

# BIDEN'S BORDER BETRAYAL: CRIMINAL ALIENS IN AMERICA

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## HEARING BEFORE THE SUBCOMMITTEE ON BORDER SECURITY AND IMMIGRATION OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED NINETEENTH CONGRESS

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## **BIDEN'S BORDER BETRAYAL: CRIMINAL ALIENS IN AMERICA**

**TUESDAY, JULY 22, 2025**

UNITED STATES SENATE,  
SUBCOMMITTEE ON BORDER SECURITY AND IMMIGRATION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice at 2:54 p.m., in Room 106, Dirksen Senate Office Building, Hon. John Cornyn, Chair of the Subcommittee, presiding.

Present: Senators Cornyn [presiding], Graham, Cruz, Moody, Klobuchar, Hirono, and Padilla.

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

Chair CORNYN. The Senate Subcommittee on Border Security and Immigration will come to order. The purpose of today's hearing is to examine the devastation that criminal aliens have caused in communities across the United States. In particular, we aim to show the American people how the realities on the ground are very different from the narrative pedaled by the mainstream media.

Rather than truthfully and honestly reporting the facts, media outlets have spread misinformation, allowing harmful, false rhetoric to dominate the airways. The result of these falsehoods is that radical far left activists have taken to the street, and targeted, and demonized the very people who are charged with enforcing the laws that Congress has passed, and that would be ICE immigration enforcement officers.

[Poster is displayed.]

The first false narrative I want to address is a claim that illegal aliens are not criminals, but law-abiding individuals. Neither the Democrats nor the media are willing to tell the public the truth that the moment an alien illegally enters the United States, they have committed a crime, a crime under the U.S. law to enter the U.S. legally. America is a country of laws, and we expect anyone who wishes to come to our country to obey those laws.

Another false narrative pedaled by the far left is that illegal aliens are not receiving due process when they're arrested by Immigration and Customs Enforcement. This naturally begs the question; what sort of process are these individuals actually due? The idea that someone could break our laws, enter our country illegally, and then be entitled to all the rights and privileges of an American citizen is a little far-fetched, to be sure.

While the Fifth Amendment to the United States Constitution applies to all individuals within the United States, illegal aliens are not entitled to the same level of due process as American citizens. The fact of the matter is that by the time any alien has received an order of removal, they have had all the due process they're owed under the law.

Most aliens with final orders of removal have been in the immigration system for almost a decade. Many have had the opportunity to have their day in court, the very essence of due process, but they neglected to show up.

Another false narrative is that ICE is not targeting the worst of the worst criminals. But the fact of the matter is that as we speak, there are 291,141 criminal aliens in the United States today who have final orders of removal.

Just this morning in the Senate Judiciary Committee, a comment was made that ICE is targeting gardeners. Well, 291,141 criminal aliens who are under final orders of removal are still in the United States for this fiscal year alone. Two hundred thirteen thousand and two hundred seventy-nine, criminal aliens with final orders of removal already have convictions, while 78,546 have pending criminal charges.

Even more disturbing is the fact that 282,194 of these criminal aliens are still roaming free and not in ICE custody. Yet, there are many criminal aliens in the United States continuing to commit heinous crimes even to this day. Some of these criminals are part of transnational criminal networks and organized gangs. All you need to do is look at the posters in this room to see some of the worst criminals ICE has apprehended recently; murderers, rapists, pedophiles, and sex traffickers.

One of our witnesses here today, Sheriff Roy Boyd, can attest to the types of crimes he sees even in Goliad, the Texas County with a population of less than 8,000. The Friday before the July 4th weekend, Sheriff Boyd's officers arrested a 29-year-old Iranian national who entered the United States illegally, not once, but twice.

The first time, this criminal committed a violent, aggravated felony in Indiana. And while he was charged for the crime, he received a suspended sentence in exchange for his removal from the United States. But his crime spree did not end there. Despite being deported, he returned to the United States, again, illegally. And what did he do when he came back, he murdered a man in Galveston, Texas, a murder that was caught on video. Thankfully, he was arrested less than 12 hours later with the murder weapon still in his possession. This crime should never have happened.

I want to remind my colleagues on the other side of the aisle that there was a time in the not-so-distant past when they agreed that criminal aliens should be deported. But it seems like amnesia has set in, especially because we now happen to have a President in office who's restored the rule of law and now requires enforcement of existing laws.

Recall the deporter-in-chief that would be President Obama? And who was in charge of immigration enforcement during President Obama's term in office, none other than Tom Homan, President Trump's current border czar. In fact, Tom Homan received a Presi-

dential Rank Award during the Obama administration for his service as the head of ICE Enforcement and Removal Operations.

The laws haven't changed since President Obama was in office, only the party of the President in office has changed. And today, we have a pro-enforcement President who was elected in a decisive victory, winning the electoral college, the popular vote, in every single swing State. He was elected in part, in large part, I'd submit, because of his pro-immigration enforcement provisions, something 54 percent of Americans support, including Hispanic Americans in my State, many of whose families have come here lawfully and followed all the rules.

American voters know full well that deterrence is an important part of immigration enforcement and preventing the flow of criminal aliens into the United States, which means swift apprehension, detention, and deportation. And that works. The Congress just recently passed what's been called the One Big Beautiful Bill that includes billions of additional dollars for ICE detention facilities and for more personnel to make sure that our laws on the books that Congress passed and that were signed into law are actually enforced.

The State of Florida has stepped up to the plate recently helping the administration to open a detention facility that's come to be known as Alligator Alcatraz. I'm hopeful that other States will step up to help in similar ways. If we could find a way to make something like this work in Texas, I would strongly support it, and I'd encourage our Governor as well as Secretary Noem, to explore the possibility of locating future detention facilities in Texas.

The far left activists and the mainstream media who support their efforts continue to fan the flame with their rhetoric and misinformation. This is done with one goal in mind; to do anything and everything to undermine President Trump's domestic agenda, just as they did during his first term.

And finally, I'd like to end my remarks with a reminder. We're here today to remind the public of the real tragedy of President Biden's open border policies; the hundreds of victims of criminal, illegal aliens, crimes that could have been avoided if the laws on the books had simply been enforced.

That's why we have two wonderful angel moms here today. First, Marie Vega, the mother of slain border agent Javier Vega, Jr., who was killed August 3, 2014. Javier's angelversary, as Mrs. Vega calls the date of his death, is less than 2 weeks away. Javier died nearly 11 years ago, but the fact remains, he was murdered by illegal aliens who never should have been in the United States in the first place.

I was proud to honor Javier and work with the National Border Patrol Council in the Rio Grande Valley Border Patrol sector to have a Border Patrol checkpoint named in his honor.

I also want to welcome Tammy Nobles, the mother of Kayla Hamilton. This is a particularly difficult week for her because Kayla's birthday is July 24, this Thursday, and the anniversary of her death is July 27, this upcoming Sunday. And I'm grateful that she's willing to join us here today and tell her story.

Ms. Noble said the most joyful day for her was when her daughter was born, and the saddest day for her is her daughter's heaven

date, July 27. Kayla was viciously murdered by an MS-13 gang member who originally entered the United States as an unaccompanied minor and was released into the custody of an unvetted sponsor. We're honored to have both Marie and Tammy with us today to share their stories, and tell about the loss of their loved ones, and how it continues to impact their lives today.

I also want to welcome Victor Avila. Victor knows all too well the price that our law enforcement officers pay just to do their jobs. Victor and his partner were shot by gang members. Victor was seriously wounded and his partner lost his life on that day.

I intend to introduce a bill in the Senate to honor Ms. Noble's daughter, Kayla Hamilton. The bill will require that HHS conduct mandatory checks on all unaccompanied minors, and bar criminal alien sponsors from being allowed to assume custody of such children. A similar bill was introduced by Representative Russell Fry in the House.

You may ask, why is it necessary to pass a law to get Health and Human Services to do mandatory checks on unaccompanied minors and to bar criminal alien sponsors? Well, that's because laws barring that do not currently exist, and we need to make sure that this can never happen again.

And now, I yield to Ranking Member Padilla to give his opening statement.

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

Senator PADILLA. Thank you, Mr. Chairman. Good afternoon, everybody, and thank you all for being here.

You know, prior to the start of this Congress, for nearly 4 years, I served as Chair of the Subcommittee within Ranking Member Cornyn. And now, our roles have been reversed. So, I'm happy to be here as a Ranking Member under Chairman Cornyn's leadership here.

For 4 years, though, when I was Chair, we held hearings examining everything; from immigrants serving in the military and in our healthcare system, to America's Refugees Admissions Program, and the need to better resource our overwhelmed immigration courts. So, today, 6 months after President Biden has left office, we hear Republicans continue to talk about how Donald Trump has solved our border crisis.

But you won't be surprised to learn that they're also focusing on. Guess what? The Biden border betrayal, that's what they call it. And I suspect that years down the road, they'll continue to point the finger at President Biden. But here's what Republicans won't be saying, that if Donald Trump and Republicans were truly focused on just targeting violent criminals, Democrats would have no objections. I know I've been saying it. If that's really what was going on, there would be no discussion. There would be no debate, there would be no disagreement.

You also won't hear Republicans share the data. The fact that a large number of undocumented immigrants in the United States actually entered the United States lawfully, and are only currently undocumented because they overstayed their visa, or maybe they entered the country following the rules of the temporary protected

status programs outlined by prior administrations, but protections that have been removed, churning a legal immigrant into an undocumented immigrant. You won't hear them share those facts.

Six months into Donald Trump's second term as President, it is increasingly clear who the administration is going after. Just look at how they're doing it. They're raiding workplaces and staking out court hearings. They're going after farmers and farm workers, students and families, and business owners, many of whom other than being undocumented, do not have any violent criminal record and many who have been living here contributing to the success of their communities and the country for years and years, if not decades.

So, none of what we're seeing happening around the country or very little is actually targeting criminals. And I'm not asking you to take my word for it. It shouldn't be hard, but it is hard for some to take my word for it. Let's look at the administration's own data. Less than 10 percent of immigrants who ICE has taken into custody have serious criminal convictions, less than 10 percent. Again, don't just take my word for it. This is administration's data.

[Poster is displayed.]

In fact, compared to the first Trump administration, these Donald Trump and Stephen Miller quotas have led to a 500 percent increase in the number of arrests of non-citizens without criminal records. And as a Federal judge ruled less than 2 weeks ago, there is, "a mountain of evidence," showing Federal agents are illegally profiling and arresting people based on their race, accents, or work.

So, no, let's not pretend that this is only about cracking down on violent criminals. This is increasingly about sending armored vehicles, and agents, and tactical gear into communities to intimidate and sow fear, not to protect. It should also, at some point, ask the questions about where the resources are being redirected from to escalate the immigration enforcement activities.

Because the fact of the matter is whether they're being diverted elsewhere from elsewhere within the Department of Homeland Security, from the Department of Defense, the Department of Justice, they're being taken away from other critical missions, missions that are critical to our Nation's security, not just white-collar crime. We can have a whole session just about that. How about fentanyl task forces that are now being under-resourced because of these ill-conceived strategies?

Now, all this is not just morally wrong, it's also bad for our economy that people being targeted are often the people who are harvesting our fruit and vegetables, who work in meat packing plants or in the service industry. The very same group of people who just a few years ago at the outset of the COVID pandemic, Donald Trump declared essential. And the fact of the matter is Donald Trump has simply gone too far and the public is starting to turn against him.

A Gallup poll published on July 11, just a couple weeks ago, showed a dramatic swing in public opinion. In public awareness and understanding is how it should read. In just the last year, the percent of Americans who think immigration is a "good thing" for the country has jumped 15 points to a record high 79 percent. At the same time, Americans who want to see immigration decreased, dropped from 55 to 30 percent. Americans across the country are

rejecting the cruel and indiscriminate treatment of the neighbors they've known for decades.

[Poster is displayed.]

Yet, earlier this month, Republicans in Congress rubber stamped more than \$150 billion to fund this administration's disastrous enforcement agenda. One hundred and fifty billion dollars not to help hire additional asylum officers that we so desperately need to process the cases and meet the demand on our system. Not \$150 billion to ensure that unaccompanied children, for example, some as young as two or 3 years old, have legal counsel as they face a judge on their own with their own future on the line.

And not \$150 billion to hire additional immigration judges, even as more and more people are detained and the administration is firing immigration judges at alarming rates. Instead, this is additional taxpayer dollars to ramp up the mass deportation raids that have been so poorly executed. They're sweeping up United States citizens, including veterans.

And so, I do ask why are we here? What more do you want? It's clear why we're here today. We're here because Donald Trump is scapegoating immigrants. It's always been his outlet. It's long been his way to distract from a massively unpopular agenda like making the largest cuts to Medicaid in history in order to pay for tax cuts for the rich, and to make ICE's budget larger than the budget of the FBI, the ATF, the DEA, the U.S. Marshals Service, and the Bureau of Prisons combined.

This is their "break glass in case of emergency" option when public sentiment turns against them and their agenda hasn't been only about targeting violent criminals, and it's certainly not about fixing or modernizing our immigration system. So, Democrats are glad to be here today to help set the record straight.

My message to the Trump administration is this; the numbers don't back you up. The heartbreaking stories we hear on a daily basis do not back you up, and the American public doesn't back you up. So, I urge this Subcommittee, and the Committee as a whole, to please, let's get back to the real work of reforming our immigration system.

And with that, Mr. Chair, if can introduce the Minority witnesses.

Chair CORNYN. Let me please ask all of the witnesses to stand, and I'll administer the oath, and we'll do the introductions. If you could raise your right hand and repeat after me.

[Witnesses are sworn in.]

Chair CORNYN. Let the record reflect the witnesses have all answered in the affirmative. Please be seated. I'll introduce the Majority witnesses, and then I'll turn it over to Senator Padilla.

Tammy Nobles, as you've heard, is the mother of Kayla Hamilton, who was murdered by Walter Javier Martinez, an illegal alien gang member who entered the United States as an unaccompanied alien child from El Salvador.

When Kayla was being murdered, she managed to call and left a voicemail on her boyfriend's phone. In the voicemail, you can hear the struggle going on in the background and Kayla could be heard crying. Martinez can be heard in the voicemail, hushing her and near the end, telling her, "I'm sorry," in Spanish while stran-

gling her with a phone cord. After Kayla was dead, Martinez tied her up and sexually assaulted her.

Kayla fought for her life that day. She had bruises up and down her arms, her fingers, and left side of her face, her back, and down her leg, and deep wounds to her neck from the cord.

Victor Avila is a retired ICE/Homeland Security Investigation Supervisory Special Agent. As an HSI special agent, Victor served on the border and is an accredited diplomat to Mexico, Spain, and Portugal. He advised those governments on complex and wide-ranging criminal investigations, including narcotics trafficking, arms trafficking, human trafficking, financial violations, commercial fraud, and counter terrorism.

While he was on official assignment to Mexico, Victor suffered multiple gunshot wounds and survived a violent ambush by the Mexican Los Zetas Cartel, where special agent Jaime Zapata tragically lost his life in the line of duty.

Marie Vega is the mother of former U.S. Marine and Border Patrol Agent, Javier Vega, Jr. On Sunday, August 3, 2014, Javier Vega was out with his family when two criminal illegal aliens ambushed him and tried to steal Javier's truck. The two aliens jumped out of the stolen vehicle they were driving and without hesitation or warning, began shooting at Javier and his family. The illegal aliens shot Javier in the back and his father in the chest in front of his minor children.

Andrew R. Arthur is a resident fellow in law and policy at the Center for Immigration Studies in Washington, DC. Arthur previously served as staff director for the U.S. House of Representatives Committee on Oversight and Government Reform, the National Security Subcommittee from January 2015 to September 2016, and was counsel for the U.S. House of Representative Committee on the Judiciary in Washington, DC from July 2001 to November 2006.

Sheriff Roy Boyd is the Sheriff of Goliad County, Texas. Goliad is a rural South Texas county with a population of around 1,000, situated about halfway between Houston and Laredo, along U.S. Highway 59. Sheriff Boyd has been a police officer for 31 years, and retired from the Victoria Police Department and the Victoria County Sheriff's Office prior to becoming sheriff of Goliad County. Sheriff Boyd has also worked as one of the leads on Texas's Operation Lone Star. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chairman. Before introducing the minority witnesses, I do want to take a moment to express my sympathies with Mrs. Vega and Ms. Nobles for your loss. And on behalf of all my Democratic colleagues, also reiterate that we've denounce violence, particularly violence against law enforcement. So, I just want to make sure we are clear where we stand on this side of the aisle.

First, I'd like to introduce Alejandro Barranco. Alejandro is a Marine veteran from Orange, California, an older brother to two active-duty Marines, and son to Narciso Barranco. Alejandro's father, Narciso, is an immigrant from Mexico who has lived in the United States for more than 30 years and has never committed a crime in the United States.

Today, Alejandro will testify about the violent and outrageous treatment his father experienced at the hands of Border Patrol agents and the betrayal that he feels as a veteran who proudly served his country. Thank you for being here.

Next, I'd like to introduce Deborah Fleischaker. Ms. Fleischaker has served in several career and political roles at the Department of Homeland Security as well as ICE, including as ICE's acting Chief of Staff. Ms. Fleischaker has also served as ICE's Assistant Director for Regulatory Affairs and Policy, and as DHS's Executive Secretary and acting DHS Chief Privacy and Chief FOIA Officer. Ms. Fleischaker will lean on her extensive experience and understanding of both DHS and ICE operations in her testimony today. Thank you.

And finally, I'd like to introduce retired Police Commander, Dr. Giovanni Veliz. Dr. Veliz served with the Minneapolis Police Department for over 30 years before retiring in 2023. As an officer, he worked with the Drug Enforcement Agency and the Federal Bureau of Investigation task forces, as well as the Minneapolis Police Department's Organized Crime Unit.

After immigrating from Ecuador and growing up in New York City, Dr. Veliz was the first immigrant to serve as a police lieutenant and commander in the Minneapolis Police Department. He'll testify about the importance of building bridges between law enforcement and immigrant communities from his professional and academic perspectives.

Thank you to all of the witnesses for being here today. Thank you, Mr. Chair.

Chair CORNYN. I know we're anticipating the attendance of Chairman Grassley here momentarily, but in the meantime, we'll hear opening statements from the witnesses. And Mr. Avila, can we start with you? And if you'll please keep your statement to 5 minutes, and then we will get through everybody, and then we can come back and ask some questions, have more of a discussion.

**STATEMENT OF VICTOR AVILA, RETIRED ICE/HSI  
SUPERVISORY SPECIAL AGENT, SOUTHLAKE, TEXAS**

Mr. AVILA. Good afternoon, Chairman, thank you so much for the invitation to be here today. Good afternoon, Senator Padilla. Good afternoon, to the panel members.

My name is Victor Avila. I'm a retired ICE/Homeland Security Investigation Supervisory Special Agent. HSI is responsible for investigating crimes involving immigration, trade, customs, and border security that threaten the security of the American homeland.

While serving with HSI, I personally led criminal investigations of human traffickers, drug smugglers, and violent criminals, many of whom were criminal, illegal aliens. During my tenure as a Federal officer, I served under three different administrations, and as an HSI special agent, I served on the border. Born and raised in El Paso, Texas.

And also, like you mentioned, as accredited diplomat in Mexico, Spain, and Portugal. I advise these governments on complex and wide-ranging criminal investigations including narcotics, trafficking, armed trafficking, human trafficking, financial violations, commercial fraud, and counter-terrorism.



You mentioned this, Senator. While on official assignment in Mexico, I suffered three gunshot wounds and survived by the grace of God after a violent ambush by Los Zetas Cartel, where my partner, Special Agent Jaime Zapata, tragically lost his life in the line of duty.

I have witnessed what a human being is capable to do to another, especially a child. As a subject matter expert in human trafficking investigations and victims identification, I tragically have seen things that I will not ever be able to take away from my head. I describe it as pure evil.

Drug trafficking, human trafficking, human smuggling are just a few crimes that illegal aliens are involved with. I have experienced the violence and the imminent threat that we face from not just the illegal aliens, many of who are associated with Mexican cartels.

What is happening today with our ICE officers and agents is unprecedented. The doxing of our men and women of ICE and accusing them of kidnapping when it's a lawful arrest, or disappearing people, simply must stop. They are upholding their oath and performing the scope of their duties.

Vilifying officers because some people disagree with the enforcement of the law or because it contradicts their ideology is just not acceptable. Thousands of police officers arrest people every single day and that officer is not singled out for doing their job. Why then are ICE officers being targeted? This, I believe, is politically driven issue.

How do we get here? The Biden administration opened the border utilizing illegal policy like the CBP One app and exploiting our asylum criteria and parole systems. The Biden administration was very successful in limiting the budget for ICE. They were successful at bringing the morale down in law enforcement, especially Border Patrol.

They were successful in having them lose their identity, stripped of their authority, tie their hands behind their backs to not do their jobs. The interior enforcement that you're seeing right now was almost non-existent, especially work site enforcement. They were silenced by the media.

The priority of ICE is the removal of criminal illegal aliens, those with existing criminal histories in the U.S. or their home country. However, there are illegals in the U.S. that were not properly vetted by the Biden administration. And although no criminal history is registered in our data bases, many are affiliated with a gang or cartel activity. Those caught as a collateral will also be processed for removal as well.

Illegal aliens detected and arrested by ICE are receiving due process. It's important to note that not all illegal aliens face the same removal proceedings. It depends how the illegal entered the U.S., where they entered, the country of origin, many, many different factors. Some illegals are subject to mandatory detention while others can be removed immediately, like visa overstays.

