacement of civilian authority, also known as martial law.¹²¹

To ensure adherence to these limitations, the proposal includes mechanisms for congressional and judicial oversight. At the time of deployment, the president, secretary of defense, and attorney general would be required to submit a joint certification and report to Congress setting forth certain basic information. The authority provided by the law would expire automatically after seven days unless approved by Congress, using expedited procedures that would prohibit filibustering and allow any member to force a vote. Finally, courts would be authorized to review whether the criteria for deployment were met, employing a deferential “substantial evidence” standard of review to ensure that courts did not simply replace the president’s judgment with their own.

In April of this year, a bipartisan working group of former top national security officials led by former White House counsel Bob Bauer (under President Obama) and former acting head of OLC Jack Goldsmith (under President Bush) issued a statement calling for reform of the Insurrection Act and setting forth principles to guide such reform.¹²² The working group’s principles overlap significantly with the Brennan Center’s proposed reforms. Three months later, Senator Richard Blumenthal introduced the Insurrection Act of 2024, which closely tracks the Brennan Center’s proposal.¹²³

¹²⁰ See Goitein and Nunn, *Statement to the U.S. House Select Comm. to Investigate the Jan. 6th Attack*, *supra* note 5. The proposal was subsequently published as a law review article. See Goitein and Nunn, *An Army Turned Inward*, *supra* note 99.

¹²¹ See Tim Lau and Joseph Nunn, *Martial Law Explained*, BRENNAN CTR. FOR JUST. (Sept. 10, 2020), <https://www.brennancenter.org/our-work/research-reports/martial-law-explained>.

¹²² Press Release, American Law Institute, *Guidance for Insurrection Act Reform Issued by Bipartisan Group* (Apr. 8, 2024), <https://www.ali.org/news/articles/guidance-insurrection-act-reform-issued-bipartisan-group/>.

¹²³ Insurrection Act of 2024, S. 4699, 118th Cong. (2024).

In the near future, of course, there are political barriers to enacting Insurrection Act reform. Unfortunately, it might take a massive abuse of this dangerous law to overcome those barriers. For now, though, members of Congress who support shoring up legal safeguards against presidential overreach should look for every opportunity to build bipartisan support for this critical reform effort.

IV. The Alien Enemies Act

The Alien Enemies Act was enacted to give the president vast regulatory, detention, and deportation powers in times of declared war or an armed attack by a foreign nation or government. President-elect Trump, however, has said he will use this wartime authority for peacetime immigration enforcement.¹²⁴ This would be a clear abuse of the law. Moreover, even in wartime, applying this centuries-old law would conflict with later-enacted immigration protections and violate modern understandings of constitutional rights. Congress should thus repeal the Alien Enemies Act without delay.

A. The Alien Enemies Act: A Sweeping Wartime Authority

The Alien Enemies Act of 1798 is the last remaining part of the notorious Alien and Sedition Acts. The president can invoke the law by proclaiming the existence of a “declared war” or a threatened or ongoing “invasion” or “predatory incursion” against U.S. territory perpetrated by a “foreign nation or government.”¹²⁵ Upon invoking the Alien Enemies Act, the president is empowered to summarily detain, deport, and regulate the conduct of “all” noncitizens over the age of 14 who were born in or are citizens of the proclaimed foreign belligerent.¹²⁶ Although the law originally applied only to men, Congress amended it to cover women in 1918.¹²⁷

The law does not distinguish between noncitizens who are loyal or disloyal, who have legal status or who are unlawfully present. Its text includes no exceptions for noncitizens who are long-term permanent residents, who have served in the U.S. military, or who came to the United States as refugees from the foreign belligerent. Historically, the law has been used to regulate and intern individuals from each of these categories, including German Jews who had fled persecution in the Third Reich.¹²⁸

The law also includes no substantive or procedural restrictions on how the president can regulate the conduct of targeted noncitizens. Presidents have issued Alien Enemies Act

¹²⁴ Steve Inskeep and Christopher Thomas, *Trump Promised the ‘Largest Deportation’ in U.S. History. Here’s How He Might Start*, NPR (Nov. 15, 2024), <https://www.npr.org/articles/trump-deportation-immigrants-alien-act/>.

¹²⁵ 50 U.S.C. § 21.

¹²⁶ The law applies to noncitizens who are the “natives, citizens, denizens, or subjects” of a proclaimed foreign belligerent. *Id.* Since World War I, courts have held that “nativity is determined by the place of [a noncitizen’s] birth” and that birth heritage is immutable. *Minotto v. Bradley*, 252 F. 600, 602 (N.D. Ill. 1918). Congress and the Department of Justice have discussed the Alien Enemies Act as applying to noncitizens based on their ancestry. *See, e.g.,* Wartime Violation of Italian American Civil Liberties Act, 114 Stat. 1947 (2000); U.S. DEPT. OF JUSTICE, A REVIEW OF THE RESTRICTIONS ON PERSONS OF ITALIAN ANCESTRY DURING WORLD WAR II (2001).

¹²⁷ An Act to Amend Section Four Thousand and Sixty-Seven of the Revised Statutes by Extending Its Scope to Include Women, 40 Stat. 531 (1918).

¹²⁸ *See generally* Harvey Strum, *Jewish Internees in the American South, 1942–1945*, 42 AM. JEWISH ARCHIVES 27 (1990).

regulations to limit where noncitizens could live, where they could work, how they could travel, and what they could own, on penalty of detention.¹²⁹ At times, these regulations have appeared to conflict with established constitutional rights—as when President Roosevelt limited Japanese, German, and Italian noncitizens’ access to certain books. Unlike many regulations under contemporary law,¹³⁰ these Alien Enemies Act regulations can be and have been promulgated by the president without any notice-and-comment process.

The civil liberties shortcomings of past Alien Enemies Act regulations have been exacerbated by the law’s absence of procedural protections for individuals who are detained or deported for running afoul of them. The Alien Enemies Act does not entitle noncitizens to any hearing, appeal, or right to be represented by counsel. When, in World Wars I and II, Presidents Wilson and Roosevelt issued regulations that allowed them to intern any noncitizen they “deemed dangerous,” neither those regulations nor the law itself established any standard or evidentiary threshold for determining whether targeted noncitizens were in fact dangerous. In its 1948 *Ludecke v. Watkins* opinion, a narrow majority of the Supreme Court upheld this vague regulation on the theory that, by targeting only a subset of noncitizens covered by the Alien Enemies Act—i.e., only those noncitizens “deemed dangerous,” as opposed to the hundreds of thousands of noncitizens of Japanese, German, and Italian ancestry in the United States—the president had exercised its power “within narrower limits than Congress authorized” and was acting within the law’s permissible scope.¹³¹ The four *Ludecke* dissenters, meanwhile, warned that the regulation gave the president leeway to punish noncitizens for their beliefs and without due process.¹³²

Presidents have invoked the Alien Enemies Act only three times: during the War of 1812, World War I, and World War II. It was last and most infamously used during World War II for the internment of 31,000 noncitizens of Japanese, German, and Italian ancestry.¹³³ (U.S. citizens of Japanese descent were incarcerated under a separate authority specific to World War II.¹³⁴) Congress and the U.S. government have issued apologies for much of this shameful episode in our nation’s history.¹³⁵

¹²⁹ See, e.g., Woodrow Wilson, *Proclamation 1364*, 40 Stat. 1651 (Apr. 6, 1917); Franklin D. Roosevelt, *Proclamation 2525*, 6 F.R. 6321 (Dec. 7, 1941); Franklin D. Roosevelt, *Proclamation 2526*, 6 F.R. 6323 (Dec. 8, 1941); Franklin D. Roosevelt, *Proclamation 2527*, 6 F.R. 6324 (Dec. 8, 1941).

¹³⁰ See 5 U.S.C. § 553.

¹³¹ 335 U.S. 160, 166 (1948).

¹³² See generally 335 U.S. 160 at 173 (Black, J., dissenting); 335 U.S. at 184 (Douglas, J., dissenting).

¹³³ *World War II Enemy Alien Control Program Overview*, NAT’L ARCHIVES, <https://www.archives.gov/research/immigration/enemy-aliens/ww2> (last visited Dec. 18, 2024).

¹³⁴ See *The Alien Enemies Act Paved the Way for Japanese American Incarceration. Let’s Keep It In the Past*, DENSHO (Oct. 17, 2024).

<https://densho.org/catalyst/the-alien-enemies-act-paved-the-way-for-japanese-american-incarceration-lets-keep-it-in-the-past/>.

¹³⁵ Civil Liberties Act of 1988, 102 Stat. 903 (1988) (providing apologies and reparations not only for Japanese incarceration under Executive Order 9066 but also to permanent residents of Japanese ancestry interned under the Alien Enemies Act); *Mochizuki v. United States*, 43 Fed. Cl. 97, 97(1999) (approving a settlement agreement to provide federal apologies and reparations to a class of Japanese Latin-Americans interned under the Alien Enemies Act); *Wartime Violation of Italian American Civil Liberties Act*, *supra* note 126 (apologizing for the “devastating” effects of Alien Enemies Act regulations on Italian-American communities and identifying the law’s lack of procedural protections for internees of Italian ancestry as a civil liberties infringement).

B. How Trump Might Try to Use the Alien Enemies Act to Assist in Mass Deportations, and the Limitations on Such Use

Since September 2023, Trump has promised to invoke the Alien Enemies Act as part of his mass deportation agenda.¹³⁶ According to aides, he intends to claim that migration from Mexico, El Salvador, and Venezuela constitutes an “invasion” or “predatory incursion” perpetrated by drug cartels and gangs that are acting as *de facto* governments or influencing formal governments’ policy through bribes.¹³⁷

There is no precedent for using the Alien Enemies Act in the absence of an armed conflict. When Presidents James Madison and Woodrow Wilson invoked the law in the War of 1812 and World War I, they did so on the basis of Congress’s declaration of those wars.¹³⁸ And when President Franklin D. Roosevelt invoked the law on December 7, 1941, he did so in response to Japan’s surprise attack on Pearl Harbor, for which he proclaimed an “invasion.”¹³⁹

Throughout the Alien Enemies Act’s 226-year history, the law has been understood as a wartime authority only. The Fifth Congress discussed the Alien Enemies Act in terms of its compliance with the law of war and repeatedly referred to “invasion” in its literal sense, as an open or actual “hostility” aimed at the subjugation of a country.¹⁴⁰ In an essay discussing the Alien Enemies Act, James Madison wrote, “Invasion is an operation of war.”¹⁴¹ Later jurists and presidents maintained this understanding, with the Wilson administration acknowledging that the Alien Enemies Act’s reach was limited to “those to whom the rules of war under the laws of nations applied.”¹⁴²

Nor is there precedent for using the Alien Enemies Act to address gang or cartel activity. Based on its requirement of a “foreign nation or government” adversary, the Alien Enemies Act has consistently been understood as an authority applicable in *interstate* armed conflict, not in conflicts with nonstate groups.

Trump might well argue that his decision to proclaim a migrant “invasion” is a sensitive national security determination committed to the president’s discretion and not susceptible to judicial review. He could raise a similar argument about his decision to recognize gangs and

¹³⁶ Vaughn Hillyard, Jake Traylor and Dan Gallo, *Trump Vows to Invoke a Wartime Law to Deport Suspected Foreign Gang Members and Drug Dealers*, NBC NEWS (Sept. 20, 2023), <https://www.nbcnews.com/politics/donald-trump/trump-alien-enemies-act-travel-ban-deport-drug-dealers-gang-members-rcna108121>.

¹³⁷ Asawin Suebsaeng and Adam Rawnsley, *Trump’s Bonkers Plan to Weaponize an Archaic Law for Mass Deportations*, ROLLING STONE (Jan. 8, 2024), <https://www.rollingstone.com/politics/politics-features/trump-archaic-law-mass-deportations-1234941671/>.

¹³⁸ James Madison, *Proclamation* (Feb. 23, 1813), quoted in Lockington’s Case, Brightly (N.P.) 269, 271 (Pa. 1813); Woodrow Wilson, *Proclamation 1364*, *supra* note 129.

¹³⁹ Franklin D. Roosevelt, *Proclamation 2525*, 6 F.R. 6321 (Dec. 7, 1941).

¹⁴⁰ *The Alien Laws*, in GREAT DEBATES IN AMERICAN HISTORY, VOLUME SEVEN: CIVIL RIGHTS, PART ONE 22–23 (Marion Mills Miller, ed. 1918).

¹⁴¹ JAMES MADISON, THE REPORT OF 1800 (1800), <https://founders.archives.gov/documents/Madison/01-17-02-0202>.

¹⁴² See, e.g., Supplemental Brief of the United States, 20 (1918), ex parte Gilroy, 257 F. 110 (S.D.N.Y. 1919); De Lacey v. United States, 249 F. 625, 626 (9th Cir. 1918) (“Alien enemies have no rights and no privileges . . . during time of war. . . . Power to enact [the Alien Enemies Act] . . . is recognized in international law.”).

cartels as *de facto* governments or components, by way of bribery, of formal governments in Latin America. But the judiciary’s “political question doctrine,” under which courts often refuse to review congressional or presidential decisions on sensitive foreign policy and national security matters, has key backstops.

In its 1962 *Baker v. Carr* opinion, the Supreme Court suggested that the judiciary could override political decisions that reflect an “obvious mistake” or “obvious instance of a manifestly unauthorized exercise of power.”¹⁴³ In addition, in *Sterling v. Constantin* (discussed in Part II.D., above), the Court alluded to a “permitted range of honest judgment” within which executives must operate pursuant to their constitutional obligation to “Take Care that the Laws be faithfully executed.”¹⁴⁴ The courts could rely on these backstops to strike down an invocation of the Alien Enemies Act to address the actions of nonstate groups in peacetime.

Even if courts refuse to weigh in on these questions, the law would still be vulnerable to challenge on statutory and constitutional grounds. To start, the historical operation of the Alien Enemies Act stands at odds with requirements under contemporary immigration law, which may displace some or much of the wartime authority’s summary deportation power. Most clearly, immigration law’s withholding-of-removal provisions that implement the 1967 Refugee Protocol and Convention Against Torture may entitle noncitizens to a hearing if they express a fear of persecution or torture in their country of origin. These protections were read to limit the government’s Title 42 power to expel noncitizens during the COVID-19 public health emergency.¹⁴⁵ This was so even though Title 42, like the Alien Enemies Act, was a longstanding authority and was not a part of conventional immigration law.

Furthermore, the 1948 *Ludecke* opinion that last upheld the Alien Enemies Act against a due process challenge predates the postwar civil rights revolution that remade the Fifth and Fourteenth Amendments. The law has never survived a modern due process challenge, and it has never been subjected to an equal protection challenge. Because the law permits indefinite civil detentions or internment, authorizes the detention or deportation of individuals based solely on their ancestry, and dispenses with basic procedural protections, it is arguably inconsistent with modern understandings of the Constitution’s due process and equal protection guarantees. These arguments are detailed in a recent Brennan Center report.¹⁴⁶

C. What Congress Can Do: Repeal the Alien Enemies Act

The surest way to head off an abuse of the Alien Enemies Act, and to prevent a recurrence of civil liberties violations like those seen during World War II, would be for Congress to repeal the law. The Brennan Center has endorsed Senator Mazie Hirono’s Neighbors Not Enemies Act, S. 1747, a clean repeal bill.

¹⁴³ 369 U.S. 186, 214–16 (1962).

¹⁴⁴ 287 U.S. at 399–400.

¹⁴⁵ *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 731 (D.C. Cir. 2022).

¹⁴⁶ KATHERINE YON EBRIGHT, THE ALIEN ENEMIES ACT: UNJUST, UNNECESSARY, AND UNCONSTITUTIONAL 11–15 (2024), <https://www.brennancenter.org/our-work/policy-solutions/alien-enemies-act>.

Congress can repeal the Alien Enemies Act without any adverse effect on national security. Since the law was last used, Congress has codified and enacted criminal, immigration, and national security laws that protect against espionage, sabotage, and other malign activities in both peacetime and wartime. More specifically, chapters 37 and 105 of the criminal code cover all manner of espionage and sabotage, from sketching defense installations to tampering with defense materiel. Other parts of the criminal code now prohibit acting as an unregistered agent of a foreign government, trespassing on military property, and planning attacks on U.S. servicepeople.¹⁴⁷ In immigration law, there now exists an authority and process for deporting noncitizens on “security and related grounds,” including for engaging in espionage, sabotage, or “any activity” to oppose the U.S. government by force.¹⁴⁸ And the president’s ability to enforce these criminal and immigration laws is enhanced by postwar national security tools, including far-reaching surveillance capabilities and authorities.

Since World War II, no president has felt the need to invoke the Alien Enemies Act to protect the homeland or U.S. war efforts. The United States has prosecuted the Korean War, the Vietnam War, the Gulf Wars, and other conflicts without relying on the authority. Repealing the Alien Enemies Act would honor constitutional principles and prevent abuse while simultaneously ensuring public safety.

Conclusion

There are multiple legal authorities that President-elect Trump could exploit to involve the military in his plans for mass deportations. Many of these authorities, however, come with significant limitations. Moreover, even when a law—such as the Insurrection Act—appears to grant almost limitless discretion, it remains the case that the broadest discretion can still be abused. Nonetheless, it would behoove Congress to codify the various implied constraints on these powers, to amend the text where necessary to comport with the underlying intent, to ensure that both Congress and the courts can serve as checks against presidential overreach, and to repeal the Alien Enemies Act outright. Congressional action is the best hope for guarding against abuses of these authorities by the incoming administration or a future one.

¹⁴⁷ 18 U.S.C. §§ 951, 1381, 1389.

¹⁴⁸ 8 U.S.C. § 1227(a)(4).



December 10, 2024

Senator Dick Durbin, Chair
U.S. Senate Committee on the Judiciary
Washington, DC, 20510

Senator Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC, 20510

Re: Statement for the Record for the hearing on 10 December 2024, "*S How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy*"

Dear Chair Durbin, Ranking Member Graham & Committee Members:

On behalf of the [Coalition for Humane Immigrant Rights](#) (CHIRLA), the largest statewide immigrant rights organization in California, we submit this statement for today's hearing "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy", in strong support of the long-term undocumented population, who has been residing in the United States with no real access to a pathway to citizenship. These American families now face the threat of mass detention and deportation as proposed by President-Elect Trump, mostly recently in a television interview this past weekend. Our support is rooted in our unwavering conviction that immigrants regardless of their status - DACA, DREAMERs, undocumented youth, their families, and all 11 million undocumented immigrants - are essential and help form the backbone of the United States.



Founded in 1986, CHIRLA advocates for just and humane policies that positively affect all immigrant communities. For decades, we have engaged in previous fights related to broader immigration reform, rapid response in times of need, naturalization, and ongoing litigation. Currently, we lead a national campaign to change the registry date of the Immigration and Nationality Act in order to offer permanent protections for millions of immigrants. As the subject of today's hearing bears witness, such protections have never been more needed.

It has been almost 40 years since Congress has provided long-term undocumented immigrants comprehensive and just pathways to citizenship. Millions of undocumented immigrants have been in the United States for almost two decades. According to Pew Research, [undocumented immigrants live in 6.3 million households, including 22 million people. In addition, 4.4 million U.S.-born children live with an undocumented parent as of 2022](#). The effects of mass detention and deportation of these community members will have rippling effects on not just the undocumented member of our community, but it will also affect millions of U.S. citizens, the economy and beyond.

Mass Deportation

President-Elect Trump has vowed to carry out one of the largest deportations in the country's history vowing to deport over 11 million undocumented and United States citizen children who cannot be separated by their families or would face the undue burden of living separated. [Between Fiscal Year 2000 and May 2024 the country has carried out 7 million removals](#). Deportations at this scale have both intended and unintended effects. For example, large removals have a prominent impact on the labor market. When removals at this scale are carried out wages and employment of United States workers decreases. There is a decrease in consumption power at the local level that reduces the demand for U.S. born workers, there is less job competition that results in decreased wages, and in general inflation increases. In 2022, undocumented immigrants spending power totaled more than USD 254 billion, these same households had a combined



income of USD 330 billion and contributed nearly USD 76 billion in taxes according to the [Council on Foreign Relations](#). The scale of deportations that President Elect proposes will lead to a [4.2 to 6.8 percent decrease in annual US GDP or a loss of 1.1 to 1.7 trillion dollars](#).

Mass Detention

The United States Immigration and Customs Enforcement (ICE) held over 38 thousand people in ICE detention centers as of data provided in November 2024. Many of them spend long periods of time in remote locations without access to legal services or loved ones. Most of the United States detention centers are private for-profit centers that mimic prison-like complexes.

While in detention many people face abuse and racism given that this industry has little oversight. This has resulted in deaths, harm, and abuse of immigrants. Many migrants in detention suffer of sexual assault, violent abuse, medical neglect, and unsanitary conditions. In addition, temporary holding facilities see inhumane conditions inflicted on detainees, e.g. having to sleep on cement floors, use open toilets, insufficient food and water, lack of bathing facilities, constant light exposure, and deficient temperature controls leaving families with young children to face extreme heat or severe cold.

Immigrant detention centers have systemic failures and perpetuate racism. The majority of people in immigrant detention centers are black and brown and disproportionately face harm. Given this call for a blanket deportation and detention, President-Elect Trump will put those who are doubly vulnerable in more difficult situations. Examples of these populations include elderly, pregnant women, and LGBTQ+, among others.



Mental Health Impacts on Children and Families

In 2018, the American Academy for Pediatrics wrote that “[there is no evidence that any amount of time in detention is safe for children](#).” In fact, studies have shown that traumatic events like detention and deportation can lead to psychological trauma and long-term mental health risks. Repeatedly, studies have shown that families including children and parents suffer emotionally when detained. This can then and in many cases has led to many other issues.

For CHIRLA, the cost of deportation is most apparent on a human level. That cost to the individual migrant could mean being in a country that you no longer, if you ever did, know. Compounding this are the very real harms to family, especially children left behind. As the [Kaiser Family Foundation found in interviewing](#) families in Los Angeles, California and elsewhere around the country: these consequences include:¹

- Sudden and Severe Financial Hardship
- Disruption to Children’s Routines and Relationships
- Extreme Stress, Anxiety and Depression
- Abrupt Declines in School Performance
- And more.

As one of the impacted migrants stated in the study:

So, we looked at lots of different options to find a solution, and the only solution was to send [the youngest children] to Mexico and for me to get two jobs.” **Spouse/Partner of Detained/Deported Individual, Los Angeles, CA**

These human costs can be translated into a smaller workforce, lost productivity and more, but ultimately, they represent family separation and unalterable negative life trajectories for many. These harms and costs are societal, and they



ripple out into the classrooms, the workplaces and neighborhoods of the detained and deported.

CHIRLA urges the current Administration and Congress to act quickly and recognize the indispensable contributions that the immigrant community has made for decades—as integral parts of our communities, our lives, and our country. There is no excuse for not doing what is possible now to protect our American families from this very real threat of trauma and separation.

Please contact Marisol Hernandez, Deputy Director of National Policy and Congressional Affairs at marisol.h@chirla.org should you have any questions.

Sincerely,

Angelica Salas
Executive Director of the Coalition for Humane Immigrant Rights (CHIRLA)



**CLASP Statement for the Record
Senate Committee on the Judiciary
"How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and
Devastate Our Economy"
December 10, 2024**

Chairman Durbin, Ranking Member Graham, and members of the Senate Committee on the Judiciary, we thank you for this opportunity to submit a statement for the hearing "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy." The Center for Law and Social Policy (CLASP) is a national, nonpartisan nonprofit advancing anti-poverty policy solutions that disrupt structural and systemic racism and remove barriers blocking people from economic security and opportunity. CLASP works to develop and implement federal, state, and local policies (in legislation, regulation, and implementation) that reduce poverty, improve the lives of people with low incomes, and create pathways to economic security for everyone. That includes directly addressing the barriers people face because of race, ethnicity, gender, disability, and immigration status.

The CLASP policy team has expertise on immigration, child development, education, and health policy as well as on the range of anti-poverty policies impacting immigrant families. CLASP has conducted research on the impact of the Trump Administration's immigration policies on young children as well as the impact of the Trump Administration's worksite raids on families and communities. We focus this statement on the short- and long-term implications of immigration enforcement measures on child well-being and express our deep concern about a mass deportation effort that could lead to the harmful expulsion of a record number of people, including U.S. citizen children. As experts on the intersection of immigration and child development policies, we urge Congress to reject increased immigration enforcement policies, including mass deportations, that would heighten the risk of parent-child separation or put children themselves at risk of detention and deportation, as well as cause a chilling effect on immigrant communities in accessing education, health care, and nutrition assistance, and further traumatize children living in mixed-status families.

According to Immigration and Customs Enforcement (ICE) data, over 400,000 parents of U.S. citizen children have been deported, resulting in lasting harm to those children, their families, and communities.¹ The number of children impacted is likely higher since the number of U.S.

¹ Nicole Chávez, Suma Setty, Hannah Liu, and Wendy Cervantes, "Still at Risk: The Urgent Need to Address Immigration Enforcement's Harms to Children," Center for Law and Social Policy (CLASP), (June 2023),

citizen children per parent is not reported, and ICE does not publicly report the number of deported parents of non-citizen children. Under a mass deportation plan, millions more children are at risk of losing a parent; 5.2 million children had at least one unauthorized immigrant parent in 2018. Eighty five percent of these children, 4.4 million, are U.S. citizens.² Another 360,000 U.S.-born children of parents with Temporary Protected Status (TPS) and 300,000 U.S.-born children with at least one parent with Deferred Action for Childhood Arrivals (DACA) status are additionally at risk of losing a parent, given the incoming administration's intentions to strip these statuses and make TPS and DACA recipients vulnerable to deportation.³

The threat and reality of increased immigration enforcement, especially parent-child separation, has profound negative impacts on children and communities. These impacts include mental and physical harm, educational setbacks, developmental delays, economic and housing insecurity, decreased access to health care and nutritional assistance, and increased burden on educators, child care staff, and other providers. It is also important to note that the harms of ramped up immigration enforcement are also expected to be combined with other immigration policy attacks that may further undermine immigrant families' and their children's access to critical health care, nutrition, and other supports. And research shows that the cumulative effect of so many threats causes the greatest harm to children's development. Furthermore, any mass deportation effort will lead to an unprecedented climate of fear that will make it virtually impossible for families to effectively raise their children or function normally. The consequences will be immediate and long-term, tearing up families, straining communities left to respond in the aftermath, and ravaging local businesses and economies. We urge Congress to reject any proposal that could fund or otherwise enable the incoming Administration to carry out a reckless and immoral mass deportation plan that will ultimately leave a stain on our nation's history.

<https://www.clasp.org/publications/report/brief/urgent-need-address-immigration-enforcement-harm-children/>.

² Randy Capps et al., "Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins," Migration Policy Institute, (December 2020), <https://www.migrationpolicy.org/research/unauthorized-immigrants-united-states-stable-numbers-changing-origins>.

³ "Fact Sheet: Temporary Protected Status (TPS)," First Focus on Children (January 31, 2023), <https://firstfocus.org/resources/fact-sheet/temporary-protected-status#:~:text=Currently%2C%20there%20are%2016%20countries,parents%20who%20are%20TPS%20beneficiaries>; Nicole Prchal Svajlenka and Trinh Q. Truong, "The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition," Center for American Progress (November 24, 2021); <https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>; Paul Dans and Steven Groves (ed.), *Mandate for Leadership: The Conservative Promise*, The Heritage Foundation (2024), <https://www.project2025.org/>

Both the threat and reality of immigration enforcement and parent-child separation are Adverse Childhood Experiences (ACEs).

Adverse Childhood Experiences (ACEs) are potentially traumatic events that occur to children ages 0-17. These experiences include abuse, witnessing violence, and death of a family member by suicide, among others.⁴ The ACEs framework is widely used across child well-being researchers and practitioners because of evidence demonstrating that the more ACEs a child experiences, the higher their risk for health and social problems in adulthood.⁵ The long-term impacts of ACEs include higher likelihood of becoming an adult victim of violence, illicit drug use, tobacco use, obesity, depressed mood, panic/anxiety, and suicidal ideation, among other physical and mental health problems.⁶ Health researchers argue that negative immigration-related events, such as the detention and deportation of a parent or caregiver and even the threat of parental detention, constitute as Adverse Childhood Experiences, given the plethora of evidence on the threat and deprivation that children in immigrant families experience in restrictive, anti-immigrant socio political contexts.⁷ The below expanded ACEs framework from Barajas-Gonzalez, et al. in *Social Science & Medicine* visualizes the numerous immigration-related ACEs that children may experience and the level of impact they may have on children on axes of threat and deprivation.

Some of the ACEs with the highest deprivation and threat to children are childrens' experiences of detention/deportation, the detention/deportation of a caregiver, and food, housing, and economic insecurity due to a deported breadwinner. The effect of these ACEs' impact on the child's short and long-term development depends on their developmental stage and their and their families' legal status, which in turn impact the severity and frequency of these immigration-related ACEs. The model also illustrates how the level of threat and deprivation children experience is also dependent on a larger environment of immigration policies and anti-immigrant sentiment and the child's own perception and awareness of immigration policies. Ultimately, the reality and threat of immigration-related adverse events in childhood "function as anticipatory stressors that can become chronic stressors, a disruption to family preservation and

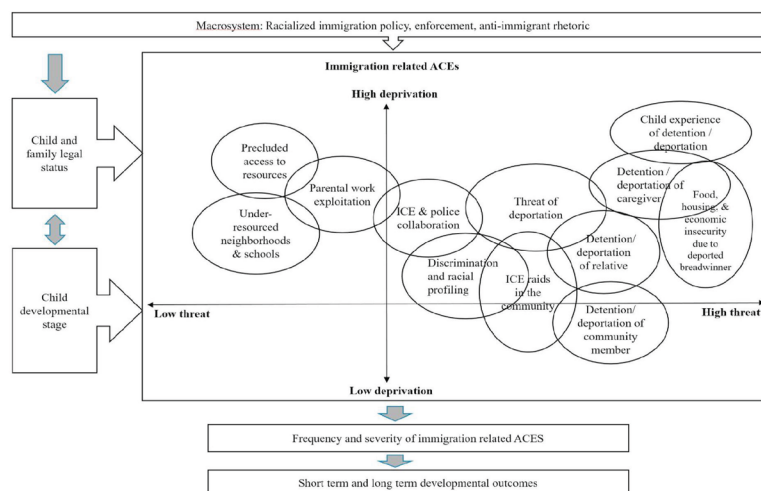
⁴ Center for Disease Control and Prevention, "About Adverse Childhood Experiences," (October 2024), <https://www.cdc.gov/aces/about/index.html>.

⁵ Shannon Struck et al., "Adverse childhood experiences (ACEs) research: A bibliometric analysis of publication trends over the first 20 years," *Child Abuse and Neglect International Journal*, (February 2021) <https://www.sciencedirect.com/science/article/pii/S0145213420305500>.

⁶ Adverse childhood experiences and associated health outcomes: A systematic review and meta-analysis, 2019, <https://www.sciencedirect.com/science/article/abs/pii/S0145213419303047>

⁷ R.G. Barajas-Gonzalez et al., An ecological expansion of the adverse childhood experiences (ACEs) framework to include threat and deprivation associated with U.S. immigration policies and enforcement practices: An examination of the Latinx immigrant experience, 282 *Soc. Sci. & Med.* at 2 (2021), <http://tinyurl.com/yssvzsub>.

unity, and a pervasive threat to children's sense of safety," seriously damaging children's mental and physical health.⁸



Note. ACEs = Adverse childhood experiences; ICE = Immigration and customs enforcement.

Deportations harm the mental health and well-being of children in immigrant families.

Having stable caretakers is key to a healthy childhood, especially for young children and those with special needs.⁹ Children in mixed-status families, however, live with a constant sense of uncertainty and fear that their parents could be taken away at any moment. In accordance with an expanded ACEs framework incorporating immigration-related adversity, increased immigration enforcement will exacerbate children's anxiety and distress. Numerous studies demonstrate the connection of both the threat of immigration enforcement as well as the detention and deportation of a family member to adverse mental health, behavioral problems, and health issues for children in immigrant families. A 2017 CLASP study across six states found that children as young as three-years-old were expressing fear about losing a parent to deportation and demonstrating those fears through words and troubling behaviors; one child was described as biting his fingertips to the point of bleeding.¹⁰

⁸ R.G. Barajas-Gonzalez et al., An ecological expansion, 2021.

⁹ "Parents and Caregivers Are Essential to Children's Healthy Development," American Psychological Association, (June 2023), <https://www.apa.org/pi/families/resources/parents-caregivers>.

¹⁰ Cervantes et al, Our Children's Fear, 2018.

Children whose parents are deported are significantly more likely to experience mental health conditions such as depression and anxiety, as well as display signs of aggression and other behavioral issues.¹¹ They may suffer from social isolation, self-stigma, insomnia, and may experience post-traumatic stress and/or attachment disorders.¹² Young children experience these impacts even more because of their emotional and physical dependence on their caregivers and are at developmental stages when interactions with primary caregivers provide a foundation for health and well-being.¹³ The impact of parental detention and deportation may magnify for children if they see the arrest happening. Research shows that when a child witnesses a parents' arrest, they suffer the greatest impacts to their mental health, as is the case when a child is present when a parent is arrested at a traffic stop, home raid, or when dropping off a child at school or child care.¹⁴ While there are a few policies in place to guide the handling of children, there is limited consistency in implementation and no child-focused training for immigration agents for how to mitigate the trauma to children.¹⁵

These emotional and behavioral impacts may even have life or death implications. An Ohio pre-teen died by suicide following her father's deportation after he was stopped by police for using high beams while driving.¹⁶ These stories linking immigration enforcement with adolescent trauma and suicide are not simply anecdotes. One study linked the detention and deportation of a family member with increased alcohol use, problem behaviors, and suicidal ideation among Latinx adolescents while another linked adolescents' concerns about the impacts of U.S. immigration policy with increased levels of anxiety, sleep issues, and adverse blood pressure changes.¹⁷ Additionally, in the aftermath of a Tennessee workplace raid in April 2018, behavioral

¹¹ Luis H. Zayas et al., "The Distress of Citizen-Children with Detained and Deported Parents," *Journal of Child and Family Studies* 24, no. 11 (November 1, 2015): 3213–23 <https://doi.org/10.1007/s10826-015-0124-8>; Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews,

"Our Children's Fear: Immigration Policy's Effects on Young Children," CLASP (March 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

¹² Luis H. Zayas & Laurie Cook Heffron, "Disrupting young lives: How detention and deportation affect US-born children of immigrants," *Am. Psych. Ass'n* (Nov. 2016). <https://mi-aimh.org/wp-content/uploads/2018/01/L.-Zayas-Disrupting-Young-Lives-How-Detention-and-Deportation-Affect-US-born-Children-of-Immigrants-copy.pdf>

¹³ Ajay Chaudry et al., "Facing Our Future: Children in the Aftermath of Immigration Enforcement", Urban Institute (2010), <https://www.urban.org/research/publication/facing-our-future>; Randy Capps et al., "Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature," Migration Policy Inst. (Sept. 2015), <https://tinyurl.com/ybm62mqa>.

¹⁴ Chaudry et al., "Facing Our Future," 2010.

¹⁵ "ICE Detained Parents Directive" Immigration and Customs Enforcement, (March 2024), <https://www.ice.gov/detain/parental-interest>.

¹⁶ Lynn Tramonte and Suma Setty, "Broken Hope: Deportation and the Road Home," (December 2023), Center for Law and Social Policy, https://www.clasp.org/wp-content/uploads/2023/11/2023_Broken-Hope-Deportation-and-the-Road-Home_Issue-Brief-1.pdf.

¹⁷ Kathleen M. Roche, et al., "Association of Family Member Detention or Deportation With Latino or Latina Adolescents' Later Risks of Suicidal Ideation, Alcohol Use, and Externalizing Problems," *JAMA Pediatrics*

issues and substance use among local Hispanic students increased; substance use disorders during the raid year was 1.5 times above the average rate, while diagnoses of self-harm, suicide attempts, or suicidal ideation increased by 50 percent.¹⁸ The long-term implications of children's mental health issues are concerning; behavioral problems, depression, and anxiety in children are associated with a number of health and wellness complications and economic and social exclusion in adulthood.¹⁹

Increased immigration enforcement puts ALL children's mental health and healthy development at risk.

Immigration enforcement, including mass deportations, has cascading impacts on the health and well-being of all children in affected communities. Young children do not often understand the nuances of immigration policy and may not even know whether their parents are at risk of being detained or deported. CLASP's research found that even children whose parents had legal status or were U.S. citizens expressed fear and anxiety. One Head Start teacher recounted a young child's fear that the president would send her mom back to Mexico, despite her mother not even being from Mexico.²⁰

Moreover, research has found that children whose parents are not deported, but have adults in their social networks deported also experience this distress. The more people a child's parents know who have been deported, the more likely the child has developmental delays or diagnoses.²¹ This finding demonstrates how parental stress trickles down to their children, affecting their healthy development and well-being. Research has consistently shown that hardship and distress in the early years can compromise healthy development and growth in both the short and long terms.²²

174, no.5: 478-486 (2020), doi: 10.1001/jamapediatrics.2020.0014; Brenda Eskenazi, et al, "Association of Perceived Immigration Policy Vulnerability With Mental and Physical Health Among USBorn Latino Adolescents in California," JAMA Pediatrics 173, no. 8 (2019): 744-753, doi:10.1001/jamapediatrics.2019.1475. <https://pubmed.ncbi.nlm.nih.gov/32176245/>

¹⁸ Carolyn Heinrich, Mónica Hernández, and Mason Shero, "Repercussions of a Raid: Health and Education Outcomes of Children Entangled in Immigration Enforcement," Journal of Policy Analysis and Management (December 2022), <https://doi.org/10.1002/pam.22443>.

¹⁹ Ann S. Masten et al., "Developmental cascades: linking academic achievement and externalizing and internalizing symptoms over 20 years," Developmental Psychology 41, no.5: 733-746 (2005), doi:10.1037/0012-1649.41.5.733;

<https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2800143>.

²⁰ Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, "Our Children's Fear: Immigration Policy's Effects on Young Children," CLASP (March 2018).

https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

²¹ Edward D. Vargas and Viridiana L. Benitez, "Latino parents' links to deportees are associated with developmental disorders in their children," Journal of Community Psychology, (March 2019), <https://onlinelibrary.wiley.com/doi/abs/10.1002/jcop.22178>.

²² "Persistent Fear and Anxiety Can Affect Young Children's Learning and Development: Working Paper No. 9," National Scientific Council on the Developing Child (2010); "The Science of Early Childhood

The negative impact is not limited to young children. While young children may not understand who is at risk, older children are not as sheltered from the greater ecosystem of fear caused by the threat of increased immigration enforcement. A 2021 study found that adolescents with foreign-born parents experienced more psychological worry and behavioral withdrawal responses to immigration actions and news than their peers with U.S.-born parents, even among those with parents who had legal status.²³ In addition, the 2018 Tennessee worksite raid study also revealed that even U.S. citizen children whose families were not directly involved in the raid experienced increased behavioral issues and substance use disorders.²⁴

Immigration enforcement actions, in particular large-scale raids, immediately endanger children.

Immigration policies, including enforcement policies, have historically failed to consider the impact on children, such as parental separation. Following workplace immigration raids under the G.W. Bush and Trump Administrations resulting in hundreds of deportations, local schools and churches stepped in to coordinate care for children whose parents were detained.²⁵ In a few cases, Child Protective Services (CPS) was unable to account for the safety of children impacted by the raids. A study conducted by CLASP focused on the first Trump Administration's worksite raids found that lack of communication with local schools and CPS prior to the raids left schools scrambling to respond to ensure children were not returning to empty homes or unnecessarily placed in the care of CPS.²⁶ Another study found that parents who were detained or deported often encountered difficulties in reunifying with children who were involved in the child welfare system, leading at times to the unnecessary termination of parental rights and permanent family separation.²⁷ While several policies have been implemented over the past two decades to mitigate some of the harm to children and families caused by immigration enforcement, it is likely that

Development: Closing the Gap Between What We Know and What We Do," National Scientific Council on the Developing Child (2007); "From Neurons to Neighborhoods: The Science of Early Childhood Development," Jack P. Shonkoff and Deborah A. Phillips, eds., Committee on Integrating the Science of Early Childhood Development, National Research Council and Institute of Medicine (2000); Martin H. Teicher et al., "The Neurobiological Consequences of Early Stress and Childhood Maltreatment," *Neuroscience & Biobehavioral Review* 27, no. 1-2 (2003): 33-44, [https://doi.org/10.1016/S0149-7634\(03\)00007-1](https://doi.org/10.1016/S0149-7634(03)00007-1).

²³ Recent immigration actions and news and the adjustment of U.S. Latino/a adolescents. By Roche, Kathleen M., White, Rebecca M. B., Rivera, Maria Ivonne, Safa, M. Dalal, Newman, Daniel, Falusi, Olanrewaju Cultural Diversity & Ethnic Minority Psychology, Vol 27(3), Jul 2021, 447-459. <https://psycnet.apa.org/buy/2020-55758-001>.

²⁴ Heinrich et al., Repercussions of a Raid, 2022.

²⁵ Heinrich et al., Repercussions of a Raid, 2022; Cervantes et al., The Day That ICE Came, 2020.

²⁶ Cervantes et al., The Day That ICE Came, 2020.

²⁷ Seth Freed Wessler et. al., "Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System," Applied Research Center (now Race Forward), (November 2011), <https://www.raceforward.org/research/reports/shattered-families>.

the safety and well-being of children will not be a priority of the incoming Trump Administration. In fact, we are concerned that several protective policies may be completely rescinded, putting children at greater risk of immediate danger and long-term harm.

Given the stated goals of the incoming Administration's mass deportation plan, it is likely that the use of large-scale raids will once again be used. This includes worksite raids as well as widespread home raids. The very aggressive nature of the way these raids are carried out put children at great risk, even more so if no preventative protective policies are in place to mitigate the harm to children. Home raids are often carried out in the middle of the night, resulting in children waking up to armed guards breaking into their homes, separating parents from children in different rooms, and arresting parents and taking them away. Large-scale worksite raids, which were ended under the Obama Administration and revived under the Trump Administration, are often carried out in a militaristic, highly forceful manner. As documented in CLASP's *The Day That ICE Came* report, many who witnessed the 2019 Mississippi raid—the largest operation in U.S. history—described it as feeling like a “terrorist attack.”²⁸ Small, normally quiet towns were swarmed with helicopters and armed officials, and children, whose schools were sometimes across the street within view of the poultry plants, recalled watching in horror as their handcuffed parents were marched in lines into white vans. It was also the first day of school in several of the school districts impacted, making it more traumatic for young children who were going to school for the first time as well as more difficult for school administrators to respond. When such chaos is the rule of the day, it is nearly impossible to ensure the safety and well-being of children.

Families with children face financial and housing instability because of parental detention and deportation.

When a caregiver is removed from the household due to deportation, household income is reduced, either because the deported caregiver's earnings are lost or they need to pay for childcare. Recent studies estimate that immigration enforcement reduces the median household income of affected families between 19 and 47 percent, which means millions of families are driven into poverty due to detention and deportation.²⁹ Moreover, the costs of detention and deportation add up; families must pay for legal assistance, transportation to visit loved ones in

²⁸ Cervantes et al., *The Day That ICE Came*, 2020.

²⁹ Catalina Amuedo-Dorantes, Esther Arenas-Arroyo, and Almudena Sevilla, “Immigration Enforcement and Economic Resources of Children With Likely Unauthorized Parents,” Centre on Migration, Policy and Society (COMPAS), University of Oxford (July 2021), https://ora.ox.ac.uk/objects/uuid:dccc7ad6-d069-4b62-b19d-25609ac95f71/download_file?file_format=pdf&safe_filename=Amuedo_Arenas_Sevilla_2018.pdf&type_of_work=Journal+article; Robert Warren and Donald Kerwin, “Mass Deportations Would Impoverish US Families and Create Immense Social Costs,” Center for Migration Studies (2017), <https://cmsny.org/publications/mass-deportations-impoverish-us-families-create-immense-costs/>.

detention centers, and, if their loved one is deported, support their loved one in another country where their economic stability is not guaranteed.³⁰

Following the 2019 Mississippi worksite raid – the largest worksite raid in U.S. history with more than 1,800 arrests— families of the nearly 700 detained or deported workers, including those with children, struggled to make ends meet. Consequently, virtually all families reported having to turn to charitable donations for support with basic needs like rent, utilities, and food for months afterward. Even family members with work authorization had a hard time finding work in the aftermath of the raids.³¹ Families impacted during prior worksite raids who also lost all of most of their income had great difficulty rebounding even a year later and had to move in with other families to save on housing costs.³²

As a result of financial instability, households impacted by deportation will struggle to make ends meet, including paying for rent, utilities, food, diapers, and other basic, essential needs. Deportations resulting in the removal of primary income earners from their households play a large role in housing instability, foreclosures, and additional loss of property among mixed-status Latino households.³³ Housing instability and an increased likelihood of poverty can have profound impacts on children’s developmental health.³⁴

Moreover, the impact of large-scale worksite raids and increased deportations can devastate local economies, affecting local housing and job markets and business climates.³⁵ These ripple effects

³⁰ Ojeda VD, Magana C, Burgos JL and Vargas-Ojeda AC, "Deported Men's and Father's Perspective: The Impacts of Family Separation on Children and Families in the U.S." *Frontiers in Psychiatry*, (March 2020) 11:148. doi: 10.3389/fpsy.2020.00148. <https://pubmed.ncbi.nlm.nih.gov/32256398/>.

³¹ Cervantes et al., *The Day That ICE Came*, 2020.

³² Chaudry et al., *Facing Our Future*, 2010.

³³ Jacob S. Rugh and Matthew Hall, "Deporting the American Dream: Immigration Enforcement and Latino Foreclosures," *Sociological Science* 3, no. 46: 1053-1076, <http://dx.doi.org/10.15195/v3.a46>; Baker, Beth and Alejandra Marchevsky, "Gendering deportation, policy violence, and Latino/a family precarity," *Latino Studies* 17 (2019): 207–24, doi: 10.1057/s41276-019-00176-0; Juan Manuel Pedroza, "Housing Instability in an Era of Mass Deportations," *Population Research and Policy Review*, (May 2022), <https://link.springer.com/article/10.1007/s11113-022-09719-1>; Heather Koball et al., "Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents," Urban Institute (September 2015). <https://www.urban.org/sites/default/files/publication/71131/2000405-Health-and-Social-Service-Needs-of-US-Citizen-Children-with-Detained-or-Deported-Immigrant-Parents.pdf>.

³⁴ Heather Koball et al., "Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents," Urban Institute (September 2015). <https://www.urban.org/sites/default/files/publication/71131/2000405-Health-and-Social-Service-Needs-of-US-Citizen-Children-with-Detained-or-Deported-Immigrant-Parents.pdf>.

³⁵ Juan Pedroza and Molly Scott, "ICE worksite raids are back. Here's what we know about them," Urban Institute (2018), <https://www.urban.org/urban-wire/ice-worksite-raids-are-back-heres-what-we-know-about-them>; Chloe

cause harm to all residents, including U.S.-born families with children, living in impacted communities, as small towns struggle to recover from these shocks sometimes even a decade afterward.³⁶

Deportations will cause a chilling effect among immigrant communities, limiting their access to nutrition assistance, health care, and other essential services.

Fear of deportation casts a cloud of uncertainty and danger over common activities that affect immigrant families' ability to live their lives. This phenomenon restricting daily life—commonly referred to as the “chilling effect”—causes families to avoid seeking out basic necessities, from medical care to social services.³⁷ As a result, children become isolated from the larger community, miss critical health care milestones like vaccinations and well-child visits, and experience food insecurity due to their families forgoing the nutrition assistance for which they are eligible.³⁸ Again, we are particularly concerned about the potential for the chilling effect to be even greater under the next Trump Administration, as they have indicated plans to strip DACA recipients and TPS holders of their status and rescind the “protected areas” policy that restricts immigration enforcement from hospitals and health care settings, child care centers, places of learning, and places of worship.³⁹

During the site visits conducted by CLASP in 2017, parents reported needing to plan out their basic activities to ensure whenever possible that a family member with lawful status was driving, and at times even the most critical outings were skipped.⁴⁰ For example, parents in rural Pennsylvania shared their reluctance to take their children to the emergency room at night because it was known that ICE patrolled the highway to the nearest hospital, and parents in several states shared that they had posted signs on the doors of their home at children's eye level with the warning “*No abre la puerta*” (“don't open the door.”) Parents even avoided taking their children to places like playgrounds and libraries, in particular when there were rumors in the community about ICE vehicles spotted near such areas.

East, “Brookings Institute (2024), <https://www.brookings.edu/articles/the-labor-market-impact-of-deportations/>.

³⁶ Pedroza and Scott, ICE worksite raid, 2010.

³⁷ Qingwen Xu and Kalina Brabeck, “Service Utilization for Latino Children in Mixed-Status Families,” *Social Work Research* 36, no. 3 (2012): 209–21, <http://www.istat.org/stable/42659834>; Carolyn Heinrich, Mónica Hernández, and Mason Shero, “Repercussions of a Raid: Health and Education Outcomes of Children Entangled in Immigration Enforcement,” *Journal of Policy Analysis and Management* (December 2022), <https://doi.org/10.1002/pam.22443>.

³⁸ Wendy Cervantes, Rebecca Ullrich, and Hannah Matthews, “Our Children's Fear: Immigration Policy's Effects on Young Children,” CLASP (March 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf.

³⁹ *Project 2025*, The Heritage Foundation.

⁴⁰ Cervantes et al., “Our Children's Fear,” (March 2018)

The level of fear in communities often varies, depending on the level of immigration enforcement in the state or other anti-immigrant policies. For example, communities often feel less safe in states where there are partnerships between ICE and local law enforcement agencies (e.g., Section 287(g) agreements, Secure Communities programs), which also erodes immigrant communities' trust in local government and healthcare services.⁴¹ A 2012 North Carolina study evaluating the health impacts of 287(g) agreements and the Secure Communities programs found that Latina mothers sought prenatal care later and received insufficient care relative to non-Latina mothers. Latina respondents shared that they were mistrustful of health services, likely influenced by the presence of 287(g) agreements and the Secure Communities program in that area at the time.⁴²

Restricted mobility and fear of accessing basic needs also is heightened following a large-scale raid, including home raids and worksite raids. Following the 2019 Mississippi worksite raid, children were absent from schools for several days, and some families even hid out in their homes for weeks with curtains pulled over their windows.⁴³ In addition, because the 2018 Tennessee raid occurred at the same time as a community health event, Hispanic families too afraid to venture out of their homes missed out on vaccinations, basic health screenings, and information offered to community members attending the event. Many Hispanic families subsequently stopped attending other health-related appointments with their children altogether.⁴⁴

In addition to the fear of immigration enforcement, other anti-immigrant policies—such as the “public charge rule” under the first Trump Administration—create additional concerns that may deter immigrant families, including those with lawfully present and U.S. citizen family members, from accessing essential safety net benefits like the Supplemental Nutrition Assistance Program (SNAP), Medicaid, or the Children’s Health Insurance Program (CHIP). In a survey of adults in immigrant families with children, 10.2% and 9.6% of respondents stated that they or a family member avoided applying for SNAP and Medicaid/CHIP, respectively. The rates were higher among adults in low-income immigrant families with children, who reported the same avoidance of SNAP and Medicaid/CHIP at 17.1% and 14.8%, respectively.⁴⁵ The chilling effect creates

⁴¹ Chavez et al., *Still at Risk*, <https://www.clasp.org/publications/report/brief/urgent-need-address-immigration-enforcement-harm-children/>.

⁴² Scott D. Rhodes et al., “The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos in the United States,” *American Journal of Public Health* 105, no. 2 (Feb. 1, 2015): 329-37, <https://doi.org/10.2105/AJPH.2014.302218>.

⁴³ Cervantes et al., *The Day that ICE Came*, (July 2020)

⁴⁴ Heinrich et al, 2022.

⁴⁵ Jennifer M. Haley et al., “One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019,” *Urban Institute* (June 18, 2020), <https://www.urban.org/research/publication/one-five-adults-immigrant-familieschildren-reported-chilling-effects-public-benefit-receipt-2019>.

quantifiable health access inequities; approximately 4 in 10 undocumented immigrants were uninsured in 2020, compared to 1 in 10 U.S. citizens. Further, U.S. citizen children of immigrants were more than twice as likely to be uninsured if they have at least one noncitizen parent than if they have two citizen parents (10% vs. 4%)⁴⁶. With regard to nutrition access, mixed-status Mexican families are significantly less likely to participate in WIC, a critical health and nutrition program for pregnant individuals and young children with low incomes.⁴⁷ A recent survey finds that this chilling effect has lingered for years after the Trump Administration left office, with many immigrant families continuing to avoid public benefit programs as of 2021.⁴⁸

The harmful impact on the well-being of immigrant families of avoiding essential services for immigration-related reasons is well-documented.⁴⁹ The COVID-19 pandemic also demonstrated what immigrant communities and advocates have long known—that the health and wellbeing of immigrants are inextricable from that of the greater community.⁵⁰ One study found that an increase in immigration enforcement led to a decrease in undocumented immigrants intending to receive the vaccine, meaning that immigration enforcement undermines public health efforts to contain infectious diseases like COVID-19.⁵¹ This finding aligns with reporting that immigration enforcement fears were among the reasons mixed-status families were reluctant to get vaccinated.⁵² Immigration enforcement tactics have been shown to target immigrants and their families, sometimes regardless of actual citizenship status, thereby producing a chilling effect across entire communities. When immigrant families are too afraid to take care of themselves, the entire community suffers.

⁴⁶ “Health Coverage of Immigrants,” Henry J. Kaiser Family Foundation,

<https://www.kff.org/racial-equity-and-healthpolicy/fact-sheet/health-coverage-of-immigrants/>.

⁴⁷ Edward D. Vargas and Maureen A. Pirog, “Mixed-Status Families and WIC Uptake: The Effects of Risk of Deportation on Program Use,” *Social Science Quarterly* 97 (April 2016): 555-572, <https://doi.org/10.1111/ssqu.12286>.

⁴⁸ Jennifer M. Haley, Dulce Gonzalez, and Genevieve M. Kenney, “Immigration Concerns Continued to Deter Immigrant Families with Children from Safety Net Programs in 2021, Compounding Other Enrollment Difficulties,” Urban Institute (2022), <https://www.urban.org/research/publication/immigration-concerns-continued-deter-immigrant-families-children-safety-net>.

⁴⁹ Elisa Minoff et al., “The Lasting Legacy of Exclusion”, Center for the Study of Social Policy and Georgetown Center on Poverty and Inequality, (August 2021), <https://cssp.org/wp-content/uploads/2021/08/Lasting-Legacy-of-Exclusion-FINAL-ACCESSIBLE.pdf>

⁵⁰ Juan Carlos Gomez and Vanessa Meraz, “Immigrant Families during the Pandemic: On the Frontlines but Left Behind,” CLASP (February 11, 2022), <https://www.clasp.org/publications/report/brief/immigrant-families-pandemic-frontlines/>.

⁵¹ May Sudhinaset, Ezinne Nwankwo, and Hye Young Choi, “Immigration enforcement exposures and COVID-19 vaccine intentions among undocumented immigrants in California,” *Preventive Medicine Reports* (June 2022), <https://www.sciencedirect.com/science/article/pii/S2211335522001152>.

⁵² Miriam Jordan, “After a pandemic pause, ICE resumes deportation arrests,” *The New York Times*, September 14, 2020, <https://www.nytimes.com/2020/09/12/us/ice-immigration-sweeps-deportation.html>.

Children experience educational setbacks because of mass deportation.

Education is an important stepping stone toward future success, but fear and anxiety about immigration enforcement often undermine student achievement and access to education, from early education through postsecondary education. Children with at least one undocumented parent made up 12% of the U.S. K-12 school enrollment in 2021.⁵³ Beyond setting students up for future economic security and socioemotional development, places of learning also act as important community hubs to help families access emotional or material support.⁵⁴

Local immigration enforcement raids and collaboration with law enforcement through 287(g) enforcement have been shown to decrease school engagement by increasing chronic student absenteeism and displacing students, disrupting learning, and threatening future achievement.⁵⁵ In addition to worksite raids and local law enforcement cooperation with federal enforcement authorities, a recent study found that absenteeism could be a response to local and state anti-immigration laws as well. After the enactment of a state immigration enforcement law, absences and withdrawals from school of both undocumented and documented Hispanic students increased.⁵⁶

We are gravely concerned about the potential for widespread fear related to immigration enforcement to have an even a greater impact on school participation during the second Trump Administration, in particular due to increased anti-immigrant rhetoric targeting newcomer students as well as ongoing state-level efforts to undermine the constitutional right to access a

⁵³ "Beyond the Border: Family Separation in the Trump Era," UnidosUS (2019), https://unidosus.org/wp-content/uploads/2021/07/unidosus_beyondtheborder_22519.pdf; "Table 203.20. Enrollment in public elementary and secondary schools, by region, state, and jurisdiction: Selected years, fall 1990 through fall 2030," National Center for Education Statistics, https://nces.ed.gov/ipeds/data/ipeds_datacenter/ipeds_datacenter.asp?table=203.20; "Immigrant and International Students in Higher Education", Higher Ed Immigration Portal, (2022) <https://www.higheredimmigrationportal.org/national/national-data/>

⁵⁴ Michael B. Horn, Julia Freeland, and Stuart M. Butler, "Schools as Community Hubs: Integrating Support Services to Drive Educational Outcomes," Brookings Institution (September 2015), <https://www.brookings.edu/wp-content/uploads/2016/06/Horn-Freeland-Paper-FINAL.pdf>.