The illegals with final removal orders and their due process through an immigration court subject them to arrest and removal immediately. And just to be clear, ICE officers and HSI special agents do not require a warrant to conduct an arrest. Ninety-plus

percent of the arrests that I conducted in my career were warrantless.

It is important for Congress to engage with other countries for the removal process and establish memorandums of understandings, especially in Mexico and Central America. I think Congress has a vital role to better support the mission of U.S. Customs and Border Protection, CBP, ICE, and the role that they play every single day safeguarding our border.

We have many, many things to talk about that the Big Beautiful Bill will—you'll see a big difference coming very, very soon to augment their capacity. Thank you so much for your time. I look forward to your questions.

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

Chair CORNYN. Mr. Arthur.

**STATEMENT OF ANDREW R. ARTHUR, RESIDENT FELLOW,  
CENTER FOR IMMIGRATION STUDIES, WASHINGTON, DC**

Mr. ARTHUR. Thank you, Chairman Cornyn, and Ranking Member Padilla, and Members of the Subcommittee. Thank you for inviting me today to discuss this salient topic.

There's been a great deal of contention of late over ICE arrests of aliens in the interior. With 33 years of immigration experience as a prosecutor, congressional staffer, and immigration judge, I hope to put those arrests into context.

Some 300,000 aliens have been arrested in the interior under the second Trump administration according to DHS. That's more than the 113,500 aliens ICE arrested in Fiscal Year 2024, and the 170,600 ICE arrests in FY2023. And the agency is on track to make twice as many interior arrests this year as in FY2009, 298,000.

That said, as the Supreme Court noted in *INS v. Lopez-Mendoza*, a case addressing the legality of work site raids, the average immigration officer made 500 alien arrests per year in 1984, at a time when the unauthorized population was significantly smaller. If ICE were operating at that same pace today, the agency would've made roughly 3 million interior arrests since January.

According to DHS, 70 percent of the aliens ICE arrested in the last 6 months have criminal histories, either arrests or convictions. That's roughly equivalent to FY2024 when 72 percent of ICE interior arrests involve aliens with criminal histories, but much higher than the 43 percent criminal history arrest rate in FY2023.

Most of the ICE enforcement attention, both in Congress and in the media, has focused on what ICE refers to as "at-large arrests" at homes and in public places. When I was an INS trial attorney in California in the mid-1990's, there were few at-large arrests because most jurisdictions allowed immigration officers into their jails and other secure facilities to take custody of criminal aliens.

As the New York City criminal justice coordinator told the House Judiciary Committee, a hearing I staffed, in February, 2003, the NYPD cooperated, "with Federal authorities in investigating and apprehending aliens suspected of criminal activity."

As I note in my written testimony, that cooperation degraded in the mid-2010's as jurisdictions began implementing "sanctuary

policies” to impede ICE enforcement. Sanctuary policies only protect criminals, and if they were to end, ICE would likely be too busy processing criminals in local jails to perform many at-large arrests.

Because alienage isn’t a critical factor in most State and local arrests and prosecutions, there’s no way to know what percentage of the undocumented have criminal records. But what is known is that 100 percent of criminal aliens do have criminal records and the recidivism rate is high. A 2011 GAO study found that criminal aliens had, on average, seven separate arrests apiece. As most of those criminal aliens live in and prey on immigrant communities. Other immigrants are the ones harmed the most.

Sanctuary policies also forced ICE agents into the community to arrest criminal targets where the threat of violence resistance is higher, and where they often encounter other aliens here unlawfully, likely the key reason why the percentage of ICE arrests involving aliens with criminal histories isn’t higher.

Note also that all aliens, including criminals, are entitled to constitutional protections throughout the removal process, including due process law. The process due to those aliens, as Mr. Avila just noted, differs from what the Constitution accords to criminal defendants and is often less than that according to U.S. citizens. The Due Process Clause applies to all persons in the United States, but the Supreme Court has held, “The nature of that protection may vary dependent upon an alien’s status and circumstance.”

Finally, I’ll note that I was a congressional staffer on 9/11. Congress responded to those attacks by tightening the vetting process for aliens coming lawfully to protect Americans from criminals and other security threats. The hard-earned lessons of September 11 were ignored over the last 4 years as the last administration released millions of unvetted aliens into our communities, too many of whom have gone on to harm innocent victims here.

We have the most generous legal immigration system in the world, but American voters will only continue to support those policies if they are safe from criminal threats and know the laws will be enforced. That’s likely why 75 percent of respondents in the most recent Harvard/Harris Poll supported the current administration’s “efforts to deport criminals who are here illegally.”

In closing, thank you again, and I look forward to your questions.

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

Chair CORNYN. Thank you, Mr. Arthur. Sheriff Boyd.

**STATEMENT OF ROY BOYD, SHERIFF,  
GOLIAD COUNTY SHERIFF’S OFFICE, GOLIAD, TEXAS**

Mr. BOYD. Chairman Cornyn, and Members of the Senate Committee, thank you for having me here today. As you’ve stated, I’m the Sheriff of Goliad County, Texas. We’re a small rural county Sheriff’s office about halfway between Houston and Laredo in Highway 59. So, we’re on a major corridor for legitimate and illegitimate products going to and from the border.

I’ll get straight to the point. The border Biden policy has had the most significant negative impact on the safety and security of our communities in South Texas in my 31 years of law enforcement. As

an example, in Goliad County at the Sheriff's office prior to 2021, the Goliad County Sheriff's Office averaged 77 arrests per year. From January 2021 to date, we've averaged 413 arrests per year. That's a significant increase.

I looked in our records and found no records of smuggling of humans cases or engaging in organized criminal activity cases prior to January 2021 for our law enforcement agency. From 2021 to 2025, the Goliad County Sheriff's Office arrested 96 people for smuggling of humans and 126 for engaging in organized criminal activity. These kind of activities have skyrocketed throughout Texas as a result of Biden's open border policy. On top of that, we've turned over 145 illegal aliens to Border Patrol for processing and possible deportation.

But this policy has brought quite a few other things, including significant property damage. In South Texas, there have been thousands of events where smugglers have driven through fences and have caused much damage to private property tearing down fences. There are multiple ranches in South Texas that have over \$100,000 in fence damage per year as a result of this open border policy and the cartel incursions into South Texas.

Many rural houses have been abandoned out of fear of the cartel smugglers going through. There's been a drastic increase in the auto theft of pickup trucks throughout South Texas. Because what many people don't realize is that the smugglers are using stolen trucks. That takes tens of thousands of vehicles to get millions of people through South Texas every year. And those vehicles are stolen from Texans and used in this illicit trade.

Trespassing on private property has become a commonplace to the point where many of the ranches have been abandoned, where people fear being on them. In Goliad County alone, even though we're 180 miles from the border, in 2021, we discovered 16 cartel stash sites in our county. Those are just the ones we found by going out and looking. We had what was described by the Department of Homeland Security as the largest inland cartel stash site ever discovered in the United States of America.

But the property damage is just part of it. It's the physical and the psychological damage. And I will give you just a few examples starting in 2021. We have a lot of residents in rural South Texas with credible fear of the cartel smugglers coming through their property.

In April, 2021, a traffic stop in Goliad County led to the arrest of Brisa Santana. What we found was Ms. Santana had been recruited in a bar in Dallas by a gentleman from Mexico, and she had gone down to the border and picked up three girls who were all in their late teens, early 20's. And they were being told that they were bringing up being brought into the United States to be reunited with their family members who were already illegally here in the U.S.

But our investigation revealed that Ms. Santana had fake Social Security cards in her underwear when we got her to jail, led to further questioning. And what that investigation revealed was those three young ladies were considered "especials" and they were never going to be reunited with their families here. They were being

taken to Chinatown in Houston to be put in sex slavery, indentured servitude.

As you already pointed out, earlier this month, we caught the murderer in our county. We've dealt with a lot of different violence as a result of the Biden's open border policy. But I will leave you with this. For anyone who does not believe that these things are happening, I'm leave you with a quote from a letter I found in a sex slave house from a raid I did in Rockport, Texas.

The letter that I found there starts off with, "Dear daughter. In USA, we sometimes have something called a slave boy or a slave girl. We call it an indentured servant—" This letter goes on to articulate that it takes 5 to 13 years for these slaves to buy their freedom once they're brought into the United States of America. That is, unless they're sold to a new master before their debt is paid off.

Thank you for your time, your consideration, and I will yield for any questions you have.

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

Chair CORNYN. Ms. Nobles.

#### **STATEMENT OF TAMMY NOBLES, NORFOLK, VIRGINIA**

Ms. NOBLES. Thank you for having me here today and allowing me to speak. On July 27, 2022, I received the worst news that a parent can ever get, that my newly 20-year-old daughter, Kayla Hamilton, was found deceased with injuries consistent with a homicide. There are no words to describe the heart-wrenching, soul-crushing pain of losing your child so horrifically.

Kayla was a happy and loving person. She loved life and God. She loved going to church and learning about Jesus and the Bible stories. She showed the world that being herself was okay and you didn't have to follow everyone else. She was extremely ambitious and despite having autism, she was determined to make her way in this world. She loved animals especially her cat, Oreo, and cared about the homeless.

At first, we knew very few details of the murder until an arrest. At the end of March 2022, Walter Javier Martinez was apprehended by Border Patrol crossing illegally into the U.S. at the southwest border in Rio Grande City, Texas. Martinez stated that he was 16 years old and he feared gang activity in his home country of El Salvador.

As an UAC, Martinez was granted access into the United States with no background checks or vetting. Health and Human Services and Homeland Security did not verify the sponsor and allowed Martinez to go live in Frederick, Maryland. There were behavior issues with him living with his sponsor, so he ended up staying with his half-brother who lived in the same neighborhood in a mobile home park as Kayla.

There were behavioral issues with Walter Martinez's, so the half-brother called the property manager of the mobile home park, which I thought was a legit company. We learned that an illegal immigrant, who was a priest, owned some of the mobile homes, and allowed his cousin to rent a home to this 16-year-old gang member in the same mobile home as Kayla.

Through the investigation of Kayla's murder, we found out that this priest and his cousin knew Walter Javier Martinez from El Salvador. And knew he was running from a homicide and they decided to put him in the same mobile home as Kayla.

Kayla and her boyfriend, and the young family did not know Walter Javier Martinez, and they did not know their rental rights and didn't know that they had a right to say no to Martinez living in the same community. They were all afraid to say no in fear of getting kicked out on the streets, so they said nothing.

Martinez was only living there less than 5 days before he violently and brutally murdered my daughter. Walter Javier Martinez broke into Kayla's room while she was sleeping that morning. Kayla left a voicemail on her boyfriend's phone. According to the voicemail a struggle was going on and Kayla can be heard crying, groaning, and struggling to breathe. Martinez was also heard on the voicemail hushing her and near the end telling her, "I'm sorry," in Spanish while strangling her with a phone cord.

After she was deceased, Martinez tied her up and sexually assaulted her. This was confirmed by the anal swabs that matched Martinez's DNA. Kayla fought for her life that day. She had bruises up and down her arms, her fingers, the left side of her face, her back and down her leg and deep wounds to her neck from the cord.

Local police knew right from the beginning that he was the main suspect just by their initial investigation. It took the Aberdeen Police Department to confirm that Martinez was a known MS-13 gang member, and that he had a criminal record in El Salvador in 2020.

If Health and Human Services or Homeland Security would have done a background check, then they would have known this, and Martinez wouldn't be able to be on U.S. soil. With Martinez being 16 years old, Maryland Child Protective Services took custody of Martinez until the DNA results came back.

The Aberdeen Police Department was very transparent to CPS. They did tell Child Protected Services he needed to be held in a secure location because he was a threat to society and based on the murder of, and injuries to Kayla. It was later learned after Kayla's murder, Child Protective Services placed Martinez in a group home with other children where he was able to attend a public high school and then when he had behavioral issues at the group they put him in a foster home which allowed him to enroll into another Maryland high school.

While in jail a letter was intercepted that Martinez wrote confessing to 4 murders, and 2 rapes, and admitting he was a MS-13 gang member. Martinez ended up pleading guilty and taking the plea deal of 70 years. Since he was a juvenile at the time, even though he was tried as an adult, Martinez could not get life without the possibility of parole.

Not only was Kayla's life put at risk and taken, but so many other children and adults were at risk. The Biden-Harris Administration did not put the American citizens safety first. We need to ensure the safety of our citizens and protect the children from being with the wrong peers and/or placement in group homes with unsuspected gang members.

Background checks and vetting should be required at the start so that agencies can check for criminal records and gang affiliation in their home country. Sponsors also need to be screened and verified. Under the Kayla Hamilton Act introduced last week by Representative Fry, Health and Human Services will be required to gather background information on all potential sponsors and every adult in their household.

If Homeland Security and Health and Human Services had checked Martinez's background, then they would have known that he was a known MS-13 gang member, and my precious daughter, Kayla, would still be alive today. All both agencies had to do was make one phone call to El Salvador and they would have known that he was a known MS-13 gang member, and that he had a criminal record for illicit gang activity.

To prevent such tragedies from happening again, The Kayla Hamilton Act will mandate background checks on UAC's and the sponsors so that no person will be at risk. Sorry I went over my time.

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

Chair CORNYN. Thank you, Ms. Nobles. Mrs. Vega.

#### **STATEMENT OF MARIE VEGA, LA FERIA, TEXAS**

Mrs. VEGA. Thank you, Senator, for having me here and allowing me to tell our story. My name is Marie Herrera Vega. I am an angel mom, and the mother of two incredible sons.

Javier "Harvey Vega" Jr., my first born, one of my two pride and joys, an amazing grandson, son, brother, husband, father, you name it. He was it. He was just amazing with a heart of gold, like no one you have ever met. An American with a love for his country, law enforcement, life and family.

Harvey joined the United States Marine Corps 5 months after graduating from high school. He served 4 years. After leaving the Marine Corps, attended college while working a full-time job. Immediately after graduation, he was hired by Christus Spohn Hospital as a biomed technical engineer. In 2006, he joined the United States Border Patrol until 2014. Javier "Harvey" Vega, Jr. Remember that name.

Jordy Vega, my second baby, another amazing son, joined the United States Marine Corps as well. Same as his big brother, he was deployed to Iraq three times. We nearly lost Jordy when the convoy he was traveling in hit an IED on his fourth deployment this time to Afghanistan, he and his men were ambushed and Jordy was shot in the arm. He served 9 years in the military. Jordy now lives in Louisiana and works for an American company.

Sunday, August 3, 2014 was a day that started off with wonderful memories of our U.S. Marine and Border Patrol Agent son and his family visiting us. The entire day was planned, good quality family time, a barbecue, shopping, rifle sighting in preparation for hunting season and some fishing to end the day before they headed back home.

Instead, late that afternoon, our beautiful day turned into a nightmare when two criminal, illegal aliens decided to ambush us in an attempt to steal both four-wheel drive trucks. The two

illegals jumped out of the stolen vehicle they were driving and without hesitation or a warning, they began shooting at us without even asking us to hand over the keys.

In the process, Harvey was shot in the chest. My husband Javier was shot in the back and they continued shooting at the rest of us, which included me, my daughter-in-law, two grandsons, and their friend. When I heard the yelling coming from the illegals while they shot at us, I fell back off the chair that I was sitting on and I struggled to get up, but instead had to crawl to my son who had tried to pick up an AR which he had left leaning by the truck to defend us.

Do you know what it is like to see your son go down after being shot? Do you know what it is like to hear the gunshots, bullets whizzing past you? Do you know what it's like when your mind is trying to process everything, telling your grandchildren to duck while thinking your son is on the ground with a bullet in his chest? Do you know what it's like to hear your son's last words to his father? "Keep shooting, Dad, keep shooting," were his last words.

That should never have happened. The illegals not only possessed a stolen vehicle, they also possessed guns that were stolen. They each had a long list of crimes including holding a gun to a toddler's head if the family did not hand over the keys, their money, their phones, their vehicles. Who does this to a toddler?

They had served time in county jail, been previously deported, fined \$10, and ordered to self deport again. The same illegals had robbed our friend, Douglas Light, on his very own ranch in La Feria, holding a gun to his grandson, Paul's rib cage, and threatening to shoot him if Doug did not hand over the keys to the truck. Doug did as he was told, and the illegals drove off with a truck trailer and the lawn equipment.

Going back to the nightmare that we lived, had my husband and I not returned fire, the illegals would've killed everyone there, leaving no witnesses, and that's including my grandbabies. Five days from today, it'll be Harvey's 11th anniversary. Eleven years is how long I have lived with survivor's guilt. Eleven years is how I have struggled, how much I have struggled to survive without my baby. Eleven years I have lived with flashbacks. During every waking moment.

Eleven years, we have celebrated the boys' birthdays, graduations, weddings, starting new families, new careers, and amazing accomplishments without my baby. Eleven years, I have witnessed how his killing has impacted the community, our families, his work families, his childhood friends. I have seen the heartbreak in everyone's voice, hearts, and actions.

Illegal aliens have impacted American lives in a very negative way. They have no regard for human life as I witnessed firsthand. The illegals that killed Harvey also shot my husband in the back, and shot at innocent children and women. My grandbabies and their friend were only 8 and 11 years old.

Take a moment and imagine your child or grandchild witnessing this horror. How does that make you feel? Would you be okay with this? Had our immigration laws been enforced, our son would be here. Barack Obama failed me, my family and our community and our Nation. My husband now suffers from PTSD. He is handi-



capped because of the extent of damage the bullet caused. Nerves and ligaments were severed when the 45-caliber bullet traveled from one side of his waist narrowly missing his spine before exiting on the other side of his body.

I want you to know that we do not have an issue with people coming to America legally. We do have immigration laws in place for a reason, and they need to be enforced. And as politicians, you need to allow those in charge to enforce these laws. We are not a lawless nation.

I myself was not born in America. I am the daughter of an American-born father and a Mexican-born mother. However, my father did not smuggle or sneak us into this country. After marrying my mother, he stayed by her side in Mexico until he applied to move us back to his country. He waited patiently, filled out all the necessary documents and paid all the fees.

He never even asked for government assistance making due with his pay as a farmer and carefully planning for times when the weather did not permit work. He taught me and my siblings to be God-fearing, hardworking, law-abiding citizens. My two older siblings and I are proud naturalized citizens, and my little brother is a U.S. citizen.

La Feria, Texas, my little town's population is about 7,000. Our little community has lost three young lives to illegal alien crime. Noemi Dominguez, a 26-year-old teacher murdered by criminal, illegal alien Angel Maturino Reséndiz in 1999. Some of you might remember him as The Railroad Killer. He was a serial killer that murdered so many people throughout America.

Javier "Harvey" Vega, Jr., 36-year-old father of three boys, a U.S. Marine and Border Patrol Agent murdered in cold blood in front of his family by Gustavo Tijerina-Sandoval and Ismael Hernandez Vallejo in 2014. They both had a long list of crimes they committed throughout the Rio Grande Valley. If committing these crimes was their job, it doesn't seem to me like they had—they were producing anything in the community. They were not contributing to the community.

Maria Macias, a 37-year-old mother of three beautiful young daughters killed in a car accident caused by illegal alien, Bedelin Alegria, in 2022, who instead of trying to render aid fled from the scene of the accident.

That's three young lives from my town. This is what family separation really looks like. Not one angel family will ever see our loved ones again. Their lives were taken by illegal aliens. Now that you know a mother that had to shoot back to defend and protect her family, do you still believe we should have open borders?

Open borders have consequences, and you can see from what I have experienced because of the crimes committed by illegals, the pain lives with us for the rest of our lives. You took a oath to uphold the Constitution and work for "We the people." That means working with your fellow politicians. Regardless of which side of the aisle you are on, you are supposed to work together representing us, ensuring that those coming in are obeying our immigration laws. They need to be properly vetted not only for their safety, but yours, and ours. Thank you, Senator.

[The prepared statement of Mrs. Vega appears as a submission for the record.]

Chair CORNYN. Thank you, Mrs. Vega. Ms. Fleischaker.

**STATEMENT OF DEBORAH FLEISCHAKER, FORMER ACTING CHIEF OF STAFF, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, PRINCIPAL CONSULTANT, BLACKBIRD VENTURES, LLC, WASHINGTON, DC**

Ms. FLEISCHAKER. Chairman Cornyn, Ranking Member Padilla, thank you for the opportunity to testify today.

Chair CORNYN. Punch the a.

Ms. FLEISCHAKER. It's on. Can you hear me?

I currently serve as the principal consultant at Blackbird Ventures, and prior to that, I spent nearly 14 years at the Department of Homeland Security as both a career public servant and a political appointee, including as the acting ICE chief of staff and the ICE assistant director for regulatory affairs and policy. The views I'm sharing today are my own and don't reflect the official positions of DHS or ICE.

At the core of today's hearing is a critical question. How can we enforce immigration laws in a way that protects national security, ensures public safety, and respects legal rights? The answer must be grounded in facts, professional judgment, and strategic use of limited resources. Not fear, spectacle, or indiscriminate enforcement.

Unfortunately, the Trump administration's approach has strayed from these principles. Rather than focus on individuals who pose a real risk like those with serious criminal convictions or recent unlawful entries, the administration has embraced a quota-driven model that prioritizes volume over safety.

Officers have reportedly been pressured to meet 3,000 arrests per day, regardless of risk level, and as of June, 2025, nearly half of all ICE arrests involved people with no criminal history at all. This isn't just unjust, it's ineffective. It diverts resources from genuine threats, floods the immigration courts and detention system, and lowers morale among career officers. It also erodes public safety.

When we target low risk individuals simply to boost numbers, we lose focus on serious threats like organized crime, child exploitation, and human trafficking. We've also seen a rollback of critical safeguards. ICE arrests at sensitive locations like schools, hospitals and courthouses have surged. This deters crime victims from seeking help, and punishes people for following the law and appearing in court. That makes everyone less safe.

Enforcement tactics have become more aggressive and less accountable. Officers increasingly conduct operations wearing masks and without clearly identifying themselves, and the Trump administration has eliminated the ICE body-worn camera program, and weakened key oversight offices.

In a democracy, the public has a right to know who's exercising government power and under what authority. In short, what we need is not broader enforcement. We need smarter enforcement that is targeted, lawful, transparent, and focused on protecting communities, not padding arrest statistics.

And we can't ignore the toll this approach takes on law enforcement officers themselves. When professionals are asked to meet daily quotas, arrest quotas, it undermines their sense of mission and integrity. Being told to prioritize administrative arrest of low-risk individuals over pursuing serious threats, corrodes morale, and creates a culture of frustration and burnout. This isn't sustainable and it's not what public safety demands.

We also must remember that how we enforce our immigration laws sends a powerful message. Are we using our laws to instill fear and divide, or are we using them to reflect our values of safety, fairness, and accountability. Policies driven by quotas instead of evidence and expertise ultimately compromises our national security and public safety.

Thank you. I look forward to your questions.

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

Senator CORNYN. Thank you very much. Mr. Barranco.

**STATEMENT OF ALEJANDRO BARRANCO, VETERAN,  
UNITED STATES MARINE CORPS, ORANGE, CALIFORNIA**

Mr. BARRANCO. Good afternoon, Chairman Cornyn, Ranking Member Padilla, and Members of the Subcommittee. My name is Alejandro Barranco. I am a proud Marine and the son of Narciso Barranco. My father was violently attacked and detained on Saturday, June 21, 2025 in Santa Ana, California while working a job he has held since the 1990's.

He was surrounded by masked men who did not identify themselves, never presented any type of warrant. Terrified, he ran. They chased him, pointing a gun at him, pepper sprayed him, and eventually tackled him to the ground, and kicked him. After he was handcuffed, these men held him down while another beat him repeatedly in the neck and head area. After all of this, they then threw him in the backseat of an unmarked vehicle.

Growing up, my father was always working from sun up to sun-down. He always did his best to provide for our family, even if it meant working 7 days a week and extremely long hours.

We always had a food on the table, a roof over our heads, and clothes to wear to school. He always taught us to be good people and try our best to give back, respect this great country, and be thankful for all the opportunities we would have growing up in America.

Before I continue, I want to make clear my views and opinions do not reflect those of the Marine Corps. I was the first in my family to graduate high school and eventually go to college. A dream come true for my parents. While in college, I would keep asking myself if I was doing the best I could, or if I could maybe do more for myself and my family. That's when I looked into joining the military.

I joined the Marine Corps out of the love I have for this country, and continue to bring honor to my family name. When I told my dad I was going to enlist, he cried with pride. He told me to give it everything I had because we'd do anything and everything to give back to our country.

I deployed to Kabul in 2021 to support the evacuation, standing with Marines who made the ultimate sacrifice. I helped carry their caskets home. Today, both of my brothers are also serving on active duty. My father tells everyone, all three of my sons are Marines. He is so proud that he raised sons who wanted to serve.

My brothers and I are a reflection of who my father really is; a law-abiding, proud, and patriotic man. My father has no criminal record, and should have never been attacked by these people. My dad is a human being, but he was not treated with the dignity he deserved. He has always made sure to do his best in giving back and supporting this country just like we all do. That is who he is. That is who our country punched, threw in detention, and is trying to deport.

What I saw in the video that day broke my heart. Since my father was detained, it has been a nightmare for my family. He was held in a cage with 70 to 100 other people, one toilet, no shower, no change of clothes. People were in work uniforms because they were literally taken while trying to do their jobs, supporting their families and community.

When he went to another facility, Adelanto, conditions were still grim. He went 14 hours without water. The plumbing failed. Dirty blankets made people sick. When he finally got a hearing, the Government attorney arrived unprepared. If we didn't have a lawyer, we wouldn't have even known he had a court date.

My father was eventually granted bond and came home. But the trauma that day and the brokenness of this system remains in our hearts. My father is an outstanding member of the community and should have never been attacked the way he was. These people had no warrant for him, and had no reason to chase and beat him. He was working his job, which he has had over 30 years.

I believe my father was racially profiled, which led to a lot of stress and mental trauma for everyone in my family. We have received an overwhelming amount of support from everyone in the community, from our neighbors, to councilwomen, and Members of Congress. This kindness is the country I know and love. But I also know this is not the only case in which officers have crossed the line and ignored all types of training in how to detain someone.

I do believe that the vast majority of the undocumented people in this country are here to work and support the country, as well as raising children like my brothers and me. In fact, an estimated 1 in 12 U.S. residents are either undocumented or live with an undocumented individual. Among Latinos, it's 1 in 3.

I'm here today because I want other people who've had family members like my dad taken away to know they are not alone. Thousands of families like ours are being ripped apart, and their stories matter. I want this Committee to understand the human impact of immigration policies on this administration.

I want them to know that the people being ripped from our communities are hardworking, honest, patriotic people who are raising America's teachers, nurses, and Marines. Deporting them doesn't just hurt my family, it hurts all of us. It makes our communities less safe, less prosperous, and less resilient.

The current system is broken. Cruel, and indiscriminate raids are tearing families apart, and punishing hardworking people who

contribute to our communities every day. My father, like so many others, deserves a fair chance to stay in the country he calls home. This country is better because of people like my dad. It is time our policies reflected that. Thank you.

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

Chair CORNYN. Dr. Veliz.

**STATEMENT OF DR. GIOVANNI VELIZ, RETIRED POLICE COMMANDER, MINNEAPOLIS POLICE DEPARTMENT, MAPLE GROVE, MINNESOTA**

Dr. VELIZ. Chairman Cornyn, Ranking Member Padilla, and Members of the Subcommittee, good afternoon. My name is Giovanni Veliz, and it is my honor and duty to be before this Committee to provide testimony on community policing and safer communities for all. I'm a retired police commander with over 30 years of law enforcement. I have served various critical roles in task forces in the United States Drug Enforcement Task force, the Federal Bureau of Investigations, and Police Commander of the Special Crimes Investigations Division and more.

My years of experience have shown me time and time again that reducing crime and partnership with communities reflects years of sustained engagement, trust building, and open communications. This supports both effective public safety, and the safety on honorable sworn police officers who have taken the oath to protect communities with due process and dignity.

My testimony today reflects my personal views and experience, and does not reflect the official positions of the Minneapolis Police Department. As a patrol officer, I recognized the profound value of community relationships by actively engaging community members, and local business owners, and attending countless meetings. I gained insight into the community's needs and concerns.

I was privileged to be welcomed by immigrant families and community leaders into their spaces where I listened to the stories of dangerous journey into the United States, stories of hardship, resilience, and a yearning for safety and opportunity. This family often expressed fear of crime and reluctance to contact law enforcement. These fears have been shaped by past experiences with abuse or unjust justice systems.

I learned much from these encounters and they compelled me to reflect on the value of providing voice to the voiceless in treating every individual with dignity and respect. In the response to the call for strong relationships with the immigrant community, I led initiatives in partnership with the community stakeholders, including the creation of a multicultural advisory committee and the development of vocational workshops.

These workshops reach dozens of families teaching them about police services and engaging them to build trust with police officers and help reduce crime in their neighborhoods. The trust and cooperation generated through these efforts led to critical public safety outcomes, including information in major drug trafficking investigations, the rescue of a kidnapped community member, the apprehension of suspects in shootings and successful large scale fraud investigations involving organized crime in Minnesota.

I respectfully share my concern that the increased local law enforcement involvement in aggressive and fear-based raids of immigrant communities is already eroding trust, cooperation, and public safety in our neighborhoods. When residents fear law enforcement, their willingness to report crime, cooperate with investigations, or assist and identify violent offenders, is diminished.

The erosion of that trust not only undermines crime prevention, but also puts both officers and communities members at a greater risk. Trust between law enforcement and communities we protect is vital and can only be achieved through community cooperation. Without community cooperation, police agencies across the country will have a difficult time identifying and apprehending violent offenders. This will more likely create risk for both police officers and community members.

Today, I offer this testimony grounded in my experience as a law enforcement leader, a scholar, and lifelong advocate for justice and community partnership. I urge this Committee to fully recognize the dangerous consequences to public safety these aggressive tactics present. I also urge you to work together with community leaders and public safety experts to rebuild trust and to continue to keep our communities safe.

Thank you for your service and leadership.

[The prepared statement of Dr. Veliz appears as a submission for the record.]

Chair CORNYN. Thank you, Dr. Veliz.

We'll start with the round of questions, 5-minute rounds, and as you can see, due to conflicts, a number of our Members have other commitments and aren't able to be here in person. But I know Senator Padilla and I will have some questions and perhaps others will join us along the way.

Mrs. Vega, like Ms. Nobles, you've shared with us a painful experience in your life. Most people don't know exactly what you had to do during the incident that resulted in your son's death and the wounding of your husband that is holding the gun, a gun against the perpetrators to defend your family. Nor do many people understand the lasting impact on your children as they witness the death of their father or grandchildren, their father, before their very eyes. You mentioned flashbacks. Are you still dealing with the effects of that incident today?

Mrs. VEGA. Yes, sir, I am.

Chair CORNYN. How so?

Mrs. VEGA. It's horrible. I need to stay busy around the clock because the minute your head hits that pillow, everything plays out over and over, and you can't stop it.

Chair CORNYN. Now, Mrs. Vega, I think some people wrongly suggest that the Hispanic community in this country are somehow opposed to enforcement of our immigration laws, and I think it was Sheriff Boyd made the important distinction between legal immigration and illegal immigration.

To be sure, legal immigration has been one of the secrets to our success as a nation, a nation of laws. But illegal immigration has been an unmitigated disaster for so many families, including the Hispanic community in Texas and elsewhere. So, your family came to the United States legally.

Some of our colleagues here and others you've heard in the news say that, well, people can break the law and come to the United States illegally, but because they've been here a while, they ought to be able to stay and should not be forced to return home to get legal status. Do you agree with that?

Mrs. VEGA. No, sir. They've had ample time to rectify their citizenship status. It's an honor being in this country when you're from another country and you come here. It's an honor.

Chair CORNYN. Ms. Nobles, what are some of the worst things reported in the news about your daughter's death that you want corrected for the record?

Ms. NOBLES. A lot of it is they confuse the terms, you know, immigration and illegal immigrants. We're talking about illegal immigrants who had broke the law. Kayla did not live with Walter Martinez. He was put there without their saying in anything.

Also, the whole thing about that illegal immigrants commit less crimes. How do we know that we don't know who's in this country. They have not been vetted, background check. We have no identification of them. We have no idea who they are. They're not in the system. We were really lucky to get a conviction from Walter because they checked and he was not in the system. They had to try to find out who he was by calling Border Patrol, getting his name and his date, and they had to call El Salvador to get any information about him.

Nobody knew him. He wasn't in the system. No fingerprints, nothing. We don't know who they are. We don't know who's coming here, and we don't know what crimes they committed because they haven't been caught. We were lucky that he was caught and the ones that we do know of, they actually got caught.

There's no way of knowing because they could live under the radar. They can live in the communities. Her murderer can act like a 16-year-old child. I've seen him in the beginning of the investigation. He was sitting there acting all scared, and acting—you know, and asking permission to eat.

And then in the end when he got caught, his whole demeanor changed. He sat in that chair and they told him he was being arrested for a homicide. He sat in that back chair. He looked so much older, so much wiser, and he was like—and he said homicide in Spanish. He just sat back and was like, okay. Like that, laughing about it like it was a joke that he murdered my daughter and just left her on the floor like trash. It was a joke to him.

Chair CORNYN. Sheriff Boyd, it seems like during the 4-years of the Biden administration, the U.S. Government outsourced its immigration policy to transnational criminal organizations, otherwise known as cartels.

And as part of Operation Lone Star, that task force, I know you have tracked the human smuggling flowchart and also the flowchart of cartel drug operations, but in your experience dealing with the broken borders or the open border policies of the Biden administration, didn't it allow not only the trafficking of children and women, but the movement of drugs and other contraband across the border without any distinction between that and people who want to come here to work and perhaps want to achieve a better life?

Mr. BOYD. Yes, Senator. So, what had happened is Border Patrol was basically turned in from an enforcement agency into a baby-sitting and processing agency. They were tied up on the border, actually processing people to get them into this country as fast as possible, friends of mine and Border Patrol said they would get in trouble for not processing enough people into the country in a timely manner.

And what that did was that left our borders wide open for people to come through and to bring stuff through. But I will tell you that during that time period, slave trade outpaced narcotics as far as the revenue that the Government was aware of, that the cartels made.

And so that's one of the problems that we're seeing now is this was not an immigration issue. This was a slave trade issue. These people were brought here by the cartels because we ceded our authority of the border from the U.S. Government to the cartels.

They brought those people here and put them into indentured servitude. And I've seen that firsthand. We have imported millions upon millions of people. We have put them in a peon class and they are now trying to pay off their debts to their masters. They're beholden to workplaces, whether it be in a farm, whether it be in a kitchen, whether it be at the hotel, or whether it be unloading 18-wheeler loads of dope or moving different product, or killing people.

They're beholden to the cartels to do whatever it is they are told to do by the cartels and their affiliate organizations. And that's a direct result to the last 4 years.

Chair CORNYN. And Sheriff, is it your experience that the only thing or maybe the main thing that the cartels care about is money?

Mr. BOYD. That is absolutely it. And I will touch on one thing that Senator Padilla mentioned about people working in the fields. I don't know if y'all have ever sat down face to face with a sicario in a small room, but I've done it on multiple occasions.

Those individuals didn't just kill people for a living, they also worked out in the fields. They were welders, helpers, they worked on pipelines, they had regular jobs during the day and they killed people on their time off for the cartels. So, just because somebody works at the local farm or works in a some industry doesn't mean they don't have the capacity to do evil and do those things. And so that we need to understand.

Chair CORNYN. And finally, you were part of Operation Lone Star Task Force, and I believe you've supplied us with a couple of charts here. One, a human smuggling flow chart and one a simplified flow chart of cartel drug operations. Is that correct?

Mr. BOYD. That is correct.

Chair CORNYN. And those are based off of our experiences of conducting investigations. All right. These will, without objection, be made part of the record.

Chair CORNYN. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. One of the first things I want to clarify, something I keep hearing not just during this hearing, but for months and months now from the Trump administration, is that they're going after the worst of the worst. That's the soundbite, that's the rhetoric.



And their aggressive show of force is accomplishing the goal. If that's their claim. The way they present it, the way they talk about President Biden's administration and prior Democratic administrations is like it was never a priority for Democratic administrations to go after criminals. And that Democrats and Democratic administrations just didn't care about the presence of dangerous people in our communities. Simply not true. So, I want to help set the record straight. And again, if you can't take my word for it, let's turn to an expert.

Ms. FLEISCHAKER, you were in ICE leadership. In your view, in your experience, did the Biden administration ever restrain ICE from pursuing serious criminals? Part B to that question, only because one of the other witnesses implied that the Biden administration was restraining ICE, either by policy or by resources from doing its job. True or false? Can you expand on both of those please?

Ms. FLEISCHAKER. We absolutely did not stop ICE agents from enforcing the law and going after public safety threats. In fact, we encourage them to do so. We very much want to find and arrest public safety threats in the community.

Senator PADILLA. Well, thank you for that. And anybody on this side of the dais who's familiar with the appropriations process in Congress, particularly in the Senate given the filibuster rules, knows that spending plans are adopted on a bipartisan basis, on a bipartisan basis.

So, we can discuss and debate the need for additional investments in not just enforcement, but as I mentioned previously, immigration judges, hearing officers, et cetera. In fact, not too long ago, there was a bipartisan proposal on the table to significantly ramp up the budgets for those agencies and Republicans walked away from that deal. That's a fact.

Second area I want to tackle is in the area of indiscriminate enforcement. Just by show of hands, by the way, raise your hand if you think all immigrants are criminals. Let the record reflect none of the witnesses raised. All immigrants are criminals?

[Poster is displayed.]

Ms. NOBLES. Not all immigrants.

Senator PADILLA. I'm very precise in my question, very precise in my question. Raise your hand if you believe all immigrants are criminals.

Ms. NOBLES. Repeat your question.

[Off mic.]

Ms. NOBLES. Are you talking illegal immigrants or are you talking about regular immigrants?

Mr. ARTHUR. Microphone.

Senator PADILLA. All immigrants. I'm using my words very precisely.

Ms. NOBLES. Are you talking illegal immigrants or immigrants who came here legally and did it the right way? Which one?

Senator PADILLA. By a show of hands, raise your hand if you believe—

Ms. NOBLES. There's not going to be a proper answer to that.

Senator PADILLA. Or even most.

Ms. NOBLES. No, all illegal immigrants are criminals because—

Senator PADILLA. So, I don't think anyone here would disagree with the idea of rooting out the "worst of the worst" even if we disagree over what immigration policy should be. But I believe it's unacceptable that these raids are so indiscriminate that they end up sweeping up people with no history of violent crime, hardworking people trying to give their children a better life like Alejandro's father, Narciso.

Alejandro, the question is for you. First of all, I'm so sorry about what happened to your father and what your family's been going through. Targeting somebody like him does not seem to make the community, the State of California, or the country any safer. And it's an insult to our history of welcoming people who want a better life.

Now, I agree, we need to modernize our immigration system to make it more strategic, more effective. Is there anything else that you would like to share about the cruelty with which your father was treated or which your family's gone through?

Mr. BARRANCO. I think that the way they treated him and the way they handled that situation was very unprofessional. It showed men who were not trained, it doesn't seem like it. They were running with fingers. They're running with guns in their hand, with fingers on the trigger, pointing it at civilian vehicles. And honestly, I don't think that's for the best of public safety. And I believe that they should have better training and go out and chase after the real criminals.

Senator PADILLA. Well, I couldn't agree more. And the more resources, personnel, funding and otherwise, that's directed at—again, just broad-based enforcement is less focus, less prioritization of those violent criminals that we know we're out there, the administration knows are out there, but they're not the clear priority or focus.

If I may, Mr. Chairman, just one more question in this round. We know that the massive show of force by the Department of Homeland Security has scared people across communities, not just Los Angeles, not just throughout my home State of California, but other parts of the country, to the point that we're now seeing people hesitate to go to work, hesitate to patronize stores and to visit public spaces, even go to church. So, I'm deeply concerned that this fear will also deter people from reporting crimes like domestic violence, sexual assault, robbery, et cetera.

Dr. Veliz, you have 3 decades of experience encouraging community members to come out of the shadows and trust you and your officers to report crime, to engage in law enforcement, to improve public safety. You spoke to this a little bit during your opening statement, but can you describe the impact of these indiscriminate raids on the types of relationships that you trained your officers to build with immigrant communities?

Dr. VELIZ. Thank you, Senator Padilla, for the question. So, under my leadership, Senator Padilla, would spend days, years, weeks. I spent 30 years building trust. Trust is a fulcrum to crime reduction, to the safety community members, to the safety of police officers. This is an ongoing daily through every single interaction.

When the community have the perception that we involve in immigration enforcement, they are not going to come forward and re-

port crimes. They're not going to come forward and access police services. Thus, what's going to happen is that that will increase the percentage for this immigrant communities to be revictimized by violent offenders. And once again, that will put greater risk for police officers. Community members are the ones who are home in their community 24/7. They are our eyes and ears when we respond and we try to reduce crime.

Senator PADILLA. Thank you, Mr. Chair. I have additional questions. I'll wait for the next round.

Chair CORNYN. Senator Moody.

Senator MOODY. Thank you, Mr. Chair. I am the newest Senator here, certainly the newest on Judiciary. And I am so glad that I am here in this capacity now because I served as Florida's Attorney General and watched in horror as Biden and his handlers, and the radicals in charge of his administration systematically and intentionally broke down all of the structures and security safeguards at the border. And it was only through litigation that we were able to uncover documents that showed their plan was in place from day one.

In fact, when they started rolling out executive orders, dismantling everything that the Trump administration had put into place, they were warned by those in the administration and Border Patrol and DHS, that if you do this, we will immediately be overrun. We will immediately lose any control at the border, and we do not have the ability to keep pace with the detention capacity that will be needed.

And in fact, ignoring all of those warnings by the their own administration, they not only went ahead and issued the executive orders, dismantling everything that Trump had put into place. They then asked for less money for detention beds. And the consequences and the chaos that unfolded not only was predicted by their own administration, it put law enforcement at the border at risk. It put families and communities at risk. It put our Nation's sovereignty and security at risk as more and more people flooded into this country with previous criminal backgrounds, and those that were on the terrorist watch list.

And as I pursued litigation, a judge said "Biden and his administration has turned our border into nothing more than a meaningless line in the sand." And when there were warnings that our border would be overrun when Title 42 was expiring, Florida uncovered documents saying that their grand plan was to step back and let it be overrun.