⁵⁵ Laura Bellows, "Immigration Enforcement and Student Achievement in the Wake of Secure Communities," AERA Open 5, no. 4 (October 29, 2019), <https://doi.org/10.1177/2332858419884891>; J. Jacob Kirksey and Carolyn Sattin-Bajaj, "Immigration Arrests and Educational Impacts: Linking ICE Arrests to Declines in Achievement, Attendance, and School Climate and Safety in California," AERA Open 7 (October 4, 2021), <https://doi.org/10.1177/23328584211039787>; Thomas S. Dee and Mark Murphy, "Vanished Classmates: The Effects of Local Immigration Enforcement on School Enrollment," American Educational Research Journal 57, no. 2 (April 2020): 694-727, <https://doi.org/10.3102/0002831219860816>; Carolyn Heinrich, Mónica Hernández, and Mason Shero, "Repercussions of a Raid: Health and Education Outcomes of Children Entangled in Immigration Enforcement," Journal of Policy Analysis and Management (December 2022), <https://doi.org/10.1002/pam.22443>.

⁵⁶ Benjamin Meadows, "Undocumented and Under Threat of Deportation: Immigrant Students in the Classroom," Journal of Human Resources (Aug 2021), <https://doi.org/10.3368/jhr.0621-11738R1>.

K-12 education regardless of immigration status. Should the Trump Administration also rescind the protected areas policy that restricts immigration enforcement actions in places of learning as well as other critical places, that would create a severe chilling effect and make parents feel less safe about dropping off their children to child care or school.⁵⁷

Finally, a parent's detention or deportation often results in poor academic outcomes like lower grades and decreased school attendance for children left behind. Children whose parents were deported may have trouble focusing on school or fear going to school, especially if their parents were detained during the school day. Moreover, as a result of lower household income, older children may have to drop out of school to work and contribute to household income and/or have to become de-facto parents to younger siblings. They end up experiencing delays in or becoming fully disjointed from their own educational and career ambitions.⁵⁸

Immigration enforcement causes additional strain on providers and reduces program availability for all communities.

Immigration enforcement activities, especially when they are combined with other adverse policies, have a significant impact on providers serving children and families, including social workers, pediatricians, educators, and child care workers. Many were witnessing the direct impacts of trauma on the children they were serving and also felt compelled to try to answer complicated immigration policy questions or refer parents to legal providers to assist them, creating additional strain on their time and mental well-being. In cases of large-scale raids, schools and child care centers may also be left to deal with ensuring kids are not returning to empty homes.

In CLASP's interviews with early care and education workers, many providers expressed anxiety and concern in response to changing immigration policy during the first term of the Trump Administration.⁵⁹ One study conducted during the Trump Administration found that child care

⁵⁷ "Protected Areas Enforcement Actions", U.S Immigration and Customs Enforcement <https://www.ice.gov/about-ice/ero/protected-areas>; Project 2025.

⁵⁸ Wendy Cervantes, Rebecca Ullrich, and Vanessa Meraz, "The Day That ICE Came: How Worksite Raids Are Once Again Harming Children and Families," Center for Law and Social Policy (July 2020), <https://www.clasp.org/publications/report/brief/day-ice-camehow-worksite-raids-are-once-again-harming-children-and/>; Laura Bellows, "Immigration Enforcement and Student Achievement in the Wake of Secure Communities," AERA Open 5, no. 4 (October 29, 2019), <https://doi.org/10.1177/2332858419884891>; J. Jacob Kirksey and Carolyn Sattin-Bajaj, "Immigration Arrests and Educational Impacts: Linking ICE Arrests to Declines in Achievement, Attendance, and School Climate and Safety in California," AERA Open 7 (October 4, 2021), <https://doi.org/10.1177/23328584211039787>; Thomas S. Dee and Mark Murphy, "Vanished Classmates: The Effects of Local Immigration Enforcement on School Enrollment," American Educational Research Journal 57, no. 2 (April 2020): 694-727, <https://doi.org/10.3102/0002831219860816>.

⁵⁹ Hannah Matthews, Rebecca Ullrich, and Wendy Cervantes, "Immigration Policy's Harmful Impacts on Early Care and Education", CLASP, (March 2018),

and early education providers were struggling to support children and families who were under additional stress, including some who had experienced the detention or deportation of a parent.⁶⁰ Several educators were DACA recipients themselves and concerned about losing their own status.

K-12 educators are also impacted, reporting being overwhelmed with the impact of anti-immigrant rhetoric and enforcement activities before the 2016 election and during the Trump administration. They have had to increasingly manage anti-immigrant sentiment between students and protect minority students while also balancing their role as apolitical educators who serve the entire community.⁶¹ In one study, educators reported symptoms consistent with Secondary Traumatic Stress, putting them at risk for burnout, threatening the entire education system.

Immigration enforcement can also impact availability of early care education programs.⁶² Studies have shown that immigration enforcement reduced children's participation in center based child care programs, especially among disadvantaged children, including those of citizen parents.⁶³ One study found that enforcement activities decreased Hispanic enrollment in Head Start programs by 10 percent.⁶⁴

As a result of decreased participation, 46 percent of surveyed early education administrators reported difficulty meeting enrollment goals, further threatening the child care supply for entire communities.⁶⁵ The decrease in center-based child care availability and participation means more

<https://www.clasp.org/publications/report/brief/immigration-policy-s-harmful-impacts-early-care-and-education/>.

⁶⁰ Matthews et al., "Immigration Policy's Harmful Impacts on Early Care and Education," CLASP (March 2018)

⁶¹ Maureen B. Costello, "The Trump Effect," Southern Poverty Law Center, (April 2016), https://www.splcenter.org/sites/default/files/splc_the_trump_effect.pdf; Shena Sanchez, Rachel Freeman, and Patricia Martin, "Stressed, Overworked, and Not Sure Whom to Trust: The Impacts of Recent Immigration Enforcement on our Public School Educators," UCLA Civil Rights Project, (March 2018) <https://escholarship.org/content/qt0w65087r/qt0w65087r.pdf>.

⁶² Ali et al., "Secure Communities as Immigration Enforcement: How Secure Is the Child Care Market?", 2022

⁶³ Umair Ali, Jessica H. Brown, and Chris M. Herbst, "Secure Communities as Immigration Enforcement: How Secure Is the Child Care Market?," IZA Institute of Labor Economics (December 2022), <https://docs.iza.org/dp15821.pdf>.

⁶⁴ "How a Pathway to Citizenship Can Help Children Thrive," Children Thrive Action Network (2021), <https://childrethrivethenetwork.org/2021/10/research-brief-how-a-pathway-to-citizenship-can-help-children-thrive/>.

⁶⁵ Rebecca Ullrich and Shiva Sethi, "No Longer Feeling Safe: Perspectives on immigration policy from early childhood professionals," CLASP (March 2020), https://www.clasp.org/sites/default/files/publications/2020/03/2020_nolongerfeelingsafe_0.pdf.

children, including children of U.S. citizens, are pushed to lower-quality child care settings, which may slow their cognitive and developmental progress.⁶⁶

Detaining and deporting children has devastating consequences for their well-being.

In order to carry out a mass deportation plan, Trump and others from his incoming Administration have indicated the possibility of detaining and deporting children, even those who are U.S. citizens, with their parents. Research has shown both practices to have immediate and long-term harms on children.

There is simply no safe way to detain a child. After the controversial use of family detention to hold recently arrived asylum seekers during the Obama Administration, health and child development experts, including the American Academy of Pediatrics, denounced the practice for its detrimental impact on children's health and safety, concluding that "no amount of time in detention is safe for a child."⁶⁷ Research on U.S. family detention centers during this period consistently found poor access to age-appropriate health care (including documented deaths of young children due to medical neglect while in U.S. custody), poor access to quality education, and severe harms to the mental health of both parents and children in custody, including disruption of the parent-child relationship due to parents' limited authority in such setting.⁶⁸ An evaluation conducted by a committee designated by the Department of Homeland Security recommended the end of family detention and concluded "detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management, or detention is never in the best interest of children."⁶⁹ Thus, any attempt to detain families together prior to deportation for any amount of time would subject them to these same documented risk factors.

We also recognize the risks to child well-being for U.S. citizen children who are forced to return to their parents' country of origin. While we firmly believe in upholding the right of a parent facing deportation to make decisions regarding the custody of their children and whether or not to take their child with them or leave them in the care of another parent or guardian in the U.S., the decision to uproot a child from the only home they have ever known has severe

⁶⁶ Umair Ali et al., "Secure Communities as Immigration Enforcement: How Secure Is the Child Care Market?" 2022. <https://www.sciencedirect.com/science/article/abs/pii/S0047272724000379>

⁶⁷ Julie M. Linton et al., "Detention of Immigrant Children", American Academy of Pediatrics, (May 2017) <https://publications.aap.org/pediatrics/article/139/5/e20170483/38727/Detention-of-Immigrant-Children?autologincheck=redirected>.

⁶⁸ "Family Incarceration Continues to Endanger Children, Impede Access to Legal Information & Waste Government Resources", Human Rights First, (March 2019), https://humanrightsfirst.org/wp-content/uploads/2022/10/Short_Detention_Report_March_2019-1.pdf.

⁶⁹ "Report of the DHS Advisory Committee on Family Residential Centers", Department of Homeland Security, (September 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

consequences, in particular when parents may not have the support in their home country needed. In many cases, a parent left their country due to increased violence, political instability, or natural disasters. Even if the immediate conditions are not dangerous, research has found that when children move with their deported parents, they struggle to integrate into their new communities and schools and face educational setbacks due to language barriers or enrollment challenges.⁷⁰

Conclusion

Ensuring that every child in the U.S. is able to thrive and achieve their full potential is critical for our country's future. While the incoming Administration claims that its mass deportation agenda seeks to target "dangerous criminals," we know from experience that any such effort will once again result in the detention and deportation of parents, including those who currently have DACA or TPS, with dire consequences for their families, children, and entire communities. In addition to well-documented harms of immigration enforcement that we have laid out in this statement, we want to stress that these harms are likely to be combined with a range of other federal and state anti-immigrant policies that threaten several rights from birthright citizenship to access to K-12 education, as well as increased anti-immigrant rhetoric—further compromising the well-being of children, most of whom are U.S. citizens. Ultimately, the failure of Congress to pass a pathway to citizenship will have devastating consequences for families who will be targeted by these attacks in the coming years. Therefore, we urge our allies in Congress to not simply stand by while the future of an entire generation is undermined and to use every possible lever to restrict funding for a mass deportation plan and to hold the incoming Administration accountable to its egregious actions.

We thank you again for the opportunity to submit this statement for the record. Any questions should be directed to Suma Setty, Senior Policy Analyst, at ssetty@clasp.org.

⁷⁰ L.E. Gulbas et al., "Deportation experiences and depression among U.S. citizen-children with undocumented Mexican parents", *Child Care Health Dev.*, (March 2016), <https://pubmed.ncbi.nlm.nih.gov/26648588/>; Zayas et al., "The Distress of Citizen-Children with Detained and Deported Parents" *J. Child Fam Stud.* (January 2015), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4667551>.



Proposed 2024 Mass Deportation Program Would Socially and Economically Devastate American Families

by Matthew Lisiecki and Gerard Apruzzese

October 9, 2024

Executive Summary

In 2017, the Center for Migration Studies (CMS) analyzed the effects of a mass deportation program for undocumented immigrants proposed by then-President Donald Trump (Warren & Kerwin 2017). With now-candidate Trump reintroducing a similar proposal as a key element of his platform, CMS has conducted a new analysis using the most recent available data: the 2022 American Community Survey microdata, released by the US Census Bureau (Ruggles et al. 2024). In this report, we highlight the devastation of mass deportation on both undocumented residents *and* their US citizen and legal noncitizen families and communities. We discuss individual, household, and family characteristics of the 10.9 million undocumented residents living in the US, and 4.7 million households with both undocumented residents and residents with permanent legal status (referred to henceforth as “mixed status” households). We investigate the economic effect of the deportation on US citizens and undocumented residents, as well as the negative fiscal impact on the broader economy should mass deportation be carried out.

Key findings of the updated analysis include:

- 5.8 million US households are home to at least one undocumented resident. Of those, 4.7 million households are home to undocumented residents *and* US citizens or others with legal

status. Therefore, mass deportation threatens to break up nearly 5 million American families.

- Over half of the US undocumented population is woven into American life, having been in the country for at least 10 years; their deportation would damage long-standing communities.
- Mass deportation would push nearly 10 million US citizens into economic hardship. Median household income for mixed-status households would drop from \$75,500 to \$39,000 (a drop of over 48 percent).
- 5.5 million US-born children live in households with at least one undocumented resident, including 1.8 million living in households with two undocumented parents.
- The monetary cost of paying to complete the upbringing of these US-born children in the event of mass deportation is estimated to be at least \$116.5 billion.
- Undocumented workers contribute an estimated \$96.7 billion in federal, state, and local taxes; their removal from the workforce would have a substantial impact on local economies.

This report is one of several CMS publications outlining the negative impacts of a mass deportation policy for undocumented immigrants. In 2017, we analyzed the social and economic impacts of mass deportation using Census Bureau data from 2014 (Warren & Kerwin 2017). Earlier in 2024, we [explored other immediate and](#)

[downstream impacts](#) of the Trump campaign's proposed mass deportation policy, including the moral, legal, and public safety crisis caused by implementing a mass search-and-seizure operation across the nation.

Undocumented Residents in the United States

Using 2022 Census Bureau data, CMS has estimated a population of 10.9 million undocumented individuals (see Warren 2024). Over half (54 percent) of the population is long-term residents, having lived in the US for 10 or more years. As each person stays in the United States longer, their impact and ties to their community only strengthen, increasing the potential disruptions their removal supposes. In the following section, we further describe the undocumented population in the United States in 2022.

In the US, there are 5.8 million households with at least one undocumented resident, up from 5.3 million such households in 2014. 1.1 million households are exclusively composed of undocumented residents, which means that the vast majority (4.7 million) of “undocumented” households contain residents with a mix of legal statuses. Characteristics of mixed-status households are discussed in the following section.

Of the 9.9 million undocumented individuals 16 years and older, 7.6 million are members of the labor force—a labor force participation rate of 77.2 percent.¹ Using ACS data for the full population (16 years and older), the nationwide labor force participation rate in 2022 was 63.5 percent, indicating that undocumented immigrants in the US are more likely to be contributing to the labor force (and, therefore, paying taxes) than the nationwide average. Undocumented workers play a crucial role in filling both current and projected labor shortages

(Lisiecki 2024b). Fourteen percent of undocumented workers, or just over 1 million, are self-employed. Undocumented workers also play a vital role in staffing essential occupations, with 74 percent of undocumented workers working in essential roles, compared to 65 percent of the native-born labor force (Kerwin & Warren 2020).

2.3 million, or approximately one in five undocumented persons over 18, have college degrees, up from 1.3 million in 2014. Of these, 1.4 million undocumented college graduates have degrees in either engineering, business, communications, or social sciences. Of the total undocumented population, nearly 60 percent (6.3 million) speak English well or very well, or only speak English.

Of all undocumented residents, 81.3 percent have incomes at or above the 2022 poverty level. Additionally, median household income of all households with undocumented residents (including both mixed-status households and those with only undocumented residents) is \$71,300. This is \$3,500 less than the national median household income of \$74,800 derived from the ACS. The discrepancy in household incomes is much greater when looking at households composed exclusively of undocumented residents, where the median household income is \$53,200, or \$23,600 less than the national median household income.

Finally, 2.6 million undocumented residents, nearly a quarter of the overall population, had little agency in their immigration status, coming to the United States with family before the age of 15 years old. For more on programs related to legal status for childhood arrivals (including DACA), see Kerwin et al. (2022).

¹ An alternative labor force measure to unemployment rate, used here to indicate intention to work as well as ability to obtain employment. Labor force participation is defined as those who are employed plus those who are unemployed, divided by the total population over the age of 16.

Mixed Status Households

The following section focuses on mixed-status households in the United States. We define “mixed-status” as households with at least one undocumented resident and one resident with legal status (including native-born US citizens, naturalized US citizens, and permanent legal residents). By understanding more about this subset of the undocumented population, we begin to understand the wide-reaching impacts of mass deportation beyond the undocumented population and into broad swathes of American communities.

According to 2022 data, there are just over 7 million undocumented individuals living in households with US citizens. More broadly, 8.5 million undocumented residents are living in mixed status households, alongside either US citizens, other residents with legal status, or both. Forty eight percent of households with at least one undocumented resident (2.8 million households) are the home of at least one US-born child, with a total of 5.5 million US-born children residing in households with undocumented residents. This number, however, does not include any US-born dependents of undocumented parents who now live in other households with no undocumented persons.

Overall, there are 4.7 million mixed-status households (defined as a home with at least one undocumented resident and at least one citizen or legal noncitizen resident), compared to only 1.1 million households which house only undocumented residents. This includes 3.9 million households with both undocumented and US citizen residents, up from the previous version of this report (Warren & Kerwin 2017), which identified only 3.3 million such households. Of 4.7 million mixed-status households, nearly 4 million also include a US citizen. In addition, 726,000 undocumented immigrants are married to a US citizen, with 455,000 of that total residing in the country for at least ten years,

and thus qualifying for the Biden administration’s parole-in-place expansion announced in June 2024 (Lisiecki 2024a).

Conversely, 9.7 million US citizens (adults and children) live in households with undocumented residents. This number, up from 6.6 million such households in 2014, underscores the increased devastation renewed deportation proposals would inflict on US citizens.

Undocumented Residents in Mixed-Status and Undocumented-Only Households

In this section, we facilitate direct comparisons between two groups of undocumented immigrants: those who live in mixed-status households and those who live in undocumented-only households. As a reminder, there are 4.7 million mixed-status households and 1.1 million undocumented-only households, according to 2022 data.

First, undocumented residents who live in mixed households have lived in the United States longer than those in households containing only undocumented persons. Specifically, 57 percent of those in mixed households have lived in the US for 10 years or longer, compared to 41 percent of those in undocumented-only households.

Those in mixed households speak English slightly better than those not in mixed households. Almost 60 percent of undocumented people in mixed households speak English well or very well, or only speak English, compared to 58 percent of residents of undocumented-only households.

When comparing labor force participation, undocumented residents who live in mixed households are less likely to participate in the labor force (75.3 percent) than those in undocumented-only households (83.4 percent). Note that both groups display

significantly higher labor force participation than the nationwide average.

Mixed-status household undocumented residents are more likely to have health insurance. Specifically, 52 percent of undocumented residents who live in mixed households have health insurance coverage, compared with 49 percent of undocumented residents of undocumented-only households.

Household-level Impact of Mass Deportation

5.5 million US-born children under the age of 18 live in households with undocumented immigrants. A mass deportation program would leave these US-born children without one or more of the adults responsible for their care and upbringing. This is even more dire for the 1.8 million US-born children living with two undocumented parents. Assuming that $\frac{1}{3}$ of these children would remain in the US (a fairly conservative assumption), and that each child would have at least one parent or guardian remaining (again conservative, since we know that a significant percentage of these children have two undocumented parents), we apply the estimated cost of raising a child to age 18 (see Lino et al. 2017) and adjust for the average number of years of support needed² in order to reach age 18. A US mass deportation program for undocumented immigrants would therefore create over \$116.5 billion of childrearing expenses currently borne by members of the childrens' households. See Table 1 for calculation details.

² This adjustment takes into account the varying ages of the US-born children. We compute the median age of US-born children who live in households with undocumented residents, 8.27 years. Therefore, the median child requires an additional 9.73 years of childrearing before reaching age 18. Therefore, 9.73 divided by 18.0 years = 54.1 percent.

Table 1. Estimated Loss of Financial Support for US-Born Children Due to Mass Deportation

1	5,542,800	US-born children in households with undocumented residents
2	54.1%	Adjustment for average number of years of support needed per child
3	\$ 233,610	Estimated cost of raising a child to age 18
4	50%	Percent of child support provided by undocumented residents
5	33.3%	Assumes one third of US-born children would remain in the US
6	\$ 116,549,634,770	Loss of financial support for US-born children if mass deportation

6 = 1x2x3x4x5

In addition, 1.3 million undocumented children live in households with other undocumented residents. Beyond the financial costs of raising US citizens left behind by mass deportations, such a program would add to an existing climate of fear. Fear is a known barrier in immigrants' accessing vital public services (including education for US citizen children) and reporting public or workplace safety violations (Alulema & Pavilon 2022).

In addition to the damage fear of mass deportation can have on the family unit, the 9.8 million US citizens living in households with undocumented individuals face economic consequences in the face of a mass deportation program. According to 2022 ACS data, the median income of mixed status households is \$75,500. To understand the economic contributions of the undocumented residents in mixed households, we computed the median household income subtracting the median income of undocumented members of mixed-status households. Without the contribution of undocumented household members, the median household income for mixed-status households would drop to \$39,000, a drop of over 48 percent, pushing millions of Americans closer or into poverty, and increasing the burden on public benefits and charitable institutions. These findings confirm that families must remain intact to ensure the security of these households and the 5.5 million US citizen children in them. In order to further support these American households, pathways to legal status for undocumented residents are imperative.

Broader National Implications

The impact of mass deportations would not only have impacts at the household and family level; the removal of the 10.9 million undocumented residents of the United States would have consequences for the entire nation. For instance, undocumented residents play a role in the US housing market. Nearly 1.5 million, or one in four, of households with at least one undocumented person have mortgages. Deportation would likely cause default on a significant percentage of those 1.5 million mortgages, threatening the US housing market with destabilization.

Additionally, undocumented people in the United States contribute large sums to the American economy. The total undocumented population accrued over \$375 billion in income in 2022. According to estimates from the Institute on Taxation and Economic Policy, undocumented immigrants paid \$96.7 billion in federal, state, and local taxes in 2022 (Davis et al. 2024). Thus, over 25% of undocumented immigrants' income goes towards taxes, public funds which would be lost in the case of mass deportations of undocumented residents of the United States.

The economic and fiscal costs of a mass deportation program detailed above include only costs that can be derived from the American Community Survey and related datasets. As such, they do not include the social and emotional impact of this policy on children and families. These costs can be assumed to be, at minimum, similar to the costs of the Trump administration's 2018 policy of family separation, a policy described by medical experts as one that "will lead to lifelong mental, emotional, and physical damage" (see Buchanan et al. 2021).

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About Center for Migration Studies of New York

The Center for Migration Studies of New York (CMS) is a think tank and an educational institute devoted to the study of international migration, to the promotion of understanding between immigrants and receiving communities, and to public policies that safeguard the dignity and rights of migrants, refugees, and newcomers.

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Statement of

Lindsay P. Cohn, PhD

For the Record of

The Senate Judiciary Committee

Hearing on

“How Mass Deportations Will Separate American Families, Harm Our
Armed Forces, and Devastate Our Economy”

10 December 2024

Lindsay P. Cohn


The views expressed in this document are those of the author and do not represent the views of the
U.S. Naval War College, the Department of the Navy, or any organ of the U.S. government.

Introduction

I am grateful for the chance to submit this statement for the record. I hold a PhD in Political Science and have been researching and publishing on issues of military organizations, military recruiting and retention, public opinion about the military, and civil-military relations more generally, for more than twenty years. My expertise on these issues has been sought by the Senate Armed Services Committee, the National Commission on Military, National, and Public Service, the USMC Talent Management Task Force, the US-Canada Reserve General Officers Advisory Board, the Virginia General Assembly Committees on Public Safety and Courts of Justice, the Deputy Secretary of Defense, and many others. I hope my contribution to this very important discussion will be helpful to the members of this committee.

In my remarks on the question of how a policy of mass deportation would likely affect our military and service-members, I will address five issues: first, the different levels at which intervention might take place and how their consequences may differ; second, military readiness; third, military morale and associated issues such as retention and suicide risk; fourth, recruiting; and fifth, public opinion.

Any level of military intervention in support of mass deportations will have at least some negative effects, and higher levels could have very serious effects. I argue that use of the military for such purposes will degrade readiness and military effectiveness, hurt retention and recruiting, increase mental health issues among service-members, and increase the dangerous trend of different groups in society seeing the military as either with them or against them, weakening society as a whole.

Different levels of intervention

- lowest: increased use of National Guard personnel in a state active duty status (available only in states whose governors choose to support the policy)¹

¹ Lieb 2024

- moderate: increased use of National Guard (in either Title 10 or Title 32 federal status)² and Active Component personnel, but in normal Defense Support to Civil Authorities (DSCA) roles in border areas and supporting federal law enforcement agencies³
- high: increased use of National Guard (in either federal status) and Active Component personnel, in normal DSCA roles, but not in border areas and supporting state or local law enforcement agencies
- extreme: increased use of National Guard (in either federal status) and Active Component personnel, in roles that require orders from the president under any part of 10 USC 251-254

I argue that all of the following consequences may happen at any of these levels, but their intensity and repercussions will increase as the levels of intervention increase.

Readiness

The most obvious and immediate consequence is readiness. The more personnel we have doing this mission, which has not been planned for, the fewer we have available for other missions, training, and crises. Our active duty, Guard, and reserve service-members and their equipment are on a thoroughly planned and budgeted schedule of deployment, training, maintenance, and acquisitions. This does not mean we cannot do any mission that is not pre-planned and pre-budgeted; but it does mean that we should be very conservative about which unplanned missions we undertake. As training, rest, and maintenance cycles are disrupted, and we put additional

² The National Guard can be in one of two federal statuses: Title 10, in which they have been called into federal service for a federal mission and are essentially indistinguishable from Active Component personnel (including receiving federal pay and benefits), and Title 32, in which they remain under the governor's operational control but are doing a federal mission and receive federal pay and benefits. The possibility of using Title 32 section 502(f) to "get around" invoking the Insurrection Act has been raised as a concern. This could be done fairly easily if the president wanted to assist a willing governor by putting troops on a better pay and benefits footing to carry out these missions. It was done fairly easily in the context of Washington DC, as it is directly under federal control and did not require a governor's cooperation. What would be unprecedented would be if the president attempted to order either the National Guard of an uncooperative governor into Title 32 status to do such missions, or the National Guard of a cooperative governor to go into an uncooperative governor's state to do these missions. While there is precedent for the supremacy of federal orders in this status (*Perpich v. DOD*, 496 U.S. 334 (1990)), I do not know of any precedent for a president ordering 502(f) missions inside the United States against the consent of either the sending or receiving governor. All of this is likely to exacerbate the problems of partisanship and division that I highlight below under "public opinion".

³ CRS 2023

wear and tear on both people and equipment, we reduce our overall readiness and our ability to respond to other crises. We also reduce the applicability of existing plans, which are predicated on certain levels of readiness and available equipment.

Our National Guard are one of the most experienced and capable disaster response organizations we have. If they are largely assisting law enforcement for this unscheduled mission instead of resting, training, and doing maintenance, they will be less available for disaster and crisis response. This is true not only while they are deployed, but for some period after that until needed rest and maintenance have taken place. This also has implications for retention (see below under morale).⁴

Responding to one crisis always reduces our ability to respond to another. Domestic law enforcement is not the primary or even secondary mission of our active duty and reserve personnel. If they are called upon for a major domestic deployment of this kind, they will be less available and less ready to respond to other events in the world that challenge U.S. national security and interests and for which they are trained and optimized. It is extremely risky to tie them up in a tertiary mission and invite U.S. adversaries to attack our interests when they know our ability to respond is seriously diminished.

Morale

The second major issue is with the morale of our personnel. Morale affects their performance, their retention, their health, and is linked to rates of service-member and veteran suicide.⁵

When service-members are called upon to do an operation they a) have not been specifically trained to do and b) do not consider a legitimate part of their role or mission, this can have multiple deleterious effects.⁶ It can make them feel like they have less sense of purpose (“this is not what I trained/joined to do”); it can lower their general sense of morale (enthusiasm for and belief in their mission); it can lower unit cohesion (as people begin to disagree over the mission because there is no doctrine, training, or organizational narrative to unify them around it); and it significantly increases the risk of moral injury (the psychological and emotional damage a person sustains when they are compelled to do something they believe is or may be wrong).⁷

⁴ Winkie and Barragan 2022; Winkie et al. 2022

⁵ Bryan et al. 2014; Nazarov et al. 2015; Bryan et al. 2018; Trachik et al. 2020

⁶ Harig and Ruffa 2022, esp. 91-93

⁷ Bryan et al. 2014; Cohn Warrior 2015, 100-102; Nazarov et al. 2015; Bryan et al. 2018; Trachik et al. 2020

All these things – sense of purpose, morale, unit cohesion, and moral injury – are clearly linked to both retention problems and suicide risk.⁸

While the first three “levels” of intervention mentioned above (state active duty and Defense Support to Civil Authority) do have some doctrine to support them, generally only some National Guard personnel have any training or experience with such missions, and only Guard are likely to consider them as potentially within their normal mission set. Most military personnel see operations like this as unrelated to their core mission. Recent research confirms what decades of anecdotal evidence tells us: the US military does not like the domestic law enforcement mission, specifically because it believes it to be inappropriate and illegitimate.⁹ This means that the risk of all the above-noted consequences exists at all levels of intervention and goes up with each level.

Recruiting

While the services improved their recruiting record in FY 2024 over FY 2023, the overall trends are problematic for military recruiting. Specifically low unemployment, a shrinking proportion of eligible young people, a smaller pool of highly-propensed young people,¹⁰ lower confidence in both the military in particular and the government in general, and demographic trends in which the fastest growing youth populations are not groups from which the military has traditionally recruited heavily.¹¹

The biggest recruiting challenge is to attract the non-propensed. Currently the two top reasons young people give for not wanting to join the military are the possibility of physical injury or death and the possibility of PTSD or other emotional/psychological issues.¹² If young people hear of higher rates of PTSD, depression, moral injury, etc., they will be less recruitable.

Recruiting the non-propensed also involves convincing them they:

- Could belong in this organization
- Belong to the community this organization is meant to serve

⁸ Bryan et al. 2014; Nazarov et al. 2015; Bryan et al. 2018; Trachik et al. 2020; Solorio 2024

⁹ Hanson and Knuppe 2024

¹⁰ A young person is considered “high propensity” if they respond either “definitely” or “probably” to the JAMRS DOD Youth Poll question, “In the next few years, how likely is it that you will be serving in the Military?”

¹¹ Kleykamp, Schwam, and Wenig 2023; Cohn 2019. Those youth demographic groups that are fast-growing but not traditionally rich recruiting sources include Asian youth, Hispanic/Latino youth, non-Christian youth, and urban youth.

¹² JAMRS 2023

- Will be doing something worthwhile/something they can believe in (not necessary, but very helpful)¹³

This kind of operation is not likely to appeal to the demographic groups that are growing in US society.¹⁴ That is because operations like this, which are politically charged and may cause significant controversy as implemented, will highlight the disagreement in the country over who really belongs here and is part of the community. The more this is highlighted as an issue, the more we will see some young people turn away from military service simply because they do not see themselves as part of the community that the military is serving, or see what the military is doing as the kind of service they want to engage in. While some young people may approve of these operations, it is unlikely they will have the kind of recruiting draw that more unifying missions do.

Public Opinion

Finally there is the issue of how operations like this are likely to affect public perception of the military, and, by extension, the relationship between service-members and society.

Public opinion about domestic military deployments appears to depend partly on whether the public views the situation as a security threat or as something else (like traditional law enforcement or political protest).¹⁵ The more they see it as a security threat, the more willing they may be to accept a military response.¹⁶ The fact that the incoming administration and people associated with it have been using the language of “invasion” and talking about immigrants as threats to the security of American lives, culture, and jobs, is perfectly calculated to make certain segments of the public accepting of a military response. But it is important to recognize that large segments of society still do not view immigrants or immigration this way,¹⁷ and for them, the use of the military is likely to appear significantly less appropriate and legitimate than a traditional law enforcement response.¹⁸

- Republicans are likely to approve of these operations and to approve of the military doing them

¹³ Cohn 2019, 5ff.

¹⁴ Latino and Hispanic as well as Asian communities are very politically diverse and will not react monolithically. Some may be more attracted to the military, but others will not be

¹⁵ Blankshain, Cohn, and Lupton 2024; Hanson and Knuppe 2024

¹⁶ Blankshain, Cohn, and Lupton 2024

¹⁷ PRRI Report 2023 <https://www.prii.org/research/are-immigrants-a-threat-most-americans-dont-think-so-but-those-receptive-to-the-threat-narrative-are-predictably-more-anti-immigrant/>

¹⁸ Blankshain, Cohn, and Lupton 2024

- Democrats are far less likely to approve of the operations and less likely to approve of the military doing them. They are also likely to feel that the military should have resisted the orders, and thus to associate the military with the policies in a way that lowers Democratic confidence/trust in the military
- Republicans are likely to be reinforced in their view that the military “belongs” to “their side”, and Democrats are likely to be reinforced in the opposite view.¹⁹ This is a problem for recruiting (as noted above), but also a problem for the health of democratic institutions; for democracy to function, people need to believe that the institutions serve everyone, not one particular party’s interests.²⁰

Conclusion

Legally speaking, many of these uses of the military are justifiable, but practically speaking, they would be very unwise. The potential consequences for U.S. national security and interests, for the morale and effectiveness of our service-members, for recruiting and retention, and for the overall health of Americans’ relationship with their military, are significant and severe.

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Church World Service Statement to the Senate Judiciary Committee on its [Hearing](#) – “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy”

For nearly 80 years, Church World Service (CWS) has served people who have been uprooted from their homes, supporting their successful integration into new communities across the country. CWS envisions a world in which all people have food, voice, and a safe place to call home – representing refugee resettlement offices and affiliates, home study and post release services for children, and case management and integration services for newcomers. CWS is also a faith-based organization, representing 14 member faith organizations and communions. It is this perspective as a faith-based organization and service provider that informs the following statement.

In the December 10 hearing titled “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy,” CWS urges the Senate Judiciary Committee to recognize the tremendous harms of mass deportation on our communities and heed the call of faith communities standing in solidarity with communities that may be targeted by mass enforcement and deportation policies.

Mass deportation policies are costly, impractical, and inflationary. A strong American economy cannot exist alongside restrictive immigration policies and mass deportation. There is nothing more inflationary than a shock reduction in workforce across scores of essential fields. The Penn Wharton Budget Model [found](#) that even a far more modest deportation program than the one proposed by the Trump-Vance campaign would result in a budgetary loss of \$350 billion over two decades. The American Immigration Council [found](#) that a one-time mass deportation operation would cost \$315 billion.

Mass deportation separates families and harms communities. More than [8.5 million](#) U.S. Citizens live in mixed-status families and households. Deportations destabilize families and communities, generating cascading financial and social impacts born by states and localities. These policies also contemplate a significant increase in immigrant detention (the site of [widespread, documented](#) human rights abuses and inhumane conditions), and even a reinstatement of family detention, a practice widely condemned for its harmful physical and psychological impacts on children.

Congress must hear the prophetic voice of faith communities standing in opposition to unjust mass deportation and detention policies. Church World Service has played a supportive role in the Sanctuary Movement since its inception, and CWS and its member denominations and covenant partners continue to be integral players in the work standing in solidarity and accompaniment. Our nation’s diverse faith traditions compel us to love our neighbor, accompany the vulnerable, and welcome the sojourner. We are called by our sacred texts to approach one another with love – not fear – and affirm the value and dignity of all. Mass deportation and detention impacts our congregations and their communities and stands in direct opposition to our moral values.

Congress has the power and opportunity to oppose funding mass deportation programs and invest in policies that lift up communities. Members of Congress will have numerous opportunities in the coming months and years to limit harm and refuse to fund a dramatic expansion of detention and deportation infrastructure. Instead, Congress must continue and expand investments in newcomers and the communities where they have settled, including by supporting legal representation and integration programs. Church World Service urges the Senate Judiciary Committee to use this hearing to recognize and share the harms of mass deportation and support communities around the country where immigrants and newcomers are driving collective benefit and wellbeing.

Statement on the Effects of Deportation and Forced Separation on Immigrants, their Families, and Communities

A Policy Statement by the Society for Community Research and Action: Division 27 of the American Psychological Association

Highlights

- Negative psychosocial effects of deportation on individuals, wives, children, and communities.
- Contextual effects surrounding deportation.
- National and judicial policy recommendations.
- Local jurisdiction policy recommendations.
- Policy recommendations for neighborhoods and institutions.

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Executive Summary

Deportation has numerous detrimental impacts on individuals who are deported, and on the families and communities they are forced to leave behind. This policy statement reviews the empirical literature to describe the effects of deportation on the individual, families, and the broader community, in order to inform policy and practice recommendations.

This policy statement is an official statement of the Society for Community Research and Action, Division 27 of the American Psychological Association, and does not represent the position of the American Psychological Association or any of its other Divisions or subunits.

This brief was written by Regina Day Langhout, Sara L. Buckingham, Ashmeet Kaur Oberoi, Noé Rubén Chávez, Dana Rusch, Francesca Esposito, and Yolanda Suarez-Balcazar. None of the authors who worked on this policy brief have a conflict of interest.

The Society for Community Research & Action takes a strength-based approach to research and action. This brief, however, focuses exclusively on the impacts of deportation. There are multiple ways in which people, individually and in community, organize to respond to deportation, as well as the threat of deportation. These actions show the resistance and resilience of communities. These responses, however, are beyond the scope of this specific document. SCRA members are in the process of summarizing the literature in this area to make policy recommendations as well. This additional brief is forthcoming.

Deportations have markedly increased in the US in the past three decades, with 340,056 people being deported from the country in 2017 (US Department of Homeland Security, 2017). Most people who are deported have lived in the country for over a decade and many are parents or caregivers of US citizens (Brabeck, Lykes, & Hershberg, 2012; Brabeck & Xu, 2010; Dreby, 2012; TRAC Immigration, 2006). Approximately, 5.9 million US citizen children (and at least three million more children who are in the US without authorization) have at least one caregiver who does not have authorization to reside in the United States (Mathema, 2017; Zayas & Cook Heffron, 2016). Immigration policies have moved away from the goal of family reunification, and have the potential to harm US citizens by separating families—including children—from their parents. For example, the hardship exemption of the Immigration and Nationality Act limits exemptions of deportation to parents, children, and spouses. Consequently, extended family caregivers, such as grandparents, are ineligible for the exemption in spite of any undue hardship caused to their US citizen family members from their deportation (Zug, 2009).

The effects of deportation are felt by individuals, families, and communities. Nearly four in five families screened in family detention centers have a “credible fear” of persecution should they be forced to return to the countries from which they migrated (US Citizenship and Immigration Services, 2016). Many of those deported are forced to return to dangerous, turbulent environments, and

deportations have resulted in kidnapping, torture, rape, and murder (Stillman, 2018). Deported individuals often find it challenging to support their families, and coupled with the trauma and stigma of the deportation, may find it difficult to maintain contact with family members; this often leads to severed relationships (Dreby, 2012; Hagan, Castro, & Rodríguez, 2010; Zayas & Bradlee, 2014; Zayas & Cook Heffron, 2016).

Family members left behind suffer multiple psychosocial consequences. Separation of a child from a parent due to deportation is associated with economic hardship, housing instability, and food insecurity (Capps et al., 2015; Chaudhary et al., 2010; Dreby, 2012). Family members are often forced to take on new roles to make ends meet: the remaining caregiver(s) must often work longer hours, leaving little time for contact with children; older children often become primary caregivers of younger siblings and/or must work to support the family, impacting school performance and retention (Chaudhary et al., 2010; Dreby, 2012). Following deportation of a family member, children demonstrate numerous emotional and behavioral challenges, such as eating and sleeping changes, anxiety, sadness, anger, and withdrawal. Even if the family is ultimately reunited, the consequences of their forced family separation often remain (Brabeck et al., 2012; Dreby, 2012; Hagan et al., 2010).

Moreover, the broader community suffers negative consequences of deportation regardless of first-hand experience. Following immigration raids and deportations, community members are often more fearful and mistrustful of public institutions, less likely to participate in churches, schools, health clinics, cultural activities, and social services, and more reluctant to report crime to the police (Capps, Rosenblum, Chishti, & Rodríguez, 2011; Hagan, Rodríguez, & Castro, 2011; Hagan et al., 2010; Sládková, Mangado, & Quinteros, 2012; Vargas, 2015). Studies have also demonstrated that immigrant adults are emotionally taxed following deportations and the threat of deportations in their communities; associated anxiety and psychological stress has been linked to cardiovascular risk factors (Brabeck et al., 2012; Martínez, Ruelas, & Granger, 2017; Torres et al., 2018). Immigrant children living in communities where immigration raids have taken place feel abandoned, isolated, fearful, traumatized, and depressed (Adames & Chavez-Dueñas, 2017; Capps, Castañeda, Chaudry, & Santos, 2007). Moreover, children—regardless of immigration status—experience fear and shame regarding deportation, which impacts their sense of self and well-being (Dreby, 2012).

In order to assuage the myriad devastating consequences of deportation on individuals, families, and communities, the US should make policy and practice changes. Federal immigration policies should keep

families together through comprehensive immigration reform that ends the threat of deportation and bolsters hardship exemptions for all family members. Local communities should prioritize safety and inclusion for all families, regardless of immigration status, by developing programs to foster support networks, sense of belonging, mental health/healing, building community, and collective political action, as these types of programs foster hope and wellness for children and families.

Introduction

This brief first describes specific aspects of current US immigration policies. It then reviews the empirical literature to describe the effects of deportation on the individual, families, and the broader community. The literature focuses primarily on deportations of Mexican and Central American immigrants, which are the largest groups of immigrants to the US at this time. Findings from these studies form the foundation for policy and practice recommendations, which comprises the last section of this policy statement, but there is no reason to expect that these findings are inapplicable to other immigrant groups.

Policy Background

Changes in US policies around immigration and deportation affect individuals, families, and communities in which deportations occur. Over the past three decades, US policies and procedures have changed markedly twice. In 1996, the Antiterrorism and Effective Death Penalty Act and the Illegal Immigrant Reform and Immigrant Responsibility Act were passed into law. These laws expanded the types of offenses for deportation, enabled retroactive deportation, and weakened judicial review over deportations (Brabeck et al., 2012; Hagan et al., 2010). The second change came after the 2001 passage of the USA PATRIOT Act, which also increased administrative authority over deportations. With these changes came a massive increase in deportations. From 1900 to 1990, approximately 20,000 people were deported each year. In the mid-1990s, the deportation rate increased by 800 percent to 180,000 a year, but has since more than doubled to 340,056 deportations in 2017 (US Department of Homeland Security, 2017, table 39). Of those deported, approximately 40% in 2016 had a prior criminal conviction (US Department of Homeland Security, 2017, table 41), meaning that most enforcement policy is aimed at those who do not have criminal convictions (Brabeck et al., 2012; Dreby, 2012; Hagan et al., 2010, 2011; US

Government Accounting Office, 2009). The majority of those deported have lived in the US for over a decade, with the median length of residence being 14 years (Brabeck & Xu, 2010; TRAC Immigration, 2006). Further, a growing number are parents whose children are US citizens (Braback et al., 2011; Dreby, 2012). These changes in immigration policy have moved the US away from the explicit goal of post-World War II immigration policy: family reunification (Hagan et al., 2010). Moreover, although the hardship exemption to the Immigration and Nationality Act authorizes the cancellation of deportation if such deportation would cause undue hardship to a US citizen, it limits deportation stays to the person's spouse, parent, or child. Consequently, grandparents, who are often primary caregivers of US citizen children, are ineligible for this exemption (Zug, 2009).

Psychosocial Effects of Deportation on the Individual

In addition to the trauma, violence, or abuse experienced prior to migration, during the migration journey, or during detention, many immigrants who are deported return to extremely dangerous and often turbulent environments in their countries of origin. Researchers at the Global Migration Project developed a database recording people who had been deported and then faced death or other harms (Stillman, 2018). The researchers contacted more than two hundred local legal-aid organizations, domestic violence shelters, and immigrants' rights-groups nationwide, as well as migrant shelters, humanitarian operations, law offices, and mortuaries across Central America; they also interviewed several families (Stillman, 2018). Their database includes numerous cases where deportations resulted in harm, including kidnapping, torture, rape, and murder (Stillman, 2018). This is especially important to consider given 79% of families screened in family detention centers have a "credible fear" of persecution if they returned to the countries from which they migrated (US Citizenship and Immigration Services, 2016).

Psychosocial Effects of Deportation on Family Members

Nearly 10% of US families with children have at least one member without citizenship, and 5.9 million US citizen children have at least one caregiver who does not have authorization to reside in the United States (Mathema, 2017; Romero, 2003). Therefore, deportation policies and procedures affect a much larger percentage of US citizens by association. Several studies provide evidence that

the forcible separation of a family is associated with negative psychosocial effects for children and other family members (Adames & Chavez-Dueñas, 2017; Capps et al., 2015; Chaudhary et al., 2010; Dreby, 2012; Hagan et al., 2011; National Council of La Raza, 2007). Indeed, we would expect the effects to be severe for these families since separation is not by choice and often occurs suddenly and unexpectedly, with little preparation or planning (Brabeck et al., 2012; Dreby, 2012). In this section, we discuss effects on children and the family unit.

The effects of sudden and forcible separation of a parent due to deportation on children are considerable. In a study of 190 children in 85 immigrant families across six US cities or towns spanning from the west coast to the south, Chaudhary et al. (2010) concluded that children faced serious challenges due to deportation of a parent, including economic hardship, housing instability, food insecurity, and separation from parents. Children experienced behavioral changes in eating and sleeping habits, and emotional changes such as increased crying, anxiety, anger, aggression, withdrawal, and a heightened sense of fear. These outcomes were still present 6 months later. In another study of 91 parents and 110 children in 80 households in Ohio and New Jersey, results were similar (Dreby, 2012). A third study conducted in three cities after immigration raids also showed consistent results, with children feeling abandoned, isolated, fearful, traumatized, and depressed (Capps et al., 2007). Similar results were obtained by Zayas (2015) in a study of citizen children of unauthorized parents. In fact, in a comprehensive review of the literature that ranged from 2009 to 2013, Capps et al. (2015) discerned that children experienced psychological trauma, material hardship, residential instability, academic withdrawal, and family dissolution after the deportation of a family member. Children who were present at the moment a parent was detained tended to have greater emotional, cognitive, and behavioral effects (Chaudhary et al., 2010). Furthermore, after a deportation, older children often needed to take on jobs to help support the family, which impacted school performance, persistence, and retention.

The family unit is also greatly affected by deportation. The majority of those deported are men (TRAC Immigration, 2014). When this person is a father, frequently mothers become single parents, often with no or little income, and sometimes facing large legal bills (Dreby, 2012). Indeed, a study of immigration enforcement in six US locations between 2006 and 2009 found that families lost 40%–90% of their income, or an average of 70%, within 6 months of a parent's immigration related arrest, detention, or deportation (Capps et al., 2016). Given this context, mothers often work long hours, frequently at more than one job, which results in reduced contact with their

children. Older children often become primary caregivers to younger siblings due to lack of affordable child care options. Moreover, parents fear losing custody of their children because of their new circumstances or threats made by immigration officials (Brabeck et al., 2012; Dreby, 2012). Furthermore, deported parents find it difficult to obtain work that would enable them to help support their families who are still in the US, which is demoralizing. This new circumstance, coupled with the trauma and stigma of the deportation, may make it difficult to maintain contact with children. A diminished emotional connection, combined with attachment-related issues brought on by a sudden separation, can effectively sever father–child and husband–wife relationships (Dreby, 2012; Hagan et al., 2010; Zayas & Bradlee, 2014). Because of these dynamics, it is often mothers who bear the largest burdens after a deportation. Even if the family is reunited, effects of the forced separation on all family members often remain (Brabeck et al., 2012; Dreby, 2012; Hagan et al., 2010). The effects of potential parental deportation on US citizen children are arguably complex; however, in one study, children who accompanied their deported parents back to Mexico described profound adjustment difficulties, including a sense of loss regarding their future and the resources available to them (Gulbas & Zayas, 2017).

These impacts extend beyond the nuclear family to grandparents and other relatives. Three of four Latinx¹ grandparents co-parent with their grandchild's parent(s) (Fuller-Thomson & Minkler, 2007). Moreover, more than 4.4 million children live in grandparent-headed households, thousands of whom are US citizen grandchildren of unauthorized grandparents. With the number of grandchildren being raised by grandparents on the rise and higher than it has ever been in this country, grandparent deportation is of great concern. Zug (2009) estimates that thousands of grandparents who are primary caregivers to US citizen grandchildren are at risk for deportation. Grandparent-headed households already face more challenges than parent-headed households, including higher rates of poverty and stressful life events with fewer resources (Fuller-Thomson & Minkler, 2007). Although grandparent caregivers experience these challenges, their grandchildren do much better than those placed into foster care, and grandparent caregiving is associated with more positive grandchild psychological well-being and healthy development across the lifespan (Copen, 2006). When grandparents face deportation, their grandchildren may not only lack a primary caregiver (if their grandparent is co-parenting), but may lose their only caregiver and be placed in

foster care, putting them at risk for multiple placements and poorer outcomes.

The effects on children and other family members when another family member is deported are exacerbated by limited mental health services. Furthermore, when they are available, there are still barriers to accessing resources (Capps et al., 2015). These barriers range from a lack of therapists who are able to provide culturally informed services, to a lack of insurance coverage, to unfamiliarity with therapy and mistrust of local services due to the deportation that has occurred (Brabeck & Xu, 2010; Hagan et al., 2011).

Psychosocial Effects of Deportation on Communities

When someone is deported in the broader community, research indicates that others in that community become fearful and mistrustful of public institutions, reducing adult and child attendance and participation in churches, schools, health clinics, cultural activities, and other vital social services designed with public health in mind (Capps et al., 2011; Hagan et al., 2010, 2011; Vargas, 2015). For example, a national study of mothers found that an increase in risk of deportation is associated with a decrease in Medicaid use, which has negative consequences for children's health and well-being in the short- and long-term (Vargas, 2015). Moreover, immigrants reduce their participation in the life of the community, including reducing visits to parks, libraries, restaurants, and other community events (Hagan et al., 2011). This lack of social integration likely has significant negative effects on immigrants and their communities. Indeed, social integration promotes a sense of well-being and purpose in individuals' lives and is associated with lower risk of overall cancer and mortality, lower rates of cardiovascular disease, less functional decline and distress, and lower psychological distress and suicide risk (Berkman, Glass, Brissette, & Seeman, 2000; Dalgard & Thapa, 2007; Unger, 1999).

When deportations occur, fearfulness and mistrust extend to public safety officials. Specifically, trust has broken down between Latinx communities—particularly Latinx immigrant communities—and local law enforcement. The breakdown is acute when local officials are involved in immigration actions through 287(g) agreements or other policies (Hagan et al., 2010, 2011; Theodore, 2013). These agreements expect local law enforcement to act as federal immigration agents, which makes entire immigrant communities mistrustful of local authorities, which has implications for community safety. Specifically, families report being unwilling to call police for any reason after a deportation (Dreby, 2012; Sládková

¹ The term "Latinx" is more gender inclusive than "Latino" and is therefore used here.

et al., 2012). Indeed, results from a telephone survey in four cities indicate that unwillingness to call the police is strongest for those who are unauthorized, with 70% surveyed reporting that they would not call police even if they were victims of crimes (compared to 44% of Latinx people who were documented immigrants or US citizens; Theodore, 2013). In other studies, families and children reported fear of all police due to their role in deportation and forced family separation (Brabeck et al., 2012; Dreby, 2012). As a consequence, serious crimes, such as domestic violence, may be reported less frequently, which results in many community members losing access to mechanisms of protection (Sládková et al., 2012). The proliferation of ICE activity has also disrupted the notion of “safety” that once characterized neighborhood schools (Crawford, 2017) and other city/municipal resources, such as hospitals (Martinez et al., 2015), that were safeguarded from federal immigration enforcement. In fact, one survey of primary care and emergency care providers found that 48% reported that ICE activity negatively impacted patient access, further attesting to how ICE activity should be considered a social determinant to health (Hacker, Chu, Arsenault, & Marlin, 2012).

In addition to affecting public life, individual well-being for others in the community where the deportation occurred is also affected. The threat of deportation could come from many different places, including simply hearing about the deportation of another person in the broader community, the news, or the internet. For example, 18 immigrant adults from Guatemala and Honduras who were living in Massachusetts and Rhode Island were interviewed 1 year after an immigration raid in the region (Brabeck et al., 2012). These adults reported that they were emotionally affected by deportations and threat of deportations in the broader community. They discussed sadness, fatigue, feeling hopeless, anxious, fearful, mistrustful, worried, and hypervigilant. They also experienced nightmares and weight fluctuations (Brabeck et al., 2012). In fact, the majority of those interviewed (67%) described fears that occurred on a daily basis. The constant anxiety and psychological stress associated with fear of deportation for oneself, family members, or others in the community is also related to cardiovascular risk factors (Martinez et al., 2017; Torres et al., 2018). For example, a study in California with 545 Mexican-origin women found a significant link between fear of deportation and cardiovascular risk factors, such as greater body mass index, greater risk of obesity, larger waist circumference, and higher pulse pressure (Torres et al., 2018).

Parents also report negative effects for their children. In a study where 132 Latinx immigrant adults living in the northeastern US were surveyed 2 years after an immigration raid, those who had a greater level of deportation

vulnerability (i.e., were unauthorized and had been detained or deported in the past, or had a family member who had been deported) noted more negative outcomes for their children, such as poorer school performance and emotional well-being for fear of deportation (Brabeck & Xu, 2010). These results are consistent with the aforementioned study with immigrants from Guatemala and Honduras. Many of these parents (44%) discussed the threat of deportation of a family member being related to their children’s poorer academic grades, depression and anxiety symptoms, and behavioral distress.

It is not only parents who have noted negative effects for children after community raids. Indeed, children’s fear and shame have been documented in ethnographic research (Dreby, 2012). Often, community narratives around deportation are vague and abstract, potentially leading children to think that anyone who is an immigrant can be easily deported. Indeed, of the 110 children interviewed in this study, 29 were unauthorized but almost all 110 talked about the possibility of deportation for themselves or a family member (Dreby, 2012). These fears of deportation transcended legal status, and if the child knew someone who had been deported or not. For many, this fear was connected to shame and secrecy; children were ashamed to be or to have family members who were immigrants due to social stigma and fear of deportation. These outcomes, widespread for the children interviewed regardless of contact with the Department of Homeland Security or deportation processes, were “devastating for children’s identity and sense of self,” as well as their overall well-being (Dreby, 2012, p. 841).

Broad Contextual Factors that Affect Individuals, Families, and Communities

The results summarized in this research span the Bush and Obama administration years, with most collected while Obama was president. Moving forward, we must also recognize the overarching socio-political shift in climate that is fostering an even greater hostile and negative discourse surrounding immigrants and immigration policy. For example, immigration reform emerged as a key issue of debate in the 2008 presidential election, and despite executive orders for DACA, activities under the Obama administration remain highly criticized by immigrants’ rights and advocacy groups (e.g., increased deportations, creation of “priority juvenile docket” in 2014 in response to the crisis of unaccompanied minors). Unfortunately, this “mixed legacy” of the Obama administration coupled with an increasingly divisive rhetoric around immigration leading up to the 2016 election (see Chishti, Pierce, & Bolter, 2017) has created a particularly hostile

environment that proliferates anti-immigrant sentiment, defamatory/hate speech, and racist remarks. This is not the first time that a harsh socio-political climate escalated during our recent US history. For example, post 9/11 marked another time with a rise in hate crimes (Chung, Bemak, Ortiz, & Sandoval-Perez, 2008), prompting advocacy efforts for comprehensive tracking of hate crimes (Anti-Defamation League, 2004).

Ongoing xenophobic attitudes and anti-immigrant sentiments, fueled by misinformation of facts (see Anti-Defamation League, 2016), have created a heightened sense of fear, mistrust, and psychological distress among immigrant communities and other marginalized groups (Hiers, Soehl, & Wimmer, 2017; Tobar, 2017; Yee, 2017). Moreover, the current Trump administration continues to put forth harsh policies, including changes to regulations that require ICE to detain pregnant women (Sacchetti, 2018). In fact, between January 20th (first official day of Trump administration) and September 30th, 2017, approximately 16,000 more individuals who already lived in US were deported (this excludes deportation of people detained at the border) as compared to the year 2016 (last year of Obama administration) (U.S. Immigration and Customs Enforcement, 2017). Shifts in overt attitudes and policies are important because perceived discrimination perpetuated by others may exacerbate poor outcomes among those living in the US without authorization (e.g., Cobb, Meca, Xie, Schwartz, & Moise, 2017). Moreover, significant adverse psychological effects due to anti-immigration actions have been reported across groups, regardless of status (Roche, Vaquera, White, & Rivera, 2018). Other historical legislative actions ("Amnesty Act" in 1986) and policies (DACA) were arguably intended to support immigrant integration and opportunities for civic engagement. More inclusive and responsive policies have important implications that help mitigate the effects of anti-immigrant contexts. For example, a review of Oregon Medicaid claims data showed that children's anxiety and adjustment claims decreased by 4.5% post-DACA (i.e., Hainmueller et al., 2017), and U.S. National Health Interview Data demonstrated a significant decrease in self-reported psychological distress among Latinx non-citizens post-DACA (Venkataramani, Shah, O'Brien, Kawachi, & Tsai, 2017).

Alternatives to Deportation, and Recommended Policies and Practices

National Laws and Judicial Review

1. Take into account what is in the best interests of US born children in immigration reform. Consistent

with the position of the American Psychological Association, immigration policies should keep families together and discourage deportation. The Society for Community Research and Action calls on the US Congress to pass, and the president to sign, comprehensive immigration reform that would offer permanent protections to all 11 million people who are unauthorized to reside in the US currently and end the threat of deportation. This would protect the human rights of many individuals who have lived in this country for some years, and have strengthened US society. It would serve to further strengthen society, from a public health standpoint, because the adverse psychosocial effects would be reduced for individuals and families, just as the harms to broader communities would be mitigated.