And in my litigation as Florida's Attorney General, I uncovered that not only were they pushing more, and more, and more, and more, and more historic numbers into our country unvetted, that they established quotas every day to make sure that Border Patrol pushed a certain amount of numbers into our country that was barely vetted.

So, as Attorney General, when I had sheriffs from all over my State calling me to say that the Biden administration was canceling detainers on criminals in their jails and telling them to release them back into the communities, I was horrified. Horrified not only because I work with law enforcement across the State, and I knew what that was doing to their communities, but horrified be-

cause I knew that went against not just the policies of Republican administrations, but Democratic administrations.

It was a radical's wish list. They had changed the entire policy on whether or not we were going to deport serious felony offenders. And there agenda was no. And the resulting crime that occurred across this country as a result was predicted. I predicted from the beginning of this administration, I was one of the first States to sue when they stopped deporting people here illegally that were committing crimes against Americans in our communities.

So, the gaslighting that started under the last administration when Mayorkas showed up and said the border is secure, the border is secure. And I guess he thought the American people would believe that it's still going on. There are so many felony offenders that are here illegally in our country that because Biden released them, this administration has to do the hard work of tracking people down and deporting anywhere from 11 million to 20 million people, because we don't know who's in this country.

On a conservative estimate, 11 million people is more than the population of 42 of our States. And most of those people were unvetted. So, you're going to hear a lot about people here that just want a better life. But make no mistake, Biden and his administration purposefully unleashed those here illegally committing crimes on you and on your families. And it was intentional.

And when I brought it to their attention that they were no longer even deporting those in Federal prisons that were completing sentences that were here illegally, that they were taking them back to where they were prosecuted and pushing them into those districts like no other Presidential administration had done, they fought me on giving me the information, and I had to sue them for that, too.

So, we can have hearings all day long, and I can hear about these stories, but make no mistake, and the American public should not fall for this DEM deception. This was intentional. It was purposeful. And they're going to roll out everything that they can think of to stop any sort of progress to shoring up and making this country safe again until they get somebody back in office that will do the same thing. So, I appreciate you Chairman for standing strong.

And I would like to ask Sheriff, I know we have a Sheriff with us from the Lone Star State, from your State, and I want to just know if you heard the same thing from people, from Sheriffs that were forced because detainers were canceled to release people back into the communities.

Mr. BOYD. Yes, you are absolutely correct, Senator. They were forcing them to release people back into the community. And we have had a longstanding partnership with Border Patrol, Department of Homeland Security, and our Federal partners. And regardless of what is said, they were not issuing any orders to Border Patrol or to ICE telling them don't enforce this, don't do that.

But what the administration was doing was sending people to those stations and then giving them verbal orders. You're no longer allowed to help law enforcement do this. And much to Border Patrol's credit, they would sit down and figure out, "Okay, how do we circumvent this order and help them in another way?"

They would figure out how to help us in a way that they hadn't been strictly forbidden from doing until the Biden administration would realize that they had figured a way around that order. And then the Biden administration would issue a new verbal order to them tell them they couldn't do that, and they would sit down and figure out another way.

So, the administration wasn't dumb enough to send out a paper trail. What they were smart enough to do is they were smart enough to send people to those stations and go, "You quit helping local law enforcement. You quit taking these actions."

Senator MOODY. And well, indeed, they held back as much paper as they could until attorneys general like me and others pushed in court and got it, and found the documents that showed they knew this was happening. Their first month in office they knew we would be overwhelmed, and they did it anyway.

And if I just might, Chairman, I'm a mother as well, and I just want to say thank you. I can't imagine the loss of a child, but sharing those stories and making sure this never happens again in our country, because we can follow the law, we can do what's right. I want to thank the parents that share their stories.

And I want to thank every law enforcement man and woman who signed up to wear the badge, and stand between chaos and order, and good and evil, and made sure that this country stands for what we were founded on; and that is the people governing ourselves under a rule of law. And that was so important, and I'm so grateful to them every day. Thank you, Mr. Chairman.

Chair CORNYN. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. I think we can all agree that our immigration system is broken both in the legal side, which is we have a visa system that has a huge backlog of people waiting to come into our country. And also, we have a number of a lot of undocumented people.

And I would like to correct the record in that there are some 11 million undocumented people here. A rather large percentage of them came here with legal visas, and they're overstayers. So, these are people who already were vetted in order to get visas to come into our country.

So, the issue of immigration is complicated, but we agree that we have a broken system. And I'm glad that when I was first elected through the U.S. Senate, one of the major bills that I worked on as a Member of this Committee was the Comprehensive Immigration Reform Bill. And while it didn't have all of the kinds of provisions that I would've supported, it was a good start. It was a good faith effort to address the complexities of immigration reform. And I thought it was a relatively fair bill. So, I voted for it.

Unfortunately, the House never got around to addressing that bill or doing anything with the bill. And so, here we are, the whole issue has become highly, highly politicized. We now have a regime that wants to deport a million people a year, if not more. They would like to deport 11 million people. How that is supposed to happen is beyond me. But that maybe that is one of the reasons that they are basically moving so much of our law enforcement community, whether it's the DOJ or the all of our various agencies into focusing on deportations.

Now, I think we can all agree that people who should be deported are the ones who are violent criminals and who have committed crimes. That is not what is happening in our country. So, the kind of roundups where the quota or the requirement is so that I should arrest 3,000 people a day. See, that leads to all kinds of actions on the part of ICE and the other agencies that they have focusing on deportation and rounding up people who are pose no danger, no safety danger to our communities. But it's certainly creating havoc and fear in our community.

So, that is what is happening. So, rather than working on what I would consider it to be comprehensive immigration reform, that we can, I hope all agree on some of the provisions. No, we are continuously blaming the prior administration.

Let us not forget that one of the major issues relating to Trump's first administration was the fact that they separated children from their parents and never kept track of who their parents are. And there are some of these children who have never been reunited with their families.

And I think that is you know, that's not the way that we should be conducting our immigration enforcement. So, I would say that we should have ICE prioritized violent criminals, people who have that kind of record that is not what is happening. So, I have a question for Ms. Fleischaker—am I pronouncing your name correctly, please?

Ms. FLEISCHAKER. Fleischaker.

Senator HIRONO. Fleischaker, yes, okay. So, last month, on June 23, ICE forced a disabled Purple Heart veteran named Sae Joon Park to self deport. He was a green card holder, but his undiagnosed PTSD led to a drug dependency, which is frankly all too common among our veterans. After an arrest for bail jumping in 2009, his green card was revoked, but he was allowed—this is 2009—allowed to stay with yearly check-ins with ICE. So, he did that every year. He would come in, and he's been living in Hawaii for the past 10 years, where he's raised two kids and cares for his 85-year-old mother who is in the early stages of dementia.

That all changed this year when ICE, under this administration, threatened to lock him up unless he left the country. So, he self-deported. So, Ms. Fleischaker, does Mr. Park strike you as someone who should be a priority for detention and removal?

Ms. FLEISCHAKER. I think the issue for me is that when we focus on numbers instead of quality, we end up focusing on people without criminal arrests, people who are contributing to their communities. We need to be focusing on real public safety threats, national security threats, and recent border crossers.

Senator HIRONO. Mr. Chairman, I'm sorry that the—my time is up, but you get my—the priority should be to deport people who pose a safety danger to our community, and a huge number of the people who are going through that process do not pose danger to our community. So, that is a use of resources that cannot be justified. Thank you.

Chair CORNYN. Senator Graham.

Senator GRAHAM. Thank you very much, Senator Cornyn, for having this hearing and all you've done to shed light on this. This is very helpful for the country and the Senate, I think.

Senator GRAHAM. Is it Ms. Fleischaker?

Ms. FLEISCHAKER. Yes.

Senator GRAHAM. Okay. Let me just ask you just a general question. How long were you the chief of staff for ICE in the Biden administration?

Ms. FLEISCHAKER. A year.

Senator GRAHAM. Excuse me?

Ms. FLEISCHAKER. One year.

Senator GRAHAM. Looking at those 4 years would you say they were successful in terms of border security?

Ms. FLEISCHAKER. Well, at ICE, I was responsible for interior enforcement. I wasn't responsible for border security. I would say that the people I know——

Senator GRAHAM. Well, your work product, I mean——

Ms. FLEISCHAKER [continuing]. Worked as hard as they could every day.

Senator GRAHAM. How would you rate border security during your time?

Ms. FLEISCHAKER. I would say border security is very important, and——

Senator GRAHAM. I know. I mean, how do you think the Biden administration did in securing our border?

Ms. FLEISCHAKER. I think that there were a lot of people who came during the Biden administration.

Senator GRAHAM. Like 11 million. I would say that's not very secure. Mr. V-E-L-I-Z?

Dr. VELIZ. Veliz, sir.

Senator GRAHAM. Yes. Thank you. How would you rate the border security initiatives of President Biden? Successful or not?

Dr. VELIZ. Senator, I'm here to testify based on my 30 years of experience as a police officer in building trust and creating separate communities. I'm not an expert in providing you with an assessment of the Biden administration——

Senator GRAHAM. Well, I mean, just generally speaking, 11 million encounters is a lot. Right?

Dr. VELIZ. It seems like a large number, Senator, yes.

Senator GRAHAM. Yes. So, the goal is to fix that. Mr. Arthur?

Mr. ARTHUR. Yes, Senator.

Senator GRAHAM. How did we go from the worst border to the most secure border in like 30 seconds?

Mr. ARTHUR. It's all a matter of will. The laws were already in place at the time that President Biden took office. He could have continued the same policies that President Trump had in place when we had a very high level of border security.

In fact, even before Title 42 went into effect, the border was secure based upon my 3 decades of experience. But the reason that the border became insecure is because those policies were reversed, and the detention mandates that this Congress has put into place were ignored.

Senator GRAHAM. So, we went from 160,000 encounters a month for 4 years down to a very, a small amount, right?

Mr. ARTHUR. Deterrence is the touchstone of enforcement at the border. And if you take away the deterrence, people are going to come in. President Trump put the deterrence back.

Senator GRAHAM. The only point I'm trying to make is that the people who are criticizing President Trump are the ones that allowed the problem to exist. You'd be the last group of people I would ask advice from about how to keep this thing going in the right direction.

So, I want the American people to know that President Trump in 6 months has gotten the border under control after 4 years of absolute chaos. So, my belief is that as we move forward, we need to make sure that we do so not to go backward in securing the border.

In terms of enforcement, Mr. Arthur, is it important that people get the message that if you come here illegally, you will be kicked out?

Mr. ARTHUR. Absolutely. Unless there is enforcement, people will be more likely to cross the border illegally. People will be more likely to remain in the United States illegally. Barbara Jordan said credibility and immigration enforcement is simple. Those who get to come in, get come in. Those who should leave, leave. And those who are here unlawfully should be forced to stay, are forced to leave.

Senator GRAHAM. So, clearly some mistakes have been made. I definitely want to fix. Some people, it shouldn't have been, you know, caught up into the system. You know, we need to get that right. But the consequence of backing off on interior enforcement and deportation, do you think it would send the wrong signal and undercut our efforts?

Mr. ARTHUR. Absolutely. The immigration laws are impossible to enforce in any stage, consular, border interior, if they're not enforced.

Senator GRAHAM. Let's just assume for a moment, which I do, that most of the people coming here legally are not coming to commit crimes. But a lot of them do. Senator Cornyn spread a light on this. A lot of people dead because of bad immigration policy. Laken Riley, the man who killed Laken Riley was released because of no detention space. Went to Georgia and eventually killed this young lady.

So, my point is, whatever we do, we don't want to go backward. We want to go forward. And if we change our enforcement policies and the way being proposed, I think we will lose our gains. And I don't want to do that. Thank you, Senator Cornyn, for having this hearing.

Chair CORNYN. Thank you, Senator Graham. Senator Klobuchar.

Senator KLOBUCHAR. Yes. Thank you to my colleagues. And I want to start by expressing my deepest sympathies to you Mrs. Vega, and to you Ms. Nobles, as well as to you, Mr. Avila. And I have always, as Senator Graham knows, because we've worked together on a number of bipartisan immigration bills, unfortunately, they have not passed. They've passed through this Committee though. And several of these comprehensive bills had much funding for the border and changes to border security.

And I strongly agree that securing our borders and ports of entry must be a top priority. I supported the border agreement negotiated with Senator Lankford last year, and we must prioritize public safety including deporting violent criminals. I have also cham-



pioned law enforcement efforts, as is well known in this room, whether hiring more police officers through the COPS Hiring Program, I lead that bill, or funding cutting edge detection technology to stop the flow of fentanyl at the border.

But I also know from my time as the top prosecutor in the biggest jurisdiction in my State for 8 years that it is always looking at how do you spend your law enforcement resources. Yes, border security, but then how do you handle when you're deciding how to deal with people in the neighborhoods? And you still want to have the resources there for gun prosecutions, for people who are felons in possession of guns, for drug trafficking, and the like.

And so, I do have serious concerns of some of the diversion of resources when it comes to some of these nonviolent people in the communities. The fear and chaos that we've seen wrongfully deporting people undermining due process and the rule of law. And I'm just going to ask a few questions because we have a vote going on.

I was at another hearing, so I apologize, Dr. Veliz, who's been in my State and I want to thank him for his work. And I've often said that immigrants don't diminish America. They define America. They are America. And our State is home to people from all over the world. And I have prosecuted people for serious crimes that come from other places. But I also prosecuted people that were born in our country.

And I want you to talk just a little bit about your 30-year career in law enforcement. You've been known as a bridge builder in our community. And could you talk about the relationships with the immigrant community and how they have paid dividends in the police work in terms of making sure we get the tips that we need to go after people that are committing serious crimes?

And if you break down all those relationships, you're going to have what I saw a guy that thought he could go after a 14-year-old and rape her because she was afraid that she'd be reported because her relative was undocumented. You can't have that go on. You have to have some relationships within the community. If you could talk about this, Dr. Veliz.

Dr. VELIZ. Thank you, Senator Klobuchar. And police officers, we have a variety of strategists and techniques to deter crime, identify violent offenders. But one of the biggest and most valuable tools that I saw in my 30-year career as a police enforcement is the human value from the community, providing that intelligence information daily. And I recognized right away. That I was only working for 8 to 10 hours a day, but community members, they stay there. They live there for 24/7. They are my eyes and my ears, not only for me, for the entire police department.

One of the successful stories, Senator, that I saw was I remember being at home at about 8 p.m. and getting a phone call from a community member and putting the community members identity and life at risk. The community member provided me with exact information about a community member who has been kidnapped by violent gang members, violent Sureños 13 gang members.

And even though we put together a SWAT team, we had technology conduct surveillance. Thank God that we have this commu-

nity member who provided with exact information about threats and how to rescue this innocent community member who was kidnapped. Thank you to the word from community members also, we have been able to seize and identify major drug trafficking of narcotics, investigations of members from cartels from organized crime.

So, in summary, I just want to say that we cannot do the job without community cooperation. We could not do this job without trust building in the communities.

Senator KLOBUCHAR. Thank you.

Chair CORNYN. To clarify just a few things, Ms. Fleischaker, do you believe that everybody who is—all individuals who are under final orders of deportation should actually be deported?

Ms. FLEISCHAKER. I believe that people with final orders of removal have gone through the legal process and then are eligible for removal for deportation.

Senator CORNY. You don't think they should be deported or you do think they should be deported?

Ms. FLEISCHAKER. I think that those are the people who can be removed. Those are the people who should be removed.

Chair CORNYN. So, there actually are some illegal aliens who should be deported. How about convicted criminals? Should they be deported?

Ms. FLEISCHAKER. Undocumented, convicted criminals? Those are the people who I think we should be prioritizing for removal.

Chair CORNYN. Okay. Mr. Avila, I think there's a lot of misconceptions about otherwise law-abiding individuals who violate our immigration laws and come into the United States. First of all, illegal entry in the United States is a crime, is it not?

Mr. AVILA. That's right. We call it EWI, entry without inspection. That's a violation of 8 U.S.C. 1325.

Senator CORNY. And in your lengthy experience in law enforcement and dealing with the border, is that the only law that people who illegally enter the country violate?

Mr. AVILA. No, it depends how you enter, when you enter, how many times you've entered and been encountered. There's very different types of removal. I think we overuse the term deportation, but believe it or not, most people, most illegals in this country are removed without a deportation order. There's expedited removals, there's voluntary returns, there's many different types of removals. The actual deportations are executed by an immigration judge under that order.

Chair CORNYN. So, in addition to illegal entry, is it your experience that many individuals who enter the country illegally engage in identity theft?

Mr. AVILA. Oh, my goodness. I conducted so many fraud cases, including Social Security cards, identity theft. I have a twin sister. She was a victim of identity theft by an illegal, a female illegal alien while she was in law school. It took her—it was so much time and such a hard effort to gain her identity back that the Social Security Administration actually issued her a new social security number. And that's very difficult to do.

Many, many times we're talking about marriage frauds, passport frauds. I conducted many search warrants where I found many doc-

uments, fraudulent documents, where these organizations, visas, and you name it. So, yes especially in the employment capacity, where these employers are denying knowledge and they hide behind that when they say, well, the illegal did provide me with an actual social security number or an id, it happens to belong to someone else or someone that doesn't exist altogether.

Chair CORNYN. And do individuals who enter the country illegally and engage in identity theft or perhaps have forged Social Security cards and the like, do they typically comply with other laws like Federal tax laws and other laws? Or in other words, my point is that, is there such a thing as a person who enters a country illegally who does not violate any other laws?

Mr. AVILA. No. Typically, there's other violations of law that sometimes the Democrats refer to as civil infractions or civil administrative. And that's—I think there's a big confusion between the criminal violation of law versus the civil violation of immigration law.

The Democrats seem too convoluted and make it into one, which is very, very different. And they commit a lot of different criminal and civil violations after they come in, whether a failure to have even vehicle insurance, things like that. That matter in my State of Texas, why our rates are so high emergency room costs many, many other economic impacts throughout the U.S.

Chair CORNYN. Dr. Veliz, I certainly respect your public service. Thank you for that. I wanted to ask you, though, based on your testimony, I was wondering, do you believe all laws should be enforced or just some of the laws?

Dr. VELIZ. Thank you, Chairman. Chairman, in my 30 years' experience as a police commander, working the streets, working in with Federal task forces, I always focus in the most violent offenses, violent offenders. My team and I were involved in hundreds of felony criminal investigations ranging from drug trafficking, weapons, and shootings.

Chair CORNYN. And we appreciate your service, as I started out by saying, but the question I have is, do you believe that all laws should be enforced or just some laws?

Dr. VELIZ. Laws are passed by legislation. Law enforcement have the discretion to enforce those laws. And I personally, I prioritize enforcing the most violent offenses, made sure communities are safe.

Chair CORNYN. Don't they frequently, in your experience in law enforcement, call that selective prosecution to just go after some cases, but not other cases of similarly situated persons who violate the same law?

Dr. VELIZ. Chairman, currently, I saw it as discretionary powers of sworn officers that have the discretion to select the most violent offenses and focus on the most violent offenders in the communities.

Chair CORNYN. Well, ladies and gentlemen, we do have a vote on, so I'm going to turn the mic over to Senator Cruz here momentarily. I just want to thank all of you for being here today and offering your testimony. And again, to Ms. Nobles and Mrs. Vega, you have our condolences. And I think we've had a test case between what happens when you enforce our immigration laws,

which we've seen under President Trump, and what happens when you don't enforce the immigration laws on a uniform basis under President Biden.

But I thank all of you for being here, and I'll turn the floor over to Senator Cruz.

Senator CRUZ [presiding]. Thank you, Mr. Chairman, and thank you for holding this hearing.

For 4 years under Joe Biden, the Democrats, this country witnessed an invasion at our southern border. It is an invasion that has no precedent in the history of our country. Twelve million illegal immigrants were allowed to come into this country, and that was deliberate. It was not an accident. It was not negligence. It was a deliberate choice that Joe Biden, and Kamala Harris, and Alejandro Mayorkas, and every Democrat Senator and House Member made.

They looked at 12 million illegal immigrants, and they saw what they believed would be future Democrat voters. And they were willing to allow Americans to be murdered, American women to be raped, American children to be brutalized by violent criminals day after day, after day.

In his first 71 days in office, President Biden released 184,241 illegal immigrants. That was a decision. By the way, it was a lawless decision. Federal immigration law says they shall be deported. No President has ever done what this administration did, which is say, we don't care about the law. We are all about partisan politics, and we're going to let them all go. And God help the communities we release them into.

His first 71 days, Joe Biden averaged 2,600 releases per day. Let's compare that to the same 71-day period in 2025 under President Trump, Joe Biden, 184,241 Donald Trump, 9. Not 9,000, not 900, 9. That is a 99.995 percent reduction.

[Poster is displayed.]

At the State of the Union address, Democrats did something else unprecedented. They decided they wouldn't stand for the President. They wouldn't applaud for the President. The only thing they would do is emanate hate and rage for the President of the United States.

So, Alexis Nungaray was at the State of the Union address. I've gotten to know Alexis well, the mother of Jocelyn Nungaray, a beautiful 12-year-old girl, raped and murdered in my hometown of Houston. The Democrats sat there and wouldn't applaud for the mother whose baby girl was taken from her.

President Trump at the State of the Union address, said last year, Joe Biden stood before Congress and said he could not secure the border unless Congress passed new legislation. And as President Trump pointed out, it turned out we didn't need new legislation. We just needed a new President.

You look at gotaways under Joe Biden, over three million gotaways. Who are gotaways? They're the most concerning of all of the 12 million that came into this country because gotaways are the illegal immigrants. We know we're here, we see signs of them, we see tracks, but they didn't turn themselves in. Gotaways are much, much more likely to be murderers, much more likely to be

rapists, much more likely to be child molesters, much more likely to be gang members, much more likely to be terrorists.

Under the Biden administration CBP was instructed of the southern border, be on guard for Hamas and Hezbollah and Palestinian Islamic Jihad terrorist coming across the border. Why? Because they've declared Jihad, and because the Biden open border policies extended a red carpet for anyone that sought to do harm.

Now, if you look at what the Trump administration has done, it didn't just slow the bleeding, it turned it around. Daily border encounters down 93 percent, encounters with gotaways down 95 percent, illegal alien crossings down over 99 percent. These are historic. The biggest improvement in border security in the history of the United States of America. And yet, not a single Democrat is here celebrating that.

[Poster is displayed.]

Not a single Democrat is saying thank you that our families are safer. They don't want our families safer. The Democrats have decided instead to fly down to El Salvador and have margaritas with MS-13 gang members. I genuinely don't understand that. Find me a community in America. Find me a mom in America that says you know what, we need more gang members who are raping more little girls.

[Poster is displayed.]

And this crisis is not about numbers. It's about lives. Laken Riley, a beautiful 22-year-old girl in Georgia, murdered by an illegal immigrant the Democrats released. Jocelyn Nungaray, as I mentioned, a beautiful 12-year-old girl in my hometown of Houston, murdered by two illegal immigrants the Democrats released. They had them in custody. Her murderers were in custody, the Democrats released them. Rachel Morin was a mother of five, raped and murdered by an illegal immigrant the Democrats had in custody. And they released them over and over and over again. This was deliberate.

And they're not alone. Border Patrol Agent Javier Vega, Jr., gunned down by Los Zetas gang members. ICE special agent Jaime Zapata, ambushed and murdered by cartel operatives. Kayla Hamilton, strangled to death by a member of MS-13. Their families are with us today. I want to say thank you. Thank you for having the courage to tell your loved one's stories.

And I'd like to just end by giving each of you an opportunity. Mr. Avila, I want to start with you, and then Ms. Nobles, and then Mrs. Vega. Tell this Committee and tell the American people a little bit about Javier, and Kayla, and Victor. Mr. Avila.

Mr. AVILA. Senator, thank you. And I appreciate the opportunity. Every time I have the ability to speak publicly, I will always honor Special Agent Jaime Zapata, who was assassinated next to me. He died serving the country. He died defending our homeland. For everyone, not one side of the aisle or the other.

But what I've continued to do in my life after I retired is my concern is about public safety. It's about national security that affects our entire community. I don't want anyone to be a victim of a crime. No one. But I cannot tolerate not one murder, not one DUI, not one theft, or one rape from a person that is in this country illegally. We have enough in our country, enough of crime. And it's

very difficult for me to accept that the Democrats always put the victims last. Let's not forget the victims.

Senator CRUZ. Thank you. Mrs. Vega, would you tell us about Javier? Please, turn your microphone on.

Mrs. VEGA. Thank you for having me here. You know, I feel like you've known Harvey. You've been with us from the very beginning. You supported us. You've put our story out there and you're compassionate. And I see that in your eyes, and I appreciate that.

I also want to say that we do not as angel moms, we do not do this for the publicity. We don't do it for the spotlight. We do it because we know the pain. And we don't want any other family suffering the pain that we've suffered. We're not supposed to outlive our children.

I stop by the cemetery every day and I visit his grave. But I miss his voice. I miss him sending me flowers. I shouldn't be the one taking flowers to his grave. I shouldn't be the one fighting for all this. But I'm not going to stop. I'm not going to stop till my last breath. Thank you, sir.

Senator CRUZ. Thank you for that. Mrs. Nobles, would you tell us about Kayla please?

Ms. NOBLES. Kayla just started her life, independently. She worked very hard to become independent. I don't know if some of you know, with autism, they overcome behavioral issues. They overcome a lot of stuff to be productive. And she was being productive. She had jobs. She celebrated her 20th birthday. I remember her counting down her birthday. She loved her birthday. "Mommy, I'm going to be 20 in a few days. Are you going to—" you know, and then I'm like, "I know. Don't remind me."

She celebrated her 20th birthday with her jojo cake, and 3 days later she was murdered, and strangled, and left on the floor like trash. I didn't know I was—no one prepares you for that phone call. And when I found out it was a known MS-13 gang member, I was angry. How in the world can that come into this country, that monster enter into our country?

And I made it that day when I learned to continue on the path to bring justice to Kayla and also for the safety of others. Nothing prepares you on burying your child that hadn't had a chance to get married, have children, and she just bought a car before she was murdered. And nothing prepares you for that. And I'm going to continue fighting for Kayla, and for others, and the safety of others because we do not know who had come across the border. They were not vetted in background check.

And another thing is, how many of those UACs that came across the border were gang members? We don't know. And also, all those children that were lost and just given to any sponsor, any group home. How do we know that they were safe? I've always said from the beginning, I was concerned with also the children, who they were giving those children to. They allowed her murderer to leave the sponsor's house. He left, they did not say or do anything.

Three months after Kayla was murdered, when he was going to high school and Child Protective Services, ORR filed a missing teen report on her murderer 3 months after she was killed. Did a sponsor say anything? I don't know. We don't know if the sponsor said anything or what happened. I think they were just trying to cover

their butt because they knew, you know, that Walter killed Kayla and then they were like, oh, well we better report him missing.

Senator CRUZ. Well, let me say to each of the witnesses here, thank you for being here. But but especially Mr. Avila and Mrs. Nobles, Mrs. Vega, especially, thank you for being here. And thank you for not only sharing your pain, but but making clear these are real people whose lives were taken and they didn't have to die. They shouldn't have to die, and your government failed you. And I want to apologize on behalf of politicians who made decisions that I will never understand and it took the lives of your babies.

The record in this hearing will stay open for 1 week for members to submit questions for the record.

Senator PADILLA. I see you're moving toward adjournment of this hearing and know Senator Cornyn as Chairman, had a chance a second round to ask some questions. As Ranking Member, I'd appreciate the opportunity to do the same and offer a closing statement as well.

Senator CRUZ. Okay. Have you voted in this vote?

Senator PADILLA. Not yet. Correct.

Senator CRUZ. Because there is a vote open, and I think they're calling.

Senator PADILLA. I'll try to be brief. In that case, let me for a go the questions and just suggest to the witnesses. Also, a thank you for your participation today. I will followup with some of you with additional questions for the record in writing. And I'll just touch on some of the topics that I've wanted to get to.

First of all, the impact of these arbitrary quotas. We've heard 3,000 a day to 7,000 a day detentions, arrest, deportations. You know, if you do the math over the 4-years, you're talking about anywhere from up to 10 million people, right, that would be deported. That's near the entire estimated undocumented population in the United States. So, that doesn't jive with me as strict focus on dangerous, violent criminals, let alone the investigative process that goes behind each and every one.

That's been my argument all along. I agree, let's focus on the dangerous, violent criminals, but when we're implementing these enforcement actions so indiscriminately, it's actually diverting resources and attention from that and from other critical missions as we're moving personnel from other agencies within DHS, and Department of Justice, and even Department of Defense nowadays.

A couple things that I think are important to clarify because of the rhetoric I keep hearing about immigrants and crime as if every single immigrant is a criminal. 70 percent of people ICE is arresting and booking have no criminal convictions. Again, this is ICE statistics. Of the 30 percent of them who have some sort of conviction, a significant portion of those offenses come from traffic violations, or yes, immigration offenses. Immigration offenses, not dangerous, violent crime.

For those who want to talk about the investment by the Trump administration in immigration enforcement and crime, the President's 2026 budget requested cuts, salaries and expenses, for the FBI by \$545 million, the DEA by \$212 million, the ATF by \$468 million. And if that wasn't enough, the Department of Justice Organized Crime and Drug Enforcement Task Force program, the

very one that helped arrest El Chappo, would lose its entire funding and would be shut down completely.

So, look, I share this because this hearing, I think, is representative how difficult it is to have a substantive, constructive conversation about immigration in Congress today. I do think that behind the scenes, there's a lot of Members of this Committee, of the Senate as a whole, of Congress as a whole, that would like to see progress being made on modernizing our immigration laws. We're all in agreement of the need for a safe, orderly, humane border. We're all in agreement that we need to modernize the system because it has become so problematic.

But as we begin to discuss, as we begin to debate, far too often, one side tries to pigeonhole, the other is, well, they just want open borders. They don't want to arrest or deport anybody. And the other side is pigeonholing as all illegal aliens are criminals. The truth is much more complex than that. And our response has to be more thoughtful than a lot of the rhetoric that we're hearing in Committee hearings and on the evening news.

If you want to be informed, let's be informed by reports like that from the National Bureau of Economic Research that shows the comparisons between crime rates and recidivism rates by immigrants versus natural born citizens for example. I'd like to submit it for the record.

Senator CRUZ. Without objection.

[The information appears as a submission for the record.]

Senator PADILLA. It's not just about resources for enforcement. By the way, you figure the problem would be solved between the Trump administration claiming, "Hey, crossings at the Southern Border are next to zero problem solved, mission accomplished." And by the way, the Budget Reconciliation Bill has a huge infusion of resources for ICE.

So, if the problem is solved, let's move on to the modernization of our immigration system. We must work together to address that. And that's not just people on my side of the aisle saying it. Last month, we saw Congressman Tony Gonzalez of Texas lead five of his Republican colleagues on the House side in calling on the Trump administration to, "start prioritizing violent offenders rather than wasting resources on immigrants with no criminal records."

Earlier this month, House Majority Leader Steve Scalise, even helped intervene after an Iranian immigrant who had been living in the U.S. for nearly 5 decades was arrested. Acknowledging the fact that there are undocumented immigrants here who have committed no crimes, leader Scalise conceded, "We will have to change law in Congress. And that means both parties are going to have to come together to do it."

So, yes, there is a path forward for this Subcommittee and for this Congress to reevaluate and refocus on what everyone agrees on. We should prioritize detaining and deporting violent criminals, but we should also be working together to support our immigration courts not standby while mass firings of immigration judges are happening. Because just throwing money at enforcement alone will not fix the problem. It will only overwhelm the system.

We should work together and not stand by while the administration decimates our refugee program, and just as Leader Scalise im-



plied, we have to be able to protect these long-term residents of our country who have lived and contributed here for decades, and who deserve a path to citizenship.

My sincere hope is for this Subcommittee to drop the theater. Being loud doesn't make you right about everything. We have to come together and get serious about bipartisan solutions. I'm ready to do the work. Thank you, Mr. Chair.

Senator CRUZ. Thank you, again, to each of the witnesses. The record will stay open for 1 week for members to submit questions for the record.

Senator CRUZ. And the hearing is adjourned.

[Whereupon, at 5:17 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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

To the  
Committee on the Judiciary  
United States Senate  
Subcommittee on Border Security and Immigration

For A Hearing Titled:  
“Biden’s Border Betrayal: Criminal Aliens in America”  
July 22, 2025  
2:30 p.m.

Room 226, Dirksen Senate Office Building  
Washington, D.C. 20515

Chairman Cornyn, Ranking Member Padilla, and members of the subcommittee, thank you for inviting me here today to discuss criminal deportations.

To address the issues raised by the committee, I have structured my written testimony to first, explain the source of the immigration power in the United States; second, to outline the criminal grounds of removal; third, to describe the laws governing immigration investigations, stops, and arrests; fourth, to delineate the statutes governing detention under the Immigration and Nationality Act; fifth, to explain the standards for due process in the removal process; sixth, to discuss immigration enforcement under the second Trump administration; and seventh, to analyze so-called “sanctuary” policies and their impacts.

## I. CONGRESS’ PLENARY AUTHORITY OVER IMMIGRATION

Key to understanding how our immigration laws work—or are supposed to work—is recognizing where the immigration authority in this country rests.

Article I, sec. 8 of the U.S. Constitution<sup>1</sup> states, in pertinent part: “Congress shall have Power . . . to establish an uniform Rule of Naturalization and to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers”.

“Naturalization”<sup>2</sup> 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)<sup>3</sup>—becomes a “citizen” (as defined by reference therein and in section 101(a)(22) of the INA<sup>4</sup>). Essential to Congress’s constitutional authority “to establish a uniform Rule of Naturalization,” is its power to regulate immigration.

As the Congressional Research Service (CRS)<sup>5</sup> has explained: “Long-standing Supreme Court precedent recognizes Congress as having plenary power<sup>6</sup> over immigration, *giving it almost complete authority to decide whether foreign nationals* (aliens, under governing statutes and case law) *may enter or remain in the United States*” (emphasis added). Reference to Supreme Court precedent illustrates the point.

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

<sup>2</sup> *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)).

<sup>3</sup> See sec. 101(a)(3) of the INA (2025) (“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>.

<sup>4</sup> See section 101(a)(22) of the INA (2025) (“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>.

<sup>5</sup> *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-S8-C18-8-1/ALDE\\_00001255/](https://constitution.congress.gov/browse/essay/artI-S8-C18-8-1/ALDE_00001255/).

<sup>6</sup> 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](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>.

In its 1954 opinion in *Galvan v. Press*<sup>7</sup>, 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 duty-bound to carry them out.

Section 212(a) of the INA<sup>8</sup> presents the various classes of aliens whom Congress has determined should be precluded 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 INA<sup>9</sup>, 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 INA<sup>10</sup> lists the “classes of deportable aliens”, aliens lawfully admitted to the United States who, for assorted reasons, Congress has directed immigration officials to remove 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 admission<sup>11</sup>; aliens convicted of certain criminal acts<sup>12</sup> (as I will describe in section II, *infra*); and aliens who pose a national security, espionage, or terrorism risk<sup>13</sup>.

## II. CRIMINAL GROUNDS OF REMOVAL

The INA contains separate grounds of inadmissibility and deportability for aliens who have been convicted of criminal offenses in the United States and abroad, the former applying to aliens who

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

<sup>8</sup> Sec. 212 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>9</sup> Sec. 212(a)(7)(A)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>10</sup> Sec. 237(a) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>11</sup> Sec. 237(a)(1)(C) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>12</sup> Sec. 237(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>13</sup> Sec. 237(a)(4) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

have not been admitted to the United States and the latter applying to those who have been lawfully admitted but are removable on criminal grounds.

#### A. The Criminal Grounds of Inadmissibility

The criminal grounds of inadmissibility are set forth in section 212(a)(2) of the INA<sup>14</sup>.

First, under section 212(a)(2)(A)(i)(I)<sup>15</sup>, “any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime” is inadmissible.

Note that inadmissibility under this provision does not require a conviction; rather, pursuant to statute, an “admission” to a “crime involving moral turpitude” or “CIMT” is sufficient.

That said, to constitute a valid admission to a CIMT in this context, the alien must be presented with the statute from the jurisdiction in which the offense is alleged to have been committed; to have that statute explained in plain language; and to admit to the key elements of that offense.<sup>16</sup>

In general, as the Board of Immigration Appeals (BIA) has explained:

*Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.*<sup>17</sup>

“To involve moral turpitude, a crime requires two essential elements: reprehensible conduct and a culpable mental state.”<sup>18</sup> Crimes in which the *mens rea* is negligence or less generally do not constitute CIMTs because such offenses “must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness”.<sup>19</sup>

“Fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude.”<sup>20</sup>

Similarly:

<sup>14</sup> Sec. 212(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>15</sup> Sec. 212(a)(2)(A)(i)(I) (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>16</sup> *Matter of K-*, 7 I&N Dec. 594 (BIA 1957). Source: <https://immigrantdefenseproject.org/wp-content/uploads/2016/10/IN-THE-MATTER-OF-K-7-IN-DEC-594-B.I.A..pdf>.

<sup>17</sup> *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3068.pdf>.

<sup>18</sup> *Matter of Silva-Trevino*, 26 I&N Dec. 826, 834 (BIA 2016). Source: <https://www.justice.gov/eoir/file/902461/dj>.

<sup>19</sup> *Matter of Silva-Trevino*, 24 I&N Dec. 687, 697 (A.G. 2008). Source: [https://www.ilrc.org/sites/default/files/resources/n.7-crimes\\_involving\\_moral\\_turpitude.pdf](https://www.ilrc.org/sites/default/files/resources/n.7-crimes_involving_moral_turpitude.pdf).

<sup>20</sup> *Jordan v. De George*, 341 U.S. 223, 229 (1951). Source: <https://supreme.justia.com/cases/federal/us/341/223/>.

*A theft offense is a crime involving moral turpitude if it involves a taking or exercise of control over another's property without consent and with an intent to deprive the owner of his property either permanently or under circumstances where the owner's property rights are substantially eroded.*<sup>21</sup>

"Burglary of a dwelling" has also been found to be a CIMT, even if the owner is not present.<sup>22</sup> Sex offenses will also generally constitute crimes involving moral turpitude.<sup>23</sup>

There are exceptions to inadmissibility under this ground for both age and recency. Section 212(a)(2)(A)(ii)(I) of the INA provides that an alien is not inadmissible based upon a single CIMT if:

*the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States.*<sup>24</sup>

And, under clause (II) therein<sup>25</sup>, a single CIMT will not bar an alien from admission if:

*the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).*

Finally, there is a waiver for this ground of inadmissibility at section 212(h) of the INA.<sup>26</sup>

<sup>21</sup> *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016). Source: <https://www.justice.gov/eoir/page/file/910821/di?inline>.

<sup>22</sup> *Matter of J-G-D-F*, 27 I&N Dec. 82 (BIA 2017). Source: <https://www.justice.gov/eoir/page/file/990986/di?inline>.

<sup>23</sup> See generally *Matter of Jimenez-Cedillo*, 27 I&N Dec. 1, 4 (BIA 2017). Source:

<https://www.justice.gov/eoir/page/file/955631/di?inline>.

<sup>24</sup> Sec. 212(a)(2)(A)(ii)(I) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>25</sup> Sec. 212(a)(2)(A)(ii)(II) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>26</sup> See sec. 212(h) of the INA (2025) ("Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E). The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status, (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and (iii) the alien has been rehabilitated; or (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or (C) the alien is a VAWA self-petitioner; and (2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts

Section 212(a)(2)(A)(i)(II) of the INA<sup>27</sup> renders an applicant for admission inadmissible if the alien has been:

*convicted of, or . . . admits having committed, or . . . admits committing acts which constitute the essential elements of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)<sup>28</sup>.*

Again, no conviction is required for a finding of inadmissibility on this ground, and as with CIMTs, there is a waiver available under section 212(h) of the INA for “a single offense” for a crime under this provision involving “simple possession of 30 grams or less of marijuana”.

Pursuant to section 212(a)(2)(B) of the INA<sup>29</sup>, an applicant for admission is inadmissible if the alien has been:

*convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more. . . .*

Traffickers<sup>30</sup> in controlled substances and other listed substances and chemicals (as defined in 21 U.S.C. § 802<sup>31</sup>) are inadmissible under section 212(a)(2)(C)(i) of the INA<sup>32</sup>, as are their spouses and adult children (under section 212(a)(2)(C)(ii) of the INA<sup>33</sup>) if, “within the previous 5 years”, they “obtained any financial or other benefit from the illicit activity of” their inadmissible spouse

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involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.”). Source:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>27</sup> Sec. 212(a)(2)(A)(i)(II) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>28</sup> See 21 U.S.C. § 802 (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section802&num=0&edition=prelim>.

<sup>29</sup> Sec. 212(a)(2)(B) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>30</sup> See generally 21 U.S.C. § 841 (2025) (“(a) Unlawful acts. Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.”). Source: <https://www.law.cornell.edu/uscode/text/21/841>; but see *Moncrieffe v. Holder*, 569 U.S. 184 (2013) (social sharing of a small amount of marijuana does not render a legal immigrant deportable). Source: <https://supreme.justia.com/cases/federal/us/569/184/>.

<sup>31</sup> See 21 U.S.C. § 802 (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section802&num=0&edition=prelim>.

<sup>32</sup> Sec. 212(a)(2)(C)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>33</sup> Sec. 212(a)(2)(C)(ii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.



or parent “and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity”.

Section 212(a)(2)(D)(i) of the INA<sup>34</sup> renders inadmissible any applicant for admission who:

*(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,*

*(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or*

*(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution . . .*

Aliens who have asserted immunity from prosecution for a “serious criminal offense” as defined in section 101(h) of the INA<sup>35</sup>, who have departed from the United States, and who have not subsequently “submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense” are inadmissible under section 212(a)(2)(E) of the INA<sup>36</sup>.

Under section 212(a)(2)(G) of the INA<sup>37</sup>: “Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22<sup>38</sup>, is inadmissible.”

“Significant traffickers in persons”, those aliens who commit or conspire to commit “human trafficking offenses in the United States or outside the United States”, as well as those who federal government officials know or have reason “to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in have engaged in severe forms

<sup>34</sup> Sec. 212(a)(2)(D) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>35</sup> See sec. 101(h) of the INA (2025) (“For purposes of section [212(a)(2)(E) of the INA], the term ‘serious criminal offense’ means- (1) any felony; (2) any crime of violence, as defined in section 16 of title 18; or (3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.”). Source: [https://uscode.house.gov/view.xhtml?req=\(title:8%20section:1101%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title8-section1101\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=(title:8%20section:1101%20edition:prelim)%20OR%20(granuleid:USC-prelim-title8-section1101)&f=treesort&num=0&edition=prelim).