2. Do not forcibly separate families given the demonstrated negative impact on children, other family members, and the broader community. As shown in the literature, the psychological consequences of separating families are long term and devastating to all involved. Therefore, policymakers should consider the human rights aspects of family unity (Brabeck et al., 2012). The 1969 American Convention on Human Rights and the 1966 International Covenant on Civil and Political Rights provide a foundation for these positions.
3. Modify the hardship exemption to deportation statute in the Immigration and Nationality Act to include other family members in order to reflect the reality of kinship care in this country, such as grandparents, aunts, uncles, and cousins.
4. Narrow the scope of enforcement and removal activities and take into account parental and caregiving status, and length of residence in the US.
5. Consider the burden placed on the larger community by immigrant detention and deportation. Specifically, policymakers should take a public health perspective on deportation, recognizing the direct and indirect impacts of deportation on the emotional/behavioral health of community members via mechanisms such as increased mistrust of public institutions, negatively impacting community members' likelihood of reporting violent crimes and receiving needed protection (Dreby, 2012).
6. Increase judicial review and discretionary authority of judges over deportation cases, as was the case prior to the passage of the Antiterrorism and Effective Death Penalty Act and the Illegal Immigrant Reform and Immigrant Responsibility Act in 1996. Processes that have such detrimental effects for families and communities deserve oversight by another governmental body, in this case, the judiciary. For example, weakening the judicial review process also removed legal constraints

that protected families and immigrants (Hagan et al., 2010, 2011; Kanstroom, 2007).

7. Ratify the 1990 International Convention on the Protection of Rights of All Migrant Workers and their Families, which would create a human rights framework in US immigration policy.
8. Ensure that there are no deportation quotas, in policy or practice. Previous quotas have resulted in the expansion of detention to those who were detained and deported simply due to immigration status (Hagan et al., 2010).

Local Jurisdictions

1. Local jurisdictions should declare themselves as sanctuary cities to enhance the protection of unauthorized immigrants and their families.
2. Local jurisdictions should not detain or deport people solely for immigration violations in local and state law enforcement.
3. Local school districts should be encouraged to build communications with their communities that prioritize safety and inclusion for all immigrant families, regardless of status. This would include a protocol for responding to ICE activity near schools and educating school personnel on the effects of immigration enforcement (i.e., threat of detention and possible deportation) on families and students. Moreover, the community's level of engagement with schools should increase to offer additional supports, just as the school should engage the community to offer community-level support.
4. Cities and other local jurisdictions should end their 287 (g) agreements, which have been controversial from the start. Specifically, communities are afraid to call local public safety officials, who are perceived as potentially deporting individuals with whom they come into contact, regardless of the behavior of the individual.
5. Local efforts are critical during post-deportation, in order to foster supportive social networks and create a sense of belonging among families. For example, schools, places of worship, and community organizations can provide important resources, both tangible and emotional. Programmatic efforts should be intentional with supporting mental health/healing, building community, and collective political action, as these types of programs foster hope and wellness for children and families (Ginwright, 2015).

Neighborhoods/Communities and Institutions/Sectors/Systems

1. Action efforts can also be concentrated at the community- or neighborhood-level to foster the well-being of

immigrant families and mitigate the negative effects of detention and deportation policies.

- a. Communities should educate local immigrants on their rights and ways to protect themselves through avenues such as Know Your Rights trainings, policy blasts/newsletters, and community forums.
 - b. Crowd-sourcing and fundraising should be readily available for families affected by detention and deportation.
 - c. Community members should build on existing community assets and strengths to support other community members during times of trauma due to fear of deportation.
 - d. Those who are not affected by deportations can become legal observers of detention and deportation actions and advocates for ending detention and deportation.
 - e. Those not affected by anti-immigrant hostilities can be trained in bystander interventions, and intervene when asked and/or when appropriate.
2. Institutions across local sectors—government, education, medical, social services—also serve an important role in creating safe access and equitable outcomes for all immigrants regardless of immigration status, and should create spaces where those who access services can feel heard, supported, protected, and valued.
 - a. Municipal governments should strengthen and/or create departments dedicated to supporting immigrant community members. Such departments may serve multiple purposes: to direct individuals to appropriate resources, to listen and respond to the challenges experienced by immigrants in the municipality, and to provide public awareness campaigns focused on valuing immigrant community members.
 - b. K-20 schools should invest in professional development for teachers and administrators on immigration policy, responsive and inclusive procedures and policies, and ways to elicit feedback from parents and students to improve school culture and climate.
 - c. K-20 schools should invest in well-trained mental and behavioral health providers who are bilingual and bicultural to support students who have experienced trauma.
 - d. Institutions of higher education should be held accountable (regardless of public or private funding) to allow equitable access to all eligible students, regardless of status. Also, concerted efforts need to focus on educating educators about creating learning environments that respect all students and provide

equitable resources to support all students regardless of their immigration status.

- e. Medical and social service sectors should focus on procedures to facilitate universal access, such as universal (i.e., single payer) health care, culturally competent professionals and/or better access to qualified interpreters, modified documentation procedures to prevent indicating immigration status in medical records, and more formalized linkages with local legal aid and advocacy networks (e.g., medical–legal partnerships).

Conclusion

In this policy statement, we have summarized the harmful effects of deportation and forced separation, and offered several policy and practice recommendations. As illustrated, the effects of deportation and forced separation are many, adverse, long-lasting and multi-faceted; they include psychosocial, physical, and economic adverse outcomes, and extend beyond the individual to powerfully impact families and communities more broadly. Consequently, the Society for Community Research and Action calls upon the Congress to pass a comprehensive immigration reform to protect the rights of all unauthorized immigrants living in the US to end the long-term fear and detrimental consequences of deportation. We also recognize that developing and passing such a reform is not an easy task to accomplish in the current socio-political climate and one that is unlikely to happen soon. Therefore, we also offer several multi-sectoral policy and practice recommendations for legal and judicial systems, local jurisdictions, communities, and public institutions to further prevent and counter, as much as possible, the harmful effects of deportation and forced separation.

Conflict of Interest

None of the authors who worked on this policy brief have a conflict of interest.

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**Written Statement of the Center for Migration Studies of New York
US Senate Judiciary Committee Hearing on “How Mass Deportations Will Separate Families, Harm our
Armed Forces, and Devastate Our Economy”**

December 10, 2024

The Center for Migration Studies of New York ([CMS](#)) is an educational institute dedicated to the study of international migration from a human rights perspective. We have serious concerns about the prospect of mass deportations, as such a policy would harm the United States economically, fiscally, and socially.

First, mass deportation would harm the United States economically, as immigrant workers would be lost in a variety of important industries. Undocumented workers compose 5 percent of the workforce, working in industries such as agriculture, construction, service, entertainment, and health care. Without their labor, the US economy would experience a labor shortage which could not be replenished easily, and the costs of goods and services would rise. Gross Domestic Product (GDP) could be reduced by as much as [6.8 percent](#) if the 8.1 million undocumented workers were deported.

Second, undocumented workers pay into the federal, state, and local tax system. Their removal, according to CMS estimates, would amount to a loss of [\\$96.7 billion](#) per year to federal, state, and local governments. They also pay \$22.6 billion per year into the Social Security system, helping to keep it solvent, an \$5.7 billion into the Medicare system—systems that undocumented immigrants are unable to access and receive benefits.

Third, mass deportation would break up as many as 5 million families nationwide, weakening the social fabric of local communities. Mass deportation would push nearly 10 million US citizens into economic hardship, as median household income for mixed-status households would drop from \$75,500 to \$39,000—a drop of over [48 percent](#). US-citizen children would be harmed as well, with 5.5 million US-born children living in households with one undocumented parent and 1.8 million living in households with two undocumented parents.

The monetary cost of paying to complete the upbringing of these US-born children in the event of mass deportation is estimated to be at least [\\$116.5 billion](#). This does not include costs associated with the abandonment of children, including mental health services and educational costs. Moreover, the cost of deporting nearly 11-12 million people—the goal of mass deportations—would be significant, even in the context of a multi-trillion dollar federal budget. According to the American Immigration Council, such a plan could cost [\\$88 billion](#) per year, or \$967.9 billion over a decade. Instead of mass deportations, CMS believes that a legalization program of immigrants who have resided in the US for a certain period would benefit the country economically. According to estimates, GDP would increase by [\\$1.5 trillion](#) over ten years.

CMS believes that a mass deportation policy is not in the best interest of the United States, as it would damage the economy by increasing inflation and lowering productivity. It also would place a fiscal strain on governmental budgets by costing billions to implement the plan and removing billions of dollars in taxes from federal, state, and local budgets. Moreover, mass deportation would exact a moral and social cost on the nation, with US families being separated on a large scale. We strongly urge Congress to reject this plan and to return to bipartisan negotiations on comprehensive immigration reform.

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Written Statement of Karen E. Ebel

March 19, 2009

**Hearing on the Treatment of Latin Americans of Japanese Descent,
European Americans and Jewish Refugees during World War II by
the US Government**

before the

**House Judiciary Committee's Subcommittee on Immigration,
Citizenship, Refugees, Border Security and International Law**

Karen E. Ebel
Written Statement
March 19, 2009

**House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law**

**Hearing on Latin Americans of Japanese Descent, European Americans and Jewish
Refugees During World War II by the US Government**

My father, Max Ebel, a German internee, died in May 2007. During one of our last conversations, he told me how disappointed he was that the Wartime Treatment Study Act hadn't passed. He said not to give up. One of my first thoughts after he died was that I had failed. He was 87, but that still wasn't old enough to see the US government agree to study what had happened to him and almost 11,000 other Germans during World War II. He did not even talk about his internment until he was almost 80, and only with much prodding. He was never bitter. He loved this country and never regretted leaving Germany. As he said: "I was an American right from the beginning, and I always will be. I think I appreciated my freedom as much as a fish let out of a bowl." That is why his internment hurt so much. In this, he was no different than most of the immigrants who landed in the many Department of Justice camps. I did not know about those camps until a few years ago. Growing up, all I knew was that he lived in a boxcar during the war years, laying rails across the North Dakota plains and that he met Native Americans there. It seemed exotic, but frankly, it did not make much sense to me.

My father arrived in New York Harbor in 1937 from Speyer, Germany days before his 18th birthday. After a dangerous knife fight with Hitler Youth angry at his refusal to join, the family felt Dad needed to follow his father to America. He boarded the SS New York with a nickel in his pocket, new woolen knickerbockers and dreams. He lived in Boston with his father, a naturalized German American citizen, working at his father's cabinetmaking shop. He joined the Boy Scouts, of which he was a member in Germany before the Hitler Youth took over, studied for his citizenship and signed on to become a junior air raid warden. As required, he registered for the Selective Service. He enjoyed his freedom and the company of other German immigrants in the active German American community.

A letter postmarked December 5, 1941 notified my father that his application for intention to become a citizen of the United States had been accepted. We all know what happened on December 7. When the Japanese bombed Pearl Harbor, America was at war. Dad's citizenship application was put on hold, when FDR issued Presidential Proclamations 2525-2527 pursuant to the Alien Enemies Act deeming all German, Japanese and Italian aliens residing in the United States "enemy aliens." Not even Jews who had recently fled persecution in Germany avoided this fate. The Alien Enemy Control Program, soon to overwhelm the lives of my father and untold other "enemy aliens," shifted into high gear. He joined about a million immigrants who had to register with the US as "enemy aliens," carry Certificates of Identification, report travel and give up their radios.

Of course, these were very desperate times and unquestionably America had to protect itself. Our country was in very grave danger. U-boats were patrolling our shores. The arrival of the highly-publicized German saboteurs on our shores gave our government even further cause for concern. The fighting overseas was intense. Even so, there had to be a better way to protect our country than treating a million immigrants as the enemy and operating a massive, expensive

internment program. True, most enemy aliens escaped the internment disaster and some definitely deserved what they got. But thousands didn't. My father was one of them.

Few know of the Alien Enemy Control Program, the bad seed that formed the basis of the well-known Japanese American tragedy. Soon after Pearl Harbor, years of planning by J. Edgar Hoover and his FBI became reality. Thousands of Japanese, Germans and Italians were swiftly arrested. The Department of Justice, working with the War Department, established prohibited zones where no enemy alien could remain and scrambled to figure out where to send the thousands of anticipated internees. Martial law was imposed in Hawaii where citizens and aliens of all three "enemy nationalities" were put into camps. The Attorney General issued a Presidential Warrant allowing the FBI to enter any home occupied by an enemy alien to search for incriminating evidence. FBI agents performed these duties with varying degrees of hostility. Most recall their home being ransacked at odd hours, frequently at gunpoint. The arrests often were the most traumatic because families did not know why their loved ones were being arrested, and where they were being taken. They just disappeared. Children left behind had to fend for themselves, many eventually ending up with family members ashamed of them, in orphanages or in foster homes.

Those arrested were initially held in temporary detention facilities scattered across the US -- hospitals, jails, for women -- convents and homes for wayward girls, INS facilities for seamen, and barracks. After a period of weeks or months, the detainees were called for a hearing. Civilian hearing boards, created by the Department of Justice, reviewed the cases of enemy aliens ensnared by largely unsubstantiated rumors and innuendo gathered for years by the FBI. The hearings, purportedly instituted by the Attorney General to give some measure of fairness, permitted the aliens no right to counsel or to question the proceedings or their accusers, but did allow two character witnesses to appear on their behalf. Suspected aliens were given little or no notice of the hearings, which could be quite adversarial. Generally, the local district attorney presented the evidence and conducted the questioning. Investigating FBI agents were present. Recommendations of release, parole or internment went to the Alien Enemy Control Unit at the Department of Justice in Washington, DC, for review and final decision. That decision could take weeks or months while the aliens awaited their fate.

If an internment order was issued, the alien became an internee and was sent into the nationwide internment system -- family camps, camps for men, camps for women, Army camps, migrant worker camps and prisons, scattered across the country. While there are few allegations of outright mistreatment, camp life was clearly challenging and the internment of unspecified duration. No attempt was made to place an internee in a camp near their home and their family rarely knew where and when their loved one would be transferred. Families were torn apart and lives disrupted, many irreparably. Some had fathers and brothers fighting for the United States overseas. Even the father of member of Jimmy Doolittle's flight crew was interned. Even some Jews were interned. Family members left at home were shunned due to fear of the FBI and spite. Newspapers published stories and incriminating lists. Eventually destitute, many families lost their homes and had to apply to the government to join spouses at the large family camp in Crystal City, Texas. These are the so-called "voluntary internees." Additionally, thousands of German and Japanese Latin Americans, including Jews who had fled persecution in Germany, were brought here from 19 Latin American countries under horrendous conditions. Upon arrival, they, too, landed in our government's internment camps.

The camps were surrounded by barbed wire and search lights and were under armed guard patrolling with dogs. Guard towers loomed. All incoming and outgoing mail was censored. Time passed agonizingly slowly. Camp conditions varied, but they were all unsettling places, rife

with suspicion, everyone wondering why the other guy was there. Clearly, some internees vociferously espoused troublesome views. Many internees came to resent their adopted land and feel bitter and betrayed. But no internee I am aware of was ever convicted of a war-related crime. They were interned because they were deemed potentially dangerous. The government dealt with spies and known subversives much more harshly, as it certainly should have.

Internees and their families begged for release, writing letters constantly to the Department of Justice in Washington. Rehearings were granted rarely and only when the internee could produce new evidence. This was an almost impossible task for those interned. When offered the opportunity to return to Germany or Japan to be exchanged for Americans and Latin Americans there, many agreed. Feeling betrayed, they gave up their American dream just to escape the limbo. Others were sent against their will. Living in a censored world, they knew little about the war-ravaged countries to which they were returning or how they would be greeted when they got there. Their families resented having to feed newcomers they had not seen or heard from in years. Germans thought they were crazy to come back, or worse, that they were American spies. Some were beaten, others died from Allied bombs. English-speaking, American-born children going to German schools faced particular scorn. Few found happiness when they left the United States, and they deeply regretted their decision.

Soon after hostilities with Germany ceased, on July 14, 1945, President Harry Truman issued President Proclamation 2655 stating that the many internees still in the camps were subject to deportation upon order of the Attorney General, following review of their cases. The camps were progressively closed. Those jubilant at war's end believing that they soon would be released were astonished to learn that they could be heading to Germany instead. Those who were allowed to go home had to sign oaths of silence not to talk about their internment. Remaining internees were consolidated at Ellis Island, a facility used longer for internment than any other in the United States. With varying degrees of success, many fought deportation through a petition to Congress and litigation. Finally, someone cared. In 1947, Senator William Langer introduced a bill in Congress to free the hundreds in Ellis Island. It never passed, but the effort did result in individual hearings for all those on Ellis Island. One 5-year internee, Eberhard Fuhr, who had been arrested in his high school at age 17, recalls this as the first time he felt his release was imminent. He was right. The hearings led to the release of hundreds, until the last internee left in 1948. Notably, in June 1948, the Supreme Court, in Ludecke v. Watkins, determined that pursuant to the Alien Enemies Act, enemy alien internees had no right to release until a peace treaty was signed with the foreign government with which the US was at war.

The internees returned home and tried to reconstruct their lives. Many were never the same again. Exchanged families, facing years of separation, often sent their American-born children back to the US to family, friends and those looking for good workers. A cloak of silence, unfounded guilt and shame was thrown over the events. Just as the internees once disappeared, so did those years of internment.

This is what happened in my family, but now I know why my father was laying rails in North Dakota. In mid-1942, the FBI came with guns drawn to the Ebel house and tore things apart searching for incriminating items, finding nothing. My grandfather and father were taken in for questioning in September 1942. My grandfather, an American citizen, was released, but the US Army issued an Exclusion Order pursuant to Executive Order 9066 requiring him to leave the East Coast in a matter of days. His attorney successfully sought an injunction, not contesting the allegations which were specious, but asserting that he was not a threat to the United States. Despite the injunction, the US Army did not withdraw this order until early 1944,

after first seeking to limit the geographic area covered by its exclusion order, an offer the court rejected, and working with the Department of Justice to denaturalize and deport him. This effort was finally abandoned. Although the family was in great turmoil during this time, not all German American citizens were as fortunate as my grandfather. He remained in his home and free. Others were excluded or denaturalized (many to have their citizenship reinstated after the war by courts overturning the original denaturalization) and interned as enemy aliens or deported.

My dad, then 22, the enemy alien, remained in custody in a small INS facility in Boston Harbor with other German, Japanese and Italian aliens. After an extremely adversarial hearing during which the district attorney told him that it had been his pleasure to take out Germans during World War I and it would be his pleasure to take out my father, parole was recommended. However, the Department of Justice deemed him "potentially dangerous to the public peace and safety of the United States" and ordered internment. After three months in a Boston detention center, he was shipped to Ellis Island where he joined hundreds of other German internees living in squalid conditions. Then, by blacked out railcar under guard, it was on to Army facilities at Ft. Meade and later Camp Forrest in Tennessee. Finally, he landed at Ft. Lincoln in Bismarck in May 1943. The only descriptive note in his calendar says "Arrived North Dakota. This is hell." Dad was behind barbed wire -- back in the fish bowl he thought he had escaped when he left Germany, with no idea why he was there or when he would get out. Ft. Lincoln was an unhappy place filled with depressed, bored, increasingly bitter Germans and Japanese. This was not the America he expected and he wanted out.

That fall, he found a way. About 100 trustworthy internees, including Max Ebel, marched out of the camp in September 1943 to work for the Northern Pacific Railroad. Under guard, they spent the next several months living in boxcars replacing rails on the North Dakota plains. Those rails could accommodate the frequent, heavy wartime munitions being shipped cross-country. A spur was laid near the Standing Rock Indian Reservation. There, the Native Americans approached the internee workers to offer them handmade items: two outcast groups coming together on the plains. Dad spoke often of a little Native American girl gravely ill with TB. The internees donated what money they had to help. This was the only part of the story I knew.

Ironically, in April 1944, while he was still interned, the Army drafted my father. This "dangerous" internee was considered trustworthy enough to fight in the war. By himself, he traveled from Ft. Lincoln to Ft. Snelling for his pre-induction physical. He flunked due to a "bad ankle" and his internment continued. Because of the railroaders' good work, perceived to have been helping the war effort, he was then granted a rare rehearing. The hearing board recommended unconditional release. Obtained years later, the release recommendation reflects why he was interned. He did not want to fight potential family members in Europe. He made pacifistic remarks. He said Hitler built good roads. It concludes that Dad was in no sense disloyal and that his further internment was unjustifiable. Nevertheless, in June 1944, the Department of Justice ordered parole. Back in Boston, he went back to work with his father, reporting to his parole officer weekly. He was not allowed to go near railroads per his parole order. Three years after his arrest, in November 1945, it was over. He was free. He became a citizen in 1953, married and had children, living the American dream. We loved hearing about the little Lakota girl he helped and his railroad adventures in the Wild West. Barbed wire was not mentioned.

Years went by. One day, listening to breaking news about the Japanese Americans, Dad said "something like that happened to me." I was shocked, but did not pursue it. He didn't

either. Ten years ago, it was time to understand. Over a period of several months, he finally told me what really happened to him. I learned about the enemy alien laws, the camps, the exchanges and the German Latin Americans. I discovered silence cast over the experience by society, by the shamed internees and by history. I met a wonderful group of former internees and their families who increasingly shared their stories. But in 2005, with fellow internees, we formed the German American Internee Coalition of which I am president to work on behalf of the German internees and to educate the public about the Department of Justice camps. It has been an emotional journey for me – not just as the daughter of an internee, but as an American who loves her country and believes it is better than this.

When Ronald Reagan signed the Civil Liberties Act of 1988 into law, it was a watershed moment for the country and for the Japanese Americans. It was a difficult moment for the Germans, Italians and Japanese Latin Americans who were not included, even though Japanese aliens interned at the Department of Justice camps were. This is not because of the reparations or the apology given, but because it seemed their experience was not considered worthy of acknowledgment. There is disagreement as to whether they should have been included. Some assert that because international law permits the internment of enemy aliens, the United States really did nothing wrong. Others state that since those interned under the Alien Enemies Act were just aliens, not citizens, their internment is not significant. Some feel this was too long ago to worry about. Yet others note that the percentage of Europeans interned is tiny compared to the total population. For the over enemy alien internees and their children who lived through the internment experience, the enemy alien program is more than interesting footnote to history to be minimized, ignored or denied. People of a specific nationality were categorically declared the enemy in a way that damaged thousands of lives. It shouldn't have happened. Those who survived at least deserve to have their experience studied and acknowledged. The Japanese Americans who suffered in the camps understand what acknowledgment means. Few would say that the Japanese American incarceration should have remained buried. Most would agree it is an important, cautionary component of US history. Most would agree that it was the right thing to do.

The German Americans and German Latin Americans deserve such acknowledgment and the history of enemy alien internment should be known, but to date that has not happened. No former German internees were invited to testify before the Commission on Wartime Relocation and Internment of Civilians ("CWRIC"), although several requested the opportunity. *Personal Justice Denied*, the CWRIC report, says very little about enemy alien internment, most of it in several paragraphs of Chapter 12 entitled "Germans and German-Americans." The chapter includes little about the Alien Enemies Act. The CWRIC recognized that hearings provided by the Department of Justice hearing boards were adversarial and hardly fair, but asserted that "because the government had unquestioned authority to detain aliens of enemy nationality in time of war, these procedures did represent an effort to provide rough fairness..." Little is mentioned of the vast web of DOJ camps, thousands of families torn apart or repatriation. Based on the CWRIC's recommendations, the Civil Liberties Act was passed. We all know that the Japanese American citizens and aliens held in the War Relocation Authority camps got reparations, but the Japanese enemy aliens held in the Department of Justice camps also did. In the 1990s, Major Arthur D. Jacobs, a former German internee and longtime advocate of equal treatment for the Germans who were interned along with the Japanese, sought recourse unsuccessfully in the courts. Years later, most think only Japanese Americans were placed in camps. That is the accepted historical narrative. That is what the media says. That is what school books say. The Alien Enemy Control Program has gone unnoticed and uninvestigated, except by a few.

In 1999, eleven years after the Civil Liberties Act passed and I first heard of Dad's internment, I finally started researching my father's story. My father courageously decided to allow a local paper to publish it. Having been one accused and interned, it is a leap of faith, but one he decided to take because he said "it's not right that no one knows this happened." Shortly thereafter, in 2000, we learned that the Wartime Violations of Italian Americans Civil Liberties Act passed requiring the Department of Justice to issue a report on their wartime experience. The report was issued in November 2001. Although not an independent investigation, this started to open the door on the Alien Enemy Control Program, but focused primarily on the Italians per the legislation. Again the whole story remained untold. Dad and I both believed that a federal study commission was needed, but did not know where to start. The few former internees who were talking were scattered across the country. It would take a grassroots effort and there were formidable hurdles. Fortunately, German American leaders in Wisconsin, including Frederick Kessler and Elsbeth Seewald, approached Senator Russ Feingold to discuss the introduction of legislation to study the European wartime experience and he agreed to do so.

In August 2001, sixty years after Pearl Harbor, Senators Feingold and Charles Grassley introduced the Wartime Treatment Study Act. Shortly thereafter, Representative Robert Wexler introduced the legislation in the House. That act would simply create commissions to study the wartime treatment of European Americans and Latin Americans, as well as the denial of asylum by the United States to Jews fleeing persecution in Germany. With respect the European American Commission, the bill requires the development of lists of internees, camps, and exchange voyages, as well as an analysis of the facts, circumstances and underlying rationale for the related government policies. We are more indebted to these men than I can begin to say. It was a miraculous day for internees whose experience had been hidden and denied for so long. It gave many internees the confidence to tell their stories. My father was elated. That was several Congresses ago. Dad always asked me "how are things in Washington?" He did not really understand all the details, but he tried to be optimistic as the years passed and his health failed. The bill was reported favorably out of the Senate Judiciary Committee four times. Finally, it passed the Senate as an amendment to the omnibus immigration reform legislation in June 2007, one month after my father died.

Other federal actions have been taken during the past several years. In 2004 and 2007, the House passed resolutions calling for a National Day of Remembrance to commemorate the signing of the now infamous Executive Order 9066, officially naming the German and Italian communities. In December 2006, legislation providing for the preservation of Japanese American confinement sites passed. Even though sites eligible for funding included Department of Justice and US Army sites where Europeans and Japanese Latin Americans were interned, they were not mentioned in the bill. The National Park Service, which is administering the as yet unfunded program conducted listening sessions around the United States which former German internees attended. The German internee community submitted comments unsuccessfully requesting that the NPS require grantees to tell the full internment story when camps were preserved. NPS advised that although other affected ethnic groups could request grants and tell their story as part of a camp preservation effort, NPS could only require that Japanese American story to be told per the terms of the legislation. On July 31, 2008, the House passed H. Res.1357 commemorating the signing of the Civil Liberties Act and resolving to review the wartime treatment of Japanese of Latin American descent, German Americans and Italian Americans. That was another wonderful day for former German internees. But then another Congress ended and the Wartime Treatment Study Act still had not passed. Without my father, I questioned my future involvement.

Just recently, the legislation was reintroduced for the fifth time. Of course, we are hopeful that this time, finally, it will pass. It is my honor to be a witness representing the thousands who lived through the internment experience for which I thank you. The Wartime Treatment Study Act needs to pass now before more die or are too old to understand. The advanced age of the remaining internees weighs heavy on my mind. Study and acknowledgment of their internment is long overdue. Sadly, my father cannot be here to see it, but others are still here who will.

Thank you.

Attachments:

Internment Order of Max Ebel, dated January 9, 1943
 Alien Enemy Hearing Board Report and Recommendation dated April 13, 1944
 Ft. Lincoln Internee List, page 4, dated February 29, 1944
 German American Internee Coalition Fact Sheet
 S. 1749, dated July 27, 1947 – A bill for the relief of enemy aliens
 Story Summaries of Certain German Internees
 Senate Judiciary Committee Report re: Wartime Treatment Study Act, May 4, 2007

In the Matter of

MAXIMILIAN F.J. EBEL, JR.

Alien Enemy

ORDER

WHEREAS, Maximilian F.J. Ebel, Jr., of Jamaica Plain, Massachusetts, a citizen of Germany, over the age of fourteen years, is within the United States and not a naturalized citizen thereof and has heretofore been apprehended as being potentially dangerous to the public peace and safety of the United States; and,

WHEREAS, the Alien Enemy Hearing Board has recommended that said alien enemy be paroled; and it appearing from the evidence before me that said alien enemy should be interned; NOW, THEREFORE,

IT IS ORDERED that said alien enemy be interned.

James B. Kelly

ATTORNEY GENERAL

January 7, 1943

Copy to District Director, Boston, Mass.
and Alien Enemy Information Bureau
on ~~January 7, 1943~~
Alien detained at East Boston, Mass.

FILE	
JAN 9 1943	
Date	<i>[Signature]</i>
Initials	<i>[Signature]</i>



DEPARTMENT OF JUSTICE

ALIEN ENEMY SPECIAL HEARING BOARD

In the matter of the detention of

MAXIMILIAN F. J. BEELInternee of the _____ District of Mass.

REPORT AND RECOMMENDATION

To the Attorney General:

The above matter came on for rehearing before this Board at
Fort Lincoln, North Dakota on April 13, 1944

Upon reconsideration whereof it is hereby recommended that the said
 alien enemy be: (check one)

Interned _____ Released X Paroled _____

SUMMARY OF FACTS AND OPINION:

This alien was born in 1919 and came to the United States at the age of 17 in the year 1937. He has a mother, brother and sister living in Germany. His father and mother are divorced and since his coming to this country, he has lived with his father and step-mother. His father became an American citizen in 1934 and probably, except for the divorce, the alien would have acquired derivative citizenship.

It should be noted that at his original hearing the Board recommended parole. It seems that due to some pacifist remarks attributed to the alien and the fact that in his Draft Questionnaire he stated he did not want to fight against Germany, and that he had made statements complimentary of the roads constructed in Germany under the Hitler regime, and because he was not a citizen, he was dismissed as an Air Raid Warden, which post he had filled with credit. As a result of the foregoing, he was called before a military hearing board which recommended his exclusion but because of his internment by the Attorney General the exclusion proceedings were suspended.

This alien made a very favorable impression upon rehearing. He is frank and, in the opinion of the Board, sincerely and entirely loyal to the United States. There is no doubt that he was a pacifist and because he had already done some Red Cross work he preferred this sort of service to military service. He has been active in boy scout work and all who know him in this work certify as to his good character and his loyalty.

His camp record is excellent as is also his work on the railroad. He has, for some time, expressed a desire to be inducted into military service having, in the opinion of the Board, sincerely come to the conclusion that as a young man loyal to this country he should fight for it. Through his Draft Board he was recently examined for induction at Fort Snelling and exhibits great disappointment that he failed to pass the physical because of a weak ankle. Prior to his internment the alien worked for his father and he and his father did construction work for the Navy.

This Board believes that this alien's further internment is unjustifiable; that he is in no sense disloyal to this country; that he is willing to fight for this country and that he ought to be released. The Board therefore recommends release. Mr. A. di Girolamo concurs.

Frank S. Holman, Chairman

Lloyd Wright

James J. Maye

A. di Girolamo, Spec. Asst. to the
Attorney General

(Original to the Attorney General, with copy to the Federal Bureau of Investigation, the Immigration and Naturalization Service and the United States Attorney for the _____ District of _____)

Noted and Retained
Mr. 6510

ALIEN ENEMY UNIT

DEPARTMENT OF JUSTICE									
Immigration and Naturalization Service								Page 4	
Civilian Alien Enemies				Fort Lincoln Internment Camp					
In custody - February 29, 1944				Fort Lincoln, Bismarck, N.D.					
NAME		Sex	Age	Occupation	Internment		Serial	Alien	
First	Middle				Number	Regist. From		Number	
<u>GERMAN</u>									
Deville, Hans A.		M	36	Hotel Bus.	3-31-0-394	5609810	US	KPRR	Gang 5
Drechsler, Erich H.		M	34	Chef	3-31-0-560	1239574	US	KPRR	Gang 5
Drenhaus, Emil		M	46	Clerk	4-27-0-107	1853739	US		
Dressel, Walter		M	43	Actor	6-9-0-46	1387511	US		
Drexler, William		M	42	Tinsmith	3-29-0-650	5864002	US		
Dreyer, Otto Friedrich		M	36	Baker	3-31-0-1202	3399174	US		
Drohshagen, Edmund		M	48	Tyrossetter	3-29-0-517	3953806	US	KPRR	Gang 5
Dront, Frank		M	44	Painter	3-31-0-696	4085316	US	KPRR	Gang 5
Duenkel, George		M	33	Cab. Mkr	7-31-0-67	4249627	US		
Duppelmann, Walter		M	44	Bartender	10-12-0-133	2570222	US		
Durrse, Jacob		M	26	Baker	3-31-0-731	3446425	US		
Eckl, Maximilian		M	24	Cab. Mkr	2-20-0-60	5784868	US	KPRR	Gang 5
Ewenthauser, Carl E.		M	21	Student	6-1-0-23	1116971	US		
Ebert, Friedrich		M	38	Mech.	3-31-0-102	4189609	US	Seaman	
Eck, William		M	48	Mech.	3-31-0-376	4458166	US		
Eder, Martin		M	55	Sausage Mkr	10-48-0-52	3059222	US		
Egan, Max		M	56	Artist	20-4-0-12	5396378	US		
Eggerhofer, Josef A.		M	41	Dentist	3-31-0-539	3490198	US	KPRR	Gang 5
Ehlers, Ernest		M	44	Handyman	3-29-0-552	4008719	US		
Emann, Wendelin		M	34	Baker & Mkr	10-12-0-151	5003049	US		
Eiche, Karl Heinrich		M	50	Movie Mkr	3-31-0-581	4314203	US		
Eimer, Helmuth		M	37	Acct.	2-6-0-23	2975256	US		
Einzinger, George J.		M	60	Steel Eng	3-29-0-330	2856998	US		
Elberfeld, William E.		M	47	Mkr Mng Hse	3-31-0-477	4835318	US		
Elsen, Heinrich		M	53	Marine Eng	3-31-0-1427	5951006	US	Seaman	
Endress, Franz		M	49	Baker	3-31-0-1431	5407666	US		
Engelbert, Walter		M	43	Butcher	3-31-0-441	5309224	US		
Engelbert, Wilhelm		M	39	Butcher	3-31-0-442	4861082	US		
Englert, Albert G.		M	34	laborer	7-34-0-10	5365473	US		
Erau, Erich Adolf		M	52	Broker	8-21-0-6	4730878	US		
Erbsmehl, Otto H.		M	42	Upholstr	3-31-0-336	4343956	US		
Erichsen, Johannes		M	38	Seaman		3994097	US	Seaman	
Erner, Friedrich August		M	40	Carp	3-31-0-1147	4860222	US		
Ernst, Frank L.		M	32	Baker	10-12-0-55	3995922	US		
Eppenschied, Otto		M	35	Storekpr	3-31-0-742	5242475	US		
Esmann, Henry H.		M	36	Elev Oper	3-31-0-803	5348956	US	KPRR	Gang 5
Eurich, Alfred		M	37	Baker	3-31-0-851	2832844	US		
Ewald, Wendelin		M	44	Baker	3-31-0-1117	5146968	US		
Eymold, Leonhard		M	53	Machg	3-31-0-495	3816170	US		
Fago, Emil		M	46	Cab. Mkr	4-29-0-50	4701659	US		
Fanger, Gottfried		M	34	Knitnce Man	3-31-0-911	5228000	US		
Fassbender, Heinrich		M	26	Soda Ftn Mkr	17-42-0-6	5822687	US		
Fassbender, Samuel		M	35	Waiter	3-31-0-994	4882945	US		
Fechtnr, Friedrich E.		M	43	Inst Mkr		2796936	US	Seaman	
Fulg, Robert Jacob		M	35	Baker	18-46-0-41	2107726	US		

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80TH CONGRESS
1ST SESSION**S. 1749****IN THE SENATE OF THE UNITED STATES**

JULY 26 (legislative day, JULY 16), 1947

Mr. LAMSON introduced the following bill; which was read twice and referred
to the Committee on the Judiciary**A BILL**

For the relief of all persons detained as enemy aliens.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the Attorney General be, and he is hereby, directed to
- 4 cancel forthwith the outstanding warrants of arrest, removal,
- 5 or deportation in the cases of Charles Aigner; Karl F.
- 6 Aldage, Senior; Karl F. Aldage, Junior; Max Arnbruster;
- 7 Paul Bante; Frederick E. Bauer; Wilma Bauer; Paul Albert
- 8 Benzenhoefer; Otto Braunger; Rudolf Fott; Margareta
- 9 Bertelmann; Helmut Bode; Adolph Beuchert; Wilhelm
- 10 Bachr; Auehen Bachr; Werner Brinck; Elbe Brinck; Willy
- 11 Backofen; Gertrude Backofen; June Backofen; Willy Boeck;

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A 11

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2

- 1 Alrich Christook; Albert Bruckner; Walter G. Bejner;
- 2 Heinrich Beecker; Frederick Beeck; Nannie Behrens; Gisela
- 3 Behrens; Klaus Behrens; Gerriet Behrens; Reimer Behrens;
- 4 Gastav Blankenburg; Johann Boehm; Max Blank; Helmut
- 5 Camp; Martha Camp; Heinz H. Camp; Hans D. Camp;
- 6 Alrich Cappellmann; Henry Diebel; August Hans Doelle;
- 7 George Dorfner; Anna Dorfner; Christian Ebnmann; Richard
- 8 Eichenlaub; Walter Engelbert; Wilhelm Engelbert; Leonard
- 9 Eymold; Anna Eymold; Maria Anna Eymold; Heinz Karl
- 10 Eymold; Paula Eymold; Richard Enders; Mary H. Enders;
- 11 Anna E. Enders; Gertrude Enders; Luise Fritsch; Richard
- 12 C. Felis; Walter Feltz; John C. Fitting; Rudolf F. Funk;
- 13 Linus Fitterer; Kurt Fries; Xaver Faller; Anna Faller;
- 14 Carl Fuhr; Anna Fuhr; Ernst Eberhard Fuhr; Karl Louis
- 15 Julius Fuhr; Otto Grimm; Rudolf Gudert; Ludwig Gotthild;
- 16 George Roman Gryczak; Henry B. Grimmermann; Kurt P.
- 17 Holz; Albert Haug; Rudolf Hackenberg; Helene S. Hacken-
- 18 berg; Heinz Heinzen; Wilhelm Hack; Erna Haupt; Werner
- 19 Helling; Robert Hartmann; Hans Hauswald; Herman
- 20 Hoehn; Ernest Oskar Hopi; Paul Hoemann; Hedwig Hoe-
- 21 mann; Hans Martin Hoemann; Hans Juhl; Wolfgang Jung;
- 22 Johann L. Jung; Heinz P. John; Martin P. Jung; Andreas
- 23 H. Jans; Emma Jans; Joseph Klien; Wilhelm Knap;
- 24 Bernard Kaehn; Julius B. Kessler; Hans Kippenberg;
- 25 Albert Kolb; Hans L. Kohpeiss; Joseph Kuiser; Fritz

- 1 Koehler; Heinz H. Krebs; George B. Knaepper; Alfred
- 2 H. Krakau; Marie Kerling; Karl Kubisch; Joseph Kuehn;
- 3 Arthur Kuehn; Martin J. Kessler; Bruno O. P. Koop;
- 4 August Klapprodt; Bernhard Krakau; Josefa Krakau; Bruno
- 5 Koop; Paul Knauer; Chris Lammie; Kurt W. G. Ludecke;
- 6 William Lachnicht; Alois V. M. Leib; Hans Landage;
- 7 Ernest K. Lack; Greta Leighton; Hans Lochmann; Manfred
- 8 Meister; William Mank; Elizabeth Mueser; Waldemar
- 9 Mueser; Hans P. Maack; Otto Neubacher; Matilda Neu-
- 10 bacher; Karl Nurnberger; George Neupert; Fred J.
- 11 Neveling; Willy Orth; Martin Orthner; John Olden; Hans
- 12 Poehner; Adolf Pasquay; Henry Reese; Hartwig Reese;
- 13 Kasper Rehle; Anton Ruehle; George Reinschneider; Lud-
- 14 wig Rosch; Werner Reimann; Frank Ritz; Hermann
- 15 Roehm; Maximilian Reichel; Erich L. Raubenheimer;
- 16 Max R. Rapp; Rosina Rapp; Edwin Rubischon; Anna
- 17 Rubischon; Theodore Roehner; Meta Stohr; William T.
- 18 Schaulmann; Karl F. Schelkshorn; Kurt Schmidt; Franz
- 19 W. L. Schrader; Hans J. Schmidt; Gerhard Sprenger; Mar-
- 20 tin Schluckwerer; Hans W. Schnoor; Bernard Schmolke;
- 21 Gerhardt Schacht; Johann Stoll; Walter E. Sykora; Her-
- 22 mann M. Schwinn; Agnes Stephan; Albert Scherfitz; Carl
- 23 Schwietzer; Albert P. Schroeder; Peter Schau; Siegfried
- 24 Schulte; Herbert Seyferth; Elizabeth Seyferth; Dietmar
- 25 Seyferth; Karl Schrock; Marie Schrock; Kurt Schweitzer;

1 Richard Ernst Schwenk; Franz Charles Unger; Anton Hugo
2 Urecht; Karl H. Ueberschaer; Antonette Uhlig; Eberhard
3 von Aschenberg; Gregor Volkeimer; Friederich Bank; Hans
4 Wesemann; Karl Ludwig Przibislavsky; Victor Franz
5 Pullwitt, alias Phillip Brechtel; Otto Willumeit; Maria Willu-
6 meit; Martin Hans Walter; Otto Wagner; Johann F. Wiechers;
7 Selma A. Wiechers; Hans G. Wiechers; Paul C. Zitzmann;
8 Max Zeller; Eugene Zimmermann; Marie Zimmermann;
9 George M. Zimmermann; and all other persons detained by the
10 Immigration and Naturalization Service of the Department
11 of Justice as enemy aliens, and is directed not to issue any
12 further such warrants or orders in the cases of such persons,
13 insofar as such further warrants or orders are based on any
14 act, acts, or status which served as a basis for the warrants
15 of arrests, removal, or deportation that are being canceled
16 by this Act; and that such persons shall not again be subject
17 to removal or deportation by reason of the same facts upon
18 which such removal or deportation proceedings were com-
19 menced or such warrants have been issued.



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US World War II Treatment of German Americans and Latin Americans

During World War II, the US violated the civil liberties of American citizens and resident aliens of "enemy" ethnic groups, primarily those of German, Italian and Japanese ancestry. Violations included internment and relocation. Members of these ethnic groups, including millions of European Americans, served in the US armed forces. Some were immediate family members of internees. The Wartime Treatment Study Act (H.R. 1425/S. 564) would require study of these issues, among others, with respect to European Americans. The Act is summarized on page 2. Specific discriminatory government policies are listed below.

US Government Wartime Policies. All numbers are estimates and are likely higher.

- Alien registration branding 300,000 Germans as "enemy aliens," restricting travel and property ownership rights.
- Exclusion from large military areas under military orders causing family disruption, loss of homes and jobs. Relocated families subject to hostility and suspicion in new homes. Employment was difficult to find. No government support for relocation. At least 50,000 Germans subject to removal from California prohibited areas.
- Hostile FBI raids and ransacking of homes and arrests with no warrants, unlimited imprisonment while awaiting parole and internment hearings. Hearings with minimal, if any, due process at which no witnesses or counsel were allowed. Internees did not know why they were interned. Families did not know where their loved ones were taken for days or weeks.
- Internment of at least 11,000 German aliens and their families, including US-born children. Families separated, homes and belongings lost. Little or no government support for families left behind. Limited admittance to family camps based upon application to government. Some children placed in orphanages when parents arrested and interned. At least 2,650 German Americans, including families with US-born children, exchanged for Americans held in Germany. Exchanged families survived cruel wartime conditions, such as hunger and Allied bombing.
- Persons of German ancestry were last ethnic group released from camps, some held till late 1948.
- Deportation, expatriation and repatriation of German Americans--resident German aliens and US citizens.
- Internees and excludées returned to communities facing unemployment, financial straits, loss of homes and belongings and stigmatization. No government support. Many families disrupted permanently. Many internees forbidden to speak of internment. Most internees have not spoken out of fear of the government, shame or other personal reasons.

Pursuing the "Good Neighbor Policy," the US government pressured Latin American countries to do the same, with similar results. Originally the State Department, through the Special War Problems Division, targeted individuals and businesses considered a threat to national security, using informants of dubious quality. Two other reasons for this secretive program are clearly stated in US documents: 1) the US wanted to supplant German businesses in Latin America with their own 2) some of those arrested were to be used in exchange for American prisoners behind enemy lines in Europe. Corrupt governments in Latin America also used the program to acquire significant properties by expelling their owners.

- US government financed prison building and operation, as well as deportation proceedings in Latin America.
- Approximately 8500 civilians of German ethnicity arrested and held without charges in prisons throughout Latin America. An unknown number sent directly to Germany.
- 4058 Germans, many of them with their native born wives and children, deported from Latin America to the US between 1941 and 1945 and interned.
- Consulates and embassies ordered not to issue visas to the deportees. On arrival, prisoners charged with illegal entry into the country, allowing indefinite detention.
- At war's end, the US worked vigorously to repatriate all remaining prisoners rather than allow them to return to their chosen country. Many never saw their homes again.
- No legal basis existed for this secret State Department program.

Additional Information: See www.gaic.info or contact Karen Ebel at kebel@gaic.info

Wartime Treatment Study Act –H.R. 1425/S. 564. The Act would establish two commissions. One commission would review the US government's World War II policies regarding European Americans (resident aliens and US citizens) and European Latin Americans and related civil liberties violations. The second commission would review the US government's refusal to allow Jewish refugees fleeing persecution entry to the US during World War II. Significant features of the WTSA:

- Duties include reviewing the facts and circumstances of and underlying rationale for governmental wartime policies regarding US resident and Latin American "enemy" Europeans and granting asylum to Jewish refugees fleeing persecution. Written report of findings and recommendations must be submitted to Congress 18 months after first meeting. (Sec. 102 & 202)
- Seven members per commission appointed by President, Senate and Congress, respectively. Two representatives each from the German and Italian American communities on one and two representatives of Jewish refugees on the other. (Sec. 101 & 201)
- Commissions authorized to hold hearings and obtain information from government entities to perform their duties. (Sec. 103 & 203)
- Congress could act on Commissions' recommendations, which might include, among other things, formal acknowledgement and establishment of education fund, as it deems appropriate.

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www.foitimes.com

March 2009



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Story Summaries of Several German Internees

The following summarizes the stories of several German families and how the Alien Enemy Control Program affected their lives during World War II.

Exchange Families: The **Eiserlohs**, a family of 5, including 3 young American-born children, ages 11, 6 and 11 months, lived in rural Ohio in a home built by Mr. Eiserloh, a German-born engineer. In December 1941, the FBI took Mr. Eiserloh away. The family didn't know where he was for weeks. Mrs. Eiserloh tried to survive alone, shunned by her previously friendly community, but finally had to sell their house far below its value. The government immediately froze the proceeds, severely restricting their meager funds. The young family had to live in the basement of a relative's home for 2 years until finally they were reunited with Mr. Eiserloh in the Crystal City family internment camp in Texas. After several inquiries by the government, in desperation, Mr. Eiserloh reluctantly agreed to repatriation. The family, all slated for exchange for Americans held in Germany, was loaded onto a train in late December with many other internees bound for New York. The SS Gripsholm waited there for its 1000-person cargo, scheduled for a January 1945 departure. This was one of six exchange voyages negotiated between Germany and the US. The government got a bonus. Mrs. Eiserloh gave birth to a boy on the train. The Eiserlohs, now 6 members, crossed the Atlantic during the height of the war. They landed in Marseilles, hitting a harbor mine en route and traveled eventually to Bregenz in boxcars where they were exchanged for Americans, primarily civilians. Virtually all their meager belongings were stolen. The Eiserlohs walked into a world of turmoil and Allied bombs. No one welcomed them back. Their family in Germany, mystified by their return and struggling to survive, hardly expected or wanted them. In the dead of one of the coldest, snowiest winters on record, the young family traveled north toward Frankfurt with their few remaining belongings, constantly in fear of Allied attacks, sometimes walking, sometimes on a train, any way they could. They abandoned one train quickly while being strafed by American planes. In late February, after two months of difficult travel from Texas, they were forced to live in a relative's cramped basement again. The children, Americans, barely spoke German. The family was viewed with hostility and ridiculed, not unlike their American experience. Understandably enough, the Gestapo suspected Mr. Eiserloh of being an American spy for the advancing US Army. He was questioned, beaten severely by six SS men in front of the young family and dragged away. Mrs. Eiserloh, alone again and bordering on a nervous breakdown, despaired of her husband's survival. Her mental health was never the same again. Several months later, advancing US Army troops freed those imprisoned in the camps. Mr. Eiserloh returned home and the family managed to survive in the difficult years following the war. Years

later, the two oldest children, now teenagers, left their parents to return to the US. Perhaps coincidentally, after brother Lothar received a US Air Force security clearance, his parents and two younger siblings were allowed to return to the US. The baby boy born on the train was killed in a car accident shortly thereafter. Mr. Eiserloh could never find a good job again in Germany or the US. A broken man, he died at age 65 in a supermarket aisle. At 59, his wife was alone again. The deep scars of the experience still color the lives of the remaining Eiserloh children. To this day, the family does not know exactly why Mr. Eiserloh was interned, but they think it was because of his membership in a German musical society.

The **Grabers**, two young boys and their German-born parents, lived in New Jersey in an apartment building owned by a Polish landlord. When Hitler invaded Poland, the relationship became strained, so the Grabers moved. The landlord contacted the FBI. Mr. Graber worked on "war sensitive technology" for the International Nickel Company. The FBI began to watch their home. In September 1942, they took him for several hours of questioning. In November, they ransacked the house. Mrs. Graber, several months pregnant, fainted and fell down the stairs. Shortly thereafter, Teddy was born, premature and handicapped, and had to remain hospitalized. The family was advised that they would be interned after Christmas. Mr. Graber wrote to President Roosevelt pleading for mercy. The agents came without notice in mid-January. The family threw together their belongings and picked up Teddy at the hospital. The family was interned with hundreds of others at Ellis Island until they were shipped to Seagoville, Texas, several months later. One and one-half years later they were sent to Crystal City. In despair, after being pressured to repatriate, the Grabers agreed to return to Germany. With the Eiserlohs and many others, they were shipped to New York and set forth on their hazardous journey. In the camps and on the SS Gripsholm, they met many Latin Americans, also to be exchanged. At least one German Jewish man was also sent back. Exchanged and dumped in Germany, they made their way through the ravaged terrain to Mr. Graber's family. Unable to find work, Mr. Graber and the eldest child, age 5, hitchhiked some distance to Mrs. Graber's hometown. Along the way, French agents stopped them, tore up Mr. Graber's American ID and spat in his face. Only young Werner's American citizenship saved them. Mr. Graber and Werner lived in a wooden barrack temporarily, refugees from the West. Mr. Graber's application for assistance was denied. How could an impoverished German refugee from America exist? In mid-April Mrs. Graber's parents' home where the family was living was destroyed in a tank attack. The post-war years were extremely difficult. Food and medication were scarce. Teddy died in 1948 of pneumonia. Mr. Graber took over his father's tooling business because a US Army truck accidentally killed his father while he was getting milk from a local farmer for the grandchildren. The boys exercised their birthright and returned to the US in the late 50s. Mr. and Mrs. Graber never returned. Mr. Graber always tried to justify the decision to repatriate to himself. Was it the right thing to do? Did he deprive his children of a normal life? Should he have stayed in the camps and returned to New Jersey again? Who knew how long they would be imprisoned? Would life have been easier had he stayed in the US? Mr. Graber's lifelong bitterness and self-doubt are another cruel legacy of internment. The Grabers have

tried to learn why they had to endure such an experience. What had their landlord said?
Was it Mr. Graber's job?

A Jewish Internee: Eddie Friedman was born of Jewish parents in Hamburg in 1892. Doctor Friedman, as attorneys are known in Germany, practiced law until forbidden to do so by Nazi edicts. Mr. Friedman and his wife, Liesl, were granted exit permits in 1938. However, before they could escape, Mr. Friedman was arrested and imprisoned in Oranienberg-Sachsenhausen concentration camp outside Berlin. Relying upon his connections to the legal community, Mr. Friedman was able eventually to secure his release from Sachsenhausen. He fled to America and freedom with Liesl. In San Francisco, his English was too broken to pursue law, so he found work delivering Viennese pastries door-to-door in the German community. To the FBI agents who were secretly monitoring Mr. Friedman's activities, this connection to suspicious German Americans indicated that Mr. Friedman was a dangerous Nazi. During the December 8 raids following Pearl Harbor in which hundreds were arrested, the FBI took him into custody in his San Francisco apartment. Eddie Friedman, the Jew who had narrowly escaped extermination in Germany, wound up behind barbed wire at Ft. Lincoln internment camp outside Bismarck, North Dakota. There, he fought "Gitterkrankheit" (fence sickness) for six months before his protests of innocence were finally heard. He was released to return to San Francisco, marked for life by the internment experience. He never returned to the practice of law, and spent thirty-nine years as a door-to-door cosmetics salesman. He always fixed his deep, sad eyes on his customers and introduced himself as Doctor Friedman. Years later, the Friedmans were still so terrified by their experience and the power of the FBI that they would never allow their real names to be used when their story was published. Friedman is a pseudonym.

Internee Laborers: Objecting to their violent militarism and Hitler's totalitarianism, **Max Ebel** resisted increasing pressure to join the other boys in the Hitler Youth. He and his family knew he had to get out after he was stabbed for his recalcitrance in a knife fight with Hitler Youth members. In 1937 he left, a month before his 17th birthday, to join his father, a German-born naturalized US citizen in Boston. Like so many immigrants, Mr. Ebel rejoiced in America's promise of freedom. As required, he registered with the Selective Service. Although he agreed to fight in the Pacific, he was classified as 4C, a conscientious objector, because he did not want to fight in Germany against his brother, cousins and friends. In September 1942, months after filing his naturalization papers, Mr. Ebel was arrested. He was not released until June 1944. At a typically hostile hearing with little or no notice, the aggressive US Attorney presented uncorroborated tips as fact. Equally zealous FBI reporters supported the fervent prosecutor's allegations. With only his father by his side, himself the subject of a contested exclusion order, no counsel was permitted. Mr. Ebel was given no opportunity to question his accusers. He was castigated for not wanting to fight in Germany. The hearing board recommended parole. He awaited the US Attorney General's decision for three months in the small Boston INS facility, pacing the rooftop barbed wire exercise cage. One internee slit his own throat with a razor. Mr. Ebel helped save his life. In January, the internment order came overruling the board's parole recommendation. He

was shipped to Ellis Island where he lived in the Great Room that had recently welcomed immigrants. Hundreds lived side by side in bunks with blankets hung for privacy. Rats ran freely. Medical care and food was poor. The barbed wire exercise cages overlooked the Statue of Liberty. Weeks later, the military, brandishing their weapons, took charge of internee transfers to Ft. Meade, threatening to take them feet first, if necessary. After required physicals, the hapless internees were shipped in heavily guarded, shuttered railroad cars to Camp Forrest near Tullahoma, Tennessee. The men lived in huts, heated by coal stoves, with black widow spiders. Mr. Ebel volunteered as a medical aide in the camp hospital and was commended for his work. In May 1943, the internees were transferred yet again to Ft. Lincoln, North Dakota, a large, men's facility. In September, Mr. Ebel was one of 100 men selected for a work detail on the Northern Pacific Railroad. They replaced rails that could accommodate heavy wartime traffic, thereby helping the American war effort. They worked outside braving the frigid North Dakota winter on the plains. The railroaders lived in boxcars heated by single coal stoves, sleeping in cots, with open bucket bathrooms. Here they celebrated Christmas. Mr. Ebel preferred the harsh living conditions to living behind barbed wire guarded by dogs and armed men like a criminal. The Sioux Indians tried to sell their handicrafts to the impoverished railroaders. The railroad gang attended the Reservation's church. Mr. Ebel helped convince the others to pool their meager funds to save the life of a 10-year-old Sioux princess with tuberculosis. In the spring, acknowledging that the railroaders performed a valuable service for the US, DOJ finally agreed to special hearings to reconsider their internment. The special hearing board recommended Mr. Ebel's release, surprised that he had ever been interned. Before DOJ's final determination, he was processed for Army induction, but failed his physical. In June, the DOJ ordered parole the terms of which included a prohibition against walking under or near the railroad.

Individual Exclusion: The Franke family experience provides ample evidence that once one came into its sights, the government had many techniques to rid itself of the danger the suspect presented. It was relentless. Living contentedly in their Baltimore, Maryland neighborhood, Otto Franke, his wife and 2 children did not know that the FBI was watching them closely. Mr. Franke, a US-born citizen of German parents, came under suspicion in 1940 when the FBI got an unsigned, semiliterate letter accusing Mr. Franke of coordinating "German underground work." His FBI dossier was opened and through diligent gumshoe work, the FBI got other unsubstantiated tips. Little was done to confirm any of the serious allegations and their work was so sloppy that it took more than a dozen tries for the FBI to get his address right. In June 1941, with the apparent prodding of the FBI, Mr. Franke was asked to resign from his draftsman's job. His supervisor's recommendation letter stated that he was a "man of excellent character and integrity." Confused about his citizenship status, the FBI finally realized that he wasn't an alien and couldn't be interned. It sent his case to another DOJ branch for his prosecution as a subversive. The Attorney General's office demanded verification of what it deemed insufficient FBI evidence. In January 1942, an FBI search of Mr. Franke's home yielded no incriminating evidence. The 1940 tips were reviewed, but could never be corroborated. There was no prosecution. In February 1942, Roosevelt issued Executive Order 9066 authorizing the military to exclude citizens and

aliens from militarily sensitive coastal areas. This order provided the legal basis for general exclusions from military zones, relocation and individual exclusions. A military review board was established in each military district giving the appearance of due process. Mr. Franke's file was forwarded to the military. On October 1942, having already lived for months in fear of the government's next tactic, Mr. Franke appeared before his review board. Relying on spotty FBI information which now actually included some countervailing facts, the board still ordered him out of the Eastern Defense Command—the eastern seaboard. No government assistance facilitated the move. Fortunately for Mr. Franke, his company had a Lima, Ohio facility, so he and his family transferred there in March 1943. By June 1943, as they were trying to resettle, the Army's Continuous Security District Office ordered him fired as a subversive. After another aborted hiring and months of unemployment, Mr. Franke found a job in another Ohio town and the family moved again. In July 1944, that company moved to New York. Mr. Franke had to decline the position they offered in New York because of his exclusion order. Isolated, discouraged, stigmatized and in difficult financial straits, the Frankes continued trying to return to Baltimore. In May 1945, the Army lifted its order. The family quickly returned to Maryland and attempted to resume a normal life after years of upheaval. Based on the article "Excluded" by Lewis H. Duiguid published in the Washington Post Magazine, January 3, 1999.

The Latin American Roundup: **Hugo Droege** emigrated from Germany to the Guatemalan highlands to find a better life. He married and lived quietly for 20 years far from Germany. He established and managed a coffee farm as he raised his family. One night, six Guatemalan police arrived with guns drawn to take him away. Mr. Droege told his wife to save the farm. Forty-eight hours later, the Guatemalan government forced her to abandon it. Pregnant with their third child, she, her two children and a mule, carrying the belongings they were allowed to take, left the farm to live with friends. The Guatemalan police turned Mr. Droege over to American soldiers. He did not see his family again for five years. In December 1942, General George Marshall initiated the secret operation that led to Mr. Droege's capture by sending a secret order to the US Caribbean Defense Command: "These interned nationals are to be used for exchange with interned American civilian nationals." Pursuant to Marshall's order, thousands like Mr. Droege from 12 Latin American countries were forcibly kidnapped and shipped to the US guarded by armed American soldiers. After being told he was going on a boat, he was strip-searched six times. Soldiers held him and hundreds of others in darkness below the ship's deck for what ended up being a month-long voyage to America. After six days in the dark, they were allowed to go on deck for a half an hour to see daylight. They were locked up like criminals and did not speak to each other. Open buckets were placed conveniently among the prisoners for bathroom use. The stench eventually stifled their hunger. Terror reigned. One man died. Many first saw the US in New Orleans. Until their exchanges were scheduled, the Latin Americans were held in various US internment camps. Hugo Droege begged not to be sent back. He was told you have to go, tied up or on your own two feet. One month later, he was shipped to Germany at the height of the Allied bombing. During the five years he was away from Guatemala, survival was very difficult. Mr. Droege believes that the Latin American coun-

tries cooperated with the United States so that they could confiscate the property of those kidnapped. When he finally returned to Guatemala, the family had nothing left. The government had taken the farm. Countries throughout Latin America profited the same way, seizing farms and businesses from those they turned over to the United States. Although the American government settled financially with and apologized to similarly treated Japanese Latinos, the plight of German Latinos has never even been acknowledged. Soon to be 100 years old, the patient Hugo Droege knows he is running out of time.

Repatriation: The **Jacobs** lived in Brooklyn, New York for years. Mr. and Mrs. Jacobs were German-born aliens. Their two boys were American. The family home was raided and ransacked on three separate occasions by the FBI. They never found any contraband (firearms, propaganda, or short-wave radio receivers). Mr. Jacobs was arrested at his job in November 1944. Like many whose spouses were arrested, the family did not know where he was for some time. He was taken to Ellis Island. He was ordered interned even though his hearing board unanimously recommended release. Mrs. Jacobs was ill and unable to maintain the household by herself. Not able to survive alone, she packed up her family's belongings, left her home and arrived at Ellis Island with her two young sons asking for mercy. They were reluctantly admitted. Eventually, the family was sent to the Crystal City family internment camp where they lived until Mr. Jacobs finally agreed to be repatriated under threat of deportation. They were transferred to Ellis Island, boarded the SS Aiken Victory in January 1946, months after the cessation of hostilities with the Axis nations, and returned to Germany. When the family arrived in the dead of winter, they were transported to Hohenasperg in a frigid, locked, heavily guarded boxcar. The bathroom was an open bucket in the corner. Once there, Mrs. Jacobs, still ill, was sent to another facility. Mr. Jacobs and his sons were sent to a military prison and each placed in separate cells. The boys, 12 and 14, were treated like Nazis by the US Army guards. The younger son, Arthur, celebrated his 13th birthday alone in his cell. The guards marched the American boy to meals by the hanging tree, hands above his head, threatening him with death if he did not behave. His fellow inmates included high-ranking officers of the Third Reich who were being held for interrogation and denazification. Eventually, the family was released, reunited and lived with Mr. Jacobs' parents. Arthur was industrious and soon began working with the American GIs living in Germany. An officer's wife worked on the boys' behalf and arranged for them to live in America. Their parents never returned to the US and Arthur didn't see them again for 11 years. Arthur became a major in the US Air Force. For the past 20 years, he has researched the government's wartime treatment of German Americans, sought to include German Americans in legislation recognizing Japanese and Italian Americans, networked with other internees, authored a book on his internment experiences and sponsored an informational web site. He has devoted himself to public education on the events, laws and attitudes that destroyed his family life and that of thousands of others. His work continues.

Karen E. Ebel

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110TH CONGRESS } 1st Session }	SENATE	{ REPORT 110-62
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WARTIME TREATMENT STUDY ACT OF 2007

MAY 4, 2007.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 621]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 621), to establish commissions to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish refugees during World War II, having considered the same, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE OF THE WARTIME TREATMENT STUDY ACT OF 2007

The Wartime Treatment Study Act of 2007 would create two fact-finding commissions to supplement the work done in the 1980s by the Commission on Wartime Relocation and Internment of Civilians, which studied the treatment of Japanese Americans during World War II. The Act would create one commission to review the U.S. Government's treatment of German Americans, Italian Americans, and European Latin Americans during World War II, and another commission to review the U.S. Government's treatment of Jewish refugees fleeing Nazi persecution during World War II.

The victory of America and its allies in the Second World War was a triumph for freedom, justice, and human rights. But, at the same time that many brave Americans fought for freedom in Europe and the Pacific, the U.S. Government was curtailing the freedom of a number of people at home.

Many Americans are aware that during World War II, under the authority of Executive Order 9066 and the Alien Enemies Act, the U.S. Government forced more than 100,000 ethnic Japanese from their homes and ultimately into relocation and internment camps. Through the work of the Commission on Wartime Relocation and Internment of Civilians, created by Congress in 1980, this shameful event finally received the official acknowledgement and condemnation it deserved. Under the Civil Liberties Act of 1988, people of Japanese ancestry who were subjected to relocation or internment later received an apology and reparations on behalf of the people of the United States.

The Wartime Treatment Study Act will ensure that the U.S. Government also acknowledges the mistreatment experienced during World War II by many German Americans, Italian Americans, and European Latin Americans, as well as Jewish refugees fleeing Nazi persecution. The Wartime Treatment Study Act would create two independent, fact-finding commissions to review this unfortunate history.

One commission would review the treatment by the U.S. Government of German Americans, Italian Americans, and other European Americans, as well as European Latin Americans, during World War II. Most Americans are unaware that, as was the case with many ethnic Japanese, approximately 11,000 ethnic Germans, 3,200 ethnic Italians, and scores of Bulgarians, Hungarians, Romanians or other European Americans and European Latin Americans were taken from their homes and placed in internment camps during World War II. Following Pearl Harbor, the U.S. Government pursuant to the Alien Enemies Act deemed approximately 600,000 Italian-born and 300,000 German-born United States resident aliens as "enemy aliens," restricting their travel and personal property rights and requiring them to carry certificates of identification. Extensive prohibited zones were established where "enemy aliens" were forbidden or their movements were restricted. Thousands of European Americans, including American-born children, ultimately ended up behind barbed wire and under armed guard in detention facilities and internment camps, such as the camps operated by the Department of Justice at Crystal City, Texas; Seagoville, Texas; Kenedy, Texas; Missoula, Montana; and Bismarck, North Dakota. The last European American internees, held at Ellis Island, were not released until 1948.

In addition, pursuant to a policy coordinated with 18 Latin American countries, more than 4,000 German Latin Americans, including German and Austrian Jews, and more than 200 Italian Latin Americans were arrested, transferred to the U.S. and interned. Thousands, including in some instances American-born children, were later deported to hostile, war-torn European Axis nations in exchange for Americans and Latin Americans held there.

These policies were devastating to the German and Italian communities, individuals and families, and the effects are still being experienced. The Wartime Treatment Study Act of 2007 will enable

Americans to learn about this history and explore why the U.S. Government violated these individuals' basic rights based on their nationality or ethnicity.

A second commission created by this bill would review the treatment by the U.S. Government of Jewish refugees, like those aboard the German vessel the *St. Louis*, who were fleeing Nazi persecution and genocide. Prior to and during World War II, the United States restricted the entry of Jewish refugees who were fleeing persecution or genocide and sought safety in the United States. During the 1930s and 1940s, U.S. Government policies affected the number of Jewish refugees, particularly those from Germany and Austria, who could gain admittance to the United States. The commission would review these facts, including how U.S. immigration policies failed to provide adequate safe harbor to Jewish refugees fleeing the persecution of Nazi Germany.

The injustices to European Americans, European Latin Americans, and Jewish refugees occurred more than 50 years ago. Enactment of the Wartime Treatment Study Act of 2007 is urgently needed. If Congress further delays enactment, the people who were affected by these policies will no longer be here to tell their stories. As Senator Feingold said in his February 15, 2007, floor statement upon introduction of S. 621, "If we wait, the people who were affected will no longer be here to know that Congress has at last recognized their sacrifice and resolved to learn from the mistakes of the past." There has been a measure of justice for Japanese Americans who were denied their liberty and property during World War II. Our country benefited greatly from analyzing the Japanese American experience. So, too, will it benefit from understanding the European American and European Latin American experience. The Wartime Treatment Study Act would complete the accounting of this period in our nation's history and provide a long overdue measure of justice to European Americans and European Latin Americans who also lost their freedoms.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

The Wartime Treatment Study Act of 2007, S. 621, is a bipartisan measure introduced on February 15, 2007, by Senator Feingold, Senator Grassley, Senator Kennedy, Senator Lieberman and Senator Inouye. Senator Cardin and Senator Wyden also joined the bill as cosponsors. Representative Robert Wexler introduced an identical measure, H.R. 1185, on February 16, 2007, in the House of Representatives.

The bill was listed on the Judiciary Committee's agenda for the first time on March 22, 2007. On April 12, 2007, the Committee ordered S. 621 to be reported favorably, without amendment, by voice vote.

The Wartime Treatment Study Act of 2007 builds on measures that were reported favorably from the Judiciary Committee in the 107th, 108th and 109th Congresses. In the 107th Congress, Senator Feingold, Senator Grassley and Senator Kennedy introduced S. 1356, the Wartime Treatment of European Americans and Refugees Study Act, on August 3, 2001. On March 14, 2002, the Judiciary Committee reported by voice vote an amended version of the bill. Significant changes included establishing two 7-member commissions rather than one 11-member commission, and changing the

name to the Wartime Treatment Study Act. No further action was taken in that Congress.

In the 108th Congress, Senator Feingold, Senator Grassley, Senator Kennedy and Senator Lieberman reintroduced the Wartime Treatment Study Act as S. 1691 on October 1, 2003. It was reported favorably by the Judiciary Committee on October 16, 2003. In January 2004, on the Senate floor Senator Feingold sought unanimous consent that the measure be taken up and passed by the Senate, but an objection was raised.

In the 109th Congress, Senator Feingold, Senator Grassley, Senator Kennedy, Senator Lieberman, Senator Corzine, and Senator Wyden reintroduced the bill as S. 1354 on June 30, 2005. It was reported favorably without amendment by the Judiciary Committee on November 17, 2005. No further action was taken.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1 contains the short title of the Wartime Treatment Study Act of 2007.

Section 2 contains the following findings:

(1) During World War II, the United States Government deemed as “enemy aliens” more than 600,000 Italian-born and 300,000 German-born United States resident aliens and their families and required them to carry Certificates of Identification and limited their travel and personal property rights. At that time, these groups were the two largest foreign-born groups in the United States.

(2) During World War II, the United States Government arrested, interned, or otherwise detained thousands of European Americans, some remaining in custody for years after cessation of World War II hostilities, and repatriated, exchanged, or deported European Americans, including American-born children, to European Axis nations, many to be exchanged for Americans held in those nations.

(3) Pursuant to a policy coordinated by the United States with Latin American nations, many European Latin Americans, including German and Austrian Jews, were arrested, brought to the United States, and interned. Many were later expatriated, repatriated, or deported to European Axis nations during World War II, many to be exchanged for Americans and Latin Americans held in those nations.

(4) Millions of European Americans served in the armed forces and thousands sacrificed their lives in defense of the United States.

(5) The wartime policies of the United States Government were devastating to the Italian American and German American communities, individuals, and their families. The detrimental effects are still being experienced.

(6) Prior to and during World War II, the United States restricted the entry of Jewish refugees who were fleeing persecution or genocide and sought safety in the United States. During the 1930s and 1940s, the quota system, immigration regulations, visa requirements, and the time required to process visa applications affected the number of Jewish refugees, particularly those from Germany and Austria, who could gain admittance to the United States.

(7) The United States Government should conduct an independent review to fully assess and acknowledge these actions. Congress has previously reviewed the United States Government’s war-

time treatment of Japanese Americans through the Commission on Wartime Relocation and Internment of Civilians. An independent review of the treatment of German Americans and Italian Americans and of Jewish refugees fleeing persecution and genocide has not yet been undertaken.

(8) Time is of the essence for the establishment of commissions, because of the increasing danger of destruction and loss of relevant documents, the advanced age of potential witnesses and, most importantly, the advanced age of those affected by the United States Government's policies. Many who suffered have already passed away and will never know of this effort.

Section 3 defines the key terms of the legislation. It specifies that "during World War II" covers the time period between September 1, 1939, and December 31, 1948. It defines "European Americans" to include U.S. citizens and resident aliens of European ancestry; "Italian Americans" to include U.S. citizens and resident aliens of Italian ancestry; "German Americans" to include U.S. citizens and resident aliens of German ancestry; and "European Latin Americans" to include persons of European ancestry residing in Central America, South America or the Caribbean during World War II.

Title I—Commission on Wartime Treatment of European Americans

Section 101 establishes the Commission on Wartime Treatment of European Americans. It provides that the 7-member Commission be composed of three members appointed by the President, two by the Speaker of the House in consultation with the minority leader, and two by the majority leader of the Senate in consultation with the minority leader. The provision contemplates that the appointing authorities will work together to ensure that the Commission includes two members representing the interests of Italian Americans and two members representing the interests of German Americans.

Section 102 sets out the duties of the Commission, which include a comprehensive review of the U.S. Government's treatment of European Americans and European Latin Americans during World War II, and the compilation of a list of the detention and internment facilities where they were held, and those who died and were born in those facilities. This review also will include an assessment of the underlying rationale for the U.S. Government's actions and recommendations for how civil liberties can be protected during wartime in the future. Section 102 also requires the Commission to submit a written report of its findings and recommendations to Congress no later than 18 months after the date of the Commission's first meeting.

Section 103 sets out the powers of the Commission. The Commission may hold hearings at times and locations of its choosing, and request the testimony of witnesses and the production of books, records, correspondence, memorandum, papers, and documents. If the Commission has difficulty securing such testimony or production, it may ask the Attorney General to invoke the aid of an appropriate federal court to require such testimony or production. In addition, the legislation requires that all executive branch entities comply fully with any requests for information from the Commission.

Section 104 contains administrative provisions regarding the hiring of staff, consultants and details; procuring supplies, services and property; and entering into contracts.

Section 105 authorizes \$600,000 in appropriations for the Commission to carry out its duties.

Section 106 sunsets the Commission 60 days after it submits the report to Congress required by Section 102.

Title II—Commission on Wartime Treatment of Jewish Refugees

Section 201 establishes the Commission on Wartime Treatment of Jewish Refugees. It provides that the 7-member Commission be composed of three members appointed by the President, two by the Speaker of the House in consultation with the minority leader, and two by the majority leader of the Senate in consultation with the minority leader. The provision contemplates that the appointing authorities will work together to ensure that the Commission includes two members representing the interests of Jewish refugees.

Section 202 sets out the duties of the Commission, which include a comprehensive review of the U.S. Government's treatment of Jewish and other refugees fleeing Nazi persecution or genocide during World War II, and an assessment of the underlying rationale for the U.S. Government's actions and recommendations for how people fleeing persecution or genocide in the future can better obtain refuge in the United States. Section 102 also requires the Commission to submit a written report of its findings and recommendations to Congress no later than 18 months after the date of the Commission's first meeting.

Section 203 sets out the powers of the Commission. The Commission may hold hearings at times and locations of its choosing, and request the testimony of witnesses and the production of books, records, correspondence, memorandum, papers, and documents. If the Commission has difficulty securing such testimony or production, it may ask the Attorney General to invoke the aid of an appropriate federal court to require such testimony or production. In addition, the legislation requires that all executive branch entities comply fully with any requests for information from the Commission.

Section 204 contains administrative provisions regarding the hiring of staff, consultants and details; procuring supplies, services and property; and entering into contracts.

Section 205 authorizes \$600,000 in appropriations for the Commission to carry out its duties.

Section 206 sunsets the Commission 60 days after it submits the report to Congress required by Section 202.

IV. COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 621, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

APRIL 19, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 621, the Wartime Treatment Study Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 621—Wartime Treatment Study Act

S. 621 would establish two commissions, the Commission on Wartime Treatment of European Americans and the Commission on Wartime Treatment of Jewish Refugees. The first commission would review the conduct of the United States government during World War II towards European Americans and European Latin Americans. The second commission would focus on the government's treatment of Jewish refugees during World War II.

Each commission, consisting of seven members, would have 18 months to report on its findings and recommendations. Members would serve without pay, but would be reimbursed for travel expenses. In addition, the commissions could hire staff or use personnel from other agencies. Each commission would terminate 60 days after submitting its final report. To fund the costs of the commissions, the bill would authorize the appropriation of \$1.2 million (\$600,000 per commission).

Assuming the appropriation of the authorized amounts, CBO estimates that implementing S. 621 would cost \$1.2 million over the 2008–2009 period. Enacting the bill would not affect direct spending or revenues. The legislation does not authorize any payment of restitution; such authority would require a separate act of Congress.

S. 621 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 621.

VI. CONCLUSION

Passage and enactment of the Wartime Treatment Study Act of 2007, S. 621, is long overdue. This bipartisan legislation will allow for a fuller accounting of this tragic chapter in our Nation's history.

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VII. CHANGES IN EXISTING LAW

Pursuant to paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law made by S. 621, as ordered reported.

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**Statement for the Record by
Mark P. Nevitt
Associate Professor of Law
Emory University School of Law**

**U.S. Senate Committee on the Judiciary
Hearing on “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy”**

December 10, 2024

Chair Durbin, Ranking Member Graham, and Members of the Committee, thank you for the opportunity to submit written testimony in connection with the Committee’s December 10, 2024, hearing entitled, “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy.” My views on the subject matter of the hearing are informed by my twenty years of experience in the U.S. Navy, both as a line Naval officer with operational experience implementing the law and as a JAG attorney advising on the law. They are also informed by my current role as a law professor teaching, researching, and publishing on the military’s use in domestic military operations.¹

The potential use of the military to enforce nationwide federal immigration laws raises serious concerns. While existing law may well permit the President to take the extraordinary step of ordering the National Guard and active-duty military to do so, deploying the military to enforce federal immigration law threatens military readiness, undermines the hard-earned trust placed in the military by civil society, and creates enormous operational risks that endanger servicemembers and citizens alike.

The President Possesses Broad Authorities to Deploy the Armed Forces Domestically, but Enforcing Immigration Laws is Far Outside Historical Norms and Boundaries

The Posse Comitatus Act prohibits the use of active-duty military personnel to enforce the law domestically, unless such use is expressly authorized by another statute or the Constitution. The Posse Comitatus Act’s constraints are limited as a practical matter, because Congress has separately delegated broad authority to the President to deploy the military domestically to conduct a wide range of military missions—including law enforcement. While lawful, activating these legal authorities is not risk-free.

The President’s authority to deploy the armed forces domestically stems largely from the Insurrection Act, which authorizes the President to federalize state National Guard units or deploy federal military forces to enforce the law. In 230 years since the law’s passage, the Insurrection

¹ See, e.g., Mark Nevitt, Deploying Soldiers on American Soil: Operational Risks and Considerations, Lawfare, (Oct. 3, 2024) <https://www.lawfaremedia.org/article/deploying-soldiers-on-american-soil--operational-risks---considerations>; Mark Nevitt, *The President and Domestic Deployment of the Military: Answers to Five Key Questions*, Just Security (Jun. 2, 2020), <https://www.justsecurity.org/70482/the-president-the-military-and-minneapolis-what-you-need-to-know/>; Mark Nevitt, *Unintended Consequences: The Posse Comitatus Act in the Modern Era*, 36 CARDOZO L. REV. 119 (2014).

Act has been invoked in response to 30 crises. It has not been invoked since President George H.W. Bush relied on the statute during the 1992 Los Angeles riots. Significantly, the deployment of federal military forces into Los Angeles was at the request of the California governor.

Insurrection Act invocations have typically been limited in time and geographic location, with the military quick to arrive and quick to leave. In several cases, Presidents invoked the law in response to civil unrest, including the 1992 Los Angeles riots and riots in four cities following the 1968 assassination of Martin Luther King, Jr. In other cases, Presidents invoked the law to protect and uphold court orders protecting civil rights. For example, in Little Rock, Arkansas in 1957, President Eisenhower federalized the Arkansas National Guard and activated the 101st Airborne Division to desegregate Arkansas schools and protect students in the wake of *Brown v. Board of Education*. President Kennedy invoked the Insurrection Act in 1963 in response to Governor George Wallace's so-called "Stand in the Schoolhouse Door," federalizing the Alabama National Guard to protect African-American students enrolling at the University of Alabama. And President Johnson federalized the National Guard to protect Martin Luther King, Jr., and civil rights marchers as they traveled from Selma to Montgomery, Alabama.

Although the Insurrection Act provides the primary authority for domestic deployment of the military, the President could also seek to use novel authorities to authorize the military's involvement in immigration enforcement. This includes 32 U.S.C. § 502 (f), which was invoked by then-President Trump during the summer of 2020 to bring National Guard units from outside the District of Columbia into the nation's capital. The precise legal contours of this authority remain unclear and are ripe for tension and conflict, particularly if outside National Guard units are deployed to unwelcoming states and territories.

Regardless of the underlying legal authority, an order to deploy the Armed Forces throughout American cities to enforce immigration laws would be massively out of step with domestic military deployments in the modern era. These deployments have typically involved a specific crisis, a discrete location, and a limited timeframe—for instance, the Insurrection Act invocation in response to the 1992 Los Angeles riots. An open-ended, national Insurrection Act invocation to enforce immigration laws would go well beyond these historic norms and boundaries.

Ordering the military to enforce domestic immigration law would also implicate the military's strong allergic reaction to conducting domestic law enforcement even when requested to do so. Senior military leaders consistently pushed back during efforts to expand the military's role in counter-drug operations throughout the 1980s and 1990s, warning that this nontraditional mission distracted from the military's core functions. Testifying before Congress in 1988, Secretary of Defense Frank Carlucci warned that imposing a broader counterdrug mission on the Pentagon stressed military resources. He also expressed concerns about the military's institutional competence to handle a law enforcement mission set. Then-Chief of Naval Operations, Admiral Frank Kelso, highlighted the Navy's lack of institutional training to conduct law enforcement missions while noting that the Navy would face a readiness concern if a Sailor was asked to testify in federal court while deployed overseas. Those concerns surrounding training, readiness, and strained resources are as true then as they are today.

Domestic Military Law Enforcement Operations Don't Align with Military Capabilities and Training

Irrespective of legal authorities, Title 10 federal military forces lack the requisite training and expertise to engage in law enforcement operations. Deploying the military to enforce federal immigration laws would require a sharp shift in mindset from overseas warfighter to domestic law enforcer. And military leaders need—indeed, require—clear orders from their civilian leaders before they take on any mission.

This shift also requires an entirely new set of instructions governing when to use force. More permissive Standing Rules of Engagement, or “SROE”—which I taught as a JAG—are integrated throughout military training.² As a general matter, Standing Rules of Engagement govern military operations in overseas environments where host-nation law enforcement and civil authorities are nonexistent or otherwise resistant to U.S. military presence. They require a more “combat mindset” and may even involve a declaration that certain forces are hostile, and whether or not a particular individual poses an imminent threat of death or serious personal injury.

Combat-focused Standing Rules of Engagement do not apply in domestic law enforcement operations. Instead, military forces would have to make the abrupt shift to the military’s more restrictive Standing Rules for the Use of Force, or “SRUF,” used for law enforcement operations.³ Standing Rules for the Use of Force take into account cornerstone constitutional protections, such as the Fourth Amendment’s protection against unreasonable searches and seizures and the First Amendment’s protection of free speech and assembly. In my experience, military training focuses heavily on the Standing Rules of Engagement and much less so on the Standing Rules for the Use of Force, for the obvious reason that servicemembers conduct overseas combat operations much more often than domestic law enforcement missions. I have no doubt that servicemembers would do their best to adapt to the new Standing Rules for the Use of Force procedures, but making this shift on a dime adds an additional level of complexity and operational risk. Mistakes are bound to happen. Law enforcement missions are best left to law enforcement professionals who are staffed, trained, and equipped to conduct this mission—not the military.

Consider some of the dangerous breakdown in communication and terminology that took place in recent American history when the military was called upon to take on nontraditional missions. When responding to the 1992 Los Angeles riots, U.S. Marines, trained as warfighters in the more combat-oriented Standing Rules of Engagement, were accompanying a police officer to a domestic dispute in a neighborhood. The police officer instructed the Marines to “cover me” as he approached the door.⁴ For law enforcement, “cover me” meant to point your weapons and be prepared to respond if necessary. The Marines interpreted “cover me” in accordance with their

² CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION 3121.01B, *Standing Rule of Engagement/Standing Rules for the Use of Force for US Forces* (June 13, 2005), https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Joint_Staff/20-F-1436_FINAL_RELEASE.pdf

³ *Id.*

⁴ Christopher M. Schnaubelt, *Lessons in Command and Control from the Los Angeles Riots*, U.S. ARMY WAR COLLEGE QUARTERLY: PARAMETERS 88 (Summer 1997), <https://dml.armywarcollege.edu/wp-content/uploads/2023/01/Schnaubelt-Lessons-of-the-LA-Riots-Parameters-1997.pdf>

training and immediately laid down a base of heavy fire, ultimately firing over two hundred bullets into the house.⁵ Thankfully no one was hurt, but this incident underscores how different training and terminology can risk lives, lead to confusion, and add to the fog of military operations.

In the 1990s, President Clinton ordered Marines to the U.S.-Mexico border to assist with counter-drug operations in an effort to combat the cross-border drug trade. In a tragic case, a young Marine killed an American high school student in Redford, Texas, Ezequiel Hernandez, who was shepherding goats along the border.⁶ While the exact circumstances of the shooting have been disputed for years, in deliberations over the 1998 National Defense Authorization Act, then-Representative Becerra stated that “Had Border Patrol agents been patrolling the border on May 20 instead of military troops, Ezequiel would probably still be alive.”

Ezequiel’s tragic death led to the temporary halting of the military presence at the border. The tragic killing conducted at the hands of heavily camouflaged Marines also underscored the disconnect between the military training and doctrine that emphasizes combat in comparably more hostile environments and civilian law enforcement training that emphasizes protection of the local community.

In sum, if ordered to enforce domestic immigration laws, federal military forces must comply with the more restrictive rules for the use of force, which must be boiled down to tactics, techniques, and procedures. These tactics, techniques, and procedures must be communicated down the chain of command to the 19-year old Marine operating in an entirely new environment with a new set of rules and procedures governing when to use deadly force. This training disconnect may lead to excessive use of force or inappropriate responses in a domestic law enforcement environment.

Confusing Chains of Command Create Additional Operational Risk

In addition to the challenges caused by a shift from permissive, operational Standing Rules of Engagement to the more restrictive law enforcement Standing Rules for the Use of Force, military personnel deployed to enforce domestic immigration laws may face confusing chains of command that create additional operational risk. Title 10 federal military personnel may well be operating alongside state Title 32 National Guard units that have not yet been brought under federal command and control. In that circumstance, state National Guard units would follow neither the Standing Rules of Engagement nor the Standing Rules for the Use of Force—they would follow state-specific rules. National Guard forces operating under Title 32 comply with state-specific rules addressing enforcement authority and use of force, and these rules vary in material respects by location. In some states (such as Arkansas) National Guard personnel have broad arrest authorities, while in other states (such as Iowa) the National Guard has only those powers enjoyed by the population at large. Each state and territory has different guidance on National Guard authorities on the use of force and when it is authorized. Different rules create additional potential for confusion when federal military forces operate alongside state National Guard forces, or when state National Guard forces operate alongside one another.

⁵ *Id.*

⁶ Samanta Schmidt, *How the Tragic Killing of an American Teenager Halted the Military Border Presence in 1997*, WASH. POST. (Apr. 6, 2018), <https://www.washingtonpost.com/news/morning-mix/wp/2018/04/06/how-the-tragic-killing-of-an-american-teenager-halted-the-military-border-presence-in-1997/>

Once again, the 1992 Los Angeles military response provides a cautionary tale. The California National Guard initially served in a state command under Governor Pete Wilson. Under state active-duty status, the California National Guard followed state rules for the use of force and worked alongside federal military troops who followed the military's rules for the use of force (not rules of engagement). When President Bush subsequently federalized the California National Guard, Guardsmen and women suddenly had to comply with the Standing Rules for the Use of Force—entirely different rules from those that had initially governed their mission. Confusion reigned, and the California National Guard did not even realize that it had been federalized for a full 24 hours.⁷ A week later, the California National Guard reverted to state status (another change in rules) while federal military forces stayed in the area and gradually redeployed back to their respective bases.

Domestic Military Operations Undermine and Distract from the Military's Core Functions While Harming Recruiting and Retention

The men and women honorably serving in the Armed Forces are our nation's most cherished national security asset. Today's military is a stressed force that suffers from retention and recruiting problems, a rising threat to national security that must be reversed. Last year, the military services missed their recruiting goals by more than 40,000 recruits.⁸ But recruiting and retention may well suffer further blows if the public perceives the military to be used for political purposes—a point reinforced in a recent RAND report titled *What Americans Think About Veterans and Military Service*.⁹ The RAND Report noted that public confidence in the military is declining due in part to heightened politicization of the military.¹⁰ And deploying the military to aid in the enforcement of nationwide, mass deportations is an inherently controversial mission that would distract the military from its core mission of protecting the United States from foreign enemies and fighting and winning the nation's wars.

These concerns are especially acute with respect to the National Guard, which has dual domestic and overseas responsibilities by design and whose members have been stressed by a range of significant deployments in recent years. Our National Guard men and women just redeployed from supporting the COVID-19 nationwide relief and response effort, the largest domestic military deployment in recent history. In recent years, we have asked our National Guard personnel to patrol the border, drive school buses, teach in high schools, guard prisons, and take on a host of missions that address problems that are typically handled by civilian authorities. The military—particularly the state National Guard—is already a stressed force and we should tread carefully before asking them to take on additional missions.

⁷ Christopher M. Schnaubelt, *Lessons in Command and Control from the Los Angeles Riots*, U.S. ARMY WAR COLLEGE QUARTERLY: PARAMETERS 88 (Summer 1997), <https://dml.armywarcollege.edu/wp-content/uploads/2023/01/Schnaubelt-Lessons-of-the-LA-Riots-Parameters-1997.pdf>

⁸ David Vergun, *DoD Addresses Recruiting Shortfall Challenges*, DoD News (Dec. 13, 2023), <https://www.defense.gov/News/News-Stories/Article/article/3616786/dod-addresses-recruiting-shortfall-challenges/>

⁹ Meredith Kleykam, Daniel Schwam, Gilad Wenig, *What Americans Think About Veterans and Military Service*, RAND Corp. (Dec. 14, 2023), https://www.rand.org/pubs/research_reports/RRA1363-7.html

¹⁰ *Id.*

Indeed, the military does not have infinite time and resources to spend on nontraditional missions. General Daniel Hokanson, the outgoing chief of the National Guard Bureau recently made the same point: time spent on nontraditional missions—such as immigration enforcement—reduces the Guard’s ability to train for core functions (serving in combat overseas, responding to natural and manmade disasters).¹¹

Conclusion

A nationwide law enforcement mission that deploys the military domestically would mark an extraordinary shift in how the nation has used our most cherished national security asset. It would upset civil-military relations, threaten civil liberties, and endanger lives. Activating the National Guard or federal military forces for a nationwide immigration law enforcement mission would be inconsistent with the limited scope of past domestic deployments, and an ironic departure from instances where the Insurrection Act was invoked to protect civil rights. Finally, it would discount the military’s longstanding and well-founded skepticism of playing an outsized and continuous role in law enforcement operations.

¹¹ Major General Daryl Bohac (ret.) et al., *Overuse of National Guard Threatens to Undermine Preparedness*, Federal Times, (July 12, 2024), https://www.rand.org/pubs/research_reports/RR1363-7.html



Chairman Dick Durbin
US Senate Committee on the Judiciary
224 Senate Dirksen Office Building
Washington, DC 20510

December 20th, 2024

To the Members of the US Senate Judiciary Committee:

My name is Michelle García and I am the Manager of Community Organizing at Access Living, the Center for Independent Living that provides services to Chicagoans with disabilities, as well as advocating on the local, state and national levels. Prior to my current role as the Manager of Community Organizing, I spent 13 years as Access Living's Latinx/Immigration Community Organizer, working to empower disabled immigrants for community change. Following the U.S. Senate Judiciary Committee's hearing on December 10th, 2024, regarding the proposal for mass deportations, I am writing to highlight the impact mass deportations would have on disabled immigrants and express my anger as a disabled woman and daughter of immigrants.

Congress must recognize the deep connection between the migrant community and disability. Many come to the United States with both visible and invisible disabilities, especially asylum seekers fleeing war, persecution, and other hardships. Many undocumented immigrants also do not have refugee status or asylum protections, and we extend our advocacy and vision of security and care to them. Whether coming from Africa, Asia, the Americas or the Middle East, people who have experienced great trauma look to our country for refuge.

After entering the United States, immigrants often work dangerous jobs that have higher rates of workplace accidents and injury, such as in agriculture and construction, which lead to disability.¹ Over time, after strenuous labor, many undocumented immigrants begin to acquire disabilities that limit their ability to work. Without adequate healthcare or disability service infrastructure in their home country, and unable to access services in the United States, disabled undocumented immigrants are trapped in a social network of vulnerabilities. This puts undocumented

¹ Drishti Pillai and Samantha Artiga, "Employment Among Immigrants and Implications for Health and Health Care," *Kaiser Family Foundation*, June 12, 2023. <https://www.kff.org/racial-equity-and-health-policy/issue-brief/employment-among-immigrants-and-implications-for-health-and-health-care/>.

individuals at a heightened risk for exploitation and abuse.² As Congress discusses the potential for mass deportations, it is important to recognize how our current immigration system fails to provide adequate supports for disabled immigrants to live independently.

Lack of accessibility throughout the process of an immigration legal court case places major risks on the health and well-being of disabled immigrants. A 2023 report by Human Rights First identified how immigration courts fail to provide reasonable accommodations, inform disabled immigrants of their full rights, and deliver critical information in an accessible manner.³ Where disability accommodations are not in place, not only does the immigration legal process fail to uphold federally protections and access for people with disabilities, but it undermines the ability of disabled immigrants to have fair representation. There is a documented history of immigrants who have mental and/or cognitive disabilities being abandoned on the street without connection to their support systems, creating a dangerous and potentially deadly situation for them.⁴ These actions ignore federal protections designed so that people with disabilities can have equitable access to our legal systems and reflect the broken nature of the immigration system.

We also oppose any attempt to bring back family separation, an inhumane and cruel policy that harms disabled immigrants and creates disability in the form of trauma. Disabled people often rely on family members for support services, and any attempt to separate them is detrimental to their well-being. The idea of disabled people being separated from their caregiver is not hypothetical. In 2018, amidst the family separation policy, the Trump administration targeted disabled immigrants. An egregious example is the 10-year-old girl with Down syndrome who, in 2018, was separated from her mother at the border.⁵ This was beyond disturbing then, and it is horrifying that such a policy may return in the upcoming administration. We *expect* Congress to prevent such a policy from being implemented again.

Mass deportations, in addition to hurting disabled immigrants, will also hurt disabled people who rely on the support of undocumented immigrants. When looking at the occupations of immigrant

² Mohammad Mahdi Doust Mohammadi et al. "Social vulnerabilities among immigrants and refugees in emergencies and disasters: a systematic review," *Frontiers in Public Health* 11 (2023). <https://doi.org/10.3389/fpubh.2023.1235464>.

³ Ruby Ritchin, "You Suffer A Lot," *Human Rights First*, July 19, 2023. <https://humanrightsfirst.org/library/you-suffer-a-lot-immigrants-with-disabilities-face-barriers-in-immigration-court/>.

⁴ Erica Bryant, "ICE's Deadly Practice of Abandoning Immigrants With Disabilities and Mental Illnesses on the Street," *Vera*, September 2021. <https://www.vera.org/ices-deadly-practice-of-abandoning-immigrants-with-disabilities-and-mental-illnesses-on-the-street>.

⁵ Gina Martinez, "Officials Confirm 10-Year-Old Girl With Down Syndrome Separated From Mother at Border," *Time*, June 20, 2018. <https://time.com/5317250/child-down-syndrome-separated-at-border/>.

workers, nearly 150,000 undocumented immigrants are a part of the care workforce.⁶ These workers provide crucial services to people with disabilities to allow them to live in their community of choice. As someone who utilizes personal attendant services for my own disability needs, I am not concerned about the immigration status of the person assisting me, but whether they will respect my autonomy and decisions as a disabled woman. It is currently hard to find care workers of any status who respect my autonomy. Any attempt at removing a significant part of the care workforce will only harm the disability community.

I also want to address arguments that undocumented immigrants are abusing public benefits without paying into our tax system. This is flatly untrue. Pew Research reported this year that over 8 million people in the American workforce are undocumented immigrants, nearly 5% of the total US workforce.⁷ In fact, undocumented immigrants paid nearly \$100 billion into federal, state, and local taxes in 2022, without the ability to receive any public benefits.⁸ It seems only logical that as Members of Congress argue the country is in a financial crisis, it would make no financial sense to remove a significant population that actually pays into the system, including paying for public benefits programs the disability community relies on. The assumption that undocumented persons use public benefits is also untrue. Undocumented immigrants, by nature of their immigration status, cannot access these services and oftentimes will pay into systems they will never benefit from. Congress cannot continue to perpetuate these harmful stereotypes and lies that harm our disability community.

People come to the United States for a multitude of reasons, but they have one common goal: seeking a better life for them and their family. We welcome a discussion on immigration reform, but one that recognizes the humanity of those involved, creates real pathways to citizenship, and makes it easier for those who want to move to our country.

⁶ Nicole Prchal Svajlenka, "Undocumented Immigrants in the Care Economy," *Center for American Progress*, February 2, 2021. <https://cdn.americanprogress.org/content/uploads/2021/01/01114813/EW-CareEconomy-factsheet.pdf>.

⁷ Jeffrey S. Passel et al., "What we know about unauthorized immigrants living in the US," *Pew Research*, July 22, 2024. <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>.

⁸ Carl Davis et al., "Tax Payments by Undocumented Immigrants," *Institute on Taxation and Economic Policy*, July 30, 2024. <https://itep.org/undocumented-immigrants-taxes-2024/>.

I thank you for your time and hope we can work together towards immigration policies that truly uplift all people with disabilities.

Sincerely,

Michelle García
Mgarcia@accessliving.org
Manager of Community Organizing
Access Living
115 W. Chicago Avenue

Cc: Karen Tamley, President & CEO, Access Living
Amber Smock, Vice President of Advocacy, Access Living

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Snapshot of ICE Detention: Inhumane Conditions and Alarming Expansion

September 2024

The U.S. government spends over three billion a year on the largest immigration detention apparatus in the world to detain and deport people who have lived in the U.S. for decades or who arrived recently seeking safety or a better life. People in detention experience [inhumane conditions](#) and rights abuses that include [medical neglect](#), [preventable deaths](#), punitive use of [solitary confinement](#), lack of [due process](#), obstructed [access to legal counsel](#), and [discriminatory](#) and [racist treatment](#). The numbers behind the immigration detention system provide a glimpse of the depths of inhumanity experienced on a daily basis by those in detention and the significant public costs, as more taxpayer dollars go towards [private prison companies](#) profiting each year off [detention contracts](#). **The numbers reiterate the urgent need to halt efforts to expand the system and phase out the use of immigration detention.**

IMMIGRATION DETENTION AT A GLANCE

DEATHS IN DETENTION

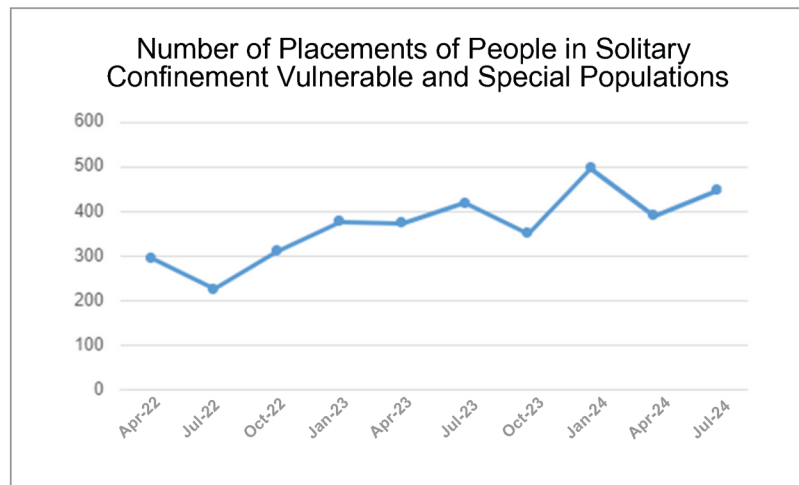
23 people have died in ICE custody since the start of the Biden administration.

- Twelve of those [deaths](#) have occurred over the last year alone, more than [double](#) the year before.
- ICE has [failed to improve](#) conditions that lead to tragic and largely preventable deaths.
- A June 2024 [report](#) examined 52 deaths between 2017 and 2021, finding that:

 **95%** of those deaths could likely have been prevented with adequate medical care.

USE OF SOLITARY CONFINEMENT

50% increase since March 2023 in ICE's use of solitary confinement for people considered members of "vulnerable and special populations."

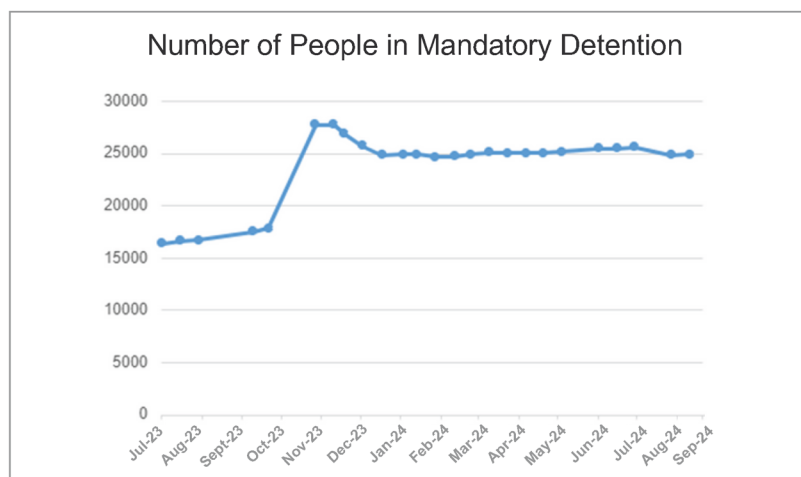


Source: [ICE Detention Statistics](#)

- The average number of consecutive and cumulative days in solitary has more than doubled for this population, which ICE classifies as people who self-identify as LGBTI, have a serious mental or medical illness, are on a hunger strike, or are on suicide watch.
- In [solitary confinement](#), which ICE refers to as "segregation," people are isolated in small cells with minimal human contact for days, weeks, or years. The practice has a devastating [psychological and physical impact](#), as The New York Times recently [reported](#).
- NIJC continues to [call for an end](#) to the use of solitary confinement in immigration detention, and Members of Congress have [joined](#) human rights organizations in calling for an end to ICE's use of the inhumane practice.

LACK OF DUE PROCESS

60% of people in ICE custody are subject to “mandatory detention,” meaning they do not have a right to a bond hearing to make a case for release, which is basic due process.



Source: [ICE Detention Statistics](#)

- Data on bond access illuminates racial disparities in ICE detention. Human rights groups have [found](#) that Black immigrants are less likely to be released on bond or parole, and are forced to pay much higher bonds.

PROFIT-DRIVEN EXPANSION

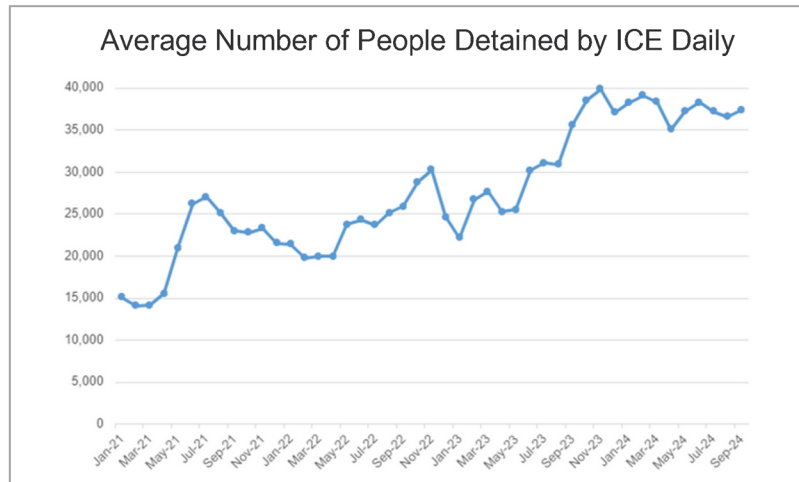
90% of people in ICE custody are held in detention centers operated for profit by private companies as of July 2023.

- This is a [10 percent increase](#) from the Trump administration.
- ICE's oversight system [permits abuse and stifles accountability](#), allowing for [lucrative](#) contracts to continue with impunity.

MORE PEOPLE DETAINED IN WORSENING CONDITIONS

37K people are detained each day on average, an alarming 140% increase from the start of the Biden administration.

- ICE detained more than 260,000 people over the last year alone. This includes people who have lived in the U.S. for decades, parents of U.S. citizens, parents separated from their children, and people who arrived recently seeking asylum or a better life.
- People increasingly protest the [abuses](#) they face in detention. As of June 2024, hundreds of people in at least five different facilities were on [hunger strikes](#).
- ICE often responds to protests with [threats](#) and physical force, using pepper spray, non-lethal bullets, and sending protesters to solitary confinement.



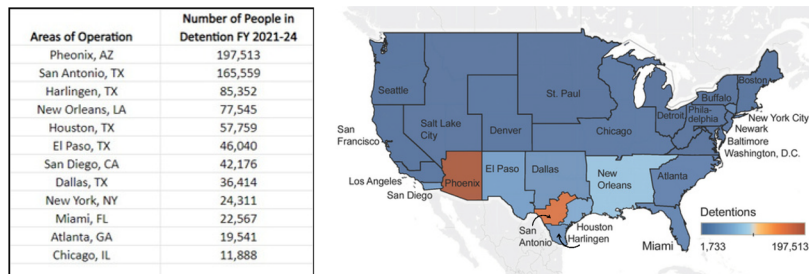
Source: [ICE Detention Statistics](#)

NEW FACILITIES AND CONTRACTS

ICE expanded immigration detention by **50%** under the Trump administration.

- During the Biden administration, the U.S. Department of Homeland Security renewed dozens of contracts and entered into new agreements with private prison companies, including opening the Moshannon Valley detention center in Pennsylvania, one of ICE's [12 facilities](#) that hold over 1,000 people each.
- ICE uses more than [190 different facilities](#) for detention across more than 40 states and U.S. territories. The states with the most [people detained](#) by ICE are Texas, Louisiana, California, Arizona and Georgia.
- The Biden administration [ended](#) a small number of ICE contracts with some of the most egregious facilities, and ICE terminated agreements in states that [banned](#) immigration detention. Now, alarmingly, the Biden administration is seeking to [expand](#) the detention system, issuing solicitations for contracts for new facilities across the country.

Number of People in Detention by Region,
FY2021-2024

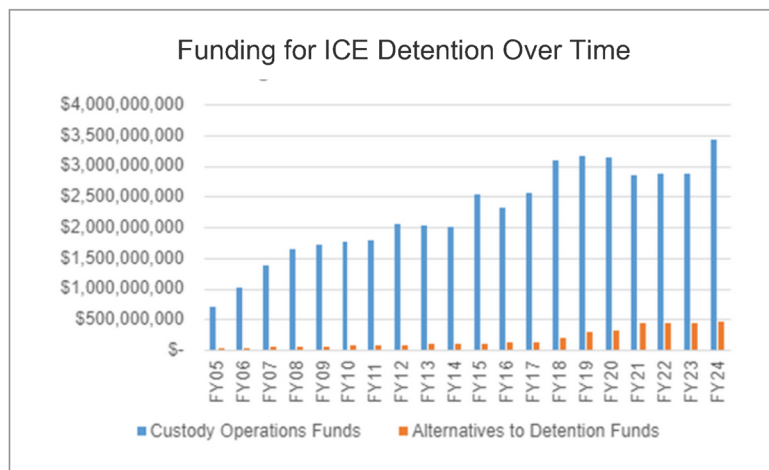


Source: ICE Enforcement and Removal Operations [Statistics](#)

CONGRESSIONAL FUNDING

Yearly funding for ICE detention has skyrocketed to **5x** higher than what it was two decades ago.

- Funding for detention is providing a windfall for private prison companies with enormous human and public costs.
- Congress [approved](#) \$3.4 billion in taxpayer dollars for fiscal year 2024 for ICE to detain an average daily population of 41,500 people - an increase of \$500 million from the prior year.



For more information, visit the National Immigrant Justice Center's website here:

<https://immigrantjustice.org/>



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Rebecca S. Pringle
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Princess R. Moss
Vice President

Noel Candelaria
Secretary-Treasurer

Kim A. Anderson
Executive Director

December 10, 2024

Committee on the Judiciary
United States Senate
Washington, DC 20010

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we would like to submit the following comments in connection with today's hearing, "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy."

The threat of mass deportations is already traumatizing students all across America. Many find it difficult—or impossible—to focus on their studies when consumed with fear of what the future holds for them and their families. Schools are places of learning, sensitive locations where immigration enforcement does not occur; that should remain the case.

We are also concerned about Dreamers—undocumented youth brought to the United States as children. Ending Deferred Action for Childhood Arrivals (DACA) would mean losing 17,000 educators, and hit major school districts in California, Texas, Illinois, New York, and Florida especially hard. More than 250,000 students would be impacted immediately—and ultimately, as many as 7 million students. Many of them would be plunged into poverty and have their access to healthcare narrowed or totally eliminated.

Mass deportations that tear families apart would cause anguish and grief that rend the fabric of our society. Instead, we urge policymakers to stabilize immigrant communities by supporting and passing the Dream Act of 2023 (S. 365), the American Dream and Promise Act of 2023 (H.R. 16), or similar legislation.

We thank you for the opportunity to submit these comments.

Sincerely,

Marc Egan
Director of Government Relations



**Statement for the Senate Committee on the Judiciary on the Hearing Entitled,
“ How Mass Deportations Will Separate American Families, Harm Our
Armed Forces, and Devastate Our Economy” on December 10th, 2024**

**BY THE
JAPANESE AMERICAN CITIZENS LEAGUE**

December 19th, 2024

The Japanese American Citizens League (JACL) submits this written testimony for the record for the December 10th, 2024 hearing before the Senate Committee on the Judiciary entitled, “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate our Economy.”

JACL is the oldest and largest Asian American civil rights organization in the United States. The JACL monitors and responds to issues that enhance or threaten the civil and human rights of all Americans and implements strategies to effect positive social change.

The Alien Enemies Act of 1798 is an archaic piece of legislation that is ripe for abuse. The Alien Enemies Act of 1798 (AEA) is the last of the four original Alien and Sedition Acts that remain today. The AEA is a wartime authority that permits the president to detain and deport foreign nationals of an “enemy nation”¹. The AEA has been used three times in the history of the United States, during the War of 1812, World War I, and most shamefully in World War II².

The Alien Enemies Act was used to intern tens of thousands of Japanese, German, Italian, and Latin American immigrants during the Second World War. For the JACL and the Japanese American community, the effects of the AEA were most present during World War II.

¹

https://www.archives.gov/milestone-documents/alien-and-sedition-acts?_ga=2.265443149.373320039.1734469691-1096771011.1734469691#enemies

² <https://www.brennancenter.org/our-work/research-reports/alien-enemies-act-explained>

Shortly after the attack on Pearl Harbor, President Roosevelt invoked the AEA by issuing **Proclamation 2525**³, designating Japanese Nationals as “alien enemies”. Following the proclamation, first-generation (Issei) leaders in the Japanese American Community were arrested in massive raids on neighborhoods and community events. The people that were arrested were sent to internment camps all across the United States. The local and federal governments essentially made the leadership of the Japanese American community disappear, leaving communities torn and directionless. The following day, **Proclamation 2526**⁴ and **2527**⁵ were issued under the authority of the AEA designating German and Italian nationals as alien enemies and were similarly targeted by raids and internment.

By the end of World War II, the Alien Enemies Act brought over **31,000 Japanese, German, Italian, and Latin American nationals** into the custody of the Department of Justice⁶. Department of Justice, Immigration and Naturalization Service, and US Army internment camps were constructed across the United States to house the internees, including in California, Oregon, Idaho, Arizona, Montana, New Mexico, Texas, Oklahoma, Louisiana, Wisconsin, Tennessee, Florida, North Carolina, Maryland, Philadelphia, New York, Massachusetts, Alaska, and Hawaii⁷. These camps would be separate from the 10 Wartime Relocation Authority (WRA) camps which would be constructed later during the war.

The mass internment under the Alien Enemies Act set the Stage for the mass incarceration of American citizens of Japanese Ancestry. The roundup and internment of immigrants from Japan, Germany, Italy, and Latin America served as the prelude to the broader Japanese American incarceration. On February 19th, 1942, President Franklin Roosevelt signed Executive Order 9066 which authorized the unconstitutional incarceration of over 125,000 Japanese and Japanese Americans under the guise of “military necessity.”

As a result of this mass incarceration layered upon the first wave of internments through the Alien Enemies Act, Japanese Americans suffered untold hardships, physically, mentally, and financially. Families that had already been torn apart when one member was removed through the Alien Enemies Act were further torn apart as the rest of the family, typically American citizens, were forcibly removed from their homes and sent to the War Relocation Authority

³ Franklin D. Roosevelt, Proclamation 2525—Alien Enemies, Japanese Online by Gerhard Peters and John T. Woolley, The American Presidency Project <https://www.presidency.ucsb.edu/node/357760>

⁴ Franklin D. Roosevelt, Proclamation 2526—Alien Enemies, German Online by Gerhard Peters and John T. Woolley, The American Presidency Project <https://www.presidency.ucsb.edu/node/357751>

⁵ Franklin D. Roosevelt, Proclamation 2527—Alien Enemies, Italian Online by Gerhard Peters and John T. Woolley, The American Presidency Project <https://www.presidency.ucsb.edu/node/357752>

⁶ <https://www.archives.gov/research/immigration/enemy-aliens/ww2#:~:text=By%20the%20end%20of%20the%20facilities%20throughout%20the%20United%20States.>

⁷ <https://maps.densho.org/sitesofshame/>

camps far from their residences. Homes, businesses, and belongings were forced to be sold for pennies on the dollar. Incarcerates suffered from inadequate medical care and diets. Basic illnesses or treatable diseases could become deadly, and childbirth was far more dangerous than before. Friends and families were further torn apart by “loyalty questionnaires” and some were even coerced by the Army and the government to renounce their American citizenship.

The “loyalty questionnaire” was an instrument used by the government to enable conscription of Japanese Americans to the armed forces. Having been labeled a security threat and incarcerated without evidence or due process, it was nearly impossible to rationalize enlisting Japanese Americans in the military, despite efforts of many to serve, particularly in Hawaii, where widespread incarceration had not been employed. Once Japanese Americans were brought into the Army in a segregated unit, it became one of the most highly decorated in the short time it served towards the end of the war. The 100th/442nd was instrumental in rescuing the Lost Battalion and the final push into Germany to end the war in Europe. Executive Order 9066 excluded American citizens from the opportunity to serve during WWII, possibly hindering our efforts to end the war as expeditiously as possible.

In 1988 the Congressionally appointed Commission on Wartime Relocation and Internment of Civilians determined that the initial interment and subsequent mass incarceration were the result of “race prejudice, war hysteria, and a failure of political leadership.”⁸ Congress attempted to correct our nation’s mistake by passing The Civil Liberties Act of 1988, issuing apologies and monetary reparations to all surviving incarcerates. A historic gesture, but one which could never fully repair the irreparable damage to our community.