<sup>36</sup> Sec. 212(a)(2)(E) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>37</sup> Sec. 212(a)(2)(G) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>38</sup> See 22 U.S.C. § 6402(13) (2025) (“The term ‘particularly severe violations of religious freedom’ means systematic, ongoing, egregious violations of religious freedom, including violations such as— (A) torture or cruel, inhuman, or degrading treatment or punishment; (B) prolonged detention without charges; (C) causing the disappearance of persons by the abduction or clandestine detention of those persons; or (D) other flagrant denial of the right to life, liberty, or the security of persons.”). Source: <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter73&edition=prelim>.



of trafficking in persons”, as defined in 22 U.S.C. § 7102(h)<sup>39</sup>, are inadmissible under section 212(a)(2)(H)(i) of the INA.<sup>40</sup>

Similarly, “any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under” section 212(a)(2)(H)(i) of the INA”, and who “has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible”, with an exception for minor children of such an alien.<sup>41</sup>

Finally, under section 212(a)(2)(I) of the INA<sup>42</sup>:

*Any alien- (i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956<sup>43</sup> or 1957<sup>44</sup> of title 18 (relating to laundering of monetary instruments); or (ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section; is inadmissible.*

#### B. The Criminal Grounds of Deportability

Section 237(a)(2) of INA<sup>45</sup> provides separate grounds of deportability for aliens who have been admitted to the United States, but who are removable on criminal grounds.

Under section 237(a)(2)(A)(i) of the INA<sup>46</sup>, aliens convicted of CIMTs for which a sentence of a year or longer may be imposed committed within five years of admission are deportable.

<sup>39</sup> See 22 U.S.C. § 7102(h) (2025) (“Severe forms of trafficking in persons. The term ‘severe forms of trafficking in persons’ means- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”). Source: [https://uscode.house.gov/view.xhtml?req=\(title:22%20section:7102%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title22-section7102\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=(title:22%20section:7102%20edition:prelim)%20OR%20(granuleid:USC-prelim-title22-section7102)&f=treesort&num=0&edition=prelim).

<sup>40</sup> Sec. 212(a)(2)(H)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>41</sup> Secs. 212(a)(2)(H)(ii) and (iii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>42</sup> Sec. 212(a)(2)(A)(i)(I) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>43</sup> 18 U.S.C. § 1956 (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-2000-title18-section1956&num=0&edition=2000>.

<sup>44</sup> 18 U.S.C. § 1957 (2025). Source: <https://uscode.house.gov/view.xhtml?hl=false&edition=2000&req=granuleid%3AUSC-2000-title18-section1957&num=0&saved=%7CZ3JhbnVsZWlkOIVTQyOyMDAwLXRpdGxIMTgtc2VidGlvbIE5NTY%3D%7C%7C%7C%7Cfalse%7C2000>.

<sup>45</sup> Sec. 237(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>46</sup> Sec. 237(a)(2)(A)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

In that vein, under section 237(a)(2)(A)(ii) of the INA<sup>47</sup>:

*Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct<sup>48</sup>, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.*

The “aggravated felony” ground of deportation in section 237(a)(2)(A)(iii) of the INA<sup>49</sup> renders deportable any alien who has been admitted to the United States and who has been convicted of any of the more than 30 aggravated felony offenses defined in section 101(a)(43) of the INA<sup>50</sup>.

Those offenses include: “murder, rape, or sexual abuse of a minor”<sup>51</sup>; “illicit trafficking”<sup>52</sup> in a controlled substance (as defined in section 802 of title 21<sup>53</sup>), including a drug trafficking crime (as defined in section 924(c) of title 18<sup>54</sup>); “illicit trafficking in firearms or destructive devices . . . or in explosive materials”<sup>55</sup> as defined under federal criminal statutes; crimes of violence as defined in 18 U.S.C. § 16<sup>56</sup> “for which a term of imprisonment of” a year or more was imposed<sup>57</sup>; theft, receipt of stolen property, or burglary offenses for which a sentence of a year or more was imposed<sup>58</sup>; and child pornography offenses as defined in specified federal criminal statutes<sup>59</sup>.

<sup>47</sup> Sec. 237(a)(2)(A)(iii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>48</sup> See *Matter of Baeza-Galindo*, 29 I&N Dec. 1 (BIA 2025) (“Two crimes involving moral turpitude, premised on separate turpitudinous acts with different objectives, neither of which was committed in the course of accomplishing the other, constitute separate schemes of criminal misconduct.”). Source: <https://www.justice.gov/d9/2025-01/4085.pdf>.

<sup>49</sup> Sec. 237(a)(2)(A)(ii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>50</sup> Sec. 101(a)(43) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>51</sup> Sec. 101(a)(43)(A) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>52</sup> Sec. 101(a)(43)(B) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>; see also fn. 30, *supra*.

<sup>53</sup> See 21 U.S.C. § 802 (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section802&num=0&edition=prelim>.

<sup>54</sup> 18 U.S.C. § 924(c) (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section924&num=0&edition=prelim>.

<sup>55</sup> Sec. 101(a)(43)(C) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>56</sup> 18 U.S.C. § 16 (2025). Source: <https://uscode.house.gov/view.xhtml?req=title:18%20section:16%20edition:prelim>.

<sup>57</sup> Sec. 101(a)(43)(F) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>58</sup> Sec. 101(a)(43)(G) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>59</sup> Sec. 101(a)(43)(I) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

Admitted aliens convicted of “high speed flight from an immigration checkpoint” under 18 U.S.C. § 758<sup>60</sup> are also deportable<sup>61</sup>, as are lawfully admitted aliens who have been convicted under 18 U.S.C. § 2250<sup>62</sup> for failing to register as sex offenders<sup>63</sup>.

Section 237(a)(2)(B)(i) of the INA<sup>64</sup> renders deportable any alien:

*who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21<sup>65</sup>), other than a single offense involving possession for one’s own use of 30 grams or less of marijuana . . . .*

Also deportable, under section 237(a)(2)(B)(ii) of the INA, is “any alien who is, or at any time after admission has been, a drug abuser or addict”<sup>66</sup>, even absent a conviction.

In its 1958 decision in *Matter of F-S-C*<sup>67</sup>, the BIA considered similar language in a predecessor statute to section 237(a)(2)(B)(ii) of the INA and distinguished between “addicts” as used in that provision from mere “users”—the latter of which, the BIA concluded, were not deportable.

Pursuant to section 237(a)(2)(C) of the INA<sup>68</sup>, admitted aliens are deportable if they have been convicted:

*under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18<sup>69</sup>) in violation of any law . . . .*

<sup>60</sup> 18 U.S.C. § 758 (2025). Source: <https://www.law.cornell.edu/uscode/text/18/758>.

<sup>61</sup> Sec. 237(a)(2)(A)(iv) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>62</sup> 18 U.S.C. § 2250 (2025). Source: [https://uscode.house.gov/view.xhtml?req=\(title:18%20section:2250%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title18-section2250\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=(title:18%20section:2250%20edition:prelim)%20OR%20(granuleid:USC-prelim-title18-section2250)&f=treesort&num=0&edition=prelim).

<sup>63</sup> Sec. 237(a)(2)(A)(v) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>64</sup> Sec. 237(a)(2)(B)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>65</sup> 21 U.S.C. § 802 (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title21-section802&num=0&edition=prelim>.

<sup>66</sup> Sec. 237(a)(2)(B)(ii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>67</sup> *Matter of F-S-C*, 8 I&N Dec. 108 (BIA 1958). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/27/Pg108.pdf>.

<sup>68</sup> Sec. 237(a)(2)(C) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>69</sup> 18 U.S.C. § 921(a) (2025). Source: [https://uscode.house.gov/view.xhtml?req=\(title:18%20section:921%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title18-section921\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=(title:18%20section:921%20edition:prelim)%20OR%20(granuleid:USC-prelim-title18-section921)&f=treesort&num=0&edition=prelim).

With respect to firearms, note that section 922(g)(5) of title 18<sup>70</sup> states:

*It shall be unlawful for any person- who, being an alien- (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in [section 101(a)(26) of the INA]<sup>71</sup>), to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.*

The exception in 18 U.S.C. § 922(y)(2)<sup>72</sup> relates to nonimmigrant aliens “admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States”, diplomats and other lawfully admitted foreign government officials, and certain foreign law enforcement officers.

All other aliens, aside from lawful permanent residents (i.e., “green card” holders), are barred by law from possessing or using firearms in this country.

To implement this provision, the Bureau of Alcohol, Tobacco, and Firearms (ATF) issued a regulation at 27 C.F.R. § 478.1, *et seq.*<sup>73</sup> defining “illegal alien” and other vague terms in section 922 of title 18.

That ATF regulation<sup>74</sup> specifically excludes from the definition of “illegal alien” (*inter alia*) aliens who have been paroled into the United States under section 212(d)(5)(A) of the INA<sup>75</sup> (which I will discuss in section IV.A, *infra*), even though: (1) paroled aliens are not admitted to the United States, either as immigrants or nonimmigrants; (2) most parolees haven’t been vetted for criminality through the consular vetting process<sup>76</sup>; and (3), by my calculations<sup>77</sup>, more than 2.86 million such parolees entered under the Biden administration.

<sup>70</sup> 18 U.S.C. § 922(g)(5) (2025). Source: <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title28-&section=122&f=tresort&num=0&saved=%7CKHKRpdGXlOjE4IHNIY3Rp246OTxiGVkaXRpb246cHJlbgltKS8PUBiAe0z3jHbnVzZWlOIjVtQ0JwcmVsaW90dGloOGUuX0c1ZWNoW9uOTI0X0k03pD3pD7CdHJlZUNvbnQ3D3pD7C7kC09fCfalse%7Cprelim>.

<sup>71</sup> Sec. 101(a)(26) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1101&num=0&edition=prelim>.

<sup>72</sup> 18 U.S.C. § 922(y)(2) (2025). Source: <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title18->

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<sup>73</sup> 27 C.F.R. § 478.1 (2025). Source: <https://www.ecfr.gov/current/title-27/chapter-II/subchapter-B/part-478>.

<sup>75</sup> Sec. 212(d)(5)(A) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>76</sup> See section IV.F, *infra* (testimony of Rodney Scott).

<sup>77</sup> Arthur, Andrew. *Did Joe Biden Really Parole In Nearly 3 Million Aliens?* CENTER FOR IMMIGRATION STUDIES (May 28, 2025). Source: <https://cis.org/Arthur/Did-Joe-Biden-Really-Parole-Nearly-3-Million-Aliens>.

That, as I have argued<sup>78</sup>, has created a massive “gun loophole” and a significant criminal vulnerability Congress never intended.

Returning to the criminal grounds of deportability, section 237(a)(2)(D)<sup>79</sup> of the INA renders deportable certain aliens who have been convicted of a national security offense, including for espionage, sabotage, and “treason and sedition”<sup>80</sup> for which a sentence of five years or more has imposed; as well as those<sup>81</sup> who have made threats against the president<sup>82</sup>, and those who have made a military expedition against a “friendly nation”<sup>83</sup>, and violators<sup>84</sup> of the Military Selective Service Act<sup>85</sup>.

Aliens who have violated presidential travel orders<sup>86</sup>, and those who imported any alien “for the purpose of prostitution, or for any other immoral purpose”<sup>87</sup> are also subject to deportation under section 237(a)(2)(D)(iv) of the INA<sup>88</sup>.

Finally, lawfully admitted aliens who have been convicted of crimes of “domestic violence”, “stalking”, violations of protection orders, and certain crimes against children are subject to deportation under section 237(a)(2)(E) of the INA<sup>89</sup>, and those who have been convicted of any offense described in the “human trafficking” ground of inadmissibility at section 212(a)(2)(H)<sup>90</sup> of the INA are also deportable under section 237(a)(2)(F) of the INA<sup>91</sup>.

### III. LAWS AND REGULATIONS GOVERNING IMMIGRATION ARRESTS

<sup>78</sup> Arthur, Andrew. A ‘Gun Loophole’ for More than 2 Million Biden-Harris Migrants Here on Parole. A recipe for mischief, if not disaster. CENTER FOR IMMIGRATION STUDIES (Nov. 26, 2024). Source: <https://cis.org/Arthur/Gun-Loophole-More-2-Million-BidenHarris-Migrants-Here-Parole>.

<sup>79</sup> Sec. 237(a)(2)(D) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>80</sup> Sec. 237(a)(2)(D)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>81</sup> Sec. 237(a)(2)(D)(ii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>82</sup> See 18 U.S.C. § 871 (2025). Source: [https://uscode.house.gov/view.xhtml?req=title:18%20section:871%20edition:prelim%20OR%20\(granuleid:USC-prelim-title18-section871\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=title:18%20section:871%20edition:prelim%20OR%20(granuleid:USC-prelim-title18-section871)&f=treesort&num=0&edition=prelim).

<sup>83</sup> 18 U.S.C. § 960 (2025). Source: <https://www.law.cornell.edu/uscode/text/18/960>.

<sup>84</sup> Sec. 237(a)(2)(D)(iii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>85</sup> 50 U.S.C. App. 451 et seq. (2025). Source: <https://uscode.house.gov/view.xhtml?req=title:50%20edition:prelim&f=treesort&edition=prelim>.

<sup>86</sup> Sec. 215 of the INA (2025). Source: [https://uscode.house.gov/view.xhtml?req=title:8%20section:1185%20edition:prelim%20OR%20\(granuleid:USC-prelim-title8-section1185\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=title:8%20section:1185%20edition:prelim%20OR%20(granuleid:USC-prelim-title8-section1185)&f=treesort&num=0&edition=prelim).

<sup>87</sup> 8 U.S.C. § 1328 (2025). Source: <https://www.law.cornell.edu/uscode/text/8/1328>.

<sup>88</sup> Sec. 237(a)(2)(D)(iv) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>89</sup> Sec. 237(a)(2)(E) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>90</sup> Sec. 212(a)(2)(H) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>91</sup> Sec. 237(a)(2)(F) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.



Congress in the INA has given immigration officers expansive powers to investigate, question, and detain aliens.

#### A. Administrative Arrest Warrants

For example, section 236(a) of the INA<sup>92</sup> permits immigration officers to issue *administrative* warrants to take into custody aliens believed to be removable from the United States, pending a decision on whether they are to be removed.

To be clear, nothing in the INA requires Immigration and Customs Enforcement (ICE) officers to seek a *judicial* warrant from a federal judge or magistrate before taking an alien into custody (regardless of what some<sup>93</sup> may believe the law requires), and in fact – as I have explained<sup>94</sup> in the past—there is no mechanism in the INA for seeking a judicial warrant for an individual alien’s arrest.<sup>95</sup>

#### B. Warrantless Questioning and Arrests

Administrative warrants aside, section 287(a)(1) of the INA<sup>96</sup> allows immigration officers to “interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States”, and paragraph (2) therein<sup>97</sup> allows officers to “arrest any alien in the United States”, if they have “reason to believe that the alien so arrested is in the United States in violation of the INA and regulations” and “is likely to escape before a warrant can be obtained for his arrest”.

That said, section 287(a)(2) also requires immigration officers to take aliens arrested without a warrant “without unnecessary delay” for a determination by an examining officer on whether those aliens have a “right to enter or remain in the United States”.

#### C. “Reasonable Suspicion”

The foregoing does not mean ICE officers can arrest or even just temporarily stop individuals based on whim or caprice, however.

<sup>92</sup> Sec. 236(a) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

<sup>93</sup> See Ramirez Uribe, Maria. *NY comptroller Brad Lander demanded a ‘judicial warrant’ in courthouse. Do ICE agents need that?* POLITIFACT (Jun. 18, 2025). Source: <https://www.politifact.com/article/2025/jun/18/Brad-Lander-ICE-required-warrant-arrest-immigrants/>.

<sup>94</sup> See Arthur, Andrew. *Immigration Judicial Warrants Don’t Exist*. CENTER FOR IMMIGRATION STUDIES (Sep. 17, 2019). Source: <https://cis.org/Arthur/Immigration-Judicial-Warrants-Dont-Exist>.

<sup>95</sup> But see Cadman, Dan. *‘Blackie’s Warrants’ and Sanctuary Jurisdictions*. CENTER FOR IMMIGRATION STUDIES (Jul. 7, 2025) (discussing judicial worksite enforcement warrants). Source: <https://cis.org/Cadman/Blackies-Warrants-and-Sanctuary-Jurisdictions>

<sup>96</sup> Sec. 287(a)(1) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1357&num=0&edition=prelim>.

<sup>97</sup> Sec. 287(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1357&num=0&edition=prelim>.

The leading precedent on immigration arrests is *INS v. Lopez-Mendoza*<sup>98</sup>, a Supreme Court opinion involving two separate cases in which aliens were subject to worksite arrest—one in an area agents were permitted by the employer to access permission, the other in which they weren't-- issued in 1984.

At issue in *Lopez-Mendoza* was whether the “exclusionary rule”<sup>99</sup>—a judge-made principle that “prevents the government from using most evidence gathered in violation of the United States Constitution” in criminal cases-- also applies in civil deportation cases.

Long story short: it doesn't.

The purpose of the exclusionary rule, as the majority noted, is to deter misconduct by investigating officers by barring the use of improperly obtained evidence, but as the Court held, “Several factors significantly reduce the likely deterrent value of the rule in such [immigration] proceedings.”<sup>100</sup>

Specifically, the majority noted that “regardless of how the arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation”<sup>101</sup>, given the primary question in deportation proceedings is the respondent's identity and alienage.

As the Court noted, the identity of a suspect cannot be suppressed under the exclusionary rule<sup>102</sup>, and (as there is no presumption of citizenship under the INA), immigration judges can draw adverse inferences<sup>103</sup> from the respondent's silence after receiving other proof of alienage.

In addition, as the Court explained, few aliens ever challenge the lawfulness of their arrests, and therefore applying the exclusionary rule in civil deportation proceedings likely wouldn't do much to change agents' behavior.<sup>104</sup>

As an aside, the majority at this juncture in its opinion underscored the fact that: “In the course of a year, the average INS agent” was then-arresting “almost 500 illegal aliens”.<sup>105</sup> If ICE were arresting aliens at the same pace today, immigration arrests would top 3 million per annum.

<sup>98</sup> *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984). Source: <https://supreme.justia.com/cases/federal/us/468/1032/>.

<sup>99</sup> See *Exclusionary rule*. LEGAL INFORMATION INSTITUTE (undated) (“The exclusionary rule prevents the government from using most evidence gathered in violation of the United States Constitution. The decision in *Mapp v. Ohio* established that the exclusionary rule applies to evidence gained from an unreasonable search or seizure in violation of the Fourth Amendment. The decision in *Miranda v. Arizona* established that the exclusionary rule applies to improperly elicited self-incriminatory statements gathered in violation of the Fifth Amendment, and to evidence gained in situations where the government violated the defendant's Sixth Amendment right to counsel. However, the rule does not apply in civil cases, including deportation hearings.”). Source: [https://www.law.cornell.edu/wex/exclusionary\\_rule](https://www.law.cornell.edu/wex/exclusionary_rule).

<sup>100</sup> *Lopez-Mendoza*, 468 U.S. at 1043.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 1039-40.

<sup>103</sup> See *Matter of Carrillo*, 17 I&N Dec. 30 (BIA 1979). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/17/2717.pdf>.

<sup>104</sup> See *Lopez-Mendoza*, 468 U.S. at 1044.

<sup>105</sup> *Id.*

#### D. Simple Questioning and Brief Detentions

Most critically, however, the majority concluded it wasn't necessary for courts to apply the exclusionary rule in civil deportation proceedings because the then-INS had "its own comprehensive scheme for deterring Fourth Amendment violations by its officers."<sup>106</sup>

That scheme was promulgated in regulations, which at 8 C.F.R. § 287.8<sup>107</sup> has carried over to ICE enforcement operations.

As paragraph (b)(1) therein explains:

*Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.*<sup>108</sup>

In other words, ICE officers—like any member of the public—can walk up to an individual and ask them questions, provided those questioned feel free to walk away.

That ICE questioning only becomes subject to legal standards when the subject in question does not feel free to leave, which brings me to 8 C.F.R. § 287.8(b)(2)<sup>109</sup>:

*If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.*

Those brief detentions are often referred to in criminal investigations as "Terry stops", after *Terry v. Ohio*<sup>110</sup>, the 1968 case that delineated the "reasonable suspicion" standard.

More broadly, the Court there explained that "in justifying the particular intrusion, the police officer must be able to point to *specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion*" (emphasis added).<sup>111</sup>

<sup>106</sup> *Id.*

<sup>107</sup> 8 C.F.R. § 287.8 (2025). Source: [https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8\(b\)\(1\)](https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8(b)(1)).

<sup>108</sup> 8 C.F.R. § 287.8(b)(1) (2025). Source: [https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8\(b\)\(1\)](https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8(b)(1)).

<sup>109</sup> 8 C.F.R. § 287.8(b)(2) (2025). Source: [https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8\(b\)\(2\)](https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8(b)(2)).

<sup>110</sup> *Terry v. Ohio*, 392 U.S. 1 (1968). Source: <https://supreme.justia.com/cases/federal/us/392/1/>.