The Judiciary is unlikely to remedy an abuse of the Alien Enemies Act. While the AEA is a wartime power, the Courts have historically been hesitant to address legislation that may impact national security. In addition to this hesitation, the Court found in the *Ludecke v. Watkins* opinion in 1948, that determining when wartime begins and ends is a “political question”. Under this precedent, the Executive Branch has the unbridled authority to wield the AEA as it sees fit. Given the dramatic rise in rhetoric framing immigration as an “invasion”, the justification for the usage of the AEA has already been set in place. We have just this year observed the 80th anniversaries of the wrongfully decided cases *Hirabayashi*, *Yasui*, and *Korematsu*. These cases serve as an example of the blind deference the court affords the executive in claims of national security necessity.

Modern Immigration, Criminal, and National Security Laws render the Alien Enemies Act as a dangerous redundancy. In 1798, the United States did not have a criminal code, immigration laws, or national security laws. In the context of the time the AEA became law, the

⁸ Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians* (Seattle: University of Washington Press and Washington D.C.: Civil Liberties Public Education Fund, 1997), 459.

United States was gearing up for the War of 1812, and there were valid concerns of spies and sabotage harming the country. A repeal of the Alien Enemies Act would not render the United States unprotected. Since the end of World War II the United States has implemented a plethora of laws that cover all of these grounds. Conventional immigration law has provisions in place to ensure due process rights to those who are detained and subject to potential deportation. The AEA provides no such protection, those interned under the AEA can be treated as prisoners of war⁹

The JACL and the Japanese American Community call upon Congress to support the Neighbors Not Enemies Act¹⁰ (NNEA) sponsored by Representative Ilhan Omar in the House¹¹ and Senator Mazie Hirono in the Senate¹². The NNEA is a clean, one line bill that repeals the Alien Enemies Act in its entirety.

The potential for the Alien Enemies Act to be used again should shock and outrage every person residing in the United States regardless of citizenship status. Just as we saw in the Second World War, the AEA can open the door through executive actions to enact egregious and inhumane violations of human rights and dignity. This shameful stain on American history should serve as a critical lesson to learn from rather than repeat. As previously discussed, the Courts will not prevent a misguided executive from abusing this power. The solution to prevent the usage of the Alien Enemies Act relies upon the legislature to take immediate action to repeal the Alien Enemies Act in its entirety. We implore the Senate Committee on the Judiciary to oppose the usage of the Alien Enemies Act as a tool for mass deportations and support the passage of the Neighbors Not Enemies Act to ensure that one of the darkest chapters of United States history is not repeated.

Respectfully,
David Inoue
Executive Director
Japanese American Citizens League

⁹ <https://www.brennancenter.org/media/13434/download>

¹⁰ <https://jacl.org/nnea>

¹¹ <https://www.congress.gov/bills/118th-congress/house-bill/3610>

¹² <https://www.congress.gov/bills/118th-congress/senate-bill/1747>

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Statement of

Lindsay P. Cohn, PhD

For the Record of

The Senate Judiciary Committee

Hearing on

“How Mass Deportations Will Separate American Families, Harm Our
Armed Forces, and Devastate Our Economy”

10 December 2024

Lindsay P. Cohn

lpc2133@columbia.edu

The views expressed in this document are those of the author and do not represent the views of the
U.S. Naval War College, the Department of the Navy, or any organ of the U.S. government.

Introduction

I am grateful for the chance to submit this statement for the record. I hold a PhD in Political Science and have been researching and publishing on issues of military organizations, military recruiting and retention, public opinion about the military, and civil-military relations more generally, for more than twenty years. My expertise on these issues has been sought by the Senate Armed Services Committee, the National Commission on Military, National, and Public Service, the USMC Talent Management Task Force, the US-Canada Reserve General Officers Advisory Board, the Virginia General Assembly Committees on Public Safety and Courts of Justice, the Deputy Secretary of Defense, and many others. I hope my contribution to this very important discussion will be helpful to the members of this committee.

In my remarks on the question of how a policy of mass deportation would likely affect our military and service-members, I will address five issues: first, the different levels at which intervention might take place and how their consequences may differ; second, military readiness; third, military morale and associated issues such as retention and suicide risk; fourth, recruiting; and fifth, public opinion.

Any level of military intervention in support of mass deportations will have at least some negative effects, and higher levels could have very serious effects. I argue that use of the military for such purposes will degrade readiness and military effectiveness, hurt retention and recruiting, increase mental health issues among service-members, and increase the dangerous trend of different groups in society seeing the military as either with them or against them, weakening society as a whole.

Different levels of intervention

- lowest: increased use of National Guard personnel in a state active duty status (available only in states whose governors choose to support the policy)¹
- moderate: increased use of National Guard (in federal status) and Active Duty personnel, but in normal Defense Support to Civil Authorities (DSCA) roles in border areas and supporting federal law enforcement agencies²
- high: increased use of National Guard (in federal status) and Active Duty personnel, in normal DSCA roles, but not in border areas and supporting state or local law enforcement agencies
- extreme: increased use of National Guard (in federal status) and Active Duty personnel, in roles that require orders from the president under any part of 10 USC 251-254

¹ Lieb 2024

² CRS 2023

I argue that all of the following consequences may happen at any of these levels, but their intensity and repercussions will increase as the levels of intervention increase.

Readiness

The most obvious and immediate consequence is readiness. The more personnel we have doing this mission, which has not been planned for, the fewer we have available for other missions, training, and crises. Our active duty, Guard, and reserve service-members and their equipment are on a thoroughly planned and budgeted schedule of deployment, training, maintenance, and acquisitions. This does not mean we cannot do any mission that is not pre-planned and pre-budgeted; but it does mean that we should be very conservative about which unplanned missions we undertake. As training, rest, and maintenance cycles are disrupted, and we put additional wear and tear on both people and equipment, we reduce our overall readiness and our ability to respond to other crises. We also reduce the applicability of existing plans, which are predicated on certain levels of readiness and available equipment.

Our National Guard are one of the most experienced and capable disaster response organizations we have. If they are largely assisting law enforcement for this unscheduled mission instead of resting, training, and doing maintenance, they will be less available for disaster and crisis response. This is true not only while they are deployed, but for some period after that until needed rest and maintenance have taken place. This also has implications for retention (see below under morale).³

Responding to one crisis always reduces our ability to respond to another. Domestic law enforcement is not the primary or even secondary mission of our active duty and reserve personnel. If they are called upon for a major domestic deployment of this kind, they will be less available and less ready to respond to other events in the world that challenge U.S. national security and interests and for which they are trained and optimized. It is extremely risky to tie them up in a tertiary mission and invite U.S. adversaries to attack our interests when they know our ability to respond is seriously diminished.

Morale

The second major issue is with the morale of our personnel. Morale affects their performance, their retention, their health, and is linked to rates of service-member and veteran suicide.⁴

³ Winkie and Barragan 2022; Winkie et al. 2022

⁴ Bryan et al. 2014; Nazarov et al. 2015; Bryan et al. 2018; Trachik et al. 2020

When service-members are called upon to do an operation they a) have not been specifically trained to do and b) do not consider a legitimate part of their role or mission, this can have multiple deleterious effects.⁵ It can make them feel like they have less sense of purpose (“this is not what I trained/joined to do”); it can lower their general sense of morale (enthusiasm for and belief in their mission); it can lower unit cohesion (as people begin to disagree over the mission because there is no doctrine, training, or organizational narrative to unify them around it); and it significantly increases the risk of moral injury (the psychological and emotional damage a person sustains when they are compelled to do something they believe is or may be wrong).⁶

All these things – sense of purpose, morale, unit cohesion, and moral injury – are clearly linked to both retention problems and suicide risk.⁷

While the first three “levels” of intervention mentioned above (state active duty and Defense Support to Civil Authority) do have some doctrine to support them, generally only some National Guard personnel have any training or experience with such missions, and only Guard are likely to consider them as potentially within their normal mission set. Most military personnel see operations like this as unrelated to their core mission. Recent research confirms what decades of anecdotal evidence tells us: the US military does not like the domestic law enforcement mission, specifically because it believes it to be inappropriate and illegitimate.⁸ This means that the risk of all the above-noted consequences exists at all levels of intervention and goes up with each level.

Recruiting

While the services improved their recruiting record in FY 2024 over FY 2023, the overall trends are problematic for military recruiting. Specifically low unemployment, a shrinking proportion of eligible young people, a smaller pool of highly-propensed young people,⁹ lower confidence in both the military in particular and the government in general, and demographic trends in which

⁵ Harig and Ruffa 2022, esp. 91-93

⁶ Bryan et al. 2014; Cohn Warrior 2015, 100-102; Nazarov et al. 2015; Bryan et al. 2018; Trachik et al. 2020

⁷ Bryan et al. 2014; Nazarov et al. 2015; Bryan et al. 2018; Trachik et al. 2020; Solorio 2024

⁸ Hanson and Knuppe 2024

⁹ A young person is considered “high propensity” if they respond either “definitely” or “probably” to the JAMRS DOD Youth Poll question, “In the next few years, how likely is it that you will be serving in the Military?”

the fastest growing youth populations are not groups from which the military has traditionally recruited heavily.¹⁰

The biggest recruiting challenge is to attract the non-propensed. Currently the two top reasons young people give for not wanting to join the military are the possibility of physical injury or death and the possibility of PTSD or other emotional/psychological issues.¹¹ If young people hear of higher rates of PTSD, depression, moral injury, etc., they will be less recruitable.

Recruiting the non-propensed also involves convincing them they:

- Could belong in this organization
- Belong to the community this organization is meant to serve
- Will be doing something worthwhile/something they can believe in (not necessary, but very helpful)¹²

This kind of operation is not likely to appeal to the demographic groups that are growing in US society.¹³ That is because operations like this, which are politically charged and may cause significant controversy as implemented, will highlight the disagreement in the country over who really belongs here and is part of the community. The more this is highlighted as an issue, the more we will see some young people turn away from military service simply because they do not see themselves as part of the community that the military is serving, or see what the military is doing as the kind of service they want to engage in. While some young people may approve of these operations, it is unlikely they will have the kind of recruiting draw that more unifying missions do.

Public Opinion

Finally there is the issue of how operations like this are likely to affect public perception of the military, and, by extension, the relationship between service-members and society.

Public opinion about domestic military deployments appears to depend partly on whether the public views the situation as a security threat or as something else (like traditional law enforcement or political protest).¹⁴ The more they see it as a security threat, the more willing

¹⁰ Kleykamp, Schwam, and Wenig 2023; Cohn 2019. Those youth demographic groups that are fast-growing but not traditionally rich recruiting sources include Asian youth, Hispanic/Latino youth, non-Christian youth, and urban youth.

¹¹ JAMRS 2023

¹² Cohn 2019, 5ff.

¹³ Latino and Hispanic as well as Asian communities are very politically diverse and will not react monolithically. Some may be more attracted to the military, but others will not be

¹⁴ Blankshain, Cohn, and Lupton 2024; Hanson and Knuppe 2024

they may be to accept a military response.¹⁵ The fact that the incoming administration and people associated with it have been using the language of “invasion” and talking about immigrants as threats to the security of American lives, culture, and jobs, is perfectly calculated to make certain segments of the public accepting of a military response. But it is important to recognize that large segments of society still do not view immigrants or immigration this way,¹⁶ and for them, the use of the military is likely to appear significantly less appropriate and legitimate than a traditional law enforcement response.¹⁷

- Republicans are likely to approve of these operations and to approve of the military doing them
- Democrats are far less likely to approve of the operations and less likely to approve of the military doing them. They are also likely to feel that the military should have resisted the orders, and thus to associate the military with the policies in a way that lowers Democratic confidence/trust in the military
- Republicans are likely to be reinforced in their view that the military “belongs” to “their side”, and Democrats are likely to be reinforced in the opposite view.¹⁸ This is a problem for recruiting (as noted above), but also a problem for the health of democratic institutions; for democracy to function, people need to believe that the institutions serve everyone, not one particular party’s interests.¹⁹

Conclusion

Legally speaking, many of these uses of the military are justifiable, but practically speaking, they would be very unwise. The potential consequences for U.S. national security and interests, for the morale and effectiveness of our service-members, for recruiting and retention, and for the overall health of Americans’ relationship with their military, are significant and severe.

¹⁵ Blankshain, Cohn, and Lupton 2024

¹⁶ PRRI Report 2023 <https://www.prii.org/research/are-immigrants-a-threat-most-americans-dont-think-so-but-those-receptive-to-the-threat-narrative-are-predictably-more-anti-immigrant/>

¹⁷ Blankshain, Cohn, and Lupton 2024

¹⁸ Burbach 2019; Robinson 2023

¹⁹ Cohn 2021

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The views expressed in this document are those of the author and do not represent the views of the U.S. Naval War College, the Department of the Navy, or any organ of the U.S. government.

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National Association of Social Workers: Submitted Testimony Opposing Mass Deportation Policies

Chairperson Durbin, Ranking Member Graham, and distinguished members of the Judiciary Committee, my name is Mel Wilson, and I serve as Senior Policy Advisor for the National Association of Social Workers (NASW). On behalf of NASW, I am honored to submit testimony concerning President-elect Trump's ill-advised plan for a program of mass deportation targeting over 11 million non-citizen migrants currently residing in the US.

NASW joins the many members of the Judiciary Committee and many Americans in strongly opposing mass deportation. Over those years, NASW has been an active member of the immigration justice community in advocating for comprehensive immigration reforms. For those reasons, we were deeply troubled that — instead of seeking to work with Congress on immigration reform — the incoming administration chose to rely on the policy of *mass deportation* as its primary tool for increasing so-called border security.

As [history has told us](#) a strategy of mass deportation, regardless of the official rationale, has failed and has often proven to be inhumane in its execution. There are myriad valid reasons that justify resistance to mass deportation as national policy. While [recognizing the validity of such resistance](#), NASW is focusing its testimony on the impact of mass deportation on mixed status families and children.

Family Separation

With that in mind, we remind the Committee that the greatest concern and cause for apprehension is the fact that mass deportation will invariably result in widespread family separation. At present, there are approximately [6 million children](#) who live with one or both parents who is undocumented. Given those numbers, it is not difficult to realize that — when implemented — Trump's mass deportation plan will result in long-term trauma and permanent scarring of the lives of millions of children due to being forcibly separated from their parents.

The policy of family separation is not new. Trump and his newly designated Deputy Chief of Policy (Steven Miller) and his incoming "Border Czar" (Tom Homan) were the architects of a failed family separation program during the first Trump administration. Despite the broad condemnation of the policy, Trump, Homan, and Miller were and remain committed to this approach to border security.

Additionally, it should be noted that when was recently confronted by the press about his unsympathetic embrace of family separation, Mr. Homan cynically responded that the alternative to family separation would be to ["deport families together"](#). When making that statement, Mr. Homan was well aware of the fact that in mixed status families such an action would mean deporting children who — by way of their *birthright citizenship* — are native born US citizens. In that context, we are not surprised that Trump's showed his support of Homan by disparaging the entire concept of birthright citizenship. Though it is not clear if he was aware a [constitutional amendment](#) would be required to rescind that provision, Trump remains adamant that he would take steps to end birthright citizenship as we know it.

Problematic Policies Related to Raids and Detentions

A second major reason for NASW's vigorous opposition to mass deportation is related to the fact that family separation will necessitate family and child detentions. This should distress most of us, especially when we reflect back on the detention practices associated with the [zero tolerance policy](#) of the previous Trump administration. During that time, many children were held in overcrowded border control centers with inadequate food, clothing, and hygiene facilities. Reports have indicated that some children spent weeks in these conditions before being transferred to the Department of Health and Human Services (HHS). To this day, more than 1,400 of those children have not been reunified with their families. The current realities are that [several million children](#) could be separated from their parents and held in either child or family detention while their undocumented parent(s)

cases are awaiting the resolution legal processes. All of which will be traumatic to the children and will likely lead to [long-term life altering mental health problems](#) for them.

Another developing concern is about mass deportation. A [new press report](#) reveals that President-elect Trump plans to revoke a long-standing policy restricting Immigration and Customs Enforcement (ICE) from operating at or near sensitive locations, such as houses of worship, schools and hospitals, or sacred events like funerals and wedding. This is an unacceptable reversal of what was a very rational policy. People should not have to worry about their safety while attending church, going to a hospital emergency room, or picking up their kids at school. For those reasons, over the years Presidents of both parties — in recognizing the importance of preventing immigration enforcement from operating in these areas— agreed that ICE raids at such locations was not tolerable.

Temporary Protected Status (TPS)

The many adverse consequences of the Trump mass deportation plan, including the impact on mixed status families and children, unfortunately overshadows the plight of those who are present in the US under the Temporary Protected Status (TPS) program. NASW is appalled by the reports that Trump intends to take steps to [end TPS designation for approximately 1 million people](#) . This would result in those affected becoming undocumented and subject to being returned to their country of origin under the mass deportation program — compounding, many have been in the US for years and are living a productive life.

History of Racial and Ethnic Disparities in Mass Deportation Policies

Finally, we would be remiss if we did not mention racial and ethnic disparities that have plagued US immigration policy — in particular when it comes to mass deportations — for many years. Undocumented Black and Brown migrants have been by far the targets for such treatment as compared to undocumented Europeans. We need only to look at the recent treatment of Haitian TPS designees in Springfield, Ohio to demonstrate this point of view. As you recall, Haitians in Springfield were stereotyped, by both Vice President -elect Vance and Trump, as being uncivilized people who posed a physical and cultural threat to White Springfield residents. Such stereotypes lead to racial profiling and help to form the “permission structure” that is used to justify their deportation.

Similarly, the mass deportation program of 1954, which targeted over a million undocumented Mexicans (a number that included many legally present Mexican Americans), was clearly motivated by race and ethnicity. This notion is reinforced by the racial overtones of the official title— “Operation Wetback” — of the 1954 deportation program. There was little doubt that race and ethnicity was a driving factor for the [national public support](#) for rounding up and expulsion of Mexicans.

In submitting this testimony opposing President-elect Trump's mass deportation program to the Senate Judiciary Committee, NASW is affirming its solidarity with members of the immigration justice and human rights communities— which also strongly disagrees with this policy. To that point, NASW urges the Judiciary Committee to firmly reject mass deportation as a solution to border security. At the same time, the Committee must embrace a renewed commitment to work on— and pass— bipartisan [comprehensive immigration reform legislation](#).

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Mass Deportations Would Deliver a Catastrophic Blow to the U.S. Economy

Though the U.S. immigration system remains broken, immigrants are crucial to growing the labor force and supporting economic output. Immigrants have helped expand the labor supply, pay nearly \$580 billion a year in taxes, possess a spending power of \$1.6 trillion a year, and just last year contributed close to \$50 billion each in personal income and consumer spending. Congress must reform and modernize the immigration system while also cementing the immense economic benefits associated with immigration. Time and time again, Democrats have attempted to do so through comprehensive immigration reform but have been blocked by Republicans who continue to use the issue to sow division.

The incoming Trump administration plans to [conduct](#) mass deportations that would upend entire communities and have severe economic fallout. Mass deportations would reduce economic growth, shrink the labor force, cost U.S.-born workers their jobs, raise costs for nearly all Americans, and risk igniting inflation.

Depending on how many immigrants are deported, these mass deportations would:

- Reduce [real gross domestic product](#) (GDP) by as much as 7.4% by 2028,
- Reduce the supply of workers for key [industries](#), including by up to 225,000 workers in agriculture and 1.5 million workers in construction,
- Push prices up to 9.1% [higher](#) by 2028, and
- Cost 44,000 U.S.-born workers their [jobs](#) for every half a million immigrants who are removed from the labor force.

Mass deportation would damage the U.S. economy and hurt U.S.-born workers as well as immigrants

On top of the billions of dollars it would [cost](#) to undertake the sweeping deportation efforts that President Trump has [called](#) for across the country, multiple analyses show that any mass deportation plan would cause massive declines in GDP and overall employment.

- Estimates from the Peterson Institute for International Economics show that if 8.3 million undocumented immigrants are deported, GDP would be 7.4% [lower](#) and employment would be 7.0% lower by 2028. This 7.4% reduction in GDP over four years would likely mean that the U.S. economy *would not grow at all* during President Trump's second term. Even if 1.3 million undocumented immigrants are deported, GDP would drop by 1.2% and employment would drop by 1.1% by 2028.

- The American Immigration Council has estimated that a long-term deportation—deporting one million people each year until there is no undocumented population—could amount to a 4.2% to 6.8% [loss](#) in GDP (totaling \$1.1 to \$1.7 trillion in losses), with the effects felt most acutely in California, Florida, and Texas. To put this in context, the economy shrank by 4.3% during the Great Recession.
 - The researchers also find that this deportation plan would [cut](#) \$23 billion in funds for Social Security and \$6 billion from Medicare *each year* because these workers would no longer pay into these programs.
- A 2016 study estimates that mass deportations would [reduce](#) GDP by nearly \$280 billion in the first year, with the cost growing to roughly \$5 trillion after 10 years as businesses shrink their hiring and production in response to the scale of deportations.

The effects of mass deportations could be greater if additional documented immigrants or U.S. citizen family members also leave the country. People in mixed-status families who are either U.S.-born children or green card holders may be caught up in deportation sweeps or leave themselves if undocumented members of their [family](#) are deported.

Evidence also shows that deportations [reduce employment](#) for U.S.-born workers. Deportation initiatives from past administrations actually led to [net reductions](#) in employment and earnings in the short- and long-term for U.S.-born workers, with the worst impacts falling on the least educated and most vulnerable. An [analysis](#) of past deportation operations estimates that for every half a million immigrants removed from the labor force due to enforcement, 44,000 U.S.-born workers lose their jobs. Employers would not simply [hire](#) U.S. born workers to fill the vacancies created by undocumented workers who are deported, as there would be too many [vacancies](#). U.S.-born workers would be [unlikely](#) to move into these industries, and employer hiring behavior can be variable. Employers may, for example, choose to invest in production processes that require less labor instead.

Mass deportations would cause labor shortages in vital industries like agriculture, housing, and health care—raising costs for all Americans

Undocumented immigrants make up a relatively small share of the overall labor force—[between](#) 4.4% and 5.4% since 2003—but they have [outsized](#) roles in industries like construction, agriculture, health care, and hospitality. They grow, pick, and process Americans' food; build homes in communities across the country; and provide in-home care to seniors and others. Without immigrant labor, these industries would face labor shortages, further exacerbating their need for labor. In addition, the United States would lose workers that were educated here. Over 15% of undocumented workers [have](#) a bachelor's degree or higher, and nearly half a million are currently enrolled in U.S. colleges and universities.

Many industries already face labor shortages or are projected to face a shortage of workers in the coming decades. There were 282,000 job [openings](#) in construction in September 2024, and one study [estimated](#) the construction industry will need an additional 454,000 workers above the normal pace of hiring to meet the demand for labor in 2025. Mass deportations would only

exacerbate this shortage as up to a [quarter](#) of construction workers are undocumented. This loss in workers would make housing even harder to build, raising its cost. Mass deportations would also reduce the supply of farmworkers who keep Americans fed as well as the supply of home health aides at a time when more Americans are aging and requiring assistance. The American Immigration Council [estimates](#) that mass deportations would remove up to 1.5 million workers from the construction industry, 225,000 from agriculture, one million from hospitality, 870,000 from manufacturing, and 461,000 from transportation and warehousing.

The labor shortages that result from mass deportations would raise costs for all Americans. With unemployment near a historic low, employers in sectors like agriculture and construction would produce less, resulting in shortages and higher prices. Economists at the Peterson Institute for International Economics [estimate](#) that deporting 1.3 million immigrants would raise prices by 1.5% by 2028, while deporting 8.3 million immigrants would raise prices by 9.1%. Additionally, mass deportations would reduce consumer spending, as undocumented workers are not just workers but also consumers. If demand for certain goods and services slows enough, demand for workers in those sectors may also slow, and some businesses may be forced to lay off workers.

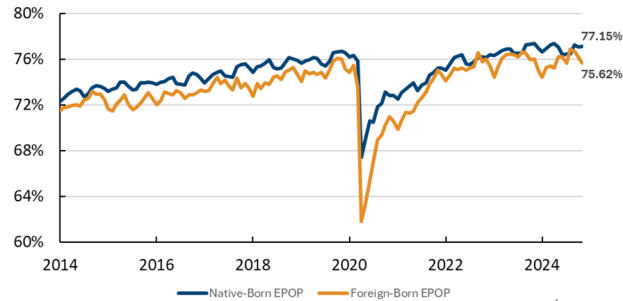
Immigration is essential for a strong labor force and U.S. economy

The massive costs associated with these deportation plans underscore just how vital immigrants are to the U.S. economy. Non-partisan analysis of recent immigration trends by the Hamilton Project shows that in 2023 immigrants [contributed](#) \$48 billion to overall personal income and \$46 billion to consumer spending. An analysis by former Council of Economic Advisers chief economist Ernie Tedeschi suggests that immigration is responsible for at least a [fifth](#) of the 8.2% growth in real GDP since the end of 2019. The non-partisan Congressional Budget Office (CBO) [estimated](#) that the recent increase in immigration could add \$8.9 trillion to GDP over the next decade while reducing the deficit by \$900 billion.

Importantly, *both* immigrant and U.S.-born workers between the ages of 25 and 64 are employed at higher rates now than they were before the pandemic (see graph below), signaling that the strong labor market in recent years has benefitted both immigrants and U.S.-born workers alike. Evidence from the last few decades shows that immigrants do not take jobs from U.S.-born workers or bring down [wages](#) for similarly-skilled workers. This is especially [true](#) when there are lots of job openings, like there were during the post-pandemic recovery. A recent [analysis](#) from the Brookings Institution estimates that U.S.-born and immigrant employment actually increased more than expected in 2023, despite previous data pointing to a decrease in U.S.-born employment. A recent study even showed that immigrants can actually [boost](#) wages and employment for U.S.-born workers.

The Strong Labor Market Has Benefitted U.S.-Born Americans and Immigrants

Native- and foreign-born employment-to-population ratio, ages 25-64, 2014-present



Source: Bureau of Labor Statistics
Note: Data are not seasonally adjusted.



Immigrants have a high propensity for entrepreneurship that boosts overall job growth

While immigrants make up about 14% of the U.S. population, they [represent](#) about a fifth of the self-employed workforce and account for a quarter of start-up founders. Many immigrants find success in their entrepreneurial pursuits: 55% of the companies valued at or above \$1 billion in the United States were [founded](#) by immigrants and more than 40% of the Fortune 500 companies in 2021 were [founded](#) by an immigrant or the child of an immigrant.

Immigrants are also more likely to work jobs that have a [job-multiplier](#) effect, meaning that their employment facilitates the entry of other workers into the labor force. For example, workers in sectors like education and health services, where immigrants make up about 1 in 5 workers, help parents and caregivers of all backgrounds enter the labor force and [grow](#) the economy. This is particularly true for women, who perform a disproportionate share of unpaid care work.

Immigrants pay their fair share in taxes and can help secure the future of key government programs

Immigrants tend to be younger, and with their high employment rates, they pay taxes into Social Security and Medicare with most not receiving benefits until many years in the future, if they are eligible at all. One study found that each foreign-born person pays on average \$1,300 [more](#) each year and \$237,000 more over their lifetime in taxes than they receive in benefits from federal, state, and local governments. Another showed that between 2012 and 2018, immigrants contributed \$166 [more](#) per capita, on average, to the Medicare Trust Fund each year than what was spent on their behalf. Conversely, Medicare spent more on U.S.-born Americans than they contributed with an average cost of \$51 per capita. Immigration can help [preserve](#) Social Security, while reforms to immigration policy could help [extend](#) Medicare solvency.

Immigrants [contribute](#) to many social programs with their taxes, despite many being ineligible to receive most government benefits. In 2022, immigrants had a spending power of \$1.6 trillion, and they collectively paid \$579 billion in local, state, and federal taxes.

Legal avenues for immigration and pathways to citizenship benefit workers and the U.S. economy

Providing a pathway to citizenship is good economics. Immigrants are helping [meet](#) labor demand while also demonstrating that more legal pathways to working in the United States are needed to meet this demand. Additionally, research shows that expanding legal immigration pathways can [reduce](#) irregular border crossings, leading to more secure and regulated borders. This approach is vital for managing [increased](#) migration to the United States, especially as more people flee their home countries due to the continued [risk](#) of violence, persecution, economic conditions, natural disasters, and climate change.

President Trump's mass deportation proposals would strip the United States of the many contributions of immigrants to the U.S. economy and communities across the country. Deporting immigrants will not only upend their lives, but also harm the U.S. economy through reduced economic growth, a smaller labor force, lost jobs, and higher costs to the detriment of all Americans.



The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

December 13, 2024

Dear Chairman Durbin and Ranking Member Graham,

MomsRising submits the following statement for the record as part of the hearing in the Senate Judiciary Committee on “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy,” which took place on December 10, 2024.

MomsRising, a movement that represents over one million members nationwide who are working to increase family economic security, stop discrimination, and help build a nation where businesses and families can thrive. We thank the Senate Judiciary Committee for holding a hearing to highlight the impact of mass deportation on the American public.

Immigrants are critical to our communities and economy. Mass deportation will separate families, and remove our friends, neighbors, home health care aides, teachers, child care providers, and parents of U.S. citizen children. Approximately [22 million](#) people in the United States live in mixed status families, including an estimated [4.4 million U.S. citizen children](#).

This is important to our over a million MomsRising members not only because many of our members are immigrants, but also because many of our mom members rely on immigrant workers as child care providers, healthcare providers, and home care providers for elderly family members. In fact, [2.6 million health care workers](#) are immigrants, [20 percent of child care workers are immigrants](#), nearly [40 percent of home care workers](#) are immigrants, and in some states like California, [nearly 40 percent of child care workers](#) are immigrants. [Immigrants boost economic growth](#), expand the labor force, and increase consumer spending. Immigration has also led to better wages and work opportunities for U.S.-born workers, [expanding opportunities for all](#).

Mass deportation and harmful immigration policies are cruel, ineffective, hurt our economy and our businesses alike, and out of touch with American families. As caring people, MomsRising members agree that meaningful immigration reform would ensure humane treatment of families and children, [reflecting voters' strong preference for a pathway to citizenship over mass deportation](#). This option would prevent the deportation of our family members, neighbors, co-workers, and permanently block safe access for all who need refuge.



Please know that families across the country are watching and counting on you to reject policies that will harm immigrant families. Instead, we urge you to remain committed to common-sense policies to reform our asylum and immigration system and boost our economy.

We are happy to share any additional resources or answer any questions you may have.

Sincerely,

Linda Stone
Senior Campaign Director
MomsRising Together & MomsRising Education Fund



Statement for the Record

Sung Yeon Choimorrow
Executive Director
National Asian Pacific American Women's Forum

Submitted to the U.S. Senate Committee on the Judiciary On Full Committee Hearing Titled:
“How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and
Devastate Our Economy”

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

Thank you for the opportunity to submit this statement on behalf of the National Asian Pacific American Women's Forum (NAPAWF) on the profound harm that mass deportations inflict on Asian American and Pacific Islander (AAPI) women, gender expansive people, and immigrant communities. We respectfully request that this statement be included in the record for the December 10, 2024, U.S. Senate Committee on the Judiciary hearing, “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy.”

NAPAWF is a multi-issue reproductive justice organization that advocates for AANHPI women and gender expansive people to have the agency, resources and political power to make the choice to parent, not to parent, to raise a family in a safe and healthy environment and to have bodily autonomy. The incoming administration's plans for mass deportation represent a direct threat to these principles. They undermine the safety, autonomy, and humanity of immigrant communities while perpetuating systemic injustice.

I. Historic Context: Immigration and AAPI Women

Since the inception of federal immigration law, immigration and reproductive justice have been intertwined. The Page Act of 1875, which banned Chinese women from entering the U.S., was among the first federal immigration laws, rooted in controlling the reproductive capacity of immigrants to maintain cultural and political dominance.¹

This relationship continues today as violations of reproductive justice continue to occur

¹ Pepe, C. S., Saadi, A., & Molina, R. L. (2023). Reproductive Justice in the U.S. Immigration Detention System. *Obstetrics and gynecology*, 142(4), 804–808. <https://doi.org/10.1097/AOG.0000000000005335>



throughout the immigration detention and enforcement system. There are reports of forced hysterectomies in Immigrations and Customs Enforcement detention², abortion bans for unaccompanied minors in detention³, forced separations of families, mistreatment of pregnant immigrants, and a lack of adequate healthcare for detained immigrants during pregnancy and childbirth⁴. Other reports show that undocumented pregnant people have been increasingly targeted by punitive immigration policies, and the frequency of deportations among pregnant individuals demonstrates that pregnancy itself is a “red flag for removal.”⁵ The mistreatment of pregnant people in detention also has adverse effects on their access to justice mechanisms—for example, when faced with inadequate health services, pregnant people are pushed to abandon their asylum applications.⁶

II. Health and Family Impacts

A. Healthcare Access

Mass deportation also has a chilling effect on the ability of immigrants outside detention to access healthcare and build healthy families. Studies repeatedly show that the threat of immigration enforcement – including deportation – is linked to a significant decline in accessing health care services.⁷

B. Mental Health

The mental health impacts of deportations are long-lasting for both adults and the

² Maya Manian, “Immigration Detention and Coerced Sterilization: History Tragically Repeats Itself,” ACLU, July 5, 2023, <https://aclu.org/news/immigrants-rights/immigration-detention-and-coerced-sterilization-history-tragically-repeats-itself/>.

³ Ariella J. Messing, Rachel E. Fabi, and Joanne D. Rosen, “Reproductive Injustice at the US Border,” *American Journal of Public Health* 110, no. 3 (February 5, 2020): 339–44, <https://doi.org/10.2105/ajph.2019.305466>.

⁴ Tina Vásquez, “CBP Subjects Migrants to Grave Reproductive Injustices,” Prism, June 6, 2023, <https://prismreports.org/2023/06/06/customs-border-protection-grave-reproductive-injustices/>.

⁵ Huang, Priscilla. “Anchor babies, over-breeders, and the population bomb: The reemergence of nativism and population control in anti-immigration policies.” *Harv. L. & Pol’y Rev.* 2 (2008): 385.

⁶ “Prison for Survivors: The Detention of Women Seeking Asylum in the United States,” Women’s Refugee Commission, October 2017, <https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/Prison-for-Survivors-REPORT-FINAL.pdf>.

⁷ Maria-Elena De Trinidad Young et al. Beyond “Chilling Effects”: Latinx and Asian Immigrants’ Experiences With Enforcement and Barriers to Health Care. *Med Care.* 2023 May 1;61(5):306-313. <https://pubmed.ncbi.nlm.nih.gov/36939228>.



children of immigrants. Research has found that the risk of mental and emotional trauma and severe psychological distress in children greatly increases after a parent has been detained or deported.⁸ These policies directly jeopardize the health of millions of immigrants and their families and weaken our communities at large.

C. Family Separation

Mass deportation and detention would also break up the families of the 5.5 million US-born children who live with at least one undocumented resident, including 1.8 million living in households with two undocumented parents. Over half of the US undocumented population is woven into American life, having been in the country for at least 10 years.⁹ Mass deportation risks tearing apart these families and leaving lasting scars on both individuals and communities.

III. Economic Contributions and Consequences

A. Tax Contributions

Immigrants are vital to the U.S. economy, and mass deportation would impose significant economic costs. Undocumented immigrants, using Individual Tax Identification Numbers (ITIN) numbers, paid \$59.4 billion in federal and \$13.6 billion in state and local taxes in 2022. Undocumented immigrants also paid \$25.7 billion in Social Security taxes, \$6.4 billion in Medicare taxes, and \$1.8 billion in unemployment insurance in 2022, programs for which they are ineligible.¹⁰

B. Essential Workforce

Immigrant women are a critical part of the economy with three in four undocumented immigrants in the workforce employed as essential workers, including 1.6 undocumented immigrant women. Additionally, over two million immigrant women, including over

⁸ "Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children," Migration Policy Institute, February 2016. <https://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effects-families>.

⁹ Lisiecki, M., & Aprizzese, G. 2024. "Proposed 2024 Mass Deportation Program Would Socially and Economically Devastate American Families." Center for Migration Studies of New York (CMS) Report.

¹⁰ Ibid.



500,000 undocumented women are employed in the care workforce.¹¹ Their removal from the workforce would have devastating implications for our already struggling care infrastructure.

C. Economic Growth

The Congressional Budget Office also found that immigrants will add \$7 trillion to the economy over the next ten years. Because of a projected surge of 5.2 million immigrant workers by 2033, GDP will grow by \$8.7 trillion over the same time period, with federal taxes increasing by \$1.2 trillion and federal deficits decreasing by \$900 billion.¹²

IV. Impact on AAPI Communities and the Need for the HEAL Act

AAPI communities represent 40% of all migrants to the U.S. and are the fastest-growing racial group in the country. Despite the harmful “model minority” stereotype, there are nearly two million undocumented AAPI immigrants in the U.S., with Southeast Asians and Pacific Islanders deported at rates three times higher than other immigrants.

Mass deportation policies harm all immigrant communities but also uniquely impact Deferred Action for Childhood Arrivals (DACA) recipients, who have been systematically excluded from healthcare programs. We urge Congress to pass the HEAL for Immigrant Families Act, which would eliminate the harmful restrictions preventing immigrant communities, including DACA recipients, from accessing Medicaid, Medicare, and other essential healthcare services. Ensuring healthcare access is critical to advancing the health, stability, and economic contributions of immigrant families.

V. A Call to Action

We urge Congress to reject mass deportation policies and resist messaging that criminalizes immigrant families. Instead, we call on Congress to:

- Advocate for humane immigration reform that upholds family unity and dignity.
- Pass the HEAL Act, ensuring healthcare access for immigrant communities.

¹¹ Nicole Svajlenka, Sarah Jane Glynn, and Sofia Carratala, “A Profile of Immigrant Women in the Workforce,” Center for American Progress, October 1, 2024, <https://www.americanprogress.org/article/profile-immigrant-women-workforce/>.

¹² Appleby, Peter, “The Importance of Immigrant Labor to the US Economy.” The Center for Migration Studies of New York, September 2, 2024. https://cmsny.org/importance-of-immigrant-labor-to-us-economy/#_ftn1.



- Protect against abuses within the immigration enforcement system.

People's lives should never be used as bargaining chips. Immigrants—whether seeking safety from persecution or contributing to their communities—deserve respect, safety, and dignity. We thank the Committee for holding this important hearing and for providing the opportunity to submit this statement.

We thank the Committee for holding this hearing and providing the opportunity to submit for the record.

Sincerely,

Sung Yeon Choimorrow
Executive Director
National Asian Pacific American Women's Forum

Written Statement for the Congressional Record

Daniel D. Maurer, Associate Professor of Law, Ohio Northern University Claude W. Pettit College of Law; Lieutenant Colonel (retired), U.S. Army Judge Advocate General's Corps.

Before the United States Senate Committee on the Judiciary, hearing on: "How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy," December 10, 2024.

Introduction

As a law school professor and scholar of civil-military relations, military justice, national security law, and criminal law, and as a combat veteran and recently retired active-duty Army lieutenant colonel, I wish to provide the Committee with this statement for the Congressional Record to highlight some of the extraordinary risks posed by President-elect Trump's stated intention to use the Armed Forces to enforce this nation's immigration laws.¹ Specifically, I wish to emphasize the dangers this plan poses for the ever-fragile and always-critical civil-military relations in the United States. Doing so necessarily touches on, but will not completely or satisfactorily address, myriad constitutional and statutory issues raised by an aggressive, unconventional use of the military on domestic soil. Considering the rapid attempt by the Committee to gather relevant information in its oversight role prior to the inauguration, I do not attempt to provide a comprehensive analysis of these issues but only highlight certain foreseeable and alarming threats to civil-military relations for the Committee's consideration.²

¹ Alexandra Hutzler, *Trump confirms plan to declare national emergency, use military for mass deportations*, ABC NEWS, Nov. 18, 2024, <https://abcnews.go.com/Politics/trump-confirms-plan-declare-national-emergency-military-mass/story?id=115963448> (last accessed Dec. 9, 2024).

² I write in my personal capacity only. These views do not necessarily reflect the views of any organization or entity for which I have been, or am currently, employed. For more detailed treatments of legal issues impacting, or driven by, civil-military relationships, I strongly recommend the following: Stephen I. Vladeck, *Military Officers and the Civil Office Ban*, 93 IND. L. J. 243 (2018); Joshua Kastenber, *The Crisis of June 2020: The Case of the Retired Generals and Admirals and the Clarion Calls of the Critics in Lex Non Scripta (Historic) Perspective*, 99 NEB. L. REV. 594 (2021); Richard K. Sala, *Congress can Delegate Authority, not Responsibility: Accountability for the Domestic Use of the Armed Forces*, 46 VT. L. REV. 24 (2021); Anthony J. Ghiotto, *The Presidential Coup*, 70 BUFF. L. REV. 369 (2022); Dan Maurer, *Paved with Good Intentions?: Civil-Military Norms, Breaches, and Why Mindset Matters*, 11 J. NAT. SEC'Y L. & POL'Y 343 (2021); Colonel Charles J. Dunlap, Jr., *Welcome to the Junta: the Erosion of Civilian Control of the U.S. Military*, 29 WAKE FOREST L. REV. 341 (1994); Dan Maurer, *Fiduciary Duty, Honor, Country: Legislating a Theory of Agency into Strategic Civil-Military Relations*, 10 HARV. NAT'L SEC'Y J. 259 (2019); BRETT J. KYLE & ANDREW G. REITER, *MILITARY COURTS, CIVIL-MILITARY RELATIONS, AND THE LEGAL BATTLE FOR DEMOCRACY* (2021) (studying military justice systems in more than 100 countries, and framing them within the axiom of military subordination to civilian control); Lindsay P. Cohn, *To Execute the Laws of the Union: domestic use of federal military force in the United States*, in *MILITARY OPERATIONS AND ENGAGEMENT IN THE DOMESTIC JURISDICTION: COMPARATIVE CALL-OUT LAWS 57-90* (Pauline Collins & Rosalie Arcala-Hall eds. 2022) (briefly describing the legislative history of the Posse Comitatus Act).

Summary

- Use of the military (active or reserve) to enforce directly, or even enable, civilian enforcement of domestic immigration law is a non-traditional and legally complex application of the President's control of the Armed Forces
- This non-traditional use of the military raises substantial risks for the health and effectiveness of normal civil-military relations
- The use of the Armed Forces in this manner may evoke strong anti-military public sentiment and reactions, eroding trust in the institution's professionalism and nonpartisanship
- Use of the Armed Forces in this manner will likely strain the working relationships among the most senior civilian national security officials and the strategic cadre of military leaders on the Joint Chiefs of Staff and the operational chain-of-command
- The use of the Armed Forces in this manner may stress long-held professional norms and expectations about the proper use of the military, risk inciting dissent or outright disobedience to otherwise "lawful but awful" orders, or may chill military leaders from questioning constitutionally suspect commands to avoid being accused of partisan slow-rolling of the President's policy directives

I.

Civil-military relations encompass two distinct sets of relationships. The first set of relationships can be called "popular civil-military relations" – a large category of concerns that involve questions about the demographic character of the All-Volunteer Force,³ political behaviors (voting, running for elected office, membership in policy-oriented organizations) and preferences of service-members,⁴ the public's normative attitudes and beliefs about the military and its members,⁵ and those members' attitudes toward civil society.⁶ In brief, this category is about the relationship between the American people, directly and as represented by the civil government, and the military (as an institution and with respect to its individual members). Given the nature of these relationships, this category is saturated with questions about democratic values and civic virtues – that is, determining the kind of military this country wants and the kind of military that members of the public want to be a part of.

The second set of relationships can be called "strategic civil-military relations" – a smaller category of different, but no less important, concerns that involve challenging interpersonal, bureaucratic, and institutional dynamics between two deliberately unequal groups: the elected and appointed civilian officials in the two political branches and the senior military

³ See, e.g., JASON K. DEMPSEY, *OUR ARMY: SOLDIERS, POLITICS, AND AMERICAN CIVIL-MILITARY RELATIONS* (2010) (note: citations throughout conform generally to professional and scholarly legal citation formats per THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (21st ed. 2021)).

⁴ See, e.g., HEIDI A. URBEN, *PARTY, POLITICS, AND THE POST-9/11 ARMY* (2021).

⁵ See generally David L. Leal, *American Public Opinion toward the Military: Differences by Race, Gender, and Class?*, 32 *ARMED FOR. & SOC'Y* 123 (2005); *WARRIORS & CITIZENS: AMERICAN VIEWS OF OUR MILITARY* (Kori Schake & Jim Mattis eds. 2016); MICHAEL A. ROBINSON, *DANGEROUS INSTRUMENT: POLITICAL POLARIZATION AND US CIVIL-MILITARY RELATIONS* (2023).

⁶ Thomas E. Ricks, *The widening gap between military and society*, THE ATLANTIC (July 1997).

leaders⁷ they nominate, confirm, and oversee.⁸ Given the fiduciary-like,⁹ principal-agent nature¹⁰ of these relationships, this category is marked by tough questions of constitutional authority (*i.e.*, civilian supremacy over the military in the form of presidential and congressional control¹¹); the proper and effective role of the Armed Forces in executing partisan policy objectives, especially outside of a traditional armed conflict and used domestically; whether retired generals and admirals ought to engage publicly on controversial political issues;¹² the legal and professional norm constraints on the discretion and independent judgment of these senior professional officers;¹³ and options that active duty senior officers have to register their dissent or objections (like resignation or “foot-dragging”).¹⁴

The President’s use of the Armed Forces to execute and enforce domestic laws like those regulating immigration, whether assisting local and state law enforcement or in a more robust and direct way, will inevitably and harmfully impact both sets of civil-military relationships. The remainder of this statement, however, will be restricted to the second category of civil-military relations.

II.

Because of its interpersonal nature and the type of legal authorities the parties wield, the “strategic civil-military relationship” is perhaps even more fragile, and the risks of domestic

⁷ By “senior military leaders,” I generally include the four-star general and flag officers nominated by the President and confirmed by the Senate to be the chief of their respective Services (e.g. Chief of Staff of the Army; Chief of Naval Operations) or to command one of the unified Combatant Commands (e.g., U.S. Central Command; U.S. Northern Command; U.S. Special Operations Command). See, e.g., 10 U.S.C. §§ 151-154, 161, 162.

⁸ ELIOT A. COHEN, *SUPREME COMMAND: SOLDIERS, STATESMEN, AND LEADERSHIP IN WARTIME* 10 (2003).

⁹ See generally DANIEL MAURER, *CRISIS, AGENCY, AND LAW IN US CIVIL-MILITARY RELATIONS* (2017).

¹⁰ See generally PETER FEAVER, *ARMED SERVANTS: AGENCY, OVERSIGHT, AND CIVIL-MILITARY RELATIONS* (2005).

¹¹ U.S. Const. art. I, § 8, cl. 11-16 (enumerated congressional national security powers); art. II, § 2, cl. 1 (president as commander-in-chief).

¹² See, e.g., Risa Brooks, Michael Robinson, & Heidi Urben, *Speaking Out: Why Retired Flag Officers Participate in Political Discourse*, 7 TEX. NAT’L SEC’Y REV. 49 (Winter 2023/2024).

¹³ SAMUEL P. HUNTINGTON, *THE SOLDIER AND THE STATE: THE THEORY AND POLITICS OF CIVIL-MILITARY RELATIONS* 73 (1985) (1957); Risa Brooks, *The Paradoxes of Huntingtonian Professionalism*, in RECONSIDERING AMERICAN CIVIL-MILITARY RELATIONS: THE MILITARY, SOCIETY, POLITICS, AND MODERN WAR 22 (Lionel Beehner, Risa Brooks, & Daniel Maurer eds., 2021); Ryan Burke & Jahara Matissek, *Trump(ing) Tradition: Old Laws, New Norms, and the Danger to Civil-Military Relations*, __ ARMED FOR. & SOC’Y 2, <https://doi.org/10.1177/0095327X241234253> (Mar. 8, 2024) (discussing the role and potential of the Uniform Code of Military Justice to regulate the unprofessional, norm-breaking, partisan criticism of presidents by retired officers); and Jim Golby & Hugh Liebert, *Ancient Perspectives on Norms in Civil-Military Relations*, 4 TEX. NAT’L SEC’Y REV. 75 (2021). This focus on the interactions between strategic elites is consistent with one branch of civil-military relations study among political science scholars. See Risa Brooks, *Integrating the Civil-Military Relations Subfield*, 22 ANN. REV. POL. SCI. 379, 380 (2019).

¹⁴ If a senior officer resigns in protest “and that action mobilizes public opposition, the costs to the civilian leadership of pursuing that action increase.” Risa Brooks, *Paradoxes of Professionalism: Rethinking Civil-Military Relations in the United States*, 44 INT’L SEC’Y 7, 19 (2020). For contrasting views on the normative desirability of this option, see Richard H. Kohn, *On Resignation*, 43 ARMED FOR. & SOC’Y 41 (2017) (criticizing principled resignation as dangerous for national security); but see JAMES DUBIK, *JUST WAR RECONSIDERED: STRATEGY, ETHICS, AND THEORY* 157-64 (2016) (arguing that conditions-based principled resignation of senior officers, if done “candidly and privately,” recognizes their moral autonomy, rather than as “mere instruments of a government”).

deployment for a military deportation campaign even more debilitating, than is the public's relationship with the Armed Forces as an institution and with its individual members. Four key facts serve to frame this concern.

The first key fact that must be acknowledged is that the President has a wide range of legal authorities with regard to employing the Armed Forces on American soil, beyond any inherent Article II power he might claim, granted by Congress (partially described below). Second, many of these authorities have been used by prior presidents, but not as legal grounds for direct use of military forces to assist with or manage a massive deportation campaign of the kind envisioned by the President-elect. Third, the President-elect established a precedent during his first term in office for aggressive interpretations of executive power¹⁵ and abandoning or ignoring presidential norms,¹⁶ including norms thought to be necessary for effective and healthy civil-military relationships with his senior strategic-level military commanders and staffs.¹⁷ Finally, the fourth fact is of more recent vintage: the Supreme Court ruled this summer that a President has either absolute or (at least) presumptive immunity from criminal prosecution after he leaves office for "official acts" he took while in office.¹⁸ Presidential "official acts" are not defined by the Court or any statute.

Together, these four key facts will likely mean that an order from the next commander-in-chief through the military chain-of-command to operationalize the Armed Forces for such a mission will be – at best – a non-traditional but "official" use of this instrument of national power and – at worst – constitutionally suspect but probably leaving him immune from criminal liability.

In this light, both the professional ethos of the modern military¹⁹ and its internal code of military discipline and criminal law (enacted by Congress²⁰) place these senior uniformed officers on the horns of a dilemma. If they dissent, they will risk fracturing trust and upsetting the regular constitutionally created imbalance between civil authority and military leadership, earning a censure or criminal charges for disobeying an order in the process.²¹ But if they simply

¹⁵ *A Close Look At President Trump's Assertion Of "Absolute Authority" Over States*, NPR, Apr. 14, 2020, <https://www.npr.org/2020/04/14/834460063/a-close-look-at-president-trumps-assertion-of-absolute-authority-over-states> (last accessed Dec. 9, 2024).

¹⁶ Ben Gittleston, *How Trump obliterated norms and changed the presidency*, ABC NEWS, Jan. 19, 2021, <https://abcnews.go.com/Politics/trumps-legacy-obliterated-norms-chipped-institutions-end/story?id=75275806> (last accessed Dec. 9, 2024); Daphna Renan, *Presidential Norms and Article II*, 131 HARV. L. REV. 2187 (2018).

¹⁷ Risa Brooks, *Through the Looking Glass: Trump-Era Civil-Military Relations in Comparative Perspective*, STRAT. STUD. Q. 69 (Summer 2021); Lt. Col. Daniel Maurer, *Breaking Ranks in a Civil-Military Crisis: Strategic Communication to Register Dissent*, JUST SEC'Y, Aug. 26, 2020, <https://www.justsecurity.org/72164/breaking-ranks-in-a-civil-military-crisis-strategic-communication-to-register-dissent/>, (last accessed Dec. 9, 2024).

¹⁸ *Trump v. United States*, 603 U.S. ___, no. 23-939 (July 1, 2024), slip op. at 42.

¹⁹ See, e.g., John A. Nagl, Tony Pfaff, & Don M. Snider, *Army Professionalism, the Military Ethic, and Officership in the 21st Century*, U.S. Army War College Strategic Studies Institute monograph (1999).

²⁰ Uniform Code of Military Justice [hereinafter UCMJ], Pub. L. No. 81-506, 64 Stat. 107 (1950) (codified as amended at 10 U.S.C. §§ 801-946a).

²¹ See, e.g., arguments in Andrew R. Milburn, *Breaking Ranks: Dissent and the Military Professional*, 59 JOINT. F. Q. 101 (2010).

follow that order without objection, they risk enabling an abuse of presidential power to the detriment of the public good and constitutional rights as they understand them.

As many commentators and scholars have noted,²² the President has a chest of tools by which he may lawfully operationalize either or both active duty and reserve components of the Armed Forces within this country's borders. Among other things, the President – by directing the Secretary of Defense – may loan or provide access to active duty bases, facilities, and equipment to any federal, state, or local civilian law enforcement official for law enforcement purposes;²³ provide military personnel to train other federal, state, and local civilian law enforcement in operating certain military equipment, or to provide “expert advice;”²⁴ he may provide military personnel to actually operate certain equipment on behalf of state and local law enforcement for “[d]etection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary; . . . [conduct] [a]erial reconnaissance,” and upon request by the head of federal law enforcement agency, provide military personnel to operate and maintain such equipment specifically to aid in the enforcement of immigration law.²⁵

Moreover, the President may recall up to one million reservists by declaring a national emergency,²⁶ and may use another authority triggered by his judicially unreviewable invocation of “national emergency”²⁷ to use up to \$100,000,000 of otherwise unobligated and available military construction funds for new bespoke “military construction projects” within the United States, such as immigrant detention facilities or other law enforcement support bases²⁸ – and the term “military construction” is broadly inclusive.²⁹

These authorities, however, are somewhat limited: military personnel shall not “directly participate in” the search, seizure, arrest, “or other similar activity unless participation in such activity by such member is otherwise authorized by law.”³⁰

²² See generally, WILLIAM C. BANKS & STEPHEN DYCUS, *SOLDIERS ON THE HOME FRONT: THE DOMESTIC ROLE OF THE AMERICAN MILITARY* (2016); Elizabeth Goitein, *Deployment of the U.S. Military for Immigration Enforcement: A Primer*, JUST SEC'Y, Dec. 3, 2024, <https://www.justsecurity.org/105321/military-immigration-enforcement-deportation/> (last accessed Dec. 9, 2024); Scott R. Anderson, *The Real Legal Limits on Domestic Military Deployments*, LAWFARE, Nov. 19, 2024, <https://www.lawfaremedia.org/article/the-real-legal-limits-on-domestic-military-deployments> (last accessed Dec. 9, 2024).

²³ 10 U.S.C. § 272.

²⁴ 10 U.S.C. § 273.

²⁵ 10 U.S.C. § 274(b)(1)(A).

²⁶ 10 U.S.C. § 12302.

²⁷ 50 U.S.C. § 1601 *et seq.*

²⁸ 10 U.S.C. § 2808.

²⁹ 10 U.S.C. § 2801(a).

³⁰ 10 U.S.C. § 275.

The most expansive of these authorities is the Insurrection Act.³¹ Recognized as an exception to the Posse Comitatus Act,³² which generally forbids using the military to execute civil law and order, the Insurrection Act provides at least three substantial opportunities for a President to deploy the Armed Forces domestically to act as law enforcement. First, if a state's legislature requests it, the President may deploy active military units (*e.g.*, the 101st Airborne Division from Fort Campbell³³) or federalize the a state's National Guard units, placing them under direct command and control of the Pentagon.³⁴ Second, the President may deploy troops if he deems federal property or federal "authority" to be threatened by "rebellion," or – an more likely to be raised – when the President determines that "unlawful obstructions, combinations, or assemblages" threaten the "authority of the United States" and the "ordinary course of judicial proceedings" make normal civil enforcement "impracticable."³⁵ Third, the President may deploy the military to suppress an "insurrection, domestic violence, unlawful combination or conspiracy" when he determines that state authorities are unwilling or unable to enforce constitutional rights of a "class" of people threatened by such civil discord.³⁶

From a strategic civil-military relations point of view, the essential cause for concern with these authorities stems from the normal degree of deference the federal courts will give the President when he invokes them. Not only have the courts opined that the President has near plenary authority over implementation of immigration rules, subject to little or no judicial review,³⁷ a President's decision to use the military at home under the auspices of a legislative grant of authority is generally uncontested in the courts.³⁸ Not only will the statutes themselves survive legal challenge, the discretionary judgment of the President – who individually determines when to declare a "national emergency" or when the conditions that trigger the myriad authorities under the Insurrection Act are present – is almost certainly unreviewable by the courts.³⁹ Because the Insurrection Act has never been used for immigration control before,⁴⁰ senior military leaders will confront a singularly unique historical use of the Armed Forces, one that breaks norms and expectations, whose legal basis is unquestionable, and which imposes no

³¹ 10 U.S.C. §§ 251-255.

³² 18 U.S.C. § 1385.

³³ President Eisenhower used this authority to deploy elements of the 101st Airborne Division to Little Rock, Arkansas to enforce public school desegregation in the face of resistance by the Arkansas state authorities. *See* Executive Order 10730: Desegregation of Central High School (1957).

³⁴ 10 U.S.C. § 251.

³⁵ 10 U.S.C. § 252.

³⁶ 10 U.S.C. § 253.

³⁷ *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

³⁸ *Martin v. Mott*, 25 U.S. 19 (1827) (the President has "exclusive" power to determine when conditions legally warrant invocation of the Insurrection Act and that decision is "conclusive" on all other parties). *See also* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (Jackson, J., concurring) (1952); *Trump v. Hawaii*, 585 U.S. 667, 138 S.Ct. 2392, 2408 (2018).

³⁹ There is precedent for judicial review of a President's action taken under a specific emergency power after declaring a "national emergency." *Biden v. Nebraska*, 600 U.S. ____ (2023) (striking down the Administration's effort to forgive and cancel more than \$400 billion in student debt by asserting powers derived from the COVID-19 declaration of a national emergency).

⁴⁰ *See generally* Joseph Nunn, *The Insurrection Act Explained*, BRENNAN CENTER, Apr. 21, 2022, <https://www.brennancenter.org/our-work/research-reports/insurrection-act-explained> (last accessed Dec. 9, 2024).

“good faith” belief or “reasonableness” requirement as a check on an improper, unwise, or corrupt *motive* for using these legal tools. When coupled with the President-elect’s declared consideration of deporting even the *citizen* family members of illegal immigrants,⁴¹ the line between an unconstitutional abuse of presidential power and the constitutional authorities vested in the commander-in-chief will become hard to for the senior strategic level military leaders to detect.

Under the military’s criminal code, servicemembers are permitted to disobey an order (without prosecutorial consequences) only when it is unlawful, irrespective of the recipient’s conscience or her religious, moral, or philosophical beliefs.⁴² Moreover, orders are *presumptively* lawful – that is, they can be disobeyed only when “patently illegal” (such that a person of “ordinary sense and understanding” would believe it to be an illegal command).⁴³ Even though the military leader who disobeys a civilian authority’s direct order would (probably) not be prosecutable under the most obviously relevant UCMJ statute,⁴⁴ military officers are conditioned by training, experience, and historically-validated professional norms to obey those commands even if they are disagreeable and contrary to their professional best judgment and advice,⁴⁵ and there are less-obvious but equally potent criminal sanctions that disobedience risks.⁴⁶

Nevertheless, the novelty and controversial character of such a military deportation campaign ought to give these senior leaders pause and serve as grounds for questioning whether

⁴¹ Allan Smith, *Trump aims to end birthright citizenship, says American citizens with family here illegally may be deported*, NBC NEWS, Dec. 8, 2024, <https://www.nbcnews.com/politics/donald-trump/trump-aims-end-birthright-citizenship-says-american-citizens-family-il-rcna183274> (last accessed Dec. 9, 2024).

⁴² 10 U.S.C. § 890; UNITED STATES MANUAL FOR COURTS-MARTIAL [hereinafter MCM], pt. IV, para. 16.C. (2024).

⁴³ MCM, pt. IV, para. 16.c.(2)(a)(i).

⁴⁴ Dan Maurer, *Governing Military Norm-Defiance in a Norm-Defying Presidency*, LAWFARE, Aug. 8, 2024, <https://www.lawfaremedia.org/article/norm-defying-military-disobedience-in-a-norm-defying-presidency--what-role-does-the-ucmj-play> (last accessed Dec. 9, 2024).

⁴⁵ *United States v. Eliason*, 41 U.S. 291, 301-02 (1842) (“The power of the executive to establish rules and regulations for the government of the army is undoubted . . . [and] [t]he power to establish implies necessarily the power to modify or repeal or to create anew. The Secretary of War is the regular constitutional organ of the president for the administration of the military establishment of the nation, and rules and orders publicly promulgated through him must be received as the acts of the executive, and as such be binding upon all within the sphere of his legal and constitutional authority. Such regulations cannot be questioned or denied because they may be thought unwise or mistaken. The right of so considering and treating the authority of the executive, vested as it is with the command of the military and naval forces, could not be entrusted to officers of any grade inferior to the commander-in-chief; its consequences, if tolerated, would be a complete disorganization of both the army and navy.”); *see also* *Parker v. Levy*, 417 U.S. 733, 751 (1974) (“The military establishment is subject to the control of the civilian Commander in Chief and the civilian departmental heads under him, and its function is to carry out the policies made by those civilian superiors”).

⁴⁶ FEATHER, ARMED SERVANTS, *supra* note 10, at 93; for alternative criminal sanctions besides those of “disobeying an order” under Articles 90 and 92 of the UCMJ, *see* 10 U.S.C. § 933 (“conduct unbecoming an officer”), § 934 (“conduct of a nature to bring discredit upon the armed forces” and “conduct prejudicial to good order and discipline”), § 894 (“mutiny or sedition”), and 18 U.S.C. § 2387(a) (“activities affecting armed forces generally”). All of these additional potential criminal prohibitions – with vaguely-worded elements – would be difficult to prove beyond a reasonable doubt and a prosecution of a senior military flag officer for such an offense would be without modern precedent.

the President and Secretary of Defense have the legal authority to use the Armed Forces in this manner. But even if the Chairman of the Joint Chiefs of Staff receives a legal opinion from his own Counsel,⁴⁷ a determined Secretary of Defense may in turn rely on a contrary opinion from the politically appointed General Counsel of the Department of Defense,⁴⁸ or similarly rely on opinions from the Office of Legal Counsel at the Department of Justice. Such opinions expressing the legality of the President's course of action (in light of the strong judicial deference discussed above) will render moot any "legal" objections by senior officers. Additionally, senior officers may not wish to obtain legal opinions in the face of predictable contrary results from legal advisors outside the Pentagon out of concern that such hesitation or skepticism will be viewed as partisan slow-rolling of the commander-in-chief's lawful policy agenda.⁴⁹ The order's presumptive legality plus a professional duty to support civilian supremacy over the military likely yields a cadre of senior strategic military officers⁵⁰ reasonably uncomfortable with, but willing to carry out expeditiously, a military-enabled mass deportation campaign.

At least with respect to normal use of the military to aid civilian law enforcement under Chapter 15 of Title 10, those officers may still resist and object on practical grounds – grounds established by Congress. Specifically, those more common and less controversial domestic uses of the military described above are subject to a determination that the support will not adversely affect the "military preparedness of the United States."⁵¹ The Chairman of the Joint Chiefs of Staff is the principal military advisor to the President and Secretary of Defense; as such, he is responsible for assessing military preparedness.⁵² But this only gives him the legal authority to make that assessment and provide advice – it does not obligate the President or Secretary to heed it. Therefore, any assessment that the domestic deployment of the military for immigration enforcement will negatively undermine "readiness" can be ignored and the Chairman can be relieved of his responsibilities and replaced. Even if private disagreement is never aired, the relief and replacement of senior military leadership may be viewed as a blatant political act by those in Armed Forces and viewed harshly by those already predisposed to object to the Administration's immigration policy (or at least using the military to enforce it).

⁴⁷ 10 U.S.C. § 156.

⁴⁸ 10 U.S.C. § 140.

⁴⁹ On the bureaucratic tactic of "slow-rolling" applied in civil-military relations, see James Joyner, *Trump's Generals: A Natural Experiment in Civil-Military Relations*, 15 STRAT. STUD. Q. 120, 125 (Summer 2021); Mackubin Thomas Owens, *Maximum Toxicity: Civil-Military Relations in the Trump Era*, 15 STRAT. STUD. Q. 99, 107 (Summer 2021).

⁵⁰ I am assuming here that the President-elect will not yet have "purged" all known or suspected "woke" general and flag officers from the Joint Chiefs of Staff, the Joint Staff, and U.S. Northern Command by the time he attempts to implement this plan. See Phil Stewart & Idrees Ali, *How a Trump presidency could lead to a purge at the Pentagon*, REUTERS, Nov. 11, 2024, <https://www.reuters.com/world/us/how-trump-presidency-could-lead-purge-pentagon-2024-11-10/> (last accessed Dec. 9, 2024).

⁵¹ 10 U.S.C. § 276.

⁵² 10 U.S.C. § 153(a)(4) (the Chairman is responsible for "(A) evaluating the overall preparedness of the joint force to perform the responsibilities of that force under national defense strategies and to respond to significant contingencies worldwide; [and] (B) assessing the risks to United States missions, strategies, and military personnel that stem from shortfalls in military readiness across the armed forces and developing risk mitigation options").

If the President-elect attempts to avoid any legal obstacles under Chapter 15 of Title 10 or the Insurrection Act and attempts to avoid direct confrontation with his senior military cadre at the Pentagon, by relying on certain states' National Guard forces normally under the command and control of the state governors, the strategic civil-military relationship will certainly face similar deleterious effects. If the states' National Guard forces remain completely under the governors' command and control, only state laws act as constraints on how they are employed in a law enforcement capacity. If the states' National Guard forces are activated under Title 32, they will perform a federal mission or operation dictated by the President or Secretary of Defense (like "homeland defense activities") but remain under the legal command of the governors.⁵³

Such an arrangement may have two significant negative impacts on strategic civil-military relations. First, it may be viewed by the Pentagon's uniformed leaders as a signal that the commander-in-chief distrusts their abilities, questions their judgment, or interprets their fidelity to the Constitution as disloyalty to the President himself. The President-elect famously espoused such views during his first term in office.⁵⁴ That signaling, in turn, may lead either to unprincipled attempts to regain the President's "favor" or may further erode the military's confidence in the principles, constitutional respect, and good judgment of the commander-in-chief. Second, reliance on the state National Guard units and their governors to execute the mass deportation campaign will leave the most experienced active-duty generals and flag officers – those serving as members of the Joint Chiefs – on the "sideline" to watch silently as other uniformed personnel are used in an unprecedented and highly controversial ways on domestic soil. Any unlawful violence perpetrated by the National Guard units will, as a result, likely be slower to be identified, more difficult to deter and prevent through training, and present more challenges for holding violators accountable. In each case, the military profession's highest-ranked stewards may appear enfeebled or incompetent, reinforcing prejudices and assumptions that the President-elect is known to possess.⁵⁵ This may risk undercutting the ability of these senior military elites to provide honest, candid, and complete expert advice, not only during this domestic operation, but in future armed conflicts abroad. Any dynamic of mutual mistrust, miscommunication, and contempt between the President (including his civilian appointees in the Pentagon) and the senior strategic-level uniformed leaders is a civil-military relationship pathology difficult to cure.

Conclusion

This statement addressed certain foreseeable risks to civil-military relations posed by the domestic deployment of the Armed Forces in support of – or to lead – a mass deportation campaign designed to enforce the Nation's immigration laws. It presents my views in my personal capacity alone and is admittedly speculative and tentative. This cannot be avoided, however, given the unprecedented nature of the President-elect's intentions.

⁵³ 32 U.S.C. § 902.

⁵⁴ See PETER BAKER & SUSAN GLASSER, *THE DIVIDER: TRUMP IN THE WHITE HOUSE, 2017-2021* (2022).

⁵⁵ Jeffrey Goldberg, *Trump: 'I Need the Kind of Generals That Hitler Had,'* THE ATLANTIC, Oct. 22, 2024, <https://www.theatlantic.com/politics/archive/2024/10/trump-military-generals-hitler/680327/> (last accessed Dec. 9, 2024).

In sum, the direct or indirect use of the military (active or reserve) to enforce domestic immigration law is a non-traditional, controversial, and legally complex application of the President's command and control of the Armed Forces. This non-traditional use of the military raises substantial risks for the health and effectiveness of normal civil-military relations. It may evoke strong anti-military public sentiment and reactions, eroding trust in the institution's assumed professionalism and nonpartisanship. Use of the Armed Forces in this manner will also likely strain the day-to-day relationships among the most senior civilian national security officials and the strategic cadre of military leaders on the Joint Chiefs of Staff and the operational chain-of-command. It may stress long-held professional norms and expectations about the proper use of the military; it may risk inciting dissent or disobedience to "lawful but awful" orders; it may blur the line separating the unwitting support of an unconstitutional abuse of presidential power and the proper subordination to civilian authority; or it may chill military leaders from questioning constitutionally suspect commands to avoid being accused of partisan slow-rolling of the President's policy directives. If any of these speculative but foreseeable scenarios come to pass, the state of American civil-military relations will not emerge unbruised, and the non-partisan character of the military profession will not survive untainted.⁵⁶

⁵⁶ During and after the first Trump Administration, the military surged discussion within its professional schools on the nature and duties of the servicemember's oath of office, focusing on the non-partisan professionalism and fidelity to the Constitution not to a particular political party or elected official. *E.g.*, Jim Garamone, *Joint Chiefs Stress Servicemembers' Commitment to Constitution*, DOD NEWS (Jan. 13, 2021), <https://www.defense.gov/News/News-Stories/Article/Article/2470780/joint-chiefs-stress-service-members-commitment-to-constitution/>; James Joyner & Butch Bracknell, *They Make You Take an Oath to the Constitution: They Don't Make You Read It*, WAR ON THE ROCKS (Oct. 31, 2022), <https://warontherocks.com/2022/10/they-make-you-take-an-oath-to-the-constitution-they-dont-make-you-read-it/>; Joseph Chapa, *The Oath of Office and the Insurrection*, WAR ROOM (Jan. 7, 2022), <https://warroom.armywarcollege.edu/articles/oath-of-office/>.



December 19, 2024

Committee on the Judiciary
United States Senate
Washington, DC 20010

Re: Statement for the Record for the hearing on 10 December 2024, “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy”

Dear Senator:

On behalf of the Southern Border Communities Coalition, a coalition of over 100 organizations located in communities from San Diego, California to Brownsville, Texas, that have come together to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent the loss of life in the border region, we submit this statement for the December 10, 2024 hearing “*How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy*.” If executed, mass deportation efforts will have direct and devastating impacts on the [19 million](#) people who call the southern border region home, including U.S. citizens, mixed status families and newcomers, and take a wrecking ball to the culture of welcome and opportunity that have long defined our communities.

Southern border communities have endured decades of escalating and costly militarization and harsh enforcement that would have been much better dedicated to initiatives that strengthen our communities, like healthcare, schools, and more modern ports of entry. We urge Congress to channel the billions of taxpayer dollars that would be spent on the mass deportation and detention machinery into investments that help our communities thrive.

We are deeply concerned that mass deportation efforts will lead to a dramatic and harmful increase in racial profiling within the southern border region by Customs and Border Protection (CBP) as the agency seeks to meet arbitrary targets of arrests for deportation. More than half of border region residents are people of color and already endure racial profiling from border agents due to the agency’s longstanding history of explicit biases on brown and Black communities¹. CBP [asserts the authority](#) to stop, frisk, detain, interrogate, and arrest anyone without a warrant or reasonable suspicion within the 100-mile enforcement zone - dangerous

¹ Source: Analysis of 2020 American Community Survey data (5% IPUMS)

and unique levels of power and control as compared to other agencies. Multiple [reports](#) and studies show that CBP relies on racial profiling for these interior stops, further compounding these harms. These harms would expand with mass deportation efforts by granting even further resources and leverage to target people of color under the guise of national security.

Mass deportation efforts will further exacerbate CBP's accountability crisis by enlarging the force without a commensurate expansion of accountability and oversight mechanisms. CBP currently faces an accountability crisis with its current force of over 19,000 agents. Mass deportation would require an unprecedented hiring surge of both ICE and Border Patrol agents. [History has shown us that hiring surges for border agents, especially if hiring standards and vetting processes are truncated, leads to greater corruption and inundates the force with inexperienced agents.](#)

Mass deportation efforts will lead to the separation of mixed status families and devastate our region. Many undocumented immigrants in border communities who would be swept up in a mass deportation effort have deep ties in our region, including as family members, neighbors, parents, DACA recipients, spouses to U.S. citizens, and lawful permanent residents. They are an integral and contributing presence within our community and support and enrich the fabric of our country.

Mass deportation efforts will also create even greater distrust between communities of color and law enforcement agencies. FBI [statistics](#) show us that border communities are among the safest in the country. Studies have [shown](#) that public safety can be negatively impacted if the public, especially those with mixed status or immigrant families, do not feel safe reporting incidents they've witnessed or been victim to out of fear of contact with agencies involved in mass detention and deportation efforts. Overall, people of color and border communities already have strained relationships with law enforcement agencies like CBP due to their long and well-documented track record of harassment and discrimination. Mass deportation efforts, especially those that involve or co-opt local and state law enforcement, will only fuel a culture of distrust, leading to less safe communities.

SBCC firmly opposes proposed mass deportation efforts and urges Congress and the next Administration to instead focus on measures that will help our border region truly thrive.

We thank you for the opportunity to submit this comment.

Sincerely,

Lilian Serrano
Southern Border Communities Coalition, Director

**Written Statement by
Alabama Immigrant Advocacy Organizations
before Senate Judiciary Committee
Regarding “How Mass Deportations Will Separate American Families, Harm Our Armed
Forces, and Devastate Our Economy”
December 10, 2024, 10:00am EST**

We, the undersigned immigrant advocacy organizations in Alabama, thank Chairperson Durbin and the Senate Judiciary Committee for holding this hearing regarding promised immigration enforcement efforts that, if enacted, will have devastating consequences for U.S. children and families and the economy. Following Alabama’s enactment of House Bill 56 (“H.B. 56”), a sweeping anti-immigrant law, in 2011, we witnessed and experienced first-hand the harms caused by stoking fear, crushing dreams, and separating families. With the incoming Administration, our community is preparing to relive that nightmare. As one young professional who is a recipient of DACA explained, “My life, my dreams, and my contributions are all rooted in the United States. It is exhausting to live with the fear that everything I have worked for could be taken away.”

We urge Congress not to repeat Alabama’s mistakes and do everything in its power to thwart the incoming Administration’s promises of mass deportations and family separation¹ and Project 2025’s proposal to carry out immigration enforcement even in “sensitive places” like schools, hospitals, and places of worship.²

Along with the below testimony, at the end of this document you will find written testimonials from Alabamians who know first hand the impact of anti-immigrant policies like H.B. 56. These testimonials were collected by organizers with Voces Inmigrantes Alabama and the Alabama Coalition for Immigrant Justice. Many of the individuals who shared their stories lived in Alabama when that legislation was passed and have seen the effect of these practices right here in our communities.

Alabama has been a testing ground for anti-immigrant policies.

We are not strangers to draconian anti-immigrant policies. In 2011, the Alabama Legislature enacted H.B. 56, a sweeping law crafted to “attack every aspect of an [undocumented immigrant’s] life.”³ Lawmakers made no attempt to hide the fact that H.B. 56 targeted the

¹ Aaron Blake, *Trump has a new family separation problem*, Washington Post (Dec. 9, 2024), <https://www.washingtonpost.com/politics/2024/12/09/trump-family-separation-mass-deportations/>.

² Bianca Vázquez Toness, *Schools are bracing for upheaval over fear of mass deportations*, AP News (Nov. 27, 2024), <https://apnews.com/article/immigration-school-deportation-9747be35d2eb109693930f114f148b94>

³ Kim Chandler, *Alabama House passes Arizona-style immigration law*, AL.com (Apr. 5, 2011), https://www.al.com/spotnews/2011/04/alabama_house_passes_arizona-s.html (quoting H.B. 56

“Hispanics.”⁴ Legislators bluntly explained that the law was “designed to make it difficult for them to live here so they will deport themselves.”⁵ Originally, H.B. 56:

- required schools to check and report the immigration status of their students;
- barred undocumented students from attending Alabama colleges and universities;
- authorized and even required police to demand proof of immigration status from anyone they suspected of being in the country without authorization;
- invalidated contracts knowingly entered into with people without lawful immigration status, including rental contracts;
- made it a crime to transport or shelter undocumented immigrants;
- criminalized day labor, and
- made it a felony for an undocumented immigrant to enter a contract with any government entity.⁶

Much of the law was struck down in federal court, after the U.S. Department of Justice, community members, nonprofits—including some of the undersigned—and faith communities challenged it.⁷ But the provisions that were upheld and the anti-immigrant animus behind the law have had a lasting devastating impact. And with new anti-immigrant legislation under consideration in Alabama,⁸ Alabamians face continued threats, harmful rhetoric, and attacks on vital members of their communities.

lead sponsor Rep. Micky Hammon as saying that H.B. 56 “attacks every aspect of an illegal alien’s life” and is “designed to make it difficult for them to live here so they will deport themselves”).

⁴ *Greater Birmingham Ministries v. Sec’y of State of Alabama*, 992 F.3d 1299, 1307 n.9 (11th Cir. 2021).

⁵ Kim Chandler, *Alabama House passes Arizona-style immigration law*, AL.com (Apr. 5, 2011), https://www.al.com/spotnews/2011/04/alabama_house_passes_arizona-s.html (quoting H.B. 56 lead sponsor Rep. Micky Hammon as saying that H.B. 56 “attacks every aspect of an illegal alien’s life” and is “designed to make it difficult for them to live here so they will deport themselves”).

⁶ Beason-Hammon Alabama Taxpayer and Citizen Protection Act No. 2011-535 (June 2, 2011) (hereinafter “H.B. 56”), available at <https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2011RS/PrintFiles/HB56-Enr.pdf>; see also Tom Baxter, *Alabama’s Immigration Disaster The Harshes Law in the Land Harms the State’s Economy and Society* 1, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

⁷ *Hispanic Interest Coalition of Alabama v. Bentley*, No. 5:11-cv-2484-SLB, 2013 WL 12357613 (N.D. Ala. Nov. 25, 2013); *United States v. Alabama*, No. 2:11-CV-2746-SLB, 2013 WL 10799535 (N.D. Ala. Nov. 25, 2013); *Parsley v. Bentley*, 5:11-CV-2736-SLB, 2011 WL 13229639 (N.D. Ala. Sept. 28, 2011).

⁸ *Ralph Chapoco, Alabama House bill would allow local law enforcement to enforce federal immigration laws*, Alabama Reflector (Apr. 3, 2024), <https://alabamareflector.com/2024/04/03/alabama-house-bill-would-allow-local-law-enforcement-to-enforce-federal-immigration-laws/>.

Alabama's children and families suffer under anti-immigrant measures.

Alabama has seen the human cost of harsh anti-immigrant policies. Children are harmed by the threat of sweeping immigration enforcement. Families are torn apart or abruptly uprooted. In the aftermath of H.B. 56, “[t]here are countless stories of families suddenly torn apart and lives disrupted, of frightened children and distraught parents faced with the choice of leaving their children behind to give them a better future.”⁹ Some families “put as much as they could in their vehicles and left everything else they had acquired behind in their haste to flee the state.”¹⁰ Others executed powers of attorneys, planning for who would care for their children, who in many cases were U.S. citizens, in the event of their arrest and deportation.¹¹

Anti-immigrant policies disrupt education by turning school officials into immigration police, diverting resources from classrooms, and making public education a risk some families cannot afford to take. Motivated by an often explicit racial animus, like H.B. 56, these policies harm both immigrant and U.S. citizen children. “On the first Monday after H.B. 56 went into effect, 2,285 Latino students (out of 34,000 in the state) did not show up to school” and that number only increased within the week.¹² A school principal in South Alabama reported in the wake of H.B. 56, “We have seen children crying as they get off the bus, thinking their parents won't be home when they return because they will have been deported.”¹³ He explained, “[T]he children will get the worst of it because this panic affects learning.”¹⁴

Alabama's economy suffers under anti-immigrant measures.

In addition to the social harms, H.B. 56 had detrimental impacts on the state's economy, particularly in the agricultural industry. At the time, Alabama's agricultural sector brought in \$5.5

⁹ Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 2, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

¹⁰ Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 17, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

¹¹ Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 18, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

¹² Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 3, 17, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

¹³ Valeria Perasso, *Alabama Hispanics concerned over immigration law*, BBC News (Oct. 25, 2011), <https://www.bbc.com/news/world-us-canada-15439733>.

¹⁴ *Id.*

billion per year.¹⁵ As immigrant seasonal workers fled the state, fields of produce went unharvested, costing farmers tens of thousands of dollars and depriving consumers of fresh produce.¹⁶ One tomato farmer in Alabama estimated a loss over \$100,000 in rotten produce, another estimated their loss at \$300,000.¹⁷ A greens and sweet potato farmer worried about the future of his entire business, not just the year's crop: "If I lose this crop, I'm out. I'll just have to do something else."¹⁸ The founder of Grow Alabama, an organization that worked to promote a community-supported agricultural model, warned of the long-term effects of anti-immigrant laws on agriculture: "It's going to change the landscape of Alabama if something doesn't happen. It will end produce farming in Alabama."¹⁹

The impact of a fleeing workforce extended beyond the agricultural sector. Jay Reed, then-president of the Alabama chapter of Associated Builders and Contractors, explained "While the legislation wasn't meant to drive out those here legally working, it has—especially in carpentry, masonry, landscaping."²⁰ And the economic harms extend beyond the impact on business profits. As families fled, so did their sizable employment, sales, and utility tax contributions.²¹

¹⁵ Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 3, 17, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

¹⁶ *Id.*; Joseph Ernbenraut, *We've Already Learned that Losing Immigrant Farm Workers is a Disaster*, HuffPost (Mar. 10, 2017), https://www.huffpost.com/entry/alabama-immigration-law-farms_n_58c1d07fe4b0ed71826b55e0; Associated Press, *Efforts to Replace Immigrant Workers in Alabama Fields Coming Up Short*, AL.com (Oct. 17, 2011), https://www.al.com/wire/2011/10/state_program_to_replace_immig.html.

¹⁷ Ed Pilkington, *Alabama Immigration: Crops Rot as Workers Vanish to Avoid Crackdown*, The Guardian (Oct. 14, 2011), <https://www.theguardian.com/world/2011/oct/14/alabama-immigration-law-workers>; Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 10, Ctr for Am. Progress (Feb. 15, 2012).

¹⁸ Paul Reyes, "It's Just Not Right": *The Failures of Alabama's Self-Deportation Experiment*, Mother Jones (March/April 2012), <https://www.motherjones.com/politics/2012/03/alabama-anti-immigration-law-self-deportation-movement/>.

¹⁹ Tom Baxter, *Alabama's Immigration Disaster* *The Harshes Law in the Land Harms the State's Economy and Society* 10, Ctr for Am. Progress (Feb. 15, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/alabama_immigration_disaster.pdf.

²⁰ Paul Reyes, "It's Just Not Right": *The Failures of Alabama's Self-Deportation Experiment*, Mother Jones (March/April 2012), <https://www.motherjones.com/politics/2012/03/alabama-anti-immigration-law-self-deportation-movement/>.

²¹ See Carl Davis et al., *Tax Payments by Undocumented Immigrants*, Inst. on Taxation and Econ. Pol'y (July 30, 2024), <https://itep.org/undocumented-immigrants-taxes-2024/>.

Conclusion

Immigrant families in Alabama are already preparing for the worst in anticipation of the second Trump Administration.²² We know, because we have witnessed it before, that the threat of, much less the implementation of, mass deportations will only harm Alabama and the entire country. We therefore urge Congress to enact and enforce guardrails on the executive branch's ability to carry out mass immigration enforcement, including limiting funding to the Department of Homeland Security (DHS), placing guardrails on such funding to prevent enforcement at "sensitive locations,"²³ conducting oversight over DHS, and enacting laws that create pathways to lawful status for the millions of undocumented immigrants in the United States.

Sincerely,

Alabama Coalition for Immigrant Justice
 Voces Inmigrantes Alabama
 Alabama Interfaith Refugee Partnership
 Tuscaloosa Latino Coalition
 Hispanic Catholic Social Services
 Reclaiming Our Time
 Alabama State Conference of the NAACP
 Southern Poverty Law Center

²² Sarah Whites-Koditschek, Anxiety grips Alabama immigrants as Trump plans mass deportation: 'I just felt like I was not safe', AL.com (Dec. 11, 2024), <https://www.al.com/news/2024/12/anxiety-grips-alabama-immigrants-as-trump-plans-mass-deportation-i-just-felt-like-i-was-not-safe.html>.

²³ Julia Ainsley and Didi Martinez, *Trump plans to scrap policy restricting ICE arrests at churches, schools and hospitals*, NBC News (Dec. 11, 2024), <https://www.nbcnews.com/investigations/trump-scrap-restriction-ice-arrests-churches-schools-rcna183688>.

Appendix: Testimonies from Alabamians*21 yr old Yemeni-American:*

My sister has been in the United States for 10 years, she has 3 children who are American citizens. She has paid taxes, is getting an education in the United States, taking her away from my family would strip a mother away from her children, and frankly would be devastating. Yemen is not safe, she would not be able to take her kids with her, her oldest child could be at risk of political violence upon arrival to Yemen. She is the embodiment of the American dream, but her asylum case has been pending for the entire 10 years she has been here and she has waited patiently. We are now scrambling to try to get her Temporary Protected Status so that our family can stay together.

23 yr old Mexican Citizen:

I am a DACA recipient who was brought to the United States at 18 months old. I am now 23, a recent university graduate, and working in my field. This country is the only home I have ever known. I grew up here, went to school here, and built my life here. Yet, my future is constantly uncertain because there is no pathway to citizenship for us. While I am a citizen of Mexico, I have no memories of my life there. My life, my dreams, and my contributions are all rooted in the United States. It is exhausting to live with the fear that everything I have worked for could be taken away.

Mexican-American woman who runs a small business doing taxes:

She works with a lot of undocumented people, and she's afraid Trump's plans will spread massive fear through a lot of people. She thinks whether people leave on their own accord or through deportation, it'll affect her business + a lot of other small businesses which will be really bad for the local economies. She said that she and her kids were lucky because Trump said he wanted to go for people who were born here to undocumented parents, and that could have been us if she wasn't legal by the time she had children. Overall she's very worried about the economy and fears that an integrated part of our culture will be lost if so many people are deported in a manner such as that.

Brianna - Legal Assistant, 21, her father is from Panama:

As a first generation Afro-Latina, the future feels dark when I reflect on Trump's plans for mass deportation. The light and resilience that many first-generation children embody is unparalleled. From a young age we develop a profound understanding of hard work and sacrifice. It's common in immigrant households to watch your parents exert themselves to the point of physical and mental exhaustion. We watch them fight so hard for our future, rights, and autonomy that they were unable to attain. Their unwavering dedication instills adaptability, perseverance, and the ability to overcome adversity in us. Even though we are more likely to experience economic disparity, discrimination, mental health challenges, we rise above our circumstances and often outperform our peers academically. Trump's mass deportation plans are deeply troubling for me

as a college student. Many of my peers' futures are in jeopardy because of these policies. The future of this country is in jeopardy. Hardworking, talented, brilliant minds across the nation will be denied the opportunity to gift the world what they have to offer. Not only would he devastate families and violate fundamental human rights, but also undermine the future of the United States and its people. Our passion, commitment, drive, and dedication are what makes this country great. Without our contributions of first-generation students, as well as the sacrifices of our parents and ancestors, this nation is on a path toward destruction.

Bianca Mendez, 18, child of undocumented parents:

My name is Bianca Maza Mendez I'm born and raised in Chilton County Alabama. Growing up I have always been beside my mom, and I have helped her out with a lot of things a "kid" does not usually do at that age. My earliest childhood memory that I have is when I was barely 6 years old in 2011 when they passed the anti-illegal immigration bill HB-56 that was when my childhood "La Lucha" started that was where my whole life started always being in a meeting or making posters for a rally where they could use while protesting. At that age I would've rather been at a park playing like other kids, making friends or just doing the usual things a child does. But instead, I was beside my mom throughout all the meetings watching and listening to all the things that were surrounding me. Seeing the fear in the eyes of people I cared about and loved seeing them stressed what would happen to my siblings and I, if they would get stopped by a cop or get arrested who would watch over us. The fear that I had when we passed a police car or even if a police officer turned to look our way because all that would go through my little head was "what if they take my mom and dad from me we do not have anyone else" "my parents are not bad people" "they work hard for the things we have" all this thoughts that would go in my head especially being the oldest I was worried of my younger siblings. As I grew up my life still revolved around all these meetings and protests, but I would not change my life for anything because I will always be grateful that I have the knowledge and wisdom that most young adults do not have at this age. I am currently 18 years old and seeing all that plans that President Trump has for the Undocumented people truly makes me worried because it just takes me back to being that little six-year-old girl worried for her parents and family members not knowing what will my siblings and I do or be able to be emotionally and physically without our parents. So yes, it would affect me but not just me because I know I am not the only young adult that would be affected by these laws. Especially if they are like me I barely started a young adults life I would not be able to watch over my younger siblings like two parents do our family would not be the same a whole piece of our hearts would be ripped out, our home would not be the same everything that we have all worked hard for as a family would be taken away. And even if we were to be back together the trauma of losing our parents would still be there, all the suffering, everything would be there, all the emotions felt. So yes, it would truly affect me a lot. Why rip families apart leaving kids and parents with horrible experiences, why not come up with a fair solution?

Mayra Rangel, undocumented Alabamian who arrived in the US at age 16:

I am writing this letter to appeal to your moral values. My name is Mayra Rangel, I am an undocumented immigrant who came to the United States more than two decades ago when I was sixteen years old. I came here because of extreme poverty. My father died of cancer when I was eight years old and I grew up seeing my mother working so much for so little money just enough to put some limited food on the table and pay my sisters and my education expenses. She promised my father, me and my sisters will continue our education so she did anything to keep that promise. But one day my mother got sick from working so much and not eating well. That day I could not take it any more, so at sixteen I decided it was my turn to help my mother. The lack of resources in my little town and my family circumstances forced me to leave. Oh I did not want to live I promise, I did not want to leave my mom, my sisters, my house, my town or my country.

First I came to California where I attended and graduated from Shafter High while working in the fields picking crops. Then I went to Bakersfield College and because I never qualified for any financial student aid, I worked three jobs to support my family in Mexico and myself here. I am not telling you this so you can feel sorry for me, I am sharing my story so you can understand why we migrate and put yourselves in our shoes if possible.

More than twenty five years have passed and now I have roots here, I have a family, I have friends in my community who care for me. I am a hard working human being. My passion is helping kids and single mothers since I know the predicament they encounter when surviving alone. I was living in fear for many years because I thought I have no rights for being undocumented here, who could I blame for the struggles of my life? God? Is it my fault? Is it trying to survive a crime? Am I a criminal for trying to support my family at the age of sixteen ? Now I am getting old in a country and state that I call home. I do not have papers that prove my legal status but I have a whole life and experiences that can prove this is my home now. Despite the media hate and judgements towards immigrants like me I am very proud of myself and I teach my children the importance of resilience, courage, and compassion. Despite what many people say, we are the best human beings you can encounter because we live our lives with passion, we cross deserts to accomplish our dreams and Alabama needs more people like us.

The world is changing, wars, natural disasters, violence, etc.. It is time to ask ourselves what is causing migration? How can we prevent it? Massive deportations are not a solution but another big problem that will damage our Alabama society. Immigration is the consequence of decisions made by our governments, we need to address that. Destroying families will create chaos, please put yourselves in our shoes for a minute. What will you do if someone wants to take you away from your children and wife by force? What will you do if someone intends to take away your wife or husband by force? We do not need more violence in our society.

Genaro Limon, father of two and husband of an undocumented Alabamian:

This letter is to request the stop of any massive deportation of undocumented immigrants in the state of Alabama. My name is Genaro Limon, I am an American citizen married to an undocumented immigrant in 2016. We have formed a beautiful family in the city of Oneonta and

have a 6 year old boy and a 3 year old daughter. We have been trying to legalize the status of my wife for the last 8 years and have not achieved it yet. My wife is in limbo with no legal status like many friends and family members in my community. My wife has been in the US since 1996, she has studied college and now has her own business, and never committed a crime. She is a productive member of Alabama society. She has been living in the United States for 28 years and has developed deep relationships in Alabama. Our families always get so much stress everytime politicians use us as scapegoats to blame all the bad things on immigrants. My family is a mixed status family like many thousands in the state and millions in the country. I am reclaiming my rights as a US citizen to keep my family together. I appeal to your moral and christian values and beliefs. The action of doing massive deportations in the state will not only destroy families, it will damage the economy and labor force in the state. I'm sure you all know that, but I encourage you to ask farmers, chicken plants, construction companies, and small businesses owners in general before you start any action against the immigrant community.

Rosa M. Toussaint-Ortiz, Community Pastor and Mental Health Coach:

I am writing this letter to show my concern on President Donald Trump's mass deportation plan which I don't support. I am a US. Citizen, born in the Dominican Republic to Dominicans parents and a descendant of a Hattian grandfather. For many years I was an undocumented child living in Puerto Rico. I was able to get a legal permanent resident. In 1978 I joined the US. ARMY, years later became a US. Citizen, and was discharged from the military and received an honorable discharge from the ARMY. I also worked for the federal government.

I am telling you this to explain why I don't agree with mass deportation, I was given the opportunity to be part of the US. And since I have been a citizen of the US that loves this country and has always done what's right to defend the constitution and my fellow Americans. I am very concerned about the psychological damage that president Trump and those that agree with him are doing to immigrant children and children of immigrant parents. I am a certified Mental Health Coach and an Assistant Pastor. We have already seen the anxiety of the children of our church immigrant members and immigrant families in our communities.

One of the things I have learned in my mental health study is about trauma which is caused by deeply distressing or disturbing experience. I saw how traumatic it was for the immigrant community of Alabama during and after the passing of the HB56 law. I was able to advocate, suffer with these families and to show compassion to them.

Only God knows of those immigrant families and children whom are now dealing with anxieties, additions and suicidal issues do to all the mistreatment that they received during that time. I never understood why if after a tornado people in Alabama received free counseling this was not offered to the children of the deported immigrants. Please see the report on the effect of deportation on families and communities written by community psychology, social Justice through collaborative research and actions, <https://www.communitypsychology.com/effects-of-deportation-on-families-communities/>

I don't support mass deportation because as a believer of the bible this bible verse and many others tell me that God our creator, and savior is not in favor of mistreating immigrants. Romans 13:10 Love doesn't hurt others. So loving is the same as obeying all the law. Thanks for this opportunity sincerely and respectfully.

Xochitl Rojas

Back in 2011-2012, I got to experience firsthand the law HB56. It was considered the nation's toughest immigration bill at the time. The law had many consequences, including:

- Hardship for immigrants: Immigrants experienced police roadblocks, verbal abuse, and deferred opportunities.
- Business costs: Businesses had to spend more on employee screening, third-party assistance, and human resources staff.
- Families fall apart: at that time many families were unable to provide basic support for their children, parents were deported and many families were forced to leave the state.

The Hispanic people have been able to cope with American culture so well that every household in the USA knows at least one individual that has no legal status in this country. Many years ago the law affected farmers, schools and the law enforcement agencies that were forced to do something that they were not happy to do, separating families.

I believe that this time it will not be a different story, the Hispanic community is so big in the state that not only many people might end up losing their jobs, but businesses, schools and society will have a harder time. Persons that have no legal status are already afraid to call the police, when they are witnesses or victims of a crime this is going to create a bigger wall, business will lose revenue from the Hispanic community and many of this business will lose hard-working people, patients will rather suffer than seek medical help, and again the separation of families, the most important part of society, this will be damaged. HB56 was part of history over ten years ago, but we still remember the struggles, we still miss the people that we haven't seen since then, we still remember those who helped us through the hard times and those who supported the radical law. This is a different year, the situation might be different, the people might be different and the reasons might be different but the consequences and the impact will be the same or even worse.

This entire situation will again affect my family, my friends, my job, the whole community where I live regardless of the person that is arrested and deported, for the simple reason that I already mentioned before, every household in America knows at least one person who has no legal status in the country. Thank you for your understanding and your concern.

Victor, father and undocumented Alabamian

Judiciary Committee, thank you in advance for accepting my writing and I hope you can understand my words. I have been living in this beautiful state for more than half of my life, since I came to the United States at the age of 17, almost a child, without knowing the language, without knowing the customs and since then I have worked in different jobs contributing to the economy and learning the laws of this country. At this time I already have an established family with three children, two of them already in college, during all these years I have contributed, as the law indicates, every year I do my taxes like any other person in the United States, I pay taxes, I pay Medicaid and I contribute to social security that will possibly never receive any benefit. My goal at this time is for my family to be well and to have enough financially for my children to finish their studies. Now, after years, I feel that my destiny is uncertain with the arrival of President Donald Trump again to the White House, and as is already known, the future anti-immigrant laws that would affect millions of people like me who are in limbo waiting for an immigration law reform that allows migrants who have been living in the country for years, contributing to the economy and paying taxes, to come out of the shadows and live a life without fear, without that fear that one day we will be deported and return to a country that we do not know, a country where we have nothing, since all our heritage is here in the beautiful state, "Sweet Home Alabama." Please I would ask you to reconsider supporting the ideas of a mass deportation and the creation of new anti-immigrant laws, because it will not only affect the "bad people" as President Trump says, this will affect more the millions of families like mine who respect the laws of this country, we respect the laws of the state, of each county and city, we only want to work well to provide a dignified life for our family. Thank you very much.

Dulce Victoria Rivera, CEO of Mi Pueblo Supermarket

To Whom It May Concern:

I am writing to you as a concerned business and community leader in Alabama to express my deep opposition to any potential support for mass deportations or harsher anti-immigration laws in our state. While immigration policy is a complex and nuanced issue, implementing such measures would have far-reaching and detrimental consequences for Alabama—economically, socially, and culturally.

The Latino and immigrant communities are integral to the fabric of Alabama's economy and society. Their contributions extend far beyond their own communities, fueling growth and prosperity throughout the state. Here are key reasons to reconsider the ramifications of supporting harsher anti-immigration policies:

Economic Contributions: Immigrant communities play a crucial role in Alabama's economy. They contribute to major industries, including agriculture, construction, manufacturing, and services, which are the backbone of both urban centers and rural areas. According to data from HICA (Hispanic Interest Coalition of Alabama), their financial impact supports local businesses, generates significant tax revenue, and sustains labor markets vital to our state's economic health.

Enacting harsh laws could cripple these industries, leading to higher costs for consumers and widespread economic instability. [Source: HICA Finance Report]

Population Growth and Prosperity: Immigrants contribute to Alabama's population growth, which is essential for a thriving economy. Growth translates to more businesses, increased tax revenue, and a higher quality of life for all residents. It fosters diversification in labor skills, enhances positive labor competitiveness, and enriches our cultural landscape. In contrast, policies targeting immigrant communities would reduce population growth, creating a negative domino effect on schools, businesses, and community development.

Financial Burden of Mass Deportation: Implementing mass deportation policies is not only morally troubling but also fiscally irresponsible. Research from the American Immigration Council highlights the exorbitant costs of such measures—costs that would ultimately fall on Alabama taxpayers. These funds could be better utilized to address critical state needs such as Medicaid and healthcare expansion, educational improvement, incentives for business growth, or prison system reform. Investing in these areas benefits all Alabamians, creating a stronger and more equitable society. [Source: American Immigration Council]

Social and Cultural Enrichment: Immigrants contribute to Alabama's rich cultural tapestry, fostering understanding and collaboration among diverse groups. This cultural exchange not only enhances our quality of life but also prepares our state to compete on a global scale. Alabama's ability to thrive in an interconnected world depends on embracing diversity and inclusivity, not driving it away.

Supporting mass deportations or harsher immigration laws would undermine Alabama's values of community and progress. It would place an undue burden on citizens, harm our economy, and erode the social cohesion that makes our state resilient and strong. I urge you to consider these factors and stand against any measures that would jeopardize our shared prosperity.

As a leader who values the future of Alabama, I call on you to advocate for policies that foster inclusivity, economic growth, and investment in our communities. Together, we can create a state where everyone has the opportunity to thrive.

Thank you for your time and consideration. I would welcome the opportunity to discuss this issue further and collaborate on solutions that benefit all Alabamians.

Camille Disla

* To whom it may concern.

my name is Camille Disla. a USA citizen
 I been in the USA for 16 years I
 have never have a problem of any
 kind. I have cousins and friend
 that are undocument but they never
 had have problems with policy of any
 kind. they are hard working
 people I will love for them to
 never have to be deported
 because just like me they have
 family that depends on them.
 they have kid, sister, brother,
 wife, husband and more that they
 suport.

Again my name is Camille Disla
 and if I can help with something
 I will more than happy.

Maria I. Rivera, small business owner

December 12, 2024

To Whom It May Concern:

My name is Maria Isabel Rivera, and I proudly serve as the Director of Rivera Communications, a family-owned business dedicated to supporting the Hispanic community in Alabama. Throughout my career, I have witnessed the profound impact that political decisions can have on our communities. Now, I feel compelled to address the alarming consequences of mass deportations.

The emotional devastation of separating families is only the tip of the iceberg. The economic ramifications would be dire and widespread. A poignant example of this was the implementation of HB56, during which we observed many thriving businesses plunge into bankruptcy in a remarkably short time. The collapse of these businesses not only eliminated jobs but also deprived the government of crucial tax revenues necessary for community growth.

This year, our commitment to our community is reflected in a significant investment in a new office building. Yet, if our clients, who rely on advertising, begin to disappear, sustaining our operations will become impossible. The fallout from these policies would create a ripple effect, jeopardizing numerous sectors:

- Increased vehicle sales and repossession rates.
- Dealerships would reduce marketing budgets aimed at the Hispanic community, ultimately affecting production.
- Industries such as residential construction, hardware, paint suppliers, tool providers, and furniture retailers would suffer greatly.

Hispanic households are vital consumers of essential services like electricity, water, and gas, continuously contributing to the local economy. When these households are uprooted, the entire community's economic stability is compromised.

As we navigate these challenging times, it is essential to recognize these realities and learn from past mistakes. Ignoring them risks not only fracturing our communities but also stunting the economic development of both our state and our nation.

Sincerely,

Maria Isabel Rivera



Abner Maldonado, small business owner

To whom it may concern?

12/16/2024

This letter is to stop any mass deportation in the state of Alabama and the entire country that I love like no other, another to stop all unjust action against immigrants since we came to this country with one goal and that is only to work honestly, we pay our taxes, I have my construction business since 2005 to date and I contribute to the economy by paying licenses and insurance required and I am up to date with the law as it should be and we have never been in problems of any kind it would be a disaster that after 27 years being in this country, which we love and respect as if it were our country of origin, that is why I am against any unjust deportation against immigrants because for them and I do not do any harm to this beautiful country that is very strong and that is not taken into account since we have our children studying and born here and they would not be the same without us, GOD willing that this massive law towards immigrants is not approved with all due respect They deserve to stop all actions towards us, thank you and may GOD bless you always!!!
Sincerely, Abner Maldonado

Jessica Garcia Cruz

12/15/2024

To Whom it Concerns:

Massive Deportation Consequences

This letter is to request the stop of any massive Deportation of Undocumented Immigrant in the State of Alabama. My Name is Jessica Garcia Cruz, and I am a U.S. Citizen of the United States born to two Undocumented parents. I have accomplished many things in life and succeeded through many milestones with the massive support of my family and especially my Parents and older Siblings. I have been able to walk in different footsteps and take a successful path, learning from their lives. I believe strongly that our System has been corrupted, and deportation isn't a solution to anything in comparison to the bigger issues occurring in this country. Both of my Parents haven't legally done anything wrong and haven't committed any crimes. My Father has worked effortlessly daily to provide for my family and give us a better future than any parent would want for their child. My Mother has done her duties as a provider in

our daily life. My younger brother genuinely needs our Parents. Were deported. My parents our family wouldn't just include harming us but also harm to them as they will have to build I am claiming my rights as a U.S. Citizen to keep my family here, and I appeal to the massive deportation.

Respectfully
Jessica Garcia Cruz

Alvany Diaz

A quien Le interese:

Reciban un cordial Saludo, mi Nombre es Alvany Díaz de Nacionalidad Venezolana, Tengo 1 año dentro de este país con un proceso a petición de asilo Religioso, estoy Juntamente con mi esposo e hijas, estamos contentos de querer ser un aporte positivo en este país, hasta el momento hemos cumplido con lo requerido para estar de manera Legal, siembargo un proceso en el que estamos lleva su tiempo.

Att: Alvany Díaz.

16 Diciembre 2024.

Cecilia Aguilar, mother of DACA recipients

To Whom It May Concern.

Massive deportation consequences

This letter is to request to stop any massive deportation of undocumented immigrants in the State of Alabama. My name Cecilia Aguilar. I'm a wife, and Mother of two children Isaac and Ulga.

We have formed a beautiful family we have in Huntsville for 18 years and we recently moving to Hoover Alabama. My boy are benefits of DACA.

We have been trying to legalize the status of us.

My husband work so hard in construction and we formed a ~~Photo~~ Photography and Video Business for social events, we helping a lot in our community by church and different organizations.

Our family always get so much stress everytime politicians use us scapegoats to blame all the bad things on immigrants.

I appeal to your moral and Christian values and beliefs. The action of doing massive deportations in the state will not only destroy families, it will damage the economy and labor force in the state, I'm sure you know that, but I encourage you to ask farmers, chicken plants, construction companies and small business owners in general.

Sincerely Cecilia Aguilar

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN™



Testimony of Julie M. Linton, MD, FAAP
On Behalf of the American Academy of Pediatrics

Before the United States Senate
Committee on the Judiciary

**“Oversight of the Customs and Border Protection’s Response to the Smuggling of Persons
at the Southern Border”**

March 6, 2019

Chairman Graham, Ranking Member Feinstein, and members of the Senate Judiciary Committee, thank you for the opportunity to testify here today. I am Dr. Julie M. Linton, a practicing pediatrician in Greenville, South Carolina, where my clinical work is focused on the care of children in immigrant families. I am testifying today on behalf of the American Academy of Pediatrics (AAP), where I serve as co-chair of its Immigrant Health Special Interest Group (SIG) and as a member of the Executive Committee for the AAP Council on Community Pediatrics.

The AAP is a non-profit professional membership organization of 67,000 primary care pediatricians and medical and surgical pediatric subspecialists dedicated to the health and well-being of all infants, children, adolescents, and young adults. The AAP is non-partisan and pro-children. Pediatricians care about the health and well-being of **all** children—no matter where they or their parents were born. We have maintained enduring concern for the health and safety of immigrant children in the custody of our government, and we published our medical recommendations as an AAP policy statement, *Detention of Immigrant Children*, in March 2017, which I co-authored.¹ Given our professional responsibility and engagement with this issue, we were outraged to learn in December of the death of 7-year-old Jakelin Caal Maquin while in Customs and Border Protection (CBP) custody, and then, just a few weeks later, to learn of the death of 8-year-old Felipe Gómez Alonzo also in the custody of CBP. During the hours, days, and weeks following the tragic deaths of Jakelin and Felipe, the Academy spoke out, urging for improved conditions and adequate medical care that could have saved the lives of these children and seeking answers from federal government officials.

Deaths of Jakelin Caal Maquin and Felipe Gomez Alonzo

On December 18, the AAP, and thirteen medical and mental health organizations, wrote to Department of Homeland Security (DHS) Secretary Kirstjen Nielsen and CBP Commissioner Kevin McAleenan expressing outrage over the death of Jakelin.² The letter stated that conditions in CBP custody are inconsistent with evidence-based recommendations for appropriate care and treatment of children and pregnant women, and as such, are not appropriate for children or pregnant women. The signers urged that specific meaningful steps be implemented to ensure all children and pregnant women in CBP custody receive appropriate medical and mental health screening and necessary follow-up care by trained providers. The letter stated that the signs and symptoms of dehydration and shock in a child, which can be fatal, are recognizable and treatable by a trained professional.

As experts in medical and mental health care for pregnant women and children, we urged DHS and CBP to work with us to develop policies that ensure the health of children and families is protected throughout the immigration process. We asked Secretary Nielsen and Commissioner McAleenan to investigate the circumstances that led to Jakelin's death in a transparent and thorough manner, that they take actions to ease the suffering of her family, and that they implement specific meaningful changes to ensure children and pregnant women in their custody receive necessary medical and mental health screening and follow-up care by trained professionals.

¹ Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

² <https://downloads.aap.org/DOFA/CBP%20Provider%20Group%20Letter%20Final.pdf>

In an editorial that same month in the Las Cruces *Sun News*, then-AAP president Dr. Colleen Kraft wrote:

Jakelin's tragic death could have been prevented. It is long past time to re-evaluate immigration agencies' policies and procedures for the care and treatment of children. As experts in the care of children, pediatricians' phones are open. Please call us. We renew our offers, which have so far been ignored, to aid the Department of Homeland Security, Customs and Border Protection, and Immigration and Customs Enforcement in improving the conditions for children in their custody.

Jakelin joins many other children who come here with their parents fleeing circumstances that endanger them. Their families seek asylum and safety in the United States. Instead, they are detained in facilities that utterly fail to meet their needs. Children are kept in cages and sleep on cement floors. They are exposed to frigid temperatures, open toilets and lights on all the time. And they aren't receiving adequate medical and mental health screening and care.

Evidence-Based Policy on Children in DHS Custody

As aforementioned, December of 2018 was not the first time AAP spoke out about the conditions in CBP custody and their appropriateness for children. The AAP policy statement, which I co-authored, entitled *Detention of Immigrant Children*, reviews the evidence on conditions in which immigrant children are processed and detained. The AAP ultimately recommended that because conditions in CBP processing centers are inconsistent with AAP recommendations for appropriate care and treatment of children, children should not be subjected to these facilities.³ The statement says that processing of children and family units should occur in a child-friendly manner, taking place outside current CBP processing centers or conducted by child welfare professionals, to provide conditions that emphasize the health and well-being of children and families at this critical stage of immigration proceedings.⁴

The policy statement details egregious conditions in many of the CBP processing centers, including lack of bedding (e.g., sleeping on cement floors), open toilets, no bathing facilities, constant light exposure, confiscation of belongings, insufficient food and water, lack of access to legal counsel, and a history of extremely cold temperatures. At times, children and families are kept longer than 72 hours, denied access to medical care and medications, separated from one another, or physically and emotionally maltreated. No child should ever have to endure these conditions.

CBP processing centers are where we see children being separated from their parents, sometimes for short periods of time (hours or days) but in other cases the separations have been much longer. Who can forget the images of crying children in metal cage-like structures from last spring and summer at a CBP processing center as the Administration's Zero Tolerance Policy was being carried out?

³ Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

⁴ Ibid.

The government's practice of separating children from their parents at the border counteracts every science-based recommendation I have ever made to families who seek to nurture and protect their children's physical, intellectual, and emotional development. Children, who have often experienced terror in their home countries and then additional trauma during the journey to the U.S.,⁵ are often re-traumatized through processing and detention in CBP facilities not designed for children. This trauma is profoundly worsened by forced separation from their parents.

The AAP has said repeatedly that separating children from their parents contradicts everything we stand for as pediatricians—protecting and promoting children's health. Studies overwhelmingly demonstrate the irreparable harm caused by breaking up families.^{6,7,8} Prolonged exposure to highly stressful situations — known as toxic stress — can disrupt a child's brain architecture and affect his or her short- and long-term health.⁹ A parent or a known caregiver's role is to mitigate these dangers. When robbed of that buffer, children exposed to extreme stress, such as separation from a loving parent or caregiver, are susceptible to a variety of adverse health impacts, including physical symptoms (e.g. headaches, abdominal pain) changes in bodily functions (e.g. loss of appetite, difficulty sleeping, toileting problems), and developmental and behavioral problems (e.g. regression in developmental milestones, problems with memory, emotional outbursts, startling easily).^{10,11}

Children who have been separated may also be mistrusting, questioning why their parents were not able to prevent their separation and care for them. A child may show different behaviors in response to exposure to traumatic events like separation from parents depending on their age and stage of development. Over time, children exposed to serious adversity are at risk for chronic conditions, such as obesity, asthma, and depression. The impact of toxic stress can be lifelong, manifesting as depression, post-traumatic stress disorder, heart disease, and diabetes in adulthood.¹²

Some have suggested that an alternative to separating families is to increase the use of Immigration and Customs Enforcement (ICE) family detention. However, family detention is not

⁵ Kadir A, Shenoda S, Goldhagen J, Pitterman S. The Effects of Armed Conflict on Children. *Pediatrics*. 2018;142(6).

⁶ Shonkoff JP, Garner AS. The Lifelong Effects of Early Childhood Adversity and Toxic Stress. *Pediatrics*. 2012;129(1):e232-46.

⁷ Masten AS. Global perspectives on resilience in children and youth. *Child Dev*. 2014;85(1):6-20.

⁸ Bouza A, Camacho-Thompson DE, Carlo G, et al. Society for Research in Child Development. The Science Is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences for Children, Families, and Communities. <https://www.srcc.org/policy-media/statements-evidence/separating-families>. Published June 20, 2018. Accessed February 1, 2019.

⁹ Shonkoff JP, Garner AS. The Lifelong Effects of Early Childhood Adversity and Toxic Stress. *Pediatrics*. 2012;129(1):e232-46.

¹⁰ Dowd MD, et al. AAP Trauma Toolbox for Primary Care. <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Pages/Trauma-Guide.aspx#trauma>. Accessed March 4, 2019.

¹¹ The National Child Traumatic Stress Network. Effects. <https://www.nctsn.org/what-is-child-trauma/trauma-types/refugee-trauma/effects>. Published September 4, 2018. Accessed February 1, 2019.

¹² Shonkoff JP, Garner AS. The Lifelong Effects of Early Childhood Adversity and Toxic Stress. *Pediatrics*. 2012;129(1):e232-46.

a safe or effective solution to address the forced separation of children and parents at the border. The AAP has said that no amount of time in detention is safe for children.¹³ When children are detained, studies show that they experience physical and emotional stress, and this causes both short- and long-term health problems, which can be severe.¹⁴ Young detainees may experience developmental delay and poor psychological adjustment, potentially affecting functioning in school.¹⁵ Expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.¹⁶

Visits to family detention centers by pediatricians revealed discrepancies between the standards outlined by ICE and the actual services provided, including inadequate or inappropriate immunizations, delayed medical care, inadequate education services, and limited mental health services. Just last week, AAP Immediate-Past President Colleen Kraft, MD, MBA, FAAP, visited the Dilley family detention center where she met ten very ill children who were unable to obtain needed medical care. One child had boils and impetigo, and another had clear signs of dehydration. Both were in grave need of medical attention. Other parents reported that when they attempted to obtain medical care for their children upon arrival to the facility they were told to come back. These are not appropriate places for children.

Firsthand Observations at CBP Processing Centers and from Children in the Community

In November of 2016, I toured the CBP's Ursula Central Processing Center in McAllen, Texas as part of a team of pediatricians from the AAP and the Texas Pediatric Society. The building, hidden behind a fence, was a warehouse-like facility identifiable only with a white placard stating that this was property of the U.S. government. Our CBP tour guide demonstrated empathy toward the detainees and recognized that the setting was not designed for children.