<sup>111</sup> *Id.* at 21; but see Arthur, Andrew. *Fed Judge Throws Up Roadblocks on ICE Stops, Arrests in L.A.* CENTER FOR IMMIGRATION STUDIES (Jul. 15, 2025) (discussing a recent temporary restraining order in *Perdomo v. Noem*, limiting the factors that ICE officers may consider during immigration stops and arrests). Source: <https://cis.org/Arthur/Fed-Judge-Throws-Roadblocks-ICE-Stops-Arrests-LA>.



### E. Formal Arrests

On the other hand, a formal arrest, under the restrictions in 8 C.F.R. § 287.8(c)(2)<sup>112</sup>, can only occur pursuant to the warrantless arrest authority in section 287(a)(2) of the INA “when the . . . immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.”

As the nonpartisan Congressional Research Service (CRS) has [explained](#)<sup>113</sup>, “reviewing courts have interpreted the ‘reason to believe’ standard for warrantless immigration arrests” under section 287(a)(2) of the INA (and by extension the regulation) as “equivalent to the Fourth Amendment’s probable cause standard.”

CRS continues:

*Under this [probable cause] standard, courts have held that an immigration officer must have sufficient facts that would lead a reasonable person to believe, based on the circumstances, that the alien has violated federal immigration laws and is likely to escape before an ICE warrant can be obtained.*<sup>114</sup>

As an important aside, I will note that 8 C.F.R. § 287.8(c)(iii)<sup>115</sup> states:

*At the time of the arrest, the designated immigration officer shall, as soon as it is practical and safe to do so: (A) Identify himself or herself as an immigration officer who is authorized to execute an arrest; and (B) State that the person is under arrest and the reason for the arrest. [Emphasis added.]*

That language, promulgated in June 2003, long predates the current administration.<sup>116</sup>

### IV. DETENTION UNDER THE IMMIGRATION AND NATIONALITY ACT

Detention of aliens subject to removal proceedings is mandatory under various provisions of the INA, both for arriving aliens who are inadmissible “applicants for admission” as defined in

<sup>112</sup> 8 C.F.R. § 287.8(c)(2). Source: [https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8\(b\)\(1\)](https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.8#p-287.8(b)(1)).

<sup>113</sup> Smith, Hillel R. *Immigration Arrests in the Interior of the United States: A Primer*. CONG. RESEARCH SERV. (Jun. 13, 2025). Source: <https://www.congress.gov/crs-product/LSB10362>.

<sup>114</sup> *Id.*

<sup>115</sup> 8 C.F.R. § 287.8(c)(iii). Source: <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287>.

<sup>116</sup> See *Powers and Authority of Officers and Employees; Revisions to the Internal Review Process for Alleged Violations of the Standards for Enforcement Activities*, 68 Fed. Reg. 35273, 35280 (Jun. 13, 2003). Source: <https://www.federalregister.gov/documents/2003/06/13/03-14931/powers-and-authority-of-officers-and-employees-revisions-to-the-internal-review-process-for-alleged>.

section 235(a)(1) of the act<sup>117</sup> and for certain aliens subject to deportability<sup>118</sup> and under final orders of removal<sup>119</sup>.

#### A. Detention Mandates in Section 235(b) of the INA

Under section 235(a)(1) of the INA<sup>120</sup>, aliens present in the United States who have not been admitted or who arrive in the United States at ports of entry or elsewhere and who have not been admitted “shall be deemed for purposes of this chapter an applicant for admission” and are subject to inspection under section 235(a)(3) of the INA<sup>121</sup>.

If, following that inspection, an immigration officer determines that the 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 INA<sup>122</sup>, that officer has two options.

Section 235(b)(1)(A)(i) of the INA<sup>123</sup> 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 under section 240 of the INA<sup>124</sup>-- “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 claims a fear of persecution if returned, 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 INA<sup>125</sup> as “a significant possibility, taking into account the credibility of the statements made by the alien in

<sup>117</sup> Sec. 235(a)(1) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>118</sup> See sec. 236 of the INA (2025) (“Apprehension and detention of aliens”). Source:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

<sup>119</sup> See sec. 241(a) of the INA (2025) (“Detention, release, and removal of aliens ordered removed”). Source:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1231&num=0&edition=prelim>.

<sup>120</sup> *Id.*

<sup>121</sup> Sec. 235(a)(1)(3) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>122</sup> See sec. 212(a)(6)(C)(i) of the INA (2025) (“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>.

<sup>123</sup> Sec. 235(b)(1)(A)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>124</sup> See sec. 240 of the INA (2025) (“Removal proceedings”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>125</sup> Sec. 235(b)(1)(B)(v) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

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<sup>126</sup>.

Thus, "credible fear" is a screening standard, used to determine whether the alien *may* be eligible for asylum.

Congress is clear, however, in section 235(b)(1)(B)(iii)(V) of the INA<sup>127</sup>, 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 INA<sup>128</sup> 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 the inspection and removal processes because the credible fear standard is low, and asylum is particularly susceptible to fraud<sup>129</sup>. The release of aliens who receive positive credible fear determinations incentivizes other alien applicants for admission to make weak or bogus claims to gain entry—a clear abuse of humanitarian relief.

Or as the House explained at the time it was drafting what would become the expedited removal provision:

*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.*<sup>130</sup>

The other choice immigration officers have during inspection under section 235 of the INA in the case of "applicants for admission" who are inadmissible under sections 212(a)(7)(A)(i) or 212(a)(6)(C) of the INA is to treat them in the same manner as aliens inadmissible under the

<sup>126</sup> See sec. 208 of the INA (2025) ("Asylum"). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

<sup>127</sup> Sec. 235(b)(1)(B)(iii)(V) of the INA (2025) (emphasis added). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>128</sup> Sec. 235(b)(1)(B)(ii) of the INA (2025) (emphasis added). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>129</sup> See Arthur, Andrew. *Fraud in the "Credible Fear" Process*. CENTER FOR IMMIGRATION STUDIES (Apr. 19, 2017). Source: <https://cis.org/Report/Fraud-Credible-Fear-Process>; see also sec. 208(b)(1)(B)(ii) of the INA (2025) ("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. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. 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."). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

<sup>130</sup> H. Rep. No. 104-469, at 107 (1996), available at: <https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf>.

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 INA<sup>131</sup>.

As with aliens subject to expedited removal, aliens under section 235(b)(2)(A) of the INA who are subject to removal proceedings under section 240 of the INA who are not “clearly and beyond a doubt entitled to be admitted” must “be detained”<sup>132</sup>.

In its May 2005 decision in *Matter of X-K*,<sup>133</sup> the BIA held that the restrictions on release in section 235(b) of the INA notwithstanding, applicants for admission subject to expedited removal who were placed into removal proceedings after receiving positive credible fear determinations were eligible for bond redeterminations from immigration judges.

Thirteen years later, however, in *Jennings v. Rodriguez*,<sup>134</sup> the Supreme Court concluded that section 235(b)(1) of the INA “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin”, calling into question *Matter of X-K*.

Subsequently, in April 2019, then-Attorney General William Barr issued a precedential decision in *Matter of M-S*,<sup>135</sup> formally reversing *Matter of X-K* and concluding that: “An alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond.”

The sole avenue for release of an inadmissible applicant pending removal proceedings is parole under section 212(d)(5)(A) of the INA<sup>136</sup>.

That provision<sup>137</sup> states, in pertinent part, that the DHS secretary:

*[M]ay, in h[er] 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.]*

<sup>131</sup> See section 235(b)(2)(A) of the INA (2025) (“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>.

<sup>132</sup> *Id.*

<sup>133</sup> *Matter of X-K*, 23 I&N Dec. 731 (BIA 2005). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3510.pdf>.

<sup>134</sup> *Jennings v. Rodriguez*, 583 U.S. \_\_\_\_ (2018). Source: <https://supreme.justia.com/cases/federal/us/583/15-1204/>.

<sup>135</sup> *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019). Source: <https://www.justice.gov/eoir/file/1154747/d?inline=>.

<sup>136</sup> Sec. 212(d)(5)(A) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>137</sup> *Id.*

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

First, parole may only be granted “on a case-by-case basis”<sup>138</sup>, 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 in cases of either “urgent humanitarian reasons” or for “significant public benefit”<sup>139</sup>. Granting parole for any other purpose is thus *ultra vires*<sup>140</sup>, 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.

Fourth, the DHS secretary may revoke parole at any time in her unreviewable discretion, if she is satisfied that the “purposes of such parole . . . have been served,” after which the paroled alien *must* return or be returned to DHS custody.

#### B. Section 236(a) and the General Release Authority

Section 236(a) of the INA<sup>141</sup> authorizes immigration officers to arrest and detain an alien on an administrative warrant “pending a decision on whether the alien is to be removed from the United States”.

In general, once those aliens are arrested and detained, section 236(a) of the INA permits DHS to continue to detain them or release them on a bond of not less than \$1,500 or on conditional parole (which is distinct<sup>142</sup> from parole under section 212(d)(5)(A) of the INA).

By regulation<sup>143</sup>, and with exceptions, aliens detained by DHS can request release on bond either from DHS or, alternatively, from immigration judges in bond proceedings, which are “separate and apart”<sup>144</sup> from removal proceedings under section 240 of the INA.<sup>145</sup>

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> 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](https://www.law.cornell.edu/wex/ultra_vires).

<sup>141</sup> Sec. 236(a) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

<sup>142</sup> *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023).

<sup>143</sup> 8 CFR § 1003.19 (2025). Source: <https://www.law.cornell.edu/cfr/text/8/1003.19>.

<sup>144</sup> 8 CFR § 1003.19(d) (2025). Source: <https://www.law.cornell.edu/cfr/text/8/1003.19>; see also *Immigration Court Practice Manual*. U.S. DEP’T OF JUSTICE, EXEC. OFC. FOR IMMIGRATION REVIEW (undated), at chap. 9.3 (“In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody upon the payment of bond. Initially, the bond is set by DHS. Upon the alien’s request, an Immigration Judge may conduct a “bond hearing,” in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS. Bond proceedings are separate from removal proceedings.”). Source: <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3>.

<sup>145</sup> Sec. 240 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.



That said, neither section 236(a) of the Act nor the applicable regulations confer any right to release on bond on an alien.<sup>146</sup>

Rather, when an alien seeks a redetermination of his or her custody status under section 236(a), that alien “must establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.”<sup>147</sup> Conversely, DHS does not bear the burden of showing that the alien should be detained.<sup>148</sup>

### C. Mandatory Detention Under Sections 236(c) and 242(a)(2) of the INA

As with the congressional restrictions on DHS’s authority to release inadmissible applicants for admission under section 235(b) of the INA, other aliens – including aliens removable on criminal grounds-- are not amenable to release under statutory restrictions.

For example, section 241(a)(1) of the INA<sup>149</sup> directs DHS to remove all aliens under final orders of removal within 90 days, designated therein as the “removal period”.

Section 241(a)(2)<sup>150</sup> of the INA, in turn, 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.

Similarly, section 236(c) of the INA<sup>151</sup> requires DHS to “take into custody any alien who”: is inadmissible under the criminal grounds of inadmissibility in section 212(a)(2) of the INA<sup>152</sup>; is inadmissible or deportable under the “terrorist activities” grounds of inadmissibility and deportability in sections 212(a)(3)(B) of the INA<sup>153</sup> and 237(a)(4)(B) of the INA<sup>154</sup> (respectively); is deportable under certain grounds of deportability in section 237(a)(2) of the INA<sup>155</sup>; or “is charged with . . . arrested for, . . . convicted of” or “admits having committed, or

<sup>146</sup> *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020). Source: <https://www.justice.gov/eoir/page/file/1258971/dl>.

<sup>147</sup> *Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018). Source: <https://www.justice.gov/eoir/page/file/1030706/dl>.

<sup>148</sup> See *Matter of Fatahi*, 26 I&N Dec. 791, 795 n.3 (BIA 2016) (“Although section 236(a) of the Act does not specifically address the burden of proof, it provides that the Attorney General has broad discretion to detain an alien “pending a decision on whether the alien is to be removed from the United States” and “may continue to detain” or “may release the alien” during that time. We have consistently held that aliens have the burden to establish eligibility for bond while proceedings are pending.”). Source: <https://www.justice.gov/eoir/file/881776/dl?inline=>.

<sup>149</sup> Sec. 241(a)(2) of the INA (2025). 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)).

<sup>150</sup> Sec. 241(a)(2) of the INA (2025). 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)).

<sup>151</sup> Sec. 236(c) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

<sup>152</sup> Sec. 212(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>153</sup> Sec. 212(a)(3)(B) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>154</sup> Sec. 237(a)(4)(B) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

<sup>155</sup> Sec. 237(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim>.

admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.”

DHS must take those aliens described in section 236(c) of the INA into custody “when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense”, and bars DHS from releasing them.

The detention mandate was added to section 236(c) by section 303 of IIRIRA.<sup>156</sup>

As Congress explained in a conference report<sup>157</sup> for an earlier iteration of that act, “A chief reason why many deportable aliens are not removed from the United States is the inability of the INS to detain such aliens through the course of their deportation proceedings” – underscoring the crucial role of detention in immigration enforcement.

#### D. Secretary Mayorkas’s “Guidelines for the Enforcement of Civil Immigration Law”

On September 30, 2021, then-DHS Secretary Alejandro Mayorkas issued a memorandum titled “Guidelines for the Enforcement of Civil Immigration Law”<sup>158</sup> (Mayorkas memo).

Notwithstanding the detention mandates in sections 242(a)(2) and 236(c) of the INA, the Mayorkas memo placed restrictions on the ability of ICE agents, officers, and attorneys to investigate, arrest, detain, prosecute, and deport removable aliens (collectively, take “enforcement action”), including those subject to removal on the delineated criminal grounds.

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.<sup>159</sup>

The aggravating factors were general and objective, relating to the facts of aliens’ criminal offenses and prior criminal history.

The mitigating factors, on the other hand, were 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.

#### E. *Texas v. U.S.* and the Laken Riley Act

As the Mayorkas guidelines facially contravened the detention mandates in sections 236(c) and 241, the states of Texas and Louisiana filed an amended complaint<sup>160</sup> in a case then pending

<sup>156</sup> Tit. III, sec. 303 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. 3009–585 to 587. Source: <https://www.congress.gov/104/plaws/publ208/PLAW-104publ208.pdf>.

<sup>157</sup> See H. Rept. 104-469—Immigration in the National Interest Act of 1995 (104th Cong., 2d Sess.).

<sup>158</sup> *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>.

<sup>159</sup> See *id.* at 3-4.

<sup>160</sup> *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>.

before the U.S. District Court for the Southern District of Texas captioned *Texas v. U.S.*<sup>161</sup>, in which they asked the district court to set the guidelines in the Mayorkas memo aside.

In June 2022, the judge assigned to *Texas* issued a Memorandum Opinion and Order enjoining the Mayorkas memo<sup>162</sup>. That injunction eventually made its way to the Supreme Court, where in June 2023, a majority of the justices held the states did not have standing to bring the case.<sup>163</sup>

In essence, the majority held that there is no precedent for a plaintiff — even a state — to request that a third-party (here, aliens removable on criminal grounds) be detained and prosecuted on either criminal or immigration grounds.

Justice Alito, in dissent, however, 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.*<sup>164</sup>

In response to that decision, the Biden administration's migrant release policies, and the threat posed by certain criminal aliens who had not been detained by DHS in accordance with the INA, Congress in January 2025 passed Pub. L. 119-1, the "Laken Riley Act"<sup>165</sup>.

Among other things, that act empowers state attorneys general to sue for injunctive relief to require DHS to detain: inadmissible applicants for admission at the borders and ports subject to mandatory detention under section 235(b) of the INA<sup>166</sup>; aliens inadmissible on criminal grounds and deportable aliens removable on specified criminal grounds in section 236(c) of the INA<sup>167</sup>; and aliens ordered removed pending deportation under section 241(a)(2) of the INA<sup>168</sup> (criminal aliens in particular).

In addition, it allows state attorneys general to sue the federal government for injunctive relief to force the secretary of State to "discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of" so-called "recalcitrant countries"<sup>169</sup> —

<sup>161</sup> *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](https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.1.0_1.pdf).

<sup>162</sup> *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](https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.240.0_4.pdf).

<sup>163</sup> *U.S. v. Texas*, 599 U.S. 670 (2023). Source: [https://www.supremecourt.gov/opinions/22pdf/22-58\\_1425.pdf](https://www.supremecourt.gov/opinions/22pdf/22-58_1425.pdf).

<sup>164</sup> *Id.* at \_\_\_\_ Slip op., dissent at 1.

<sup>165</sup> The Laken Riley Act, Pub. L. 119-1 (2025). Source: <https://www.congress.gov/bills/119th-congress/senate-bill/5/text>.

<sup>166</sup> Sec. 235(b) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>167</sup> Sec. 236(c) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1226&num=0&edition=prelim>.

<sup>168</sup> Sec. 241(a)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1231&num=0&edition=prelim>.

<sup>169</sup> *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*. CONG. RESEARCH SERV. (updated July 10, 2020). Source: <https://www.congress.gov/crs-product/IF11025>.



governments that refuse to take back their nationals who have been ordered deported — as provided for in section 243(d) of the INA<sup>170</sup>.

Finally, it allows states to sue the federal government to bar DHS from categorically releasing inadmissible applicants for admission on parole, or on any grounds aside from “urgent humanitarian reasons” or “a significant public benefit”, restrictions—as noted— Congress has already included in the parole provision in section 212(d)(5)(A) of the INA.<sup>171</sup>

#### F. Alternatives to Detention

As ICE explains<sup>172</sup>:

*ICE’s Alternatives to Detention (ATD) program exists to ensure compliance with release conditions and provides important case management services for non-detained aliens. ATD consists of the Intensive Supervision Appearance Program (ISAP). The ATD-ISAP program utilizes case management and technology tools to support aliens’ compliance with release conditions while on ICE’s non-detained docket. ATD-ISAP also increases court appearance rates.*

*ATD-ISAP enables aliens to remain in their communities — contributing to their families and community organizations and, as appropriate, concluding their affairs in the U.S. — as they move through immigration proceedings or prepare for departure.*

*ATD-ISAP has been in place since 2004 and the number of participants has increased over time. Through the end of October 2024, approximately 7.6 million aliens were being overseen on ICE’s non-detained docket. Of those, more than 179,000 participated in the ATD-ISAP program.*

Those sanguine assessments of ATD aside, there are any number of issues with that program.

Notably, the agency contends: “The daily cost per ATD-ISAP participant is less than \$4.20 per day — a stark contrast from the cost of detention, which is around \$152 per day.”<sup>173</sup>

That would be a fair comparison if those two figures, and detention and ATD, were equivalent—but they are not.

According to statistics<sup>174</sup> published by the Executive Office for Immigration Review (EOIR) — the DOJ component with jurisdiction over the immigration courts and the Board of Immigration

<sup>170</sup> Sec. 243(d) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1253&num=0&edition=prelim>.

<sup>171</sup> See sec. IV.A, *supra*.

<sup>172</sup> *What are Alternatives to Detention?* U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (updated Feb. 27, 2025). Source: <https://www.ice.gov/features/atd>.

<sup>173</sup> *Id.*

<sup>174</sup> *Median Completion Times for Detained Cases.* U.S. DEP’T OF JUSTICE, EXECUTIVE OFF. FOR IMMIGRATION REVIEW (generated Oct. 12, 2023). Source: <https://www.justice.gov/eoir/page/file/1163621/dl?inline=>.

Appeals (BIA)—the median completion time for a removal proceeding in FY 2023 was 42 days, though as recently as FY 2014 it was 27 days, and in FY 2008, it was just 8 days.

According to the Transactional Records Access Clearinghouse (TRAC)<sup>175</sup>, the average processing time for an immigration court case in January 2023 was 1,016 days, though in immigration courts in Virginia it was 1,738 days.

In other words, the total average cost for detention in FY 2023 was \$6,384, whereas the average cost for ATD was \$4,267.20—a more modest savings of \$2,116.80 per case in favor of ATD.

Cost, of course, is not the only consideration. All detained aliens must appear at their hearings in immigration court, unlike aliens who are not in detention, including those on ATD.

ICE statistics<sup>176</sup> reveal, however, that 909 of the 7,553 aliens on ATD and who had final court appearances in FY 2025 through the end of May failed to appear—a non-appearance rate of 12 percent.

That is better than the historic average non-appearance rate in immigration court for non-detained aliens of 34 percent<sup>177</sup>, but again it is 12 percent worse than the no-show rate in detained removal cases (0 percent).

The much more significant factor, though, is public safety. Detained aliens pose no risk to the community, a fact not guaranteed under ATD.

According to the House Judiciary Committee<sup>178</sup>, nearly 8 million “illegal aliens” entered the United States under the Biden administration. Unlike lawfully admitted aliens, who must prove to a consular or immigration officer that they have no serious criminal history before receiving a visa, none of those aliens was vetted before they arrived, and the vetting they received after arrival and prior to release was questionable, at best.

In that latter regard, as Rodney Scott, President Biden’s first Border Patrol chief, explained to the House Judiciary Committee<sup>179</sup> in September 2023:

*Every decision to allow a foreign national or a foreign product to enter our home must be an informed and intentional decision. If either of these criteria are*

<sup>175</sup> *Immigration Court Processing Time by Outcome*. TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (through Jan. 2023). Source: [https://tracreports.org/phptools/immigration/court\\_backlog/court\\_proctime\\_outcome.php](https://tracreports.org/phptools/immigration/court_backlog/court_proctime_outcome.php).

<sup>176</sup> *Detention Management*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (undated). Source: <https://www.ice.gov/detain/detention-management#stats>.

<sup>177</sup> *Immigration Courts: Actions Needed to Track and Report Noncitizens’ Hearing Appearances*. GAO-25-106867. Gov’t ACCOUNTABILITY OFC. (Dec. 2024). Source: <https://files.gao.gov/reports/GAO-25-106867/index.html>.

<sup>178</sup> *Quiet Amnesty: How the Biden-Harris Administration Uses the Nation’s Immigration Courts to Advance An Open-Borders Agenda*. H. Comm. on the Judiciary, 118<sup>th</sup> Cong. (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>.

<sup>179</sup> *Terrorist Entry Through the Southwest Border: Hearing Before the H. Comm. on the Judiciary, 118<sup>th</sup> Cong.* (Sep. 2023) (testimony of Rodney Scott). Source: <https://judiciary.house.gov/committee-activity/hearings/terrorist-entry-through-southwest-border>.

*missing, then we cannot honestly assert that our borders are secure. Many would argue that it is malfeasance, or at a minimum nonfeasance, for authorities to knowingly and willfully ignore threats and vulnerabilities. Unfortunately, this is exactly what is occurring.*

. . . .

*Most aliens, and most Americans for that matter, do not understand what criminal history and other information US law enforcement can access. Even more important for this discussion is the fact that most people do not seem to understand what US law enforcement can NOT access. When law enforcement officers at any level in the US use a person's biographical and biometric information to run records checks, that freshly collected information is being compared to existing records in specific US agency databases. It is extremely rare for any information about criminal acts committed by a foreign national outside the US to be documented within these US criminal history databases. When Secretary Mayorkas or any US official asserts that aliens are properly vetted, they are really telling you that they checked US databases to see if the alien had any known criminal history inside the US or if the alien had been identified and placed in the Terrorist Screening Database or Data Set.*

*To ensure there is no confusion here, running records checks on any alien that has not been arrested by US law enforcement in the past or is not currently known by US intelligence is like looking for something on an empty hard drive. There is simply no data to compare it with. The alien could be a saint, or he/she could be serial killer. There are a few ways to find out more about who the alien really is. One way is to request information from officials in the alien's home nation. At best, that is extremely time-consuming and requires US State Dept. support. In many cases this is not even an option due to a lack of diplomatic relations or a lack of capabilities in the other nation. [Emphasis added.]*

At best, ATD makes it more likely an alien will appear in immigration court or that ICE can locate aliens released on ATD. It does nothing to ensure those aliens will not commit crimes following release on ATD.

There was little transparency into the criminal activities of aliens released on ATD under the Biden administration, with notable exceptions.

In April 2024, for example, the ICE Enforcement Removal Operations (ERO) office in Denver, Colo., issued a press release headlined "ERO Denver arrests 9 at-large noncitizens who violated conditions of Alternatives to Detention".<sup>180</sup>

It detailed the results of a five-day ERO operation in the states of Colorado and Wyoming in which nine aliens who had violated the terms of their ATD releases were arrested. They

<sup>180</sup> *ERO Denver arrests 9 at-large noncitizens who violated conditions of Alternatives to Detention*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 16, 2024). Source: <https://www.ice.gov/news/releases/ero-denver-arrests-9-large-noncitizens-who-violated-conditions-alternatives-detention>.

included a Nicaraguan national who had been “was arrested in possession of a firearm and narcotics” and two separate Mexican nationals convicted for “driving while ability impaired.”

Similarly, a July 2024 press release<sup>181</sup> from ERO’s Miami office described a three-day operation in Southeast Florida during which 18 criminal aliens who had been released on ATD were taken into custody.

Those arrests included a Honduran national convicted for resisting an officer, trespassing, criminal mischief, assault, and burglary; a Chinese national convicted for conspiracy, Racketeer Influenced and Corrupt Organizations Act (RICO) violations, battery, weapons offense, drug possession and extortion; a separate Honduran national arrested for battery and aggravated assault with a deadly weapon; and a Guatemalan national arrested for battery and child abuse.

In addition, other facts about the dangers posed by (largely unvetted) aliens released on ATD have been revealed by sources outside of DHS.

An interim staff report issued by the House Judiciary Committee<sup>182</sup> in October 2024, for example, discussed the case of Mohammad Kharwin, a national of Afghanistan who was apprehended by Border Patrol agents after he entered illegally near Imperial Beach, Calif., on March 10, 2023.

As that report explains, despite agents’ concerns that Kharwin was on the terror watchlist:

*DHS placed him on Alternatives to Detention (ATD) and instructed him to report to an ICE office in Sacramento, California. After Kharwin reported to the ICE field office just 16 days after his initial encounter, he was removed from ATD and “was able to apply for asylum and work authorization and fly domestically.” DHS told the Committee and [immigration] Subcommittee that ICE removed Kharwin from ATD because there was no basis to maintain his elevated supervision.*

In March testimony before the House Oversight and Accountability Committee’s Subcommittee on Cybersecurity, Information Technology, and Government Innovation<sup>183</sup>, Simon Hankinson of the Heritage Foundation referenced other instances in which aliens released on ATD committed criminal offenses in the United States:

<sup>181</sup> *ERO Miami ATD program nabs 18 for various crimes*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Jul. 22, 2024). Source: <https://www.ice.gov/news/releases/ero-miami-atd-program-nabs-18-various-crimes>.

<sup>182</sup> *Interim Staff Report, The Biden-Harris Border Crisis: At Least 1.7 Million Potential National Security Threats*. H. Comm. on the Judiciary, 118<sup>th</sup> Cong. (Oct. 3, 2024), at 7-8. Source: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-10-03%20The%20Biden-Harris%20Border%20Crisis%20-%20At%20Least%201.7%20Million%20Potential%20National%20Security%20Threats.pdf>.

<sup>183</sup> *Leveraging Technology to Strengthen Immigration Enforcement: Hearing Before the H. Comm. on Oversight and Accountability, Subcomm. on Cybersecurity, Information Technology, and Government Innovation*, 119<sup>th</sup> Cong. (2025) (testimony of Simon Hankinson), at 7-8. Source: <https://oversight.house.gov/wp-content/uploads/2025/03/Hankinson-Written-Testimony.pdf>.

*On January 29 and 30, 2025, Jefferson Ubilla-Delgado and Geiderwin Bello Morales were arrested in Chicago and charged with the murder and robbery of 63-year-old George Levin.*

*At the time of the crime, Ubilla-Delgado was wearing an ICE GPS ankle monitor. Morales had been arrested earlier for attempting to lure a 12-year-old girl into his car. Both Ubilla-Delgado and Morales had been in Chicago for over a year, entering the United States illegally from Venezuela and Ecuador respectively at an unknown date and location.*

*On September 27, 2024, Estefania Primera, nicknamed “La Barbie,” was arrested outside Sacred Heart Church, a location known for serving arriving migrants, including illegal aliens. Primera was a member of the Tren de Aragua (TdA) gang accused of operating a sex-trafficking ring in El Paso, Texas. One sex-trafficking victim alleged Primera was the frontwoman and had drugged her. Primera crossed the border illegally near El Paso in August 2023 and was released into the U.S. with a notice to appear and an ICE-supervised ankle monitor, which she removed within weeks. TdA has been caught operating trafficking and forced prostitution rings, such as this, throughout the U.S., in the states of California, Florida, Georgia, Illinois, Nevada, New Jersey, New York and Texas.*

Then, there are the cases of Johan Jose Rangel Martinez and Franklin Jose Pena Ramos, two Venezuelan nationals who entered the United States illegally in March and May 2024, respectively.<sup>184</sup>

The pair were indicted in September 2024 on capital murder charges in the June 2024 killing of 12-year-old Houston resident Jocelyn Nungaray.<sup>185</sup>

Last June, shortly after they were arrested, the local CBS affiliate in Houston detailed<sup>186</sup> facts in court records that alleged Rangel Martinez and Pena Ramos “lured Jocelyn under the bridge, where they stayed for two hours. Court records say the men took off her pants, tied her up, killed her, and threw her body into the bayou.”

<sup>184</sup> Judge sets \$10M bond for second Venezuelan man accused of killing a 12-year-old Houston girl. ASSOCIATED PRESS (Jun. 26, 2024). Source: <https://apnews.com/article/girl-murder-houston-undocumented-venezuelans-bond-22153232c69dbb0ee62a5ffb19035e0>.

<sup>185</sup> Dorgan, Michael. DA to seek death penalty against illegal immigrants accused in Nungaray murder case. FOX NEWS (Dec. 13, 2024). Source: <https://www.foxnews.com/us/da-seek-death-penalty-against-illegal-immigrants-accused-nungaray-murder-case>.

<sup>186</sup> Homer, Michelle, Miles, Jason, and Galvan, Jaime E. Men charged with killing 12-year-old Jocelyn Nungaray aren't eligible for death penalty but that could change. KHOU 11 (updated Jun. 25, 2024). Source: <https://www.khou.com/article/news/local/12-year-old-jocelyn-nungaray-update-june-24-2024/285-9ba6c14f-06d2-4e20-b5c6-0a3405c6af55>.



Both had been fitted with ATD ankle monitors after they were apprehended entering illegally.<sup>187</sup> Martinez-Rangel's monitor was removed by DHS "after complying with mandatory check-ins for two months", while Pena Ramos was still wearing his at the time of the crime for which he was charged, "only removing it himself a few days after his alleged involvement".<sup>188</sup>

Another high-profile criminal absconder from ATD was Diego Ibarra, brother of Laken Riley's murderer, Jose Ibarra. As my former colleague, Jon Feere, reported<sup>189</sup> in March 2024:

*Diego Ibarra reentered the U.S. unlawfully on April 30, 2023, near El Paso, Texas, and was arrested by the U.S. Border Patrol and enrolled by ERO into Alternatives to Detention (ATD) on May 11, 2023. On May 25, 2023, he was removed from ATD and listed as an absconder from the program after GPS abnormalities. He has several arrests in 2023 by the Athens-Clarke County Police Department where ICE detainers were not honored.*

....

*But what happened after Diego Ibarra absconded from ATD? For the past nine months Diego ha[d] been running free, only arrested last week for possession of a fake green card. ... All we know from ICE's statement is that he eventually popped up on ICE's radar only after being arrested by the Athens-Clarke County Police Department "several" times in 2023. It appears that it was the taking of fingerprints by this police department that alerted ICE to his location (the prints go into a national database that send a ping to ICE's enforcement systems) — not the ATD program.*

According to a "Memorandum of Facts in Support of Government's Motion for Detention"<sup>190</sup> (detention memo) filed in connection with his federal fake green card charges, that ATD "abnormality" occurred when Diego Ibarra cut off his ankle monitor, which was found by the side of a road in Littleton, Colo.

He thereafter moved to Athens, Ga., where his brother would join him and murder Laken Riley.

Once in Georgia, according to the detention memo, Diego Ibarra was arrested on the night of September 24, 2023, by two officers from the Athens-Clarke County Police Department (ACCPD) for driving 80 miles per hour in a 40-mile zone.<sup>191</sup>

<sup>187</sup> Lee, Michael. *Tracking program used by Jocelyn Nungaray murder suspects has expanded under Biden*. FOX NEWS (Jun. 26, 2024). Source: <https://www.foxnews.com/politics/tracking-program-used-jocelyn-nungaray-murder-suspects-has-expanded-under-biden>.

<sup>188</sup> *Id.*

<sup>189</sup> Feere, Jon. *Georgia Murder Case Highlights Problems with 'Alternatives to Detention'*. CENTER FOR IMMIGRATION STUDIES (Mar. 1, 2024). Source: <https://cis.org/Feere/Georgia-Murder-Case-Highlights-Problems-Alternatives-Detention>.

<sup>190</sup> *U.S. v. Ibarra*, Case No. 3:24-MJ-00005-CHW, Memorandum of Facts in Support of Government's Motion for Detention, at 4 (M.D. Ga. Mar. 6, 2024). Source: <https://static.foxnews.com/foxnews.com/content/uploads/2024/03/Facts-in-Support-of-Motion-to-Detain-Diego-Ibarra-final-version-filed-Doc.-19.pdf>.

<sup>191</sup> *Id.*

A search of the vehicle revealed an open can of beer, and while Diego Ibarra initially contended that he had only consumed a single beer, he eventually admitted to having had seven.

That was a curious admission, because according to the detention memo, after his subsequent blood sample was sent to the Georgia Bureau of Investigation (GBI), the lab concluded he didn't have any alcohol in his system at all — though he did test positive for methamphetamine and tetrahydrocannabinol “THC”, the main psychoactive element in marijuana.<sup>192</sup>

He was booked into the county jail, charged with (*inter alia*) driving under the influence (DUI), speeding, and driving without a license, and thereafter released.

He failed to appear at his subsequent court date and a warrant was thereafter issued for his arrest.

Two days after that DUI arrest, on September 26, the detention memo claims, ACCPD officers were called to an Athens apartment in response to a call from a woman identified only as “J.G.”<sup>193</sup>

J.G. told police that her boyfriend — Diego Ibarra — had taken her cell phone from her, and that she had bitten him in the chest to get it back. In response, she claimed, Ibarra slapped her in the face.

Just over a month later, on October 27, 2023, ACCPD officers were called to a shoplifting incident at an Athens-area Walmart involving two males. As the detention memo<sup>194</sup> explains:

*The two males were observed stuffing items into bookbags and boarding a bus near the Walmart. An off-duty officer was able to locate the two males, who were identified as Diego Ibarra and his brother, Jose Ibarra (“Jose”). Inside a bookbag in Jose’s possession, officers located items of food taken from the Walmart. Inside Ibarra’s bookbag, officers located stolen t-shirts, shorts, hoodies, and a jacket.*

The brothers were cited for shoplifting more than \$200 worth of merchandise, but an officer advised the duo about “a pre-arrest diversion program”, and were released.<sup>195</sup>

On December 8, 2023, the detention memo alleges<sup>196</sup>, a loss-prevention officer spotted Diego Ibarra at the same Wal-Mart, loading two t-shirts into his bag and attempting to leave.

The police were called again, and this time Ibarra was purportedly<sup>197</sup> placed under arrest for shoplifting and for skipping court for the DUI charge.

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<sup>192</sup> *Id.* at 5.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 6.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

Nonetheless, he was apparently released again because he was free on February 23, 2024, when he was arrested<sup>198</sup> as a suspect in Riley’s killing. During that arrest, he provided a responding officer the fraudulent Permanent Resident Card that formed the basis of his federal charges.

He was convicted of that offense and sentenced to 48 months’ imprisonment in March.<sup>199</sup>

As the U.S. Attorney’s Office stated in announcing that conviction, “Diego Ibarra is likely affiliated with the Venezuelan gang Tren de Aragua (TdA), based on evidence including his multiple TdA tattoos and photos of him on social media making the TdA gang signs and wearing TdA clothing.”

As an aside, according to that press release:

*while in the custody of the U.S. Marshals Service and housed in the Butts County Detention Center, Ibarra caused “severe water damage” inside the jail when he damaged the fire sprinkler system in a jail cell block. On June 25, 2024, jail officers found Ibarra in possession of two improvised weapons: a sharpened sprinkler head with a make-shift grip and a pen wrapped in saran wrap.*<sup>200</sup>

#### V. DUE PROCESS IN THE REMOVAL PROCESS

Of all the clauses in the U.S. constitution, “due process” is the only one to appear twice: once in the Fifth amendment<sup>201</sup>; and again, in the 14<sup>th</sup> amendment<sup>202</sup>.

The Fifth amendment provides that “no person shall be . . . deprived of life, liberty, or property, without due process of law”.<sup>203</sup> Similarly, section 1 of the 14<sup>th</sup> amendment makes clear that no “State” can “deprive any person of life, liberty, or property, without due process of law”.<sup>204</sup>

That 14<sup>th</sup> amendment bound the individual states to the other rights enumerated in the constitution, but immigration is a fundamentally federal issue<sup>205</sup> and the Fifth amendment has—since its passage—bound the federal government.

Note that the founders didn’t simply state that the Fifth amendment required “process” before such a deprivation of “life, liberty, or property” occurred, only that the process required was what was “due” in the specific situation—an important modifier that expands or contracts the right depending on the situation.

<sup>198</sup> *Id.* at 1-2.

<sup>199</sup> *Three Venezuelans Sentenced to Prison for Possessing Fake Green Cards*. U.S. DEP’T OF JUSTICE, U.S. ATTY’S OFF., M.D. GA. (Mar. 19, 2025). Source: <https://www.justice.gov/usao-mdga/pr/three-venezuelans-sentenced-prison-possessing-fake-green-cards#:~:text=Diego%20Jose%20Ibarra%2C%20aka%20%E2%80%9CGocho,document%20on%20July%2015%2C%202024.>

<sup>200</sup> *Id.*

<sup>201</sup> U.S. CONST. amend. V. Source: <https://constitution.congress.gov/constitution/amendment-5/>.

<sup>202</sup> U.S. CONST. amend. XIV §1. Source: <https://constitution.congress.gov/constitution/amendment-14/>.

<sup>203</sup> U.S. CONST. amend. V. Source: <https://constitution.congress.gov/constitution/amendment-5/>.

<sup>204</sup> U.S. CONST. amend. XIV §1. Source: <https://constitution.congress.gov/constitution/amendment-14/>.

<sup>205</sup> See section I, *supra*.



Keep that in mind as I explain that in 2001, the Supreme Court recognized<sup>206</sup> that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent”, but also held “the nature of that protection may vary depending upon status and circumstance”<sup>207</sup>.

Just how that process works has been developed through precedent, with the Supreme Court holding at various times that: “aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country”<sup>208</sup>; “once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly”<sup>209</sup>; and that “[t]he alien, to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society”<sup>210</sup>.

#### A. Due Process for Illegal Entrants and Aliens at the Ports

To ensure aliens receive the process they are due, both the legislative and executive branches have crafted various procedures to determine whether aliens should be admitted, should be granted immigration benefits, and, alternatively, should be removed.

Up until 1996, the process due to illegal aliens hinged on whether they had entered the United States, regardless of whether they had been admitted or not, or instead had been stopped at the ports and the borders seeking admission or attempting entry<sup>211</sup>.

The former group had more expansive rights; the latter only received whatever process prior to expulsion Congress had provided them<sup>212</sup>.

<sup>206</sup> *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Source: <https://supreme.justia.com/cases/federal/us/533/678/>.

<sup>207</sup> *Id.* at 694.

<sup>208</sup> *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990). Source: <http://cdn.loc.gov/service/ll/usrep/usrep494/usrep494259/usrep494259.pdf>.

<sup>209</sup> *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Source: <http://cdn.loc.gov/service/ll/usrep/usrep459/usrep459021/usrep459021.pdf>.

<sup>210</sup> *Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950). Source: <http://cdn.loc.gov/service/ll/usrep/usrep339/usrep339763/usrep339763.pdf>.

<sup>211</sup> See Wiegand III, Charles A. *Fundamentals of Immigration Law*. U.S. DEPT OF JUSTICE, EXECUTIVE OFC. FOR IMMIGRATION REVIEW (revised Oct. 2011), at 1 (“Before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), the decision as to whether an alien was subject to deportation proceedings or exclusion proceedings was based on whether or not the alien had made an “entry” into the U.S. An alien who had made an entry was entitled to a deportation hearing and the greater procedural safeguards it provided. An alien who had not made an entry was placed in exclusion proceedings. Former section 101(a)(13) of the Act defined entry as ‘any coming of an alien into the U.S. from a foreign port or place.’ . . . These two doctrines caused a great deal of litigation over the issue of whether certain aliens were properly placed in exclusion proceedings. They were rather time consuming and, since they dealt with the issue of whether or not the alien was in the proper proceeding, delayed the addressing of the ultimate issues in the cases, i.e. the issues of excludability and eligibility for relief.”). Source: [https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals\\_of\\_Immigration\\_Law.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/Fundamentals_of_Immigration_Law.pdf).

<sup>212</sup> See *generally* *Shaughnessy v. U.S. ex rel. Mezel*, 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/>.

That calculus largely proved unworkable while at the same time it also encouraged aliens to evade inspection on their way into the United States, so in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996<sup>213</sup> (IIRIRA), Congress scrapped it with respect to arriving aliens and recent illegal arrivals and started over.

Most crucially, IIRIRA created the “inspection protocol” in section 235 of the INA<sup>214</sup>, which treats all “arriving aliens”—those at the ports and those attempting to enter illegally between the ports—equally, as “applicants for admission”<sup>215</sup>.

Section 235(a)(3) of the INA requires “immigration officers”—U.S. Customs and Border Protection (CBP) officers at the ports of entry and Border Patrol agents (also in CBP) between them—to “inspect” those aliens to determine whether they’re admissible, or more precisely, whether they’re inadmissible under any of the grounds of inadmissibility in section 212(a) of the INA<sup>216</sup>.

Unless an alien “clearly and beyond a doubt [is] entitled to be admitted,”<sup>217</sup> as explained in section IV.A, *supra*, the immigration officer must detain the alien for a removal hearing before an immigration judge under section 240 of the INA<sup>218</sup>, with one crucial caveat.

Also as explained *supra*, aliens who are inadmissible because they lack proper documents that would allow them to be admitted (under section 212(a)(7)<sup>219</sup>) or because they sought admission through fraud or misrepresentation (under section 212(a)(6)(C)<sup>220</sup>) are subject to “expedited removal”, under section 235(b)(1) of the INA<sup