Upon entering the holding area, we saw rows of children lying on mats on the floor, wrapped in silvery Mylar blankets. We saw clusters of children huddled in cages created by chain-link fences that extended towards the ceiling. Within this 55,000-square-foot space, there were four giant cages holding boys, girls, and mothers with young children. There was one small area that held adult men. The children ranged from infants to older adolescents. Most of the detainees appeared to be exhausted and frightened. Extremely bright lights shone from the high ceilings, the smell of porta-potties infiltrated the air, and the chilling sound of crinkling Mylar blankets echoed through the warehouse. The windowless environment was particularly disorienting because the lights were kept on 24 hours a day, seven days a week, which we were told was for "safety reasons."

In the Ursula facility (as it is known), there are private toilets, showers, and a clean, dry change of clothes if detainees arrive before 7 p.m.; the detainees who arrive late sit in wet clothes until the morning. Old clothes, shoes and other belongings, like backpacks and stuffed animals, are sealed away in individual plastic bags. Our guide told us three meals were provided each day.

¹³ Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

The medical care we saw provided at Ursula was cursory at best and took place in the open behind curtained screens. Detainees were checked for scabies, lice and obvious signs of infectious disease, such as active chicken pox lesions. Vital signs (temperature, blood pressure, respiratory rate, heart rate) and height and weight were not routinely taken. Those who needed more detailed exams were taken to a small, cold "medical room." There was a small cabinet with over-the-counter medications, and pictures of infectious diseases adorned the walls. We were told that emergency responders were called for those who appeared ill or injured after presenting to CBP officials in the field.

We were not permitted to speak with children during our tour of the Ursula. However, I know a lot more about what children experienced there because some of them became my patients. As a pediatrician in both North and South Carolina, I have learned through taking medical histories from dozens of children who have been processed at Ursula, that children and families have been held for up to eight days. Although they are offered food, the sandwiches have at times been kept so cold that they were frozen. Several families have shared that their belongings have been "lost" during processing, including vaccination records and medical documents that they have brought from their countries of origin. Families have also shared with me their gratitude when treated kindly by CBP officials, and this gratitude is particularly striking given the conditions to which they are exposed.

Separation of children from siblings, parents, and caregivers are routine during processing. One set of siblings fled Central America with their mother after experiencing persecution in their community. When they presented to CBP officials to seek refuge and face processing, the younger child was held in one cage with her mother, and the older child, a teenager, was kept separately from her mother and sister for three days. After thousands of miles of travel with the proximity and support of her family, this child no longer had the buffering support of her family. When she recounted her story, she became tearful and withdrawn. She shared with me that she was incredibly frightened during the time in the processing center, unable to eat or sleep. Even this brief period of time in a CBP processing center was re-traumatizing for this child, placing her at risk for short- and long-term health effects.

Children are Not Little Adults

As pediatricians, we know that children are not little adults. Children's vital signs (breathing rate, heart rate, blood pressure) have different normal parameters than adults, and these parameters vary by age. When children begin to get sick, they present with subtle findings, and they tend to get sick more quickly. For example, children can become dehydrated more quickly than adults. They require greater amounts of fluid per pound of body weight than adults, and high fevers and fast breathing can cause children to lose fluid quickly. Children also need encouragement to drink when they are ill, and this encouragement is exceedingly difficult to provide to frightened children.

The flu can be particularly serious for children and can escalate quickly. Signs differentiating a child with mild illness from a child with severe illness are quite subtle. A child can be happily playing, even running around, while her body systems begin to shut down. When a child is having difficulty breathing, she may breathe more quickly or her ribs may pull in with each

breath; these signs would often not be visible underneath clothing or to an untrained eye. Additionally, children are more prone to muscle fatigue, including the breathing muscles, and are thus at greater risk for respiratory failure.¹⁷ Even the dosing of common medications is different in children than it is in adults; rather than standard dosing, children are dosed based on their weight.¹⁸

Sepsis, for example, must be treated early in children. According to the Society of Critical Care Medicine (SCCM), sepsis is a complicated disease causing the body to be compromised by serious systemic infection leading to multiple organ failure.¹⁹ The importance of recognizing and treating sepsis early in children cannot be underestimated; each hour of delay in treatment dramatically increases mortality. Because sepsis can be so serious and so difficult to recognize in children, the SCCM has a separate set of guidelines for recognizing and treating sepsis in children that are different than for adults.²⁰ For these reasons, it is essential that the individuals who interact with children apprehended at the border are trained to recognize signs and symptoms of distress and know when to urgently refer children to additional care.

It is our understanding that CBP agents do not receive medical training related to children. While CBP does employ some EMTs and paramedics, pediatrics is a very small proportion of their training. As AAP Immediate Past President Colleen Kraft said in the days following Jakelin and Felipe's deaths, "when it comes to the medical care of children, if you're not trained in pediatric care, you don't know what you don't know."

AAP Recommendations

We urge federal agencies to apply a child-focused lens when considering policies that could have an impact on child health and well-being. AAP remains committed to working with federal agencies to offer its expertise as medical providers for children, in an effort to protect and promote child well-being. In that vein, we offer the following recommendations:

1. Because conditions at CBP processing centers are inconsistent with AAP recommendations for appropriate care and treatment of children, children should not be subjected to these facilities.²¹ The processing of children and family units should occur in a child-friendly manner, taking place outside current CBP processing centers or conducted by child welfare professionals, to provide conditions that emphasize the health and well-being of children and families at this critical stage of immigration proceedings.²²

¹⁷ Woollard M, Jewkes F. 5 Assessment and identification of paediatric primary survey positive patients. *Emergency Medicine Journal*. 2004;21:511-517.

¹⁸ Palchuk MB, Seger DL, Recklet EG, Hanson C, Alexeyev A, Li Q. Weight-based pediatric prescribing in ambulatory setting. *AMIA Annu Symp Proc*. 2006;2006:1055.

¹⁹ Weiss SL. Five Important Things to Know about Pediatric Sepsis. Society of Critical Care Medicine. <https://www.sccm.org/Communications/Critical-Connections/Archives/2018/Five-Important-Things-to-Know-About-Pediatric-Sepsis>. Accessed March 4, 2019.

²⁰ Dellinger RP, Levy MM, Rhodes A, et al: Surviving Sepsis Campaign: International guidelines for management of severe sepsis and septic shock: 2012. *Crit Care Med*. 2013; 41:580-637.

²¹ Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

²² Ibid.

2. CBP agents, including those who are not trained as EMTs or paramedics and including those who work in remote areas along the border, should be trained to know how to identify the signs of a child who is in medical distress and needs immediate medical attention. The AAP has discussed with CBP what such a training could look like. Ideally, such training would be both online and in-person. While it may not be possible to provide pediatric medical training to all CBP agents, we can work to ensure that they are better prepared to identify a sick child and to get that child into appropriate care. We must also ensure that CBP provides its agents with necessary basic supplies such as oral hydration, food, first-aid kits, and other supplies that could be life-saving should those agents encounter a sick child. The AAP is pleased to support S. 412, the Remote, Emergency, Medical, Online Training, Telehealth, and EMT (REMOTE) Act, which would provide for this training and supplies, among other provisions.
3. The Academy is urging CBP to ensure that all children under 18 years of age receive evidenced-based medical screening and care from professionals trained in pediatric care. We must have medical professionals who are trained in the care of children screening and treating vulnerable children who are in the custody of our government. CBP recently testified before the House Judiciary Committee that they are providing 100 percent medical screening of all juveniles. Yet, a number of questions remain. Will those screenings be done by medical providers who are trained in pediatrics? Do the medical providers feel prepared to care for children who may present with serious, life-threatening illness? How is follow-up care handled, and how does CBP work with community-based providers to ensure children receive optimal care? These are some of the important questions that deserve answers.

Children who are identified as needing additional medical care should be immediately referred for evaluation and treatment. Procedures should be in place to ensure that when children need treatment, they are quickly able to receive appropriate care and have access to professionals trained in the care of critically ill children during transport. We recognize that it may not be possible to have a pediatrician available at all points along the border, but there are opportunities to utilize telehealth and other technology to ensure that appropriate care is being delivered to children in a timely manner. As we saw in the tragic case of Jakelin, well-timed care can be a matter of life or death.

4. Screening and treatment should occur in the child or parent's preferred language so as to ensure the family is able to understand what is happening and accurately answer questions. This means that trained medical interpreters should be used in all clinical encounters with children and their families.
5. Children should never be separated from their parents unless there are concerns for the safety of the child at the hand of the parent and a competent family court makes that determination. Nowhere is that more important than in the case of a child needing medical screening and treatment. Parents know their child's medical history and are often better able to share that history than the child him or herself. Separation from a parent is traumatic to children, causes stress, and has the potential to negatively impact the child's short- and long-term health.
6. Sick children, children who have been hospitalized, or children with special health care needs should never be returned to a CBP processing facility. When a child is diagnosed with an

illness in a pediatrician's office or is discharged from an emergency room or a hospital, he or she is sent home to recover with plenty of rest and a parent to care for them. Parents of children being detained in CBP processing centers do not have that luxury; rather, the conditions in the centers themselves exacerbate children's suffering, and without medical professionals who understand the signs and symptoms to look for to assess a child's condition, these children are at further risk. A sick child should recover in the comfort of a home or child-friendly setting under the care of a parent or caregiver, not on a cold, concrete floor in federal custody.

7. Independent oversight of locations in which children are temporarily housed, detained, or sheltered is critical. The AAP has called for a thorough, independent investigation of the government's detention practices, including the appointment of an independent team comprised of pediatricians, pediatric mental health providers, child welfare experts, and others to conduct unannounced visits to federal facilities including CBP processing centers, ICE family detention centers, and Office of Refugee Resettlement shelters to assess their conditions for children, capacity to respond to medical emergencies involving a child and to ensure that immigrant children receive optimal medical and mental health care. These experts need unfettered access to sites where children are held in federal custody to ensure that they receive suitable care while there.
8. Family detention is not a safe or effective solution to address the forced separation of children and parents at the border. The AAP has said that no amount of time in detention is safe for children.²³
9. Instead of detention, AAP recommends the use of community-based alternatives for children in family units. Community-based case management should be implemented for children and families, thus ending both detention and the placement of electronic tracking devices on parents. Community release with case management has been shown to be cost-effective and can increase the likelihood of compliance with government requirements.^{24,25,26} We urge Congress to provide funding to support case management programs. AAP also advocates for expanded funding for post-release services to promote the safety and well-being of all previously detained immigrant children and to facilitate connection and access to comprehensive services, including medical homes, in the community. All immigrant children seeking safe haven in the U.S. should have comprehensive health care and insurance coverage, which includes access to qualified medical interpretation covered by medical benefits, pending immigration proceedings. Children and families should have access to legal counsel throughout the immigration pathway. Unaccompanied children should have free or pro bono legal counsel with them for all appearances before an immigration judge.

²³ Ibid.

²⁴ Edwards, A. Measures of first resort: alternatives to immigration detention in comparative perspective. *The Equal Rights Review*. 2011;7:117-142.

²⁵ U.S. Immigration Customs and Enforcement. Report of the DHS Advisory Committee on Family Residential Centers. <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>. Published September 30, 2016. Accessed February 1, 2019.

²⁶ Lutheran Immigration & Refugee Service, Women's Refugee Commission. *Locking Up Family Values, Again*. <https://www.womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again>. Published October 28, 2014. Accessed February 1, 2019.

10. We must remember that immigrant children are, first and foremost, children. Protections for children in law or by the courts exist because children are uniquely vulnerable and are at high risk for trauma, trafficking, and violence. The Flores Settlement Agreement (FSA) and the *William Wilberforce Trafficking Victims Protection Reauthorization Act* (TVPRA), authored by Ranking Member Senator Dianne Feinstein, provide critically important and necessary protections for children in the custody of the federal government. They are not “loopholes”. They are legal protections that account for the fact that children are uniquely vulnerable and need to be protected. The FSA set strict national standards for the detention, treatment, and release of all minors detained in the legal custody of the federal government. It requires that children be held in the least restrictive setting appropriate for a child’s needs and that they be released without unnecessary delay to a parent, designate of the parent, or responsible adult as deemed appropriate.

Pending regulations proposed by DHS and Health and Human Services (HHS) are inconsistent with the FSA by allowing DHS to expand family detention centers, increase the length of time children spend in detention, and create an alternative licensure process that undermines state child welfare laws and basic protections for children. Proposals, such as the pending regulations that would pave the way for the longer-term detention of children with their parents or to weaken federal child trafficking laws like TVPRA, serve to strip children of protections designed for their unique circumstances. We urge Congress to reject these proposals.

Children, both unaccompanied and in family units, seeking safe haven in the United States often experience traumatic events in their countries of origin and during their journeys to the U.S. Children fleeing armed conflict should be allowed to petition for asylum and should be screened for evidence of human trafficking.²⁷ Children and their families who flee their homes to seek refuge deserve access to quality healthcare and should be treated with dignity and respect. We must remember that first and foremost, children are children, and they deserve our compassion.

²⁷ Kadir A, Shenoda S, Goldhagen J, Pitterman S. The Effects of Armed Conflict on Children. *Pediatrics*. 2018;142(6).



National Immigration Law Center's Statement for the Record

**Submitted to U.S. Senate Committee on the Judiciary
"How Mass Deportations Will Separate American Families, Harm Our Armed
Forces, and Devastate Our Economy"**

Tuesday, December 10, 2024 at 10:00AM

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:
Thank you for the opportunity to submit a written statement on behalf of the National Immigration Law Center (NILC). We respectfully request that this statement be made part of the record for the December 10, 2024, Senate Committee on the Judiciary's hearing.

Introduction

The National Immigration Law Center (NILC) is a leading advocacy organization dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We advocate for laws and policies that allow immigrants and their families to thrive, including access to health care and public assistance programs, education, and workers' rights.

We applaud Members of the Senate Judiciary Committee for holding this hearing to explore the devastating harms of mass immigration detention and deportation policies. United States history has been marked by shameful episodes of demagoguery and heightened enforcement against immigrants and people of immigrant descent, from the mass raids of the Eisenhower era to the tragic family separation policy of the first Trump administration. We are bereaved to hear the President-elect threatening to unleash such terror again and encourage Members of Congress to be vigilant and robust in opposition.

The incoming administration has loudly announced plans for mass deportations, including using the military and local law enforcement to carry out their efforts.¹ These threats have already created immense fear among immigrant communities, including the nearly six million

¹ "Inside Trump's plan for mass deportations - and who wants to stop him," Ted Hesson and Kristina Cooke, Reuters. November 10, 2024. <https://www.reuters.com/world/us/inside-trumps-plan-mass-deportations-who-wants-stop-him-2024-11-06/>.



U.S. households that include an undocumented family member.² The chronic fear generated by threat of mass immigration enforcement operations causes long-lasting physical, psychological, social, and financial consequences for immigrants and their families. Across the country, people are rushing to make impossible decisions as they anticipate what is to come; for many, deportation would force a choice between permanent family separation or life in exile away from their U.S. citizen children.³

Mass detention and deportations threaten to destabilize our nation's economy and undermine the support we all need as communities – health and wellbeing, education and learning, and safety in our workplaces.

Fear as a Barrier to a Healthy Family

Our communities are stronger when everyone is healthy and can access preventative care and medical treatment. The threat of deportation not only exacerbates physical and mental health issues, but also actively discourages people from getting the care they need.⁴ All of us should be able to get the care we need without the fear of being uprooted from our families and communities, yet studies repeatedly show that the threat of immigration enforcement – including deportation – is linked to a significant decline in accessing health care services and public benefits.⁵

The chilling effect that enforcement has on accessing care has also been shown to impact enrollment in public benefits programs for children. One study found that enrollment rates in

² "Proposed 2024 Mass Deportation Program Would Socially and Economically Devastate American Families," Center for Migration Studies, October 14, 2024. <https://cmsny.org/publications/2024-mass-deportation-program-devastate-american-families-101024/>.

³ "Immigrants Across U.S. Rush to Prepare for Trump Crackdown," Miriam Jordan, The New York Times, November 24, 2024. <https://www.nytimes.com/2024/11/24/us/trump-immigrants-deportations.html>.

⁴ "Mixed-Status Families and Immigrant Families with Children Continued Avoiding Safety Net Programs in 2023," Urban Institute, August 7, 2024. <https://www.urban.org/research/publication/mixed-status-families-and-immigrant-families-children-continued-avoiding>.

⁵ Maria-Elena De Trinidad Young et al. Beyond "Chilling Effects": Latinx and Asian Immigrants' Experiences With Enforcement and Barriers to Health Care. *Med Care*. 2023 May 1;61(5):506-513. <https://pubmed.ncbi.nlm.nih.gov/36939228/>; Kevin H. Nguyen, Nicole C. Giron, and Amal N. Trivedi. Parental Immigration Status, Medicaid Expansion, And Supplemental Nutrition Assistance Program Participation. *Health Affairs*, Volume 42 No. 1, 2023. <https://doi.org/10.1377/hlthaff.2022.00288>; Carol L. Galletly, Timothy L. McAuliffe, Julia B. Dickson-Gomez, Laura R. Glasman, Dulce M. Ruelas, Latino migrants' healthcare use in the US and perceived immigration laws and consequences: A multivariable analysis, *Travel Medicine and Infectious Disease*, Volume 56, 2023. <https://doi.org/10.1016/j.tmaid.2023.102664>.



the Supplemental Nutrition Assistance Program (SNAP) dropped significantly from 2017-2019, when anti-immigrant rhetoric and policies were overt.⁶

The mental health impacts of deportations are long-lasting for both adults and the children of immigrants. Research has found that the risk of mental and emotional trauma and severe psychological distress in children greatly increases after a parent has been detained or deported.⁷

Deportations and the anxiety they cause exacerbate existing health concerns and can lead to new ailments. For example, one study found that implementation of 287(g) contracts in North Carolina – agreements that empower local law enforcement to engage in federal immigration enforcement – was correlated with poor pre-natal conditions for immigrant mothers and worse health outcomes for their babies.⁸

Mass deportations and immigration enforcement actions directly jeopardize the health of millions of immigrants and their families, making our communities weaker and at risk.

Worksite Raids Upend Entire Communities

Worksite raids are one of the most visible and harmful enforcement tactics at Immigration and Customs Enforcement (ICE)'s disposal. Raids terrorize entire communities and plunge families into chaos and fear. Upending communities through militarized raids, mass arrests, and deportations have long-lasting and devastating consequences and make it all but impossible for families to thrive.

The National Immigration Law Center (NILC) bore witness to worksite raids executed during the first Trump administration, and we fear their resurgence in the coming months and years. In 2017, the Trump administration undertook one of the largest worksite raids in history at an

⁶ Kevin H. Nguyen, Nicole C. Giron, and Amal N. Trivedi. Parental Immigration Status, Medicaid Expansion, And Supplemental Nutrition Assistance Program Participation. *Health Affairs*, Volume 42 No. 1, 2023. <https://doi.org/10.1377/hlthaff.2022.00288>.

⁷ "Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children," Migration Policy Institute. February 2016. <https://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effects-families>.

⁸ Tome R, Rangel MA, Gibson-Davis CM, Bellows L. Heightened immigration enforcement impacts US citizens' birth outcomes: Evidence from early ICE interventions in North Carolina. *PLoS ONE* 16(2): e0245020. (2021). <https://doi.org/10.1371/journal.pone.0245020>.



East Tennessee meat processing plant. Martha Pulido was one of the workers who was a victim of the militarized raid that day. She described her traumatizing experience as a plaintiff in a lawsuit filed by NILC, the Southern Poverty Law Center, and the law firm of Sherrard, Roe, Voigt & Harbison:

"I showed up to work that morning just like I had every day for more than a year, ready to do my job and provide for my family. Instead, I had a gun pointed in my face and saw my coworkers get punched in the face and shoved to the ground by federal agents."⁹

Raids devastate communities, creating an environment of extreme fear that has led to prolonged health and psychological issues among workers and their families.¹⁰ The loss of income caused by an arrest or deportation has a domino effect on families, creating or further entrenching housing instability, food insecurity, and deepened economic hardship.¹¹ One study of six locations in the United States found that families reported losing from 40 to 90 percent of their income following the arrest or deportation of a parent.¹² Children are also victims in worksite raids. The prospect of coming home from school one day only to find their mom or dad suddenly torn away from them has led children of immigrant parents to live in constant fear, anxiety, and depression.¹³

Schools Should be a Place for Children to Grow, not Fear

Schools are supposed to be safe places for children and young people to grow academically, socially, and fulfill their full potential. The overwhelming fear of deportation turns all of that on its head. In the last Trump administration, the threat of raids and mass deportations loomed heavily over immigrant communities – including school-aged children. This fear has grave consequences for the health of a learning environment, even if a raid is only rumored but does

⁹ *Isabel Zelaya, et al. v. Robert Hammer*, (United States District Court, E.D. Tennessee, Knoxville Division).

<https://www.nilc.org/wp-content/uploads/2019/02/Zelaya-v-Miles-complaint-2019-02-21.pdf>.

¹⁰ "Nearly two years after ICE came to town, trauma still haunts these Iowa families," Christopher Walljasper, USC Annenberg Center for Health Journalism. March 17, 2020. <https://centerforhealthjournalism.org/our-work/reporting/nearly-two-years-after-ice-came-town-trauma-still-haunts-these-iowa-families>.

¹¹ "Facing Our Future: Children in the Aftermath of Immigration Enforcement," The Urban Institute. February 2010. <https://www.urban.org/research/publication/facing-our-future>.

¹² "U.S. Citizen Children Impacted by Immigration Enforcement," American Immigration Council. June 24, 2021. <https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.

¹³ "Don't Be Fooled: Funding for ICE Homeland Security Investigations (HSI) Is Funding for Trump's Anti-Immigrant Agenda," National Immigration Law Center. February 8, 2019. <https://www.nilc.org/articles/dont-be-fooled-funding-for-ice-homeland-security-investigations-hsi-is-funding-for-trumps-anti-immigrant-agenda/>.



not in fact occur. One Oregon school superintendent shared what that environment felt like in a recent Associated Press article:

"Word spread that immigration agents were going to try to enter schools. There was no truth to it, but school staff members had to find students who were avoiding school and coax them back to class."¹⁴

In a mass raids environment, being the immigrant parent of a school-age child is overwhelming. Along with preparing for the first day of school by purchasing school clothes and supplies, immigrant parents must also develop an emergency plan in case they are arrested or deported and separated from their child.¹⁵ These emergency plans must include an identified caretaker to step in and support their children should they get caught up in enforcement activity. Following immigration law enforcement presence at or near schools, children tend to stay home from school, their academic performances plunge,¹⁶ and rates of anxiety and post-traumatic stress disorder rise.¹⁷ Children simply cannot grow and advance when their chief concern is hiding from immigration officials or wondering if their parents will still be there when they come home.

Schools have long been deemed "protected areas" or "sensitive locations," and therefore protected from enforcement activities.¹⁸ Such agency guidance is critical to protect families and children but is also not enough to prevent arrests or deportations around schools. In 2017, a father named Romulo Avelica Gonzalez was dropping his child off at a Los Angeles school one morning. Despite government guidance that designated schools as "sensitive locations," Romulo was stopped and violently arrested by ICE agents while his wife and teenage daughter

¹⁴ "Schools are bracing for upheaval over fear of mass deportations," Bianca Vazquez Toness, Associated Press. November 27, 2024. <https://apnews.com/article/immigration-school-deportation-9747bc55d2eb109693920f114f148b94>.

¹⁵ "Creating a family immigration raid emergency plan," American Federation of Teachers. https://www.aft.org/sites/default/files/im_emergplan_020817.pdf.

¹⁶ Kirksey, J. J., & Sattin-Bajaj, C. (2021). Immigration Arrests and Educational Impacts: Linking ICE Arrests to Declines in Achievement, Attendance, and School Climate and Safety in California. AERA Open, 7. <https://doi.org/10.1177/23528584211059787>.

¹⁷ "The Day That ICE Came: How Worksite Raids Are Once Again Harming Children and Families," The Center for Law and Social Policy, July 14, 2020. <https://www.clasp.org/publications/report/brief/day-ice-came-executive-summary/>.

¹⁸ "Guidelines for Enforcement Actions in or Near Protected Areas," Alejandro Mayorkas, Department of Homeland Security, October 27, 2021. dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf.



watched in horror from inside their car.¹⁹ This kind of trauma pervades communities for years and ultimately spreads the message that it isn't safe for parents to take their kids to school. Parents should never be placed in a situation where they must choose between their children's education or keeping their family together. Yet, rumors and promises of mass deportation foster this existential fear.

Every child should be able to go to school to learn and grow without fear. Communities are ready to stand up and defend the constitutional right to a free public education for all students and protect their immigrant neighbors. In May 2024, NILC was joined by more than 30 organizations in launching the Education for All campaign, including leading education, immigrant rights, and civil rights organizations aiming to ensure all children have access to a free K-12 public education, as mandated by law.²⁰

NILC urges the incoming administration to abandon plans to engage in mass immigration enforcement efforts. Mass deportations will weaken and destabilize our communities and undermine the institutions and services that keep us all safe and healthy. We commend the Senate Judiciary Committee for engaging in this proactive oversight hearing.

We urge Members of Congress to take the following critical actions to protect communities against the worst harms to come:

1. **Use the power of the purse to mitigate the incoming Trump administration's ability to engage in mass deportations:** Reject increases in funding for Immigration and Customs Enforcement (ICE) detention and removal operations and Customs and Border Protection (CBP) agents and enforcement. Limit the Department of Homeland Security's ability to transfer and reprogram funds into immigration detention and enforcement. Ensure that Department of Defense's resources and infrastructure are not

¹⁹ "School Settings Are Sensitive Locations That Should Be Off-Limits to Immigration Enforcement," National Immigration Law Center. May 3, 2017. <https://www.nilc.org/articles/school-settings-are-sensitive-locations-that-should-be-off-limits-to-immigration-enforcement/>.

²⁰ "National Immigration Law Center Announces Campaign to Protect K-12 Public Education Access for All Children," National Immigration Law Center. May 22, 2024. <https://www.nilc.org/press/national-immigration-law-center-announces-campaign-to-protect-k-12-public-education-access-for-all-children/>.



available for immigration enforcement purposes.

2. **Defend protected areas:** Engage in intensive oversight to ensure ICE is not undertaking enforcement actions at schools, hospitals and health care facilities, courthouses, and other sensitive locations.
3. **Protect against abuses in immigration detention facilities:** Engage in rigorous oversight of ICE and CBP facilities and any new facilities the administration constructs or utilizes to implement detentions and deportations. Regularly visit facilities in your state or district and meet with legal service and advocacy organizations on the ground to develop a nuanced understanding of issues confronting immigrant communities and those subject to enforcement.
4. **Stand with immigrant communities:** Be prepared to show up and stand in solidarity with communities who are impacted by enforcement actions.
5. **Defend against the illegal use of the military or other authorities to supplement ICE and CBP's deportation authorities:** Be prepared to provide amicus briefs in support of litigation and provide comments on rulemaking procedures as appropriate to resist the administration's illegal and harmful use of the military to expand immigration enforcement.

Thank you for the opportunity to submit this statement for the record.

Isobel Mohyeddin, Policy Coordinator
National Immigration Law Center

December 10, 2024 How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy | Outside Testimony

ORGANIZATION	AUTHOR'S NAME	AUTHOR'S TITLE/POSITION	APPENDIX	PAGE #	NOTES
Center for Migration Studies of New York	Kevin Appleby	Senior Fellow for Policy and Communications			
Society for Community Research and Action	Ahmed Oheroi	N/A			
Amica Center for Immigrant Rights	Adina Appelbaum	Program Director			
American Immigrants Lawyers Association	Vanessa Dojaquez-Torres	Practice and Policy Counsel			
Amerian Academy of Pediatrics	Tamar Magarik Haro	Senior Director of Federal Advocacy			From March 6, 2019 hearing 'Oversight of the Customs and Border Protection's Response to the Smuggling of Persons at the Southern Border'
N/A	Collen Jacobs	N/A			Explaining impact of raids on small-town
Asian Pacific Institute on Gender-Based Violence	Grace Huang	Director of Policy			
Harvey University School of Law	Mark Nevitt	Associate Professor of Law			
National Immigrant Justice Center	Jesse Franzblau	Senior Policy Analyst			
United Farm Workers	Ariel Arceaga-Sanders	Political/Legislative Director			
CLASP	Rebha deCant	Director of Legislative Affairs			
World Relief	Chelsea Scholik	Director of Government Relations			
United We Dream	Juliana Macedo do Nascimento	Deputy Director of Federal Advocacy			
Church World Service	Danilo Zak	Director of Policy			
United We Dream - Sign On	Juliana Macedo do Nascimento	Deputy Director of Federal Advocacy			
Ohio Northern University	Daniel Maurer	Associate Professor			
Coalition for Humane Immigrant Rights	Angelica Salas	Executive Director			
National Education Association	Marc Egan	Director of Government Relations			
Unidos US	Janet Murguio	President and CEO			
Young Center for Immigrant Children's Rights	Mina Dixon Davis	Senior Policy Analyst			
AFL-CIO	Shannon Lederer	Director of Immigration Policy			
U.S. Congress Joint Economic Committee	N/A	N/A			
MomsRising Together	Linda Stone	Senior Campaign Director			
National Association of Social Workers	Mel Wilton	Senior Policy Advisor			
Texas Civil Rights Project	Danny Woodward	Policy Attorney			
N/A	Lindsay Cohn	N/A			Explaining impact of using military for immigration enforcement
Center for Constitutional Rights	Brad Parker	Associate Director of Policy			Joint Statement from Alabama Immigrant Advocacy Organizations
Brennan Center for Justice	Elizabeth Goitein	Senior Director, Liberty & National Security Program			



Statement for the Record from

Advocacy Department
United We Dream

Submitted to the U.S. Senate Committee on the Judiciary

**Hearing on How Mass Deportation Will Separate American Families, Harm Our Armed
Forces, and Devastate Our Economy**

On

**Tuesday, December 10th, 2024
Room G50 of the Dirksen Senate Office Building**

Contact: Juliana Macedo do Nascimento - juliana@unitedwedream.org



Dear Members of the Committee:

United We Dream is the largest immigrant youth-led network in the United States. Our mission is to create inclusive spaces for young people—regardless of immigration status—to support, empower, and uplift their voices to achieve meaningful change. With over 750,000 members and affiliates in 28 states, we represent a broad coalition, including over 60% women and 20% LGBTQ individuals. We are committed to building a multi-racial, multi-ethnic movement advocating for dignity and justice for immigrants and communities of color across the United States.

We commend the Committee’s leadership for addressing the profound consequences of mass deportation policies proposed by President-elect Donald Trump under Project 2025. These measures, including mass deportation and increased border militarization, threaten to separate families, devastate communities, and severely harm our economy. As representatives of immigrant youth and families, we urge Congress to prioritize humane immigration policies that uphold the values of equity, opportunity, and human dignity.

The Role and Impact of DACA

The Deferred Action for Childhood Arrivals (DACA) program, established in 2012, has transformed the lives of over [835,000](#) undocumented young people, granting temporary protection from deportation and work authorization. Despite its success, DACA faces [relentless legal and political challenges](#), including [ongoing litigation](#) brought by Republican attorneys general from several states [seeking to end the program](#). This legal limbo has left recipients grappling with profound uncertainty about their futures.

Research underscores the significant contributions of DACA recipients to our economy and communities. A 2023 survey found that [94.1% of DACA recipients are employed](#), and [9.5% are business owners](#). These entrepreneurs generate jobs and support local economies through their investments and spending. Furthermore, DACA recipients have become [homeowners](#) at increasing rates, with 30.7% purchasing their first homes in 2023, reflecting their deep-rooted ties to the U.S. and the broader economic benefits they bring.

Studies from the Center for American Progress (CAP) and the Global Migration Center estimate that a pathway to citizenship for undocumented immigrant youth could generate nearly [\\$800 billion in GDP growth over a decade](#). DACA has provided recipients with financial stability, enabling them to pursue educational and professional goals, support their families, and contribute meaningfully to their communities.



The Human Cost of Mass Deportation

The proposed deportation plans by President-Elect Trump and his allies, including Stephen Miller, Tom Homan, and Krisit Noem, represent a calculated effort to destroy the fabric of this nation. These plans threaten to transform America from a vibrant, multicultural home into a white nationalist stronghold.

Family Separation and Trauma

DACA recipients are parents to an [estimated 300,000](#) U.S. citizen children. Deportations would forcibly tear parents from children, leaving families shattered and plunging children into a state of instability. These separations inflict long-term trauma, disrupting children's emotional well-being and academic performance, deployment of the military to target schools, hospitals, and neighborhoods for raids would compound the psychological harm. Immigrant families, already marginalized, would be left grappling with the terror of everyday activities such as going to work, school, or seeking medical care. Research from the Urban Institute reveals that heightened immigration enforcement [directly correlates](#) with reduced access to essential services, even among those eligible for them.

Economic Fallout

The economic contributions of DACA recipients are significant, with an estimated [\\$9.4 billion in annual tax contributions](#) and \$24 billion in spending power, according to the New American Economy. Mass deportation would strip local economies of these contributions, affecting businesses, housing markets, and community infrastructure. Employers would face workforce shortages, and the abrupt loss of skilled workers would hinder economic growth and innovation.

A Personal Story: The Ripple Effect of Losing DACA

Take the case of *Ana*, a DACA recipient who has lived in the United States since she was six years old. Ana works as a registered nurse, caring for patients in a community hospital in Texas. She is married to a U.S. citizen and is the mother of two young children, both U.S. citizens. Under current policies, Ana is protected from deportation and able to work legally. However, if DACA protections were eliminated, Ana would lose her job, and her family would face severe financial instability.

Without her income, Ana's family could struggle to make mortgage payments, potentially losing their home. Additionally, Ana's absence would leave her patients without a trusted caregiver during a time of heightened healthcare shortages. If deported, Ana would be forced to return to a country she barely knows, where her medical credentials may not transfer, further jeopardizing



her ability to provide for her family. This scenario is not unique but emblematic of the hundreds of thousands of lives that hang in the balance.

A Generational Impact

Beyond immediate family separation, the long-term effects of deportation ripple through generations. Studies from the American Academy of Pediatrics show that [children who experience the deportation of a parent](#) are more likely to suffer from anxiety, depression, and lower academic performance, perpetuating cycles of disadvantage.

Call to Action

We urge the Committee and Congress to act decisively to protect DACA recipients and other vulnerable immigrant populations. Specifically, we recommend the following actions:

1. Enact a Pathway to Citizenship: Pass legislation that provides permanent protections and a pathway to citizenship for DACA recipients and other undocumented individuals, ensuring they can live and contribute without fear of deportation.
2. Halt Mass Deportation Policies: Reject funding and support for mass deportation initiatives and border militarization that would devastate families and communities.
3. Expand Administrative Protections: Encourage the Biden-Harris Administration to utilize executive authority to expand and strengthen protections for undocumented individuals while advocating for legislative solutions.
4. Support Economic Integration: Invest in programs that support immigrant integration, including workforce development and access to education, to maximize the contributions of immigrants to the U.S. economy.
5. Promote Community Trust: Prevent immigration enforcement in sensitive locations, such as schools and hospitals, to ensure these spaces remain safe and accessible for all residents.

Conclusion

In the nearly 12 years since DACA's inception, it has been a beacon of hope and opportunity for hundreds of thousands of young immigrants. To allow the continuation of mass deportation policies would not only undermine these gains but also betray the fundamental values that define our nation.

We call on the U.S. Senate Judiciary Committee to stand with immigrant communities by rejecting harmful policies and advancing solutions that affirm their place in the American story. Together, we can build a more inclusive, just, and prosperous future for all.



Respectfully submitted,
Advocacy Department
United We Dream

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AFL-CIO

— STATEMENT FOR THE RECORD —

Senate Judiciary Subcommittee Hearing

How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy

Tuesday, December 10, 2024

The AFL-CIO is a federation of 60 affiliated unions representing more than 12.5 million workers across all sectors of our economy. Our members work in every state in the nation and they come from every region of the world. Like the workforce as a whole, our membership consists of people with all types of immigration status. Together, we strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions, and fair treatment on the job.

We commend the Committee for convening this important hearing. In addition to separating families, harming our armed forces, and devastating our economy, the agenda of mass deportations is a deeply anti-worker agenda. Here's why:

Immigrants are vital members of our workforce and our unions. One in five workers in our country wasn't born here. Immigrants work in every sector of our economy, and every part of the nation. Mass deportation plans would not only cost billions in taxpayer money, but would have a devastating economic impact. The resulting labor shortage would cause a massive drop in GDP and cripple key industries that rely heavily on immigrant labor, such as construction, hospitality, agriculture, and food processing. Rather than benefitting the remaining workforce, mass deportations amidst an already tight labor market will shutter businesses, which will disrupt supply chains, increase prices and put jobs at risk.

Without immigrants, our workforce is shrinking. Current demographic trends illustrate that without immigration, the size of our nation's workforce will decline, causing serious economic and social consequences¹. A shrinking workforce is bad for the economy, resulting in lower productivity, slower economic growth, decreased tax revenue, and higher inflation. Deporting millions of workers will accelerate these negative trends and drive up costs for food, housing, and many basic services, because there will be an insufficient supply of workers in these industries to produce sufficient supply of goods and services to meet demand.

Immigrants pay taxes on which federal, state and local budgets rely. In addition to expanding the workforce, immigrants promote economic growth through their consumer spending and tax revenues. Immigrant households contribute hundreds of billions of dollars

¹ United States Census Bureau, "[U.S. Population Projected to Begin Declining in Second Half of Century](#)," Press Release Number CB23-189, November 9, 2023.

in federal, state and local taxes annually and hold a tremendous amount of spending power. In 2021, immigrants paid \$524.7 billion in taxes.² Losing contributions of this magnitude would devastate the budgets needed to fund our public schools, hospitals, emergency response services, highways and other essential services.

Immigrants support our social safety net. Despite political attempts to portray them as a drain on resources, undocumented immigrants are taxpayers who also make substantial contributions to our social safety net, with estimates that they paid \$22.6 billion into the Social Security fund in 2016 and \$5.7 billion to Medicare³. Notably, many immigrant workers are unable to access the very benefits they help keep afloat.

The cost of mass deportation drains resources from key labor priorities. Our government already spends an astonishing 12 times more to arrest immigrants than it does to enforce the laws meant to protect more than 150 million workers at more than 10 million jobsites around the country.⁴ This has created an environment in which too many employers feel like they can violate worker rights with impunity, and further ramping up immigration enforcement will make employer threats of immigration-based retaliation even more potent.

A climate of fear makes our workplaces and communities less safe. Mass deportation policies threaten civil liberties, encourage racial profiling, separate families and cause massive economic and emotional hardship for millions of working people across the country. The terror instilled by raids and targeting means that fewer people report crimes, visit a doctor, or send their kids to school—all of which undermines the health, wellbeing and safety of our communities.

The real threat workers face is corporate greed, not immigrants. President-elect Trump wants working people to focus on the border and immigration so we'll be too distracted to notice as they roll out massive corporate tax cuts, slash our benefits, starve our public schools, and trample on our labor and voting rights. It is a classic political maneuver meant to keep us divided and poor, and we see right through it.

For these reasons and many more, the mass deportation agenda is not just bad for immigrants, but for every worker in this country. We urge members of the Committee to reject this destructive approach, and instead return focus to comprehensive reform of our unjust immigration system in ways that center a pathway to citizenship and ensure all workers are able to live and work safely and with dignity.

² [U.S. Immigration Statistics](https://www.americanimmigrationcouncil.org/research/u-s-immigration-statistics) | American Immigration Council (americanimmigrationcouncil.org)

³ [Mass Deportation: Devastating Costs to America, Its Budget and Economy](https://www.americanimmigrationcouncil.org/research/mass-deportation-devastating-costs-to-america-its-budget-and-economy) | American Immigration Council (https://www.americanimmigrationcouncil.org)

⁴ [Immigration enforcement is funded at a much higher rate than labor standards enforcement—and the gap is widening](https://www.epi.org/publication/immigration-enforcement-is-funded-at-a-much-higher-rate-than-labor-standards-enforcement-and-the-gap-is-widening) | Economic Policy Institute (epi.org)

Statement for the Record
Submitted to U.S. Senate Committee on the Judiciary
“How Mass Deportations Will Separate American Families, Harm Our Armed
Forces, and Devastate Our Economy”
 December 10, 2024 at 10:00AM

My name is Colleen Jacobs, and I am the Parish General Manager for a prominent church in Morristown, TN. We are a small town in East Tennessee, with many factories, small businesses, and a population of about 60,000 people.

On the morning of April 5, 2018, 160 American-born children in our small southern town lost a parent or working member of their family. ICE agents raided a meat packing plant in the Lakeway area of East TN, and violently apprehended 97 Hispanic workers. At the time, this was the largest workplace raid in over 10 years. I submit this statement to explain the impact this tragedy had on our small tight-knit community – the businesses, the families, the children.

On that fateful day, word quickly got out on social media that this workplace raid was transpiring, and the community began to respond. Family members gathered across the street from the National Guard armory building, where they heard their loved ones were being detained. Teachers in the community became very concerned for their students. Some rode the buses with their young students for fear that these 6 or 7 year olds might walk off the bus to an empty home.

As the day progressed, the gymnasium of an elementary school next to the armory was made available to the growing group of concerned community members. Families were told nothing and were desperately searching for answers. There was a sense of panic and fear, as well as love and support, while each family awaited the fate of their loved one. Teachers, administrators, community and faith leaders headed to the gymnasium – the waiting room. They helped keep families calm, read books to the young children and brought in piles and piles of food and drink.

In the meantime, I headed to our church to begin setting up for what became the crisis center for the community, and my husband went to the gymnasium to assist. To this day, anytime he tries to talk about that experience, he wells up with tears from the pain he witnessed. “It felt as though we were waiting to see who would be put on trains to concentration camps. I know it’s not the same thing, but watching this was so horrific.” he said. Every time the door of the gym opened, everyone stopped and looked in hopes that it might be their family member walking through that door. He remembers a particular child and older man running to a released family member embracing him like they would never let go. When the last of the 32 were released pending further litigation, the distraught families and the community at large had to begin figuring out the next steps.

Politically and ideologically, our community is almost completely conservative, Republican, and Christian. But as a small town, we have more of a microscope on the

human side of the story, relationships and economic impacts. We notice when our neighbor's husband or wife is missing, our child's soccer coach is gone, the family you sit next to at church has one less member. If you are a business, you notice when your customers have less money to spend. It is not just the numbers and statistics we notice, it is the people. People who are truly integrated into our community.

The psychological effects that the raid had on children in our community cannot be overstated. The following day after the raid, 600 children in a single school district stayed home from school out of fear. I know that many of the youth at our church continued to feel unsafe for months and months after the traumatic day.

For Morristown and the Lakeway area, our church truly became a crisis center, a safe zone and a sanctuary to many, many fearful Hispanic families. It is so important that the churches, schools and other sensitive areas be protected from ICE for those already living in the shadows. If we expect the next generations of American children born to immigrants to grow up to be productive, contributing members of society, we must allow the freedoms and basic rights for their parents and families. If people living in our country (documented or not) cannot attend faith services, maintain basic health, report crime, or educate their children, we hurt our American society overall.

The effects the raid had on the community have been profound and long lasting. Children were separated from parents, spouses were separated from each other - without even a chance to say goodbye. Families lost their primary breadwinner. Neighbors lost neighbors. Our town was permanently altered. There are no simple "one step" answers to Immigration in the US. But when we can see the world with compassion, the result is what we saw in Morristown. The politics became about the PEOPLE and their needs, not who was Republican or Democrat, Baptist or Catholic, Hispanic or Anglo. We were a community helping its neighbors. It does not get more American than that.



Thursday, December 19, 2024

Senator Dick Durbin, Chair
U.S. Senate Committee on the Judiciary
Washington, D.C. 20510

Senator Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Washington, D.C. 20510

Re: Statement from Justice for Migrant Women submitted to the Senate Judiciary Committee for the December 10, 2024 hearing “*How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy*”

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

On behalf of Justice for Migrant Women, thank you for the opportunity to submit a statement, which we respectfully request be included in the record for the December 10 hearing “*How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy*.” Justice for Migrant Women (hereinafter “J4MW”) champions migrant and rural women’s right to live and work with dignity and without fear of sexual violence. J4MW is a national organization headquartered in rural Ohio. We serve women who migrate across borders, around regions, or within states to work and we serve rural women. Many of our constituents identify as survivors of gender-based violence, including sexual violence. We thank the committee for holding the hearing and for the witnesses who provided testimony regarding their perspective on the impacts of mass deportations on families, communities, and the economy. J4MW offers three key points for consideration as Congress prepares for action in the coming year.

- 1. Prioritizing large scale and frequent deportations fails to consider the global context.**
- 2. Immigration reform must center survivors of gender-based violence, including sexual violence.**
- 3. The threat of mass deportations perpetuates anti-immigration sentiments and further emboldens perpetrators to increase harassment in the workplace, impacting the economy and entire workplaces, regardless of citizenship status.**

Prioritizing large scale and frequent deportations fails to consider the global context.

United States immigration policies have led to a change in how people experience migration in Mexico and the Mexican government has sought to put measures in place in response to these changes. As [reported from Mexico City by the Associated Press](#), historically, Mexico City has not been a sought-after stop along the migration path.¹ However, restrictive administrative policies and lack of Congressional action to address comprehensive immigration reform and provide a safe pathway to citizenship has led migrants to remain unsafely on the other side of the U.S. – Mexico Border. As a result, there has been an increased use of force by Mexican authorities in proximity to the border, with the impact ultimately being the growth of tent cities in Mexico City. As both media and [human rights reports have documented](#), Mexico has escalated its interception actions, often in ways that violate human rights.² With this in mind, the intention to deport individuals on a large scale will have substantial consequences on the regions they are sent to and it fails to consider the importance of coordinating with other countries in our immigration policies. This presents the potential for regions to be further unstabilized and drive up migration, not reduce it.

Immigration reform must center survivors of gender-based violence, including sexual violence.

Mass deportations are not a solution to creating safer communities in the United States or globally. The concept of mass deportations does not prioritize the safety of women and girls in our communities; this includes migrants and nonmigrants alike. For immigrant survivors of violence, maintaining and expanding remedies that allow them to seek justice and heal without repercussions and threat of deportation are critical not only for themselves and their families but for whole communities. Negative sentiments toward immigrants and threats of mass deportation will further silence immigrant survivors, which in turn has the potential to enable repeated perpetration of violence. In rural communities in particular, survivors of sexual violence often have limited resources to begin with. Creating additional barriers to speaking out will not enhance safety in areas where barriers such as language access, transportation and culturally sensitive care is already lacking.

Furthermore, the United States must collaborate with countries in a way that addresses the root cause of violence and cooperate on a regional level to ensure that perpetrators of harm are not enabled regardless of their immigration status or what country they are in. Safety solutions for communities require regional analysis on a local level and cooperation with the administration, Congress, consulates, and community leaders. Mass deportations do not address the root cause of gender-based violence in the United States or globally but instead use migrant people as a scapegoat for the failure of the United States and countries worldwide to address patriarchal and sexist behavior and systems. Of note is a study from the [National Institute of Justice](#) in which findings demonstrated that in Texas and California, noncitizens were less likely to commit serious violent crimes compared to U.S. born citizens. This is worth reviewing when considering

¹

<https://www.voanews.com/a/us-border-policy-spurred-migrant-camps-hundreds-of-miles-away-in-mexico-s-capital-/7769809.html>

² <https://humanrightsfirst.org/library/trapped-preyed-upon-and-punished/>

solutions to reduce crime as such evidence does not lend itself toward deporting immigrants as a priority for creating safer communities.³

The threat of mass deportations expands anti-immigration sentiments and further emboldens perpetrators to increase harassment in the workplace, impacting the economy and entire workplaces, regardless of citizenship status.

In the past month, J4MW has received an increase in cases of individuals who are reporting harassment in the workplace regarding their perceived immigration status, emboldened by the anti-immigration rhetoric. In one instance, we had an individual who chose not to return to work out of fear of further harassment. While enacting mass deportations would harm our economy, as outlined by economic experts, the mere threat of said actions has repercussions on the safety of people in the world of work. This includes not only within the place of work itself but also in spaces related to work, such as in transportation to a worksite or at a work-related gathering outside of standard working hours. Individuals at risk for harassment are not only those who do not have permanent citizenship in the United States, but also those whose race or ethnicity makes them vulnerable to assumptions regarding where they are from and their citizenship status. When taking into consideration what it would mean to pull millions of individuals out of the workforce, combined with the lack of safety for workers of color, the impact on the economy and the workforce would be detrimental to industries ranging from healthcare to the food supply chain.

The American Immigration Council provides an [analysis](#) of the impact of removing undocumented workers from the workforce, not including the residual impacts on other immigrant workers in the workforce as a whole. The analysis states that mass deportations would remove:

- 1.5 million workers from the construction workforce
- 224,700 workers from the agriculture industry
- 1 million undocumented workers in the hospitality industry
- 870,400 in the manufacturing industry
- 500,800 in general services, which includes things like auto repair, barber shops, and dry cleaning services; and
- 460,500 in transportation and warehousing.⁴

Furthermore, the [Bipartisan Policy Center](#) projects that immigration will be the primary driver of population growth in the coming decades, and outlines the positive effects that immigrants have on the economy.⁵

³ <https://nij.ojp.gov/library/publications/unauthorized-immigration-crime-and-recidivism-evidence-texas-0>

⁴ <https://www.americanimmigrationcouncil.org/research/mass-deportation#:~:text=Nationally%2C%20mass%20deportation,transportation%20and%20warehousing>

⁵ <https://bipartisanpolicy.org/explainer/why-immigration-policy-matters-for-the-national-debt/>

Conclusion

In conclusion, J4MW encourages you, as leaders of Congress on a key committee with oversight to the Department of Homeland Security, to work with the incoming administration to outline the harmful impacts of mass deportation on our communities, economy, and safety. J4MW is committed to advancing policies that enable migrant and rural women to live and work with dignity, free from violence of all kinds. We are prepared to support your efforts to do the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Mónica Ramírez". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Mónica Ramírez
President and Founder
Justice for Migrant Women

**STATEMENT OF THE JAPANESE PERUVIAN ORAL HISTORY PROJECT & THE
CAMPAIGN FOR JUSTICE: REDRESS NOW FOR JAPANESE LATIN AMERICANS!**

BEFORE THE

**UNITED STATES SENATE JUDICIARY
COMMITTEE**

HEARING ON

**HOW MASS DEPORTATIONS WILL SEPARATE
AMERICAN FAMILIES, HARM OUR ARMED
FORCES, AND DEVASTATE OUR ECONOMY**

DECEMBER 10, 2024

Introduction

The Japanese Peruvian Oral History Project (JPOHP) and the Campaign for Justice: Redress NOW for Japanese Latin Americans! (CFJ) submits this written testimony to be included in the record of the Senate Judiciary Committee’s December 10, 2024 hearing titled “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy.” This testimony highlights the real world and long lasting consequences of mass detention and deportation through the experiences of Japanese Latin Americans who were apprehended and detained by the U.S. government during World War II in the name of national security.

The Japanese Peruvian Oral History Project and the Campaign for Justice: Redress NOW for Japanese Latin Americans! are two organizations based in the United States founded by former Japanese Latin American (JLA) internees, their families, and supporters who share the World War II wartime experience of internment and displacement and the ongoing struggle for government accountability. These groups were founded to preserve our history, educate the public, advocate for proper redress, and prevent the recurrence of similar violations. Our members reside in the United States, Latin America, and Japan working both internationally and domestically to achieve our goals. We participate in efforts to repeal the Alien Enemies Act (AEA) and to secure proper apologies for the regulation, internment, and expulsion of “enemy aliens” under the AEA in World War II. The repeal of the AEA is imperative to protect constitutional and human rights in times of crisis and our story will show why.

Wartime History

While the World War II incarceration of Japanese Americans (JA) is widely acknowledged as a shameful chapter of U.S. history, the wartime experience of Japanese Latin Americans during the war is largely unknown and hidden. Empowered by the Alien Enemies Act of 1798, the Roosevelt administration seized, detained, and unlawfully stripped the national identity of Latin American “potentially dangerous” enemy aliens (citizens of a warring nation) in the name of hemispheric security and for the purpose of prisoner exchanges. These human rights abuses devastated our families and communities by unlawfully displacing and detaining individuals without due process. Japanese immigrant communities in Latin America had contributed positively to their new homes in places like Peru and Panama. Still they were rejected by their host nations and suffered grievous and long-lasting injury due to the United States’ wartime policy.

The Japanese military attack on Pearl Harbor on December 7th, 1941, and the subsequent declarations of war, prompted the United States and its Latin American allies to immediately implement plans that had been developed for “potentially dangerous enemy aliens” in German, Japanese, and Italian diasporic communities in both the United States and outside their borders in Latin America. In the name of hemispheric security the Roosevelt administration collaborated with Latin American nations to abrogate the rights of German, Japanese, and Italian immigrant residents within their borders.

From 1941–1945, over 6,000 persons deemed “potentially dangerous” enemy aliens from Latin America were arrested, transported over international borders, and detained in Department of Justice (DOJ) internment camps and organized under the AEA. 2,264 of these supposed enemy aliens were Japanese Latin American men, women, and children—both immigrant residents and citizens of their respective countries—with almost 80% of them coming from Peru.

From the outset, this policy was a failure that harmed Japanese communities in Latin America. The policy’s reliance on rumors and bias resulted in widespread persecution, stigma, dehumanization and the loss of property and businesses within these communities. Innocent individuals were humiliated and treated like criminals in their home countries. And those who were seized, or who had family members seized, and forcibly transported to the United States faced impossible choices and horrific conditions. Wives and children were separated from their husbands and fathers, not knowing if they would ever see their loved ones again. Mothers struggled to provide for their families with their husbands taken, and many decided to join their husbands in U.S. custody. For some families, reuniting meant being transported and then detained along with infants, young children, and elderly relatives.

Even before the hardship of internment, the trip to the United States was difficult. While being transported by boat to the United States, men and older boys were imprisoned belowdecks, and families were deprived of basic necessities like milk for infants. When the families arrived at processing sites in New Orleans, Louisiana, they were immediately arrested and charged with “illegal entry”. Their passports, visas, and identification papers were confiscated, rendering them effectively stateless. They were then stripped naked, in front of strangers, and sprayed with the harmful chemical insecticide DDT. Finally, they were placed on trains headed to unidentified locations—the AEA internment camps operated by DOJ and the military.

During the war, there were over seventy detention centers and internment camps run by the Wartime Relocation Authority, DOJ, and U.S. Army. Most of the JLA and other enemy alien families were held at the Crystal City Internment Camp in Texas, the largest DOJ multi-national family camp that prepared families for the prisoner exchanges. While the presence of families in Crystal City was a great source of comfort, life in the internment camp was a source of trauma and hardship. Parents felt shame over their inability to provide for their children. The children, some born in the camps, spent their childhoods in uncertainty and fear behind barbed wire and guarded 24/7. The JLAs also faced language and cultural barriers. In some cases, JLAs were subjected to forced labor.

Many JLAs were subjected not only to the AEA’s detention authority but also to its deportation power. 2,800 persons of Japanese ancestry, including 845 JLAs, were forcibly deported through the two prisoner exchanges between Japan and the United States in June 1942 and September 1943. Some individuals with no citizenship ties to Japan at all were deported against their will. These civilian deportees were thrust into war zones, and some were drafted into the Japanese military with fatal results.

By the end of World War II in 1945, the troubles inflicted upon the JLAs did not cease. Many of the JLAs wanted to return to Latin America but they were refused, with fewer than 100 Japanese Peruvians allowed to return to Peru. Instead, the majority were forcibly deported to war-torn Japan, where they faced extreme impoverishment, starvation, and alienation from the Japanese people. Some JLA children died of malnutrition and lacked clothing and proper shelter.

Hundreds of JLAs protested their potential deportation to war-devastated Japan. As late as 1947, these JLAs were some of the last World War II internees in U.S. custody. 300 Japanese Peruvians eventually had their status altered from enemy aliens to undocumented immigrants, and these Japanese Peruvians fought deportation in the courts with the support of attorney Wayne Collins. Under the looming threat of deportation, they worked grueling agricultural jobs, attended American schools, served dutifully in the U.S. military during the Korean War, and maintained their dignity and communities.

In 1954, an amendment to the Refugee Relief Act of 1953 was enacted whereby aliens who were brought to the U.S. from Latin America for internment during WWII, could apply for legal permanent residency status. After years of displacement, the majority of remaining Japanese Latin Americans decided to stay in the United States to prevent the further dislocation of their families, despite their desire to return to Latin America. Although the former JLA internees were scattered, they would spend the decades following their internment rebuilding their lives and communities and cherishing the relationships made in years of hardship.

Redress History

From the 1970s into the 1990s, the Japanese American (JA) community broke the silence about their World War II experience and built a movement for U.S. government accountability for violations of their fundamental constitutional rights. JLA internees and their families learned about these redress efforts along with JA community members. As part of the JA community in the United States, the JLAs here supported and participated in that effort for redress acknowledgment and justice, highlighting the violations we faced of our rights under U.S. and international humanitarian law.

In 1981, Congress established the Commission on Wartime Relocation and Internment of Civilians (CWRIC), which held public hearings in nine cities with testimony from over 750 witnesses and the examination of over 10,000 documents. Seven Japanese Peruvian internees testified in three cities (Chicago, Los Angeles, and New York City), and a section of the CWRIC Report, "Personal Justice Denied", documented the JLA wartime experience. The CWRIC findings included that government actions were "not justified by military necessity" but rather caused by "race prejudice, war hysteria and a failure of political leadership."

Based on the CWRIC recommendations, the Civil Liberties Act of 1988 (CLA) was passed to grant redress for fundamental injustices suffered by persons of Japanese ancestry and Aleuts during World War II. The law explicitly sought to discourage the occurrence of similar injustices and violations of civil liberties in the future" and to "make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations." The U.S. government issued an official public acknowledgment, personal apology letters signed by the President, symbolic monetary compensation, and funds for public

education. Due to the CLA's restrictive eligibility criteria, this redress was limited to U.S. citizens and legal permanent residents of Japanese ancestry and Aleuts who were alive at the time of the 1988 passage of the CLA's enactment. Most JLAs as well as thousands of other former internees of Japanese, German, and Italian ancestry, were excluded and denied redress because of the restrictive eligibility criteria.

During the early 1990s, JLA internees, their families and supporters founded the Japanese Peruvian Oral History Project (JPOHP) and the Campaign for Justice: Redress NOW for Japanese Latin Americans! (CFJ). As many of our elders had passed away, we realized the significance of documenting and preserving our JLA wartime and redress history, especially by collecting and conducting oral history interviews. We appreciated the importance of educating ourselves and the public about this hidden history and the danger of recurrence of such constitutional and human rights violations. And we committed ourselves to the example set by our elders for proper redress so that other families and communities would not have to suffer what we have experienced. Our work has included the development of educational materials and activities, including:

- The documentary film *Hidden Internment: The Art Shibayama Story* (Peek Media. 2004. 26 minutes). Historical footage and moving interviews highlight the life story of Art Shibayama, who at age thirteen, was forcibly deported from his home in Peru with his family to the Crystal City Internment Camp in Texas for the purpose of prisoner exchange and his struggle for redress justice.
- The public education forum, *Hear, In America? Immigrants as 'The Enemy' During WWII and Today* (April 8–9, 2005. University of California College of the Law, San Francisco, formerly called Hastings College of the Law) which focused on the personal testimonies of the WWII enemy aliens in the U.S. and from Latin America along with the testimonies of Muslim and Arab Americans who faced similar violations following the 9/11 attacks. A proceedings booklet and DVD were produced and distributed to all members of the U.S. Congress and staff of the Inter-American Commission on Human Rights in 2006.
- The groundbreaking traveling and online exhibit, *The Enemy Alien Files: Hidden Stories of WWII*, produced by the Enemy Alien Files Consortium. This exhibit premiered in 2001 and was redesigned in 2022 with updated content and online presentation. It explores the treatment of over 31,000 enemy aliens in the U.S. and from Latin America and underscores the fragile nature of our constitutional and human rights in times of international and domestic crisis as well as the human impact of government policies in the name of national security.

Through collaborative educational projects with other communities, particularly with WWII former “enemy alien” internees and their families, we are expanding our understanding of this WWII chapter of U.S. history, engaging in dialogue and educational activities so we can better contribute to achieving genuine security of our nation while upholding the constitutional and human rights of all persons in the U.S., whether in times of war, social crisis, or peace. The danger of history repeating itself—for immigrant residents and other non-citizens, as well as citizens—is far-reaching for our democracy, liberty, and human dignity.

We have sought legislative remedies to secure proper acknowledgment, apology, reparations and guarantees of non-repetition. These include the *Wartime Parity and Justice Act*, The *Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act*, and more recently the *Neighbors Not Enemies Act*. We have also sought justice in the courts, filing five lawsuits on behalf of JLAs. Four of these lawsuits were dismissed on procedural grounds, but the fifth case, *Mochizuki, et al v. USA*, re Fed.Cl. 97 (1999), resulted in a controversial settlement agreement that limited JLA litigants' right to seek further judicial remedies.

But the fifth case, *Mochizuki, et al v. USA*, re Fed.Cl. 97 (1999), resulted in a controversial settlement agreement, which barred further litigation against the U.S. arising from any JLA who did not opt out of the settlement, but did not prohibit efforts to seek legislative remedy.

In 2003, Art Shibayama and his two brothers filed a petition for redress with the Inter-American Commission on Human Rights (IACHR). In 2020, the IACHR issued its groundbreaking decision in *Shibayama, et al v. USA*, Case No. 12.545, affirming JLAs' right to full and equal redress for, among other things, their time spent in internment under the AEA. Significantly, the *Shibayama* decision clarifies that states must ensure equal protection of the law to all persons, regardless of their citizenship or immigration status and reaffirms the obligation of the U.S. government to provide meaningful "material and moral" redress for longstanding violations of human rights. We have raised the *Shibayama* decision with the Biden administration, and our redress efforts are ongoing.

Testimonies

Libia Hideko Maoki Yamamoto

Following are excerpts from an oral history interview conducted on May 21, 2022 for The Enemy Alien Files: Hidden Stories of WWII online exhibit. Yamamoto was a Peruvian citizen of Japanese ancestry whose father was seized in 1943. She was forcibly deported as a seven-year old child with her family and reunited with her father in a U.S. Department of Justice internment camp in Texas. In this interview she shares her family's wartime experience and its impact.

During World War II, in January 1943, my father was taken from our home at the Hacienda Tumán to the Chiclayo City Jail. He was taken to the Panama Canal Zone and then to San Pedro, California, to Tuna Canyon Detention Station near Los Angeles, and then by train to Kenedy Camp. Later, in July 1943, my mother, my siblings, older married sister and her children, and my aunt were sent to New Orleans, Louisiana; and then sent by train to Crystal City Internment Camp in Texas; and finally reunited with my father.

My father was the owner of a general store in the sugar plantation village of Hacienda Tumán. He was very liked by the community. Then one night in January 1943, the *hacienda* police came to our home and took my father away. My father could not understand because he had not

done anything wrong. But they took him. So, he asked to speak to the owner of the plantation, Señor Pardo. But Señor Pardo said the same thing, "I'm sorry, Señor Maoki, there is nothing I can do. This is beyond my control." And then they took him to the Chiclayo City Jail about fifteen miles away. We did not get to talk to my father after that.

The next day, my father was put on a truck along with fifteen plus other Japanese men. The truck drove away slowly. And all we could do was cry and wave goodbye. And I didn't even say goodbye to him. We couldn't even hug him. I tried to run to him to hug him, but the atmosphere would not allow me. Everybody was there crying, and my mother held my hand so I couldn't. And he was fifty to seventy feet away, and all I could do was just sob and say goodbye.

...then he sent the message to my mother a few months later saying that we were to be ready to leave. Pack up everything and bring the children, and my married sister and her children...[We] went to Callao in the beginning of July...we were ordered to board the Chilean freighter, and so we did. But what was frightening was, as we walked up the plank, we saw American soldiers lined up on the plank with guns and bayonets...we were afraid to go up the plank because we didn't know what was going to happen once we got up to the ship. And then, because nothing happened when we got onto the ship, we thought, "Oh, they're going to kill us when we get out to the high seas." It was really frightening, and especially for a seven-year-old. We thought we were goners. We thought, "Oh, we'll never see dad again," because we'll go before he does.

...the people that came after us, they were taken to New Orleans, they were taken to a shower. They were all made to undress and take a shower in front of everybody. And after they took their shower, they were sprayed with DDT. And then some of the girls were so humiliated to have to shower in the nude in front of all these people and then sprayed with DDT. I heard it was terrible. And they felt real bad, and I could understand that.

My married sister and her children, they really suffered because they had gone to a war-devastated Japan. There was no food...And she had little children. She had a eight-year-old, a six-year-old, and a four-year-old. And the baby died. And, she had a baby that lived for a couple of months and she died. And every day she would write to us and mother would read to us the Japanese letter, and we would listen and cry. And she would write how they didn't have any food to eat, so they had to go to the fields and just pick out grass and cook the grass and eat the grass. And that was their food. And we felt so sad for them that they suffered so much...

We were born in Peru and that was our home. And the United States yanked us out of there, and they sent us to a strange place where we didn't know the language or the customs or anything. And we had to start all over again. And that was the beginning of our life here in the United States. But it was so important because people did not understand all that had happened to us, and we wanted them to know what happened so that they may know that they were not the only ones that suffered from the war. We'd suffered too, and we wanted them to know it.

Bekki Shibayama

Below are excerpts from Bekki Shibayama's testimony at the Inter-American Commission on Human Rights hearing on March 21, 2017, in her father's case Shibayama, et al v. USA, Case

No. 12.545. *Bekki Shibayama is the daughter of former Japanese Peruvian internee Isamu "Art" Carlos Shibayama. In these excerpts she shares the wartime experiences of her grandfather and great-grandparents and the devastating impact it had on the family and herself.*

I was approximately eleven years old when I learned the details of how the U.S. government kidnapped, deported, and imprisoned my father and his family...Myself, I actually, perhaps for the first time in my life, I felt fearful for my own safety. It was actually a personal violation and vulnerability that I had not felt before. And my brother and I were confronted with the harsh reality of racial oppression and we felt defenseless. But more shocking for me was when I later realized that this feeling or this theme of insecurity ran through my entire family's personae. Suddenly, the words "with liberty and justice for all" that I recited in grade school every morning rang hollow. I wondered how my government could take my family's basic freedoms and human rights away. My father and his family had done nothing wrong. Their only supposed crime was that they were of Japanese descent and the U.S. government had a needed excuse to take them as hostages to be used in exchange for Americans being held in Japan. Quite honestly, I cannot say that our family has handled the trauma of these wartime experiences very well. There's still a veil of denial, and it still haunts us and still makes us feel angry and frustrated whenever we think of the injustices that our family had to face.

...they [Bekki's great-grandparents] were one of the first Japanese to be taken and deported out of Peru. And they were taken to an internment camp in Texas called Seagoville. Later, before my father's family even came, before they were brought to Crystal City, Texas, my great-grandparents were part of the hostage exchange. They were part of the second hostage exchange. So, they were forcibly sent back to Japan and I know that they went back to live with their son...Since it was in Japan, it was a war torn country, the son was struggling to support his family. So it was a burden to have his parents come back. And we didn't find out until later that our great-grandparents didn't even tell their son what had happened. There was so much shame that they wouldn't even tell them. The son actually wondered why did they have to come back because it put an additional burden on his family.

Tragically, my grandfather died in 1976 at the age of seventy. At the time, he was suffering from a severe depression so it was very sad and upsetting for the entire family. After the Shibayamas' deportation from Peru, my grandfather spent the rest of his life trying to regain everything that he had lost in Peru. It wasn't until after my grandfather had already passed that our family really appreciated all that he had gone through as the patriarch of the family. His whole world was actually turned upside down at the hands of the U.S. government. Our hearts break when we think of the tremendous losses and struggles that he was forced to bear. And the shame of not being able to protect his wife and his children from the unspeakable hardships must have weighed heavy on his heart. To this day my family and I believe that the U.S. government killed my grandfather's spirit. After his capitulation and from then on, he was never the same man again. Gradually he became silently entombed in a world of pain and isolation. I only knew him as a shell of his original self and I just wish that I had shown him more love when I had had the chance...

Despite my father's and others' efforts to educate the American public, the Japanese Peruvian internment is still widely unknown. In school, my brother and I were never taught

about what the U.S. government did to the Japanese people living in Peru. We have learned from our parents and our aunts and uncles about their wartime experiences. But even so, my family and I do not know much of what had happened. That is why the U.S. government needs to provide a complete and thorough account of what it did. We need access to all documents and all reports of conversations, conferences, and legal proceedings. My brother and I and my cousins want to know what happened to my father, my aunts and uncles, my grandfather, and my great-grandparents. We know they suffered and we want to know why. We need the U.S. government to apologize and acknowledge what it did. We need educational funds and we need full disclosure so what happened to the Japanese Peruvians will not happen to my family, to any other family, or to any other group again.

Well, I really want to know the complete story because we know that they suffered and they went through hardships. So, I would like to know how the government made these decisions to take them out. What were those decisions based on? What information was there? And so I would like to know just what we should be looking out for in case our government starts going in that direction again. History has a tendency to repeat itself. So, I just want to ensure, or try to ensure, that it doesn't happen again.

Closing Statement

The Alien Enemies Act of 1798 is an outdated and overbroad statute that has been used to violate individuals' rights under the Constitution and international law. It is a danger to the American values of liberty, personal autonomy, due process and equality. The long overdue repeal of the AEA is a major and necessary step to properly address the historic wrongs of the law's past use and to prevent future wrongs.

The AEA was used in World War II to intern individuals and families, as well as scapegoat and devastate communities, on the basis of their ancestry and without any proof of wrongdoing. The law directly harmed not only immigrants in the United States but also Latin Americans abducted from their home countries. The AEA paved the way for the shameful treatment of U.S. citizens and permanent residents of Japanese ancestry, which led to the historic redress granted by the U.S. government under the Civil Liberties Act of 1988. But proper acknowledgment of and apology to the other enemy alien internees and their families, including the JLAs, would make that redress legislation more credible and stronger in preventing future civil liberties violations.

From our own wartime experience, we know the devastating impact that the Alien Enemies Act can have, how broadly it can be used, and how this mistreatment has harmed our families and communities. The AEA has already given rise to redress and reparations to the JA community. and tThe call for proper acknowledgment and apology for the other AEA victims of World War II is ongoing. We of the Japanese Peruvian Oral History Project and the Campaign for Justice do not want other communities to suffer the same injustices we faced under the AEA.



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Statement for the Record from the Tahirih Justice Center to the
United States Senate Committee on the Judiciary:

***"How Mass Deportations Will Separate American
Families, Harm Our Armed Forces, and Devastate
Our Economy"***

December 19, 2024

Dear Chairman Durbin, Ranking Member Graham, and Members of
the Committee:

As a national organization serving survivors of gender-based violence (GBV), we appreciate this opportunity to further educate the Committee as to how mass deportations will harm survivors and the communities to which they belong. We respectfully request that this statement be incorporated into the record for the December 10, 2024 U.S. Senate Committee on the Judiciary hearing, *"How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy."*

GBV is a public health crisis that transcends race, religion, culture, and class and includes human trafficking, sexual slavery, domestic violence, forced marriage, female genital mutilation/cutting (FGM/C) and other abuses. The World Health Organization reports that one third of all women will become the victim of GBV over the course of their lives. According to the Centers for Disease Control and Prevention, over 50% of women in the U.S. have suffered sexual violence that involves physical contact and 25% have endured attempted or completed rape. And, it is estimated that 50% never seek help due to fear of retaliation, stigmatization, re-traumatization and other serious concerns.

The acute and long-term health and economic consequences of GBV are well-documented, with intimate partner violence costing the U.S. roughly \$8.3 billion per year. While laws such as the Violence Against Women Act are targeted toward survivors, broader areas of public policy including education, public safety, health care, child welfare, the economy and immigration directly impact survivors as well. With survivors comprising such a large and diverse segment of the general population, we are grateful that you chose to elevate a survivor's voice through her testimony during the hearing.

At Tahirih, we assist non-citizen survivors of GBV who are fleeing horrific abuses such as gang rape, torture, forced marriage, sexual slavery, FGM/C and femicide. The focus of our expertise is on how our immigration system can either enhance or obstruct a survivor's path to a safe and prosperous life. While our immigration system may seem of no concern to survivors born or naturalized in the U.S., in fact their safety is intertwined, and they often have many needs in common with survivors born abroad due to their shared experience of victimization. And, as noted during Ms. Morin's testimony, a survivor in the U.S. may have even been targeted by the very same perpetrator as a survivor abroad. Regardless of their background, survivors' needs are the same and these include access to emergency shelter and long-term safe, affordable housing, trauma focused counseling, specialized medical care – for example, for traumatic brain injury, strangulation, facial reconstruction, and pelvic floor dysfunction among many other conditions, flexible employment leave and school attendance policies, safety planning, and community support groups. U.S. laws therefore recognize that all survivors, including those fleeing abuse in their home country, need safety and stability to thrive and contribute to our communities for the benefit of us all. Affording all survivors access to justice whether it be in family, criminal, civil, or immigration court brings us closer to a world that rejects GBV as inevitable and instead focuses resources on stamping it out.

In the immigration context, policymaking that impacts mixed status families must be undertaken with great care to avoid unintended consequences for survivors and their children. For example, indiscriminate mass deportation would force many to make the heart rending 'choice' to either abruptly uproot their U.S. citizen child to a country they have never known or leave them here without their mother. People targeted for deportation may have U.S. citizen children whom they alone protect from an abusive parent or family member here in the U.S.

Survivors of GBV and other abuses abroad whose lives and safety are at grave risk may feel that their only path to safety is to flee to the U.S. to seek asylum given their own country's inability or unwillingness to protect women from violence. Consequently, the deportation of asylum seekers can be a death sentence if they are re-victimized by those who targeted them in the past. Deportation itself can make survivors even more vulnerable to re-victimization. Deportees often become specific targets of criminal gangs; without stable employment, housing, or support structures upon their return, they are easily exploited. Finally, it is well-documented that the most dangerous time for a victim of domestic violence is after she tries to escape. The increased danger a survivor faces after deportation is twofold - not only can an abuser more easily find his victim, but he will be much more likely to retaliate against her for attempting to defy him.

Justice and safety for survivors includes giving them their day in court under our laws. By contrast, indiscriminate deportation will result in punishing survivors whose abusers have stolen their identity documents or proof of lawful status. Some abusers even go so far as to hide a survivor's legal status from them, ~~leveraging their lack of knowledge and proof of status to maintain power and control.~~ Some

survivors caught up in mass deportation efforts are likely to be eligible to apply for immigration status but are unaware of their rights or still saving up for a lawyer and developing an escape plan.

Deporting survivors of GBV and other crimes also compromises public safety. By reporting and testifying against violent offenders, survivors play a critical role in helping law enforcement hold perpetrators such as human traffickers accountable and take them off the streets. By contrast, prioritizing survivors for deportation because they have a criminal history can perpetuate the punishment they are trying to escape and penalize the very behaviors that were necessary to prevent escalating harm to themselves or their children. A common tactic of abusers is to falsely accuse their victims of being the primary perpetrator of domestic violence or frame them for crimes they did not commit. Immigrant survivors are particularly vulnerable to this tactic because of language barriers. For example, police responding to a domestic violence call may use an English-speaking abuser as their translator. Survivors are also unjustly criminalized when traffickers or abusers force them to commit or abet crimes under duress such as theft or drug trafficking. Some face criminalization for defending themselves against violence, or if they recant allegations of abuse for fear of retaliation. Finally, survivors of domestic violence may face unwarranted, blanket charges of child abuse for “failure to protect” their children, despite their best efforts to do so under highly volatile and unpredictable circumstances. The criminalization of the act of *surviving* domestic violence is so pervasive that some states have even passed legislation to address it.

Ultimately, deporting people *en masse* will imperil immigrant survivors' lives and unwittingly embolden the perpetrators of horrific crimes against them in the process. Instead, we must give immigrant survivors a meaningful opportunity to present their cases under our bipartisan laws such as the Violence Against Women Act, passed specifically for the purpose of protecting them.

For these reasons, **we urge Congress to reject mass deportations and empower, rather than endanger, survivors of GBV among us.** In doing so, Congress will make all of us and our communities safer. Thank you for your consideration.

Sincerely,

Tahirih Justice Center



**Statement for the Record
Submitted to the U.S. Senate Committee on the Judiciary
On Full Committee Hearing Titled:
“How Mass Deportations Will Separate American Families, Harm Our
Armed Forces, and Devastate Our Economy”**

Submitted: December 19, 2024

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

The Advocates for Human Rights (The Advocates) is a nonprofit human rights organization and pro bono legal services provider headquartered in Minnesota and serving the Upper Midwest since 1983. The Advocates for Human Rights' mission is to implement international human rights standards to promote civil society and reinforce the rule of law. Holding Special Consultative Status at the United Nations, The Advocates regularly engages UN human rights mechanisms. For over forty years, The Advocates for Human Rights has been the primary provider of free legal representation to asylum seekers in the Upper Midwest. Today, our practice includes representation of asylum seekers, unaccompanied children, victims of human trafficking, and people held in civil immigration detention. We have provided free immigration legal services in more than 10,000 cases and are one of the only organizations providing such services free of charge in the region. The Advocates also regularly trains and mentors pro bono lawyers, coordinates and presents on immigration law at conferences and continuing legal education programs and leads numerous efforts around legal services for migrants.

The Advocates is a leading resource for anti-trafficking efforts in Minnesota, working closely with local, state, and federal labor enforcement, law enforcement and prosecutors, and with nonprofit partners. The Advocates monitors and documents government compliance with international obligations, advocates for human rights-based public policy responses, trains government and nongovernmental actors, represent victims, and coordinates legal services responses in large-scale cases. Working with diaspora and in-country human rights defenders, The Advocates leverages pro bono resources to document and advocate to end human rights abuses and to abolish the death penalty worldwide.

Based on this expertise, The Advocates is deeply concerned about the harms caused by mass deportations, including threats of such actions. Not only do such measures impact American families, armed forces and business, they violate the human rights standards that underpin our values and foundations as a nation. Without guardrails, deportations threaten racial discrimination, destabilizing communities and engendering mistrust. Instead, we know from our work in the Upper Midwest that policies of welcome engender greater peace and stability—

Minnesota is a state with a long history of refugee resettlement and migrant welcome, as well as a strong economy.

The Advocates for Human Rights, which has operated in Minnesota and the world for more than 40 years, knows that mass deportations, and even threats of such, increase human trafficking and exploitation. Threats of immigration consequences, such as deportation, are routinely wielded by traffickers and exploitative individuals in the US to keep people, including children, working in factories, farms, domestic labor, restaurant work, construction and more. In one case, a large group of farmworkers in Minnesota arrived in H visas and were kept working in dangerous temperatures without adequate living conditions or water. In a pattern of other cases, young women from Africa were brought to the US as domestic workers only to be forced to work nearly 24 hours-per-day without pay and without freedom to go anywhere unaccompanied. These women feared escaping or reporting to law enforcement because their traffickers threatened immigration enforcement and controlled their documents. In yet another group of cases, The Advocates have represented children who have come to the US to seek asylum, but are ultimately forced into labor by exploitative individuals who refuse to let them attend immigration court hearings and threaten to turn them over to ICE if they complain about their circumstances. In addition to giving traffickers this powerful tool, mass deportations fail to ensure adequate screening to identify trafficked and exploited individuals, undermining law enforcement ability to investigate and prosecute trafficking while doubling abuse of trafficking victims.

Furthermore, we know that mass deportations risk unlawfully returning people to face persecution and torture. In one case, a client of The Advocates was deported before his case was finalized. Once he was deported, he faced the exact harms on which his asylum case was based and was forced to escape to a neighboring country. When his case returned to the immigration court, he was granted permission to return to the US, but the third country prevented him from departing and boarding his return flight to the US. As a result, he remains in limbo and in danger despite having an ongoing immigration case and a legitimate claim to stay in the US. Such instances will only become more common and complex if mass deportations occur as they are likely to contain even fewer guardrails.

Finally, The Advocates urges the Committee and policy makers to decouple the criminal-immigration legal systems. Despite significant focus during the hearing on perceived relationships between immigration and crime, data show migrant communities are *more likely to be victims of crimes than to commit them*. As noted, fears of criminal-immigration consequences increase vulnerability to trafficking. Similarly, misrepresentations of migrants as criminals, results in noncitizen victims being disproportionately impacted by criminal arrests. In several cases our office has handled, victims of crime were arrested based on false claims by an abuser or trafficker and only identified when connected with legal counsel. U.S. law already includes harsh penalties and strict rules that prevent people with criminal histories from obtaining long-term status; closing immigration pathways simply prevents that screening and disadvantages migrants who seek safety, family unity, and to contribute to the US.

Rather than directing government resources to enforcement- and deportation-only efforts, the U.S. would be better-served by investing in adequate processing infrastructure that protects due process and efficiently adjudicates cases. Without such investments, we risk abandoning our values as a nation, violating human rights and due process obligations, destabilizing our communities, increasing unsafe and irregular human movement, and sowing severe human suffering. Indeed, the Global Compact on Migration, as informed by experts worldwide, has identified that safe, orderly and fair pathways to migration without threats of mass and unlawful deportation are best for national and international security, business, and human needs.

Should you require further information, we remain available. We urge the Senate to thoughtfully consider these issues and engage with experts to build safe, orderly and fair immigration systems in-line with US and international law and best practices.

Sincerely,



Michele Garnett McKenzie
The Advocates for Human Rights
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**Statement of the United Farm Workers
United States Senate
Committee on the Judiciary**

Hearing

**“How Mass Deportations Will Separate American Families, Harm Our Armed Forces,
and Devastate Our Economy”
Tuesday, December 10th, 2024**

“Right now, many farm workers of all immigration statuses – undocumented and citizen alike -- are worried about the threat of mass deportations and wage cuts.

Already we see the threat of mass deportation being used by employers to push Congress to expand and reduce wages for the H-2A visa guest program, which already has no visa cap and is little more than modern day indentured servitude: rife with abuse, with workers’ visas entirely controlled by their employer.

Mass deportations coupled with guestworker expansion merely replaces one group of vulnerable exploited workers with yet more vulnerable, more exploited, workers. To be clear: There’s nothing America First about importing cheap foreign labor and denying them basic labor protections.

As the labor union organizing farm workers of all immigration statuses in the fields every day, we know this: Workers who are afraid of getting deported are harder to organize. When you make it easier to exploit and replace any group of farm workers, you make it easier to exploit all of them, driving down wages and standards in the fields for farm workers of all immigration statuses -- -- U.S. citizens included.

Yet, farm workers persevere. Most live paycheck to paycheck, even as this country’s agricultural economy would collapse without them.

Farm workers don’t care if the food they are picking is going to a Democrat or Republican’s table.

Rather than deporting the workers who’ve fed America for decades and importing more foreign guest workers, let’s work together to extend citizenship and labor rights to all farm workers, raising wages and standards in the fields – for everyone. That’s what the workers that feed America have earned with their sweat, blood, and tears.”



Statement for the Record
Submitted to the U.S. Senate Committee on the Judiciary

On Full Committee Hearing Titled:
**"How Mass Deportations Will Separate American Families, Harm Our
Armed Forces, and Devastate Our Economy"**

Submitted by:
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December 10, 2024

Introduction

UnidosUS is the nation's largest Hispanic civil rights and advocacy organization.ⁱ Since 1968, we have worked to break down social, economic, and political barriers affecting Latinos through expert research, policy advocacy, programs, and an Affiliate Network of more than 300 community-based organizations across 200 congressional districts in the United States and Puerto Rico.ⁱⁱ Our network provides vital services such as education, health care, immigration support, housing assistance, workforce development, free tax preparation, and other services to millions of Latinos in the United States each year. We believe in an America where economic, political, and social progress is a reality for all Latinos, and we collaborate across communities to achieve it.

We appreciate the opportunity to submit testimony about the far-reaching harms of mass deportations. Our deep ties to communities nationwide have enabled us to document the hardships and successes of vulnerable immigrant populations, including long-residing undocumented individuals like Dreamers, whose contributions strengthen our economy, cultural vitality, and collective future. However, Congress's failure to enact legislation offering permanent protections reinforces their vulnerability. This experience underpins our testimony today.

For over four decades, UnidosUS has advocated for policies that strengthen the nation and enable aspiring Americans, including long-residing undocumented individuals, to build their lives in this country. We have played a role in every congressional debate on immigration for decades, including in shaping the Immigration Reform and Control Act of 1986ⁱⁱⁱ and in advocating for the establishment of the Deferred Action for Childhood Arrivals (DACA) program in 2012.^{iv} Our extensive research on immigration has, among other things, highlighted the essential role of undocumented workers in the nation's recovery from the COVID-19 pandemic^v and the devastating harms that hardline enforcement actions impose on U.S. citizen children in mixed-status families^{vi} and our economy.^{vii}

UnidosUS's immigration expertise and policy and advocacy work built over 40 years informs our deep concerns about the prospect of mass deportation operations targeting the 11 million undocumented immigrants but impacting millions more Americans in the United States. Such actions would devastate Latino and other families and communities, including U.S.-born children in mixed-status households while creating lasting economic and social harm.

Based on our expertise, we express grave concern over proposals for mass deportation operations targeting the 11 million undocumented immigrants in the United States. Deporting undocumented workers will hurt the U.S. economy by increasing the costs of goods and undermining its growth. They will also rip apart mixed-status families, leaving U.S. citizen children in conditions that impact their ability to thrive in the country. Finally, they will lead to ethnic profiling of Latinos, creating an environment of fear that runs counter to the country's long-held values of justice and fairness for all Americans.

We urge this Committee and Congress to use its considerable policy and government funding powers to prevent the far-reaching consequences of mass deportations and instead advance the balanced border and immigration solutions, including legalization of the undocumented, that Latinos and the broader electorate support.

Mass Deportations Are a Threat to the U.S. Economy

Mass deportations and the climate of fear they would generate threaten our nation's economic future by removing key workers from the country's labor force who help strengthen the prosperity of all Americans, regardless of their background. In 2020, the Pew Research Center estimated undocumented workers formed 22 percent of all agriculture jobs, 15 percent of all construction jobs, and 8 percent of all manufacturing jobs.^{viii} In 2022, Pew also noted that 8.3 million undocumented workers made up 4.8 percent of the total U.S. workforce.^{ix}

Deporting these workers would destabilize and add to severe labor shortages already experienced in these industries,^x leading to increases in the price of goods. In agriculture, for instance, deporting undocumented workers would reduce the labor force available to harvest crops and process food, driving up food prices.^{xi} In the housing sector, fewer workers to build homes would worsen housing shortages and keep prices high^{xii} at a time when Americans struggle to buy a home.^{xiii} More broadly, a June 2024 study found that deporting 7.5 million undocumented workers would lead to three years of higher inflation, which would peak at 3.1 percentage points.¹

Deporting undocumented workers would also hurt the employment rates of U.S. citizens. A 2023 study on the Secure Communities, a national information-sharing enforcement program that helped deport 424,000 individuals between 2010 and 2015,^{xiv} found that removing 400,000 low-skilled non-citizen workers reduced employment for low-to-middle-skilled immigrants by 13 percent and for mid-to-high-skilled U.S. citizens by 2.5 percent. Mass deportations on a larger scale would similarly increase labor costs, reduce employer demand for U.S.-born workers, and decrease local consumption,² leading to more job losses.

¹ It also found that deporting this number of workers would reduce the country's work hours by 3.6 percent and its GDP by 6.2 percent or \$1.7 trillion at 2023 levels. McKibbin, Warwick, Megan Hogan, and Marcus Noland, "Migration Restrictions and Damages to the U.S. Economy," Peterson Institute for International Economics, June 26, 2024, <https://www.piie.com/sites/default/files/2024-06/2024-06-26warwickppt.pdf> (accessed November 27, 2024).

² Secure Communities had similar impacts on specific job sectors reliant on immigrant workers. A 2022 study that examined how the program impacted employment rates in the early childhood care sector observed the increased fear of deportation during this period deterred 8.6 percent of low-educated workers from pursuing this work, due to a 15.8 percent decrease in Hispanic immigrant childhood care workers.

The program also reduced low-skilled native-born worker levels by 2.8 percent and high-skilled ones by 2 percent. The loss of low-skilled immigrants meant Early Childhood Care employers no longer needed as many low-to high-skilled U.S. citizen workers to complement their skills, leading to reduced employment for these groups. Ali, Umair, Jessica H. Brown, and Chris M. Herbst, "Secure Communities as Immigration Enforcement: How Secure Is the Child

Finally, current proposals to deport all undocumented immigrants would harm the U.S. economy by expanding the national debt.³ Deporting all undocumented workers would shrink the country's GDP by 2.6 percent – nearly \$5 trillion – over a decade.^{xv} Far from yielding fiscal savings as some have questionably argued, these measures would cost the U.S. economy at least \$1.6 trillion.^{xvi} Mass deportations would be prohibitively expensive for the federal government, costing at least \$315 billion⁴ while removing taxpayers who contribute \$46.8 billion in federal taxes, \$29.3 billion in state and local taxes, and 22.6 billion in Social Security contributions.^{xvii}

Mass Deportations Will Significantly Harm U.S. Citizen Children

Mass deportations would inflict profound, multigenerational harm on families, with their children bearing the most devastating consequences. Studies indicate that the combined effects of deportations and the fear of enforcement actions can undermine a child's economic stability, health, and educational outcomes, which limits their ability to thrive and make future contributions to our country as students and workers.

Mass deportations will rip the many mixed-status families living in the U.S. apart, leaving a significant number of children extremely vulnerable. At the start of 2025, 28.2 million U.S. residents will live in a household with at least one undocumented family member, including 19.5 million Latinos. These residents include 11 million American citizens who reside with these individuals, most of whom have been in the U.S. for a decade or more. Finally, these American citizens include 5.5 million children, roughly 8 percent of all children in the U.S.^{xviii}

Sweeping, indiscriminate deportations would put these U.S.-born children at serious social and economic risk. Studies estimate that the deportation of parents would see income for the remaining household drop by 47 percent, which would plunge many children deeper into poverty.^{xix} Other studies show that detaining or deporting a parent can cause hunger among these children since the decrease in income can leave families struggling to pay for food.^{xx}

The fear of family separation influences decisions that parents and their children must make, from accessing income and social supports, such as free school meals, to choices about going to school

Care Market?," IZA Institute of Labor Economics, No. 15821, December 2022, <https://docs.iza.org/dp15821.pdf> (accessed November 26, 2024).

³ A fuller examination of the economic costs of mass deportations and large-scale enforcement actions in Lynch, Robert and Michael Ettlinger, "Literature Review on the Economic Consequences of the Deportation of Unauthorized Immigrants," July 24, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4898970 (accessed November 26, 2024) and Lynch, Robert and Michael Ettlinger, "The Economic Impact on Citizens and Authorized Immigrants of Mass Deportation," University of New Hampshire Carsey School of Public Policy, August 29, 2024, <https://carsey.unh.edu/sites/default/files/media/2024-08/economic-impact-mass-deportation-lit-review.pdf> (accessed November 26, 2024).

⁴ If one million individuals were deported annually over a decade, costs could soar to nearly one trillion. These costs would include expanding detention facilities and the complex logistics to carry out these operations.

or work before these children reach the age of 18. These impacts could reduce the chances they improve their economic status and excel in their educational studies, and could have serious consequences for their mental and physical health.^{xxi}

Studies on the negative impacts of these conditions on the educational attainment of these children illustrate this point. A 2018 study that surveyed 3,500 educators⁵ during a period of expanded interior enforcement found:

- Sixty-eight percent of the respondents reported increased absenteeism among children in immigrant families, largely based on fears that immigration authorities would detain them near schools.
- Ninety percent also said they had observed emotional and behavioral problems in these children.⁶
- Finally, the educators noted a decline in their students' parental involvement, which is essential for better academic performance.^{xxii}

The anxiety, absences, or sudden disappearances of these students would ripple through our education system, causing widespread disruption in classrooms even for students who aren't the direct targets of deportations. As children stay home out of fear or are removed along with their parents, the mental health and academic success of both immigrant and native-born students would be put at risk. Studies demonstrate that local immigration enforcement raids and increased collaboration between federal immigration authorities and local law enforcement increase chronic student absenteeism and displacing of students, harming students' future academic success.^{xxiii}

Mass Deportations Will Lead to Widespread Injustice

Mass deportations risk escalating civil rights violations with law enforcement targeting more individuals based on their race, ethnicity, language, or appearance—a threat to our country's values of fairness and equal justice under the law that would have an outsized impact on Hispanics and communities of color.

⁵ Gándara, Patricia and Jongyeon Ea, "U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools," UCLA Civil Rights Project, February 28, 2018, <https://www.civilrightsproject.ucla.edu/research/k-12-education/immigration-immigrant-students/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools/Immigration-enforcement-on-schools-093018.pdf> (accessed November 27, 2024).

⁶ A 2019 UnidosUS study that surveyed 92 educators found similar results. 92 percent of respondents reported their students expressing fear over experiencing immigration enforcement. 92 percent also observed immigration enforcement concerns impacted their overall classroom climate, directly and indirectly affecting their students' ability to learn. Finally, 81 percent noticed a decline in their students' academic performance due these concerns. Ruskin, Emily, "A Generation at Risk: The Impact of Immigration Enforcement on UnidosUS-Affiliated Classrooms and Educators," UnidosUS, March 6, 2020, <https://unidosus.org/publications/2024-a-generation-at-risk-the-impact-of-immigration-enforcement-on-unidosus-affiliated-classrooms-and-educators/> (accessed November 24, 2024).

It is important to clarify what mass deportations will mean for American communities writ large. As the detention and deportation of undocumented individuals ramp up, the government will inevitably target, roundup, and harass more U.S. citizens, including the U.S. citizen children in mixed-status families targeted for removal. The likelihood that authorities will justify these abuses, or worse, deportations, of U.S. citizens under the guise of enforcing immigration laws means citizens will have limited means to pursue justice against these violations. This scenario creates a dangerous opening for abuses of federal power at all levels.⁷

The experience of the Tennessee Immigrant and Refugees Rights Coalition (TIRRC), one of UnidosUS's affiliates, serves as a potent example of the way expanded enforcement undermines our constitutional rights. In April 2018, immigration authorities raided a meatpacking plant in Bean Station, Tennessee, detaining 97 individuals in a worksite raid that was one of the largest since the mid-2000s. Immigration authorities detained individuals who looked Latino without regard to their citizenship status or documentation, which served as the basis of a lawsuit co-filed by TIRRC given the raid's violation of the Equal Protection Clause of the Fifth Amendment.^{xxiv} The courts ultimately approved a 1 million dollar settlement in favor of the workers.^{xxv}

Targeting Latino and immigrant communities will also lead to fewer reports of crime, making us all less safe. Between 2016 and 2018, for instance, reports from cities such as Houston, Dallas, Los Angeles, and Miami, noted Latinos were reporting fewer crimes due to fears of interacting with federal immigration authorities.^{xxvi} A 2018 survey on this topic found that 60.8 percent of the respondents said they were "less likely to report a crime they witnessed," while 42.9 percent said they were "less likely to report being a victim of a crime."^{xxvii} Police departments in Houston and Miami also said this decrease in crime reporting made it harder to combat crime, showing indiscriminate immigration enforcement will make it harder for local authorities to keep our cities safe.^{xxviii}

Conclusion: Legalization Is the Right Path Forward

UnidosUS's polling consistently shows that Latino voters strongly prefer providing an earned path to citizenship for the long-residing undocumented over mass deportations.^{xxix} They support a

⁷ New laws that require local law enforcement to detain suspected undocumented individuals increase the chances police will commit similar offenses, a scenario that occurred with Arizona's SB 1070, the notorious "show me your papers law" that allowed local law enforcement to detain individuals based on their appearances. Immigration Legal Resource Center, "Criminalizing Immigration: The Influence of SB 4, Texas's Regressive State Deportation Law," Immigration Legal Resource Center, October 22, 2024, <https://www.ilrc.org/sb-4-criminalizing-immigration> (accessed November 27, 2024); American Civil Liberties Union, "SB 1070 at the Supreme Court: What's at Stake," American Civil Liberties Union, <https://www.aclu.org/sb-1070-supreme-court-whats-stake> (accessed November 28, 2024); Lacayo, A. Elena, "One Year Later: A Look at SB 1070 and Copycat Legislation," National Council of La Raza, April 18, 2021, https://unidosus.org/wp-content/uploads/2021/07/A_look_at_SB_1070.pdf (accessed November 27, 2024); National Council of La Raza, "Questions and Answers About the Boycott of Arizona," https://unidosus.org/wp-content/uploads/2021/07/AZ_NCLR_QA.pdf (accessed November 27, 2024).

balanced approach that would also bring order to the border by tackling drug traffickers and human smugglers operating in the U.S.-Mexico border, investing in technology to monitor the U.S.-Mexico border, and ensuring migrants can apply for asylum throughout the region. In short, Latinos want an approach that's firm, fair, free of cruelty, and makes the nation stronger.

Government-administered mass deportation, however, would destabilize the country, cause human suffering among a broad swath of American families, including those without immigrants, and undermine the economic vitality of the nation now and well into the future. We urge Congress to use its authority to protect children and families, defend our communities, and advance balanced border and immigration solutions that are in our national interest.

ⁱ UnidosUS, "UnidosUS," UnidosUS, <https://unidosus.org/> (accessed November 26, 2024).

ⁱⁱ UnidosUS, "Our Affiliates," UnidosUS, <https://unidosus.org/affiliates/> (accessed November 26, 2024).

ⁱⁱⁱ Kamasaki, Charles, *Immigration Reform: The Corpse That Will Not Die*, La Verge: Mandel Vilar Press, July 16, 2019; Gantz McKay, Emily, "The National Council of La Raza: The First 25 Years," National Council of La Raza, July 2, 1993, <https://unidosus.org/publications/1167-national-council-of-la-raza-the-first-25-years/> (accessed December 5, 2024).

^{iv} UnidosUS, "History of UnidosUS," UnidosUS, <https://unidosus.org/about/history/> (accessed December 5, 2024).

^v UnidosUS, "The Essential Role of Immigrant Workers in America," UnidosUS, May 11, 2021, <https://unidosus.org/publications/2159-the-essential-role-of-immigrant-workers-in-america/> (accessed December 6, 2024); UnidosUS, "We can't wait: Essential workers need a path to citizenship," UnidosUS, June 2, 2021, <https://unidosus.org/blog/2021/06/02/we-cant-wait-essential-workers-need-a-path-to-citizenship/> (accessed December 6, 2024).

^{vi} Guevara, Carlos, "Beyond the Border: Family Separation in the Trump Era," UnidosUS, March 2019, <https://unidosus.org/publications/1915-beyond-the-border-family-separation-in-the-trump-era/> (accessed November 26, 2024); Nicole Chávez, Suma Setty, Hannah Liu, and Wendy Cervantes, "Still At Risk: The Urgent Need to Address Immigration Enforcement's Harms to Children," UnidosUS and The Center for Law and Social Policy, June 2023, https://www.clasp.org/wp-content/uploads/2023/06/Still-at-risk_Full-report_v4.pdf (accessed December 5, 2024).

^{vii} Ramón, Cristobal and Gabrielle Berger, "The Economic Costs of Mass Deportations of Long-Time Residents," UnidosUS, December 6, 2024, <https://unidosus.org/blog/2024/12/06/the-economic-costs-of-mass-deportations-of-long-time-residents/> (accessed December 6, 2024); Ramón, Cristobal and Viktor Oláh, "The Economic Costs of Pursuing Hardline State Immigration Policies," UnidosUS, November 21, 2024, <https://unidosus.org/publications/the-economic-costs-of-pursuing-hardline-state-immigration-policies-how-expanded-immigration-enforcement-undermined-arizona-and-floridas-economy/> (accessed December 6, 2024).

^{viii} Krogstad, Jens Manuel, Mark Hugo Lopez and Jeffrey S. Passel, "A majority of Americans say immigrants mostly fill jobs U.S. citizens do not want," Pew Research Center, June 10, 2024, <https://www.pewresearch.org/short-reads/2020/06/10/a-majority-of-americans-say-immigrants-mostly-fill-jobs-u-s-citizens-do-not-want/> (accessed November 26, 2024).

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World Relief Statement for the Record

U.S. Senate Committee on the Judiciary Hearing

"How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy"

December 10, 2024

Chairman Durbin, Ranking Member Graham and Members of the Committee,

World Relief is a global Christian humanitarian organization that partners with local churches and communities to develop sustainable, locally-driven solutions to some of our world's most urgent problems. We are grateful for the opportunity to submit this statement for the record.

On behalf of the millions of individuals we serve in the U.S. and around the world, we write to express our concern about the profound consequences mass deportations would have on families and individuals. As an organization that partners with local churches and other partners, we witness daily the critical role immigrants play in strengthening families, enriching communities, and contributing to the broader economy.

The Impact on Families

In 2018, when President Trump's first administration enacted a "zero tolerance" policy that ultimately separated several thousand children from their parents at the U.S.-Mexico border, polls found that most evangelical Christians were opposed – and vocal opposition to this policy from evangelical Christians, in particular, helped lead to its ultimate termination. Now, with the potential for family separation on a much larger scale, is another timely moment for Christians to speak up.

President-elect Trump has pledged to carry out "the largest deportation in U.S. history." While he has largely emphasized the need to deport those convicted of violent crimes, the reality is that, if his administration seeks to deport as many individuals as the president-elect has cited, the vast majority of immigrants at risk of deportation would be individuals without any criminal conviction who have been present in the U.S. for at least a decade.

He has also pledged to withdraw protections from certain immigrants who are currently in the country lawfully and initiate deportations. A deportation program of this scale would



not only harm the economy but could jeopardize family unity, including for many of the 4 to 5 million U.S. citizen minors who have a parent who is undocumented, since the U.S. government cannot lawfully remove U.S. citizens.

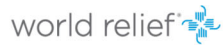
The scale and speed of this mass deportation will be limited, however, by the amount of resources appropriated by the U.S. Congress. **We urge lawmakers to prioritize solutions that would improve border security and respect the rule of law but that would not separate families.**

Mass deportations threaten the fabric of countless American families. Many immigrants targeted for deportation are deeply integrated into their communities and churches, raising U.S.-born children, caring for aging relatives, and supporting their households through employment and community engagement. Deportation disrupts these family units, leaving children without parents, creating economic instability, and inflicting long-term psychological trauma on separated family members. **As a nation that values the sanctity of family, we must recognize that mass deportations conflict with our shared commitment to protecting the most vulnerable among us.**

The Unique Plight of Afghan Evacuees

Among the immigrant populations potentially at risk of deportation are many who are currently lawfully present with parole, Temporary Protected Status or other temporary immigration legal protections that could be terminated by the executive branch without congressional involvement. That could include tens of thousands of Afghans, many of whom were evacuated to the United States after risking their lives to assist U.S. forces during two decades of conflict. These individuals and their families now face an uncertain future, as their temporary immigration status leaves them vulnerable to deportation unless Congress acts to provide a pathway to permanent legal status. President-elect Trump has not expressed that Afghan allies whose Temporary Protected Status or parole status ends would be exempted from deportation efforts.

The loss of these individuals would not only break families apart but also dishonor the promises made to our Afghan allies. Afghans represent more than personal stories of sacrifice; they symbolize the U.S. commitment to those who stood with us in times of war. Their integration into American society is not only a moral obligation but a reflection of our national character. Furthermore, if we fail to keep our promises to these allies, it could imperil future U.S. military efforts overseas, inhibiting our military's ability to build trust with local allies in future missions.



Recommendations

1. **Enact Policies That Prioritize Family Unity:** Immigration policies must prioritize keeping families together. Congress and the administration should expand access to legal avenues that protect family units, including pursuing permanent legal status options for those who currently rely upon Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) programs.
2. **Pass the Afghan Adjustment Act:** Congress must act swiftly to provide a pathway to permanent residency for Afghan evacuees, ensuring they can remain in the United States without fear of deportation and continue their contributions to our communities.
3. **Establish Humane Alternatives to Mass Deportations:** World Relief urges the adoption of immigration enforcement policies that balance national security and the dignity of individuals. Mass deportations are a blunt instrument that inflict unnecessary harm on families and communities while undermining America's reputation as a global leader in humanitarian protection. While individuals who have committed violent crimes and present a threat to public safety should be removed, undocumented immigrants who have not committed serious offenses should have the opportunity to make restitution for their violation of an immigration law through the payment of a fine or other measures that would keep families together.

Conclusion

The consequences of mass deportations are severe and far-reaching. They disrupt families, harm vulnerable individuals, and erode the values that define our nation. As policymakers, you have the opportunity to safeguard the integrity of American families and uphold our obligations to those who have served alongside us. World Relief stands ready to work with you to advance policies that reflect the dignity of every individual and the importance of family unity.

Thank you for your attention to this critical matter.

Sincerely,

Myal Greene
President / CEO
World Relief



**Statement for the Record
U.S. Senate Committee on the Judiciary
“How Mass Deportations Will Separate American Families, Harm Our Armed Forces,
and Devastate Our Economy”
December 10, 2024**

Chairman Durbin, Ranking Member Graham, and honorable members of the Senate Committee on the Judiciary, thank you for the opportunity to provide written testimony for the hearing “How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy.” Children’s Defense Fund is a national nonprofit advocacy organization dedicated to building community so young people grow up with dignity, hope, and joy. Established in 1999, Children’s Defense Fund-Texas (CDF-TX) has connected more than one million children and youth to affordable health care, supported Texas youth in pursuing education and personal growth, and advocated for resources that nurture the next generation of leaders. Today, we advocate for policies benefiting Texas families, provide essential resources, and amplify the voices of youth, families, and communities. We believe that every child deserves a safe passage to adulthood with the help of caring families and communities.

CDF-TX strongly opposes the policy of mass deportations proposed by the incoming presidential administration. Based on our expertise working at the intersection of immigration policy and child well-being, we urge Congress to oppose mass deportation efforts. Such efforts would result in family separations on an unprecedented scale, causing irreparable psychological harm that compromises millions of children’s lifelong ability to thrive psychologically, socially, and economically. Mass deportations would negatively impact all Americans by damaging our economy and our social fabric, robbing our communities of millions of teachers, co-workers, classmates, caregivers, entrepreneurs, homeowners, neighbors, friends, and relatives. However, the immediate and long-term harms of mass deportations would disproportionately be borne by communities of color and by Black and Brown children in particular.

As of 2022, roughly 11 million people were living in the United States who “lacked permanent legal status and faced the possibility of removal.”¹ Additionally, between January 2023 and April 2024, the Department of Homeland Security released “an additional 2.3 million people who have crossed the southern U.S. border without legal

¹ American Immigration Council. “Mass Deportation: Devastating Costs to America, Its Budget and Economy.” Oct. 2024, p. 1, www.americanimmigrationcouncil.org/research/mass-deportation. Accessed 19 Dec. 2024.

immigration status.”² Taking into account “the expenses associated with arrest, detention, legal processing, and removal,” the American Immigration Council estimates that the cost of removing these roughly 13.3 million immigrants in a “one-time mass deportation operation” would be at least \$315 billion.³ Based on American Community Survey (ACS) data and publicly available information about current immigration enforcement costs, a longer-term operation in which one million immigrants are deported each year would cost even more: an average of \$88 billion annually, for a total of \$967.9 billion over more than 10 years.⁴

Mass deportations would also have devastating impacts on the U.S. economy through reduced tax revenues and labor shocks in key industries such as “construction, agriculture, and the hospitality sector.”⁵ Undocumented immigrant households paid nearly \$47 billion in federal taxes and more than \$29 billion in state and local taxes in 2022 alone, and nearly 14% of workers in the construction industry are undocumented.⁶ The economic disruptions caused by the sudden absence of undocumented immigrants from our nation’s workforce would likely worsen the housing affordability crisis,⁷ and could cause job loss for hundreds of thousands of workers born in the U.S.⁸

Yet, as staggering as these numbers are, they fail to capture the full cost of mass deportations to our country. CDF-TX is most concerned about the human costs of mass deportation that will be borne by children living in immigrant and mixed-status families (families whose members include individuals with different citizenship or immigration statuses). Should these children be separated from their parents or other family members through deportations, that trauma will ripple through every area of their lives and reverberate through future generations of their families.

Across the U.S., an estimated 5.1 million U.S. citizen children live with an undocumented family member.⁹ More than one million of those children are in Texas, where 12.5% of all U.S. citizen children live with at least one undocumented parent.¹⁰ As of 2022, 47.2% of all undocumented immigrants in the U.S. lived in just three states: California, Texas, and Florida.¹¹ Therefore, the psychological, social, and economic impact of mass deportations

² American Immigration Council, *supra* note 1 at p. 1.

³ *Ibid.*

⁴ *Ibid* at p. 1-2.

⁵ *Ibid* at p. 3.

⁶ *Ibid.*

⁷ Chen, Zhao. “The Potential Impact of Immigration Policies on Housing.” *Redfin Real Estate News*, 21 Nov. 2024, www.redfin.com/news/impact-immigration-policy-housing/. Accessed 19 Dec. 2024.

⁸ American Immigration Council, *supra* note 1 at p. 3.

⁹ *Ibid.*

¹⁰ “Immigrants in Texas.” *American Immigration Council*, Aug. 2024, map.americanimmigrationcouncil.org/locations/texas/. Accessed 19 Dec. 2024.

¹¹ American Immigration Council, *supra* note 1 at p. 5.

will disproportionately fall on these states, where one out of every 20 residents could be deported..¹²

For children in immigrant families, even the threat of immigration enforcement can have devastating effects that begin before birth and influence lifelong health, education, and earnings outcomes. Research has linked heightened immigration enforcement to decreased use of prenatal care for immigrant mothers and declines in birth weight for their babies.¹³ Fear of immigration-related consequences also deters immigrant families in Texas from accessing vital nutrition support programs and causes them to go without health insurance coverage through Medicaid and CHIP. In a qualitative study “of 32 geographically diverse organizations in Texas,” CDF-TX found that between 2017 and 2019, anti-immigrant policies caused many mixed-status families to “fear enrolling even their citizen children in federal benefits programs for which they qualify.”¹⁴

During the previous Trump administration, the Center for Law and Social Policy documented that “children as young as three [were] deeply aware of the Trump administration’s anti-immigrant sentiment and the possibility of losing a parent.”¹⁵ Although too young to comprehend the details of the policies threatening their families, these children expressed fear of having their parents taken away and demonstrated their fear through behaviors “such as increased aggression, separation anxiety, and withdrawal from their environments.”¹⁶ Interviews conducted with child care workers, educators, and service providers across six states showed that “pervasive fear [was] not limited to children in mixed-status families but extend[ed] to children whose parents have lawful immigration status—some even children of U.S. citizens.”¹⁷

If mass deportations are carried out, four million mixed-status families across our country could be torn apart..¹⁸ In the past, Immigration and Customs Enforcement (ICE) has frequently arrested and deported immigrant parents without putting in place any plan for the care of their children, placing these children in immediate danger..¹⁹ Aside from the

¹² American Immigration Council, *supra* note 1 at p. 5.

¹³ Tome R, Rangel MA, Gibson-Davis CM, Bellows L. “Heightened immigration enforcement impacts US citizens’ birth outcomes: Evidence from early ICE interventions in North Carolina.” *PLoS ONE*, vol.16, no. 2: e0245020, 3 Feb. 2021. <https://doi.org/10.1371/journal.pone.0245020>. Accessed 19 Dec. 2024.

¹⁴ Anderson, Cheasty. “Public Charge and Private Dilemmas: Key Challenges and Best Practices for Fighting the Chilling Effect in Texas, 2017-2019.” Children’s Defense Fund-Texas, Nov. 2020, p. 1, Bellaire, TX, www.childrensdefense.org/wp-content/uploads/2024/10/Public-Charge-and-Private-Dilemmas-TX_FINAL-020.pdf. Accessed 19 Dec. 2024.

¹⁵ Cervantes, Wendy, Rebecca Ullrich, and Hannah Matthews, “Our Children’s Fear: Immigration Policy’s Effects on Young Children.” CLASP, Mar. 2018, p. 2, Washington, D.C., www.clasp.org/sites/default/files/publications/2018/03/2018_ourchildrensfears.pdf. Accessed 19 Dec. 2024.

¹⁶ *Ibid.*

¹⁷ *Ibid* at p. 8.

¹⁸ American Immigration Council, *supra* note 1 at p. 5.

¹⁹ Cervantes, Wendy, Rebecca Ullrich, and Vanessa Meraz. “The Day That ICE Came: How Worksite Raids Are Once Again Harming Children and Families.” CLASP, 2020, pp. 5-6, Washington, D.C., www.clasp.org/wp-content/uploads/2022/01/CLASP_Worksite_Raid_Report_final4.pdf. Accessed 19 Dec. 2024.

obvious risks to physical health and safety that arise when a child is left without adult supervision or guardianship in the wake of their caregiver's arrest, children also suffer severe psychological harm from losing a primary caregiver.²⁰ Research has repeatedly shown the "far reaching effects of these separations into adulthood, including increased risk for mental health problems, poor social functioning, insecure attachment, disrupted stress reactivity, and mortality."²¹ The Society for Community Research and Action, Division 27 of American Psychological Association, notes that "[f]ollowing deportation of a family member, children demonstrate numerous emotional and behavioral challenges, such as eating and sleeping changes, anxiety, sadness, anger, and withdrawal."²²

Deportation of a parent has also been linked to developmental delays, decreased household income, and an increased risk of poverty.²³ Children whose families are separated could face hunger, housing instability, and homelessness as a result of losing their breadwinners.²⁴ Moreover, after a parent is detained or deported, children's grades and school attendance often drop, and older children may be forced to drop out of school altogether, either to work or to care for younger siblings.²⁵ This negatively impacts their future job prospects and their ability to participate in society or support themselves financially. Family separation impacts every area of a child's life.

Every child deserves the opportunity to grow up in a family and a community where their basic needs are met and where they experience safety, belonging, and care. We urge all members of Congress to defend the well-being of our nation's children and ensure their safe passage to adulthood, regardless of immigration status, by standing boldly against mass deportations.

Any questions should be directed to Trudy Taylor Smith, Esq., Senior Administrator of Policy and Advocacy, at ttaylorsmith@childrensdefense.org.

²⁰ Bouza, Johayra, et al. "The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities." Society for Research in Child Development, 20 June 2018, www.srcd.org/briefs-fact-sheets/the-science-is-clear. Accessed 19 Dec. 2024.

²¹ *Ibid.*

²² Langhout, Regina Day et al. "Statement on the Effects of Deportation and Forced Separation on Immigrants, their Families, and Communities: A Policy Statement by the Society for Community Research and Action: Division 27 of the American Psychological Association." *American Journal of Community Psychology*, vol. 62, no. 1-2, Sept. 2018, pp. 3-12. *Wiley Online Library*, <https://doi.org/10.1002/ajcp.12256>. Accessed 19 Dec. 2024.

²³ "Afterthoughts: The Children of Deported Parents." *Children Thrive Action Network*, 13 June 2024. childrenthriveaction.org/2024/06/afterthoughts-the-children-of-deported-parents/. Accessed 19 Dec. 2024.

²⁴ American Immigration Council, *supra* note 1 at p. 3.

²⁵ Children Thrive Action Network, 13 June 2024. "Afterthoughts: The Children of Deported Parents." childrenthriveaction.org/2024/06/afterthoughts-the-children-of-deported-parents/. Accessed 19 Dec. 2024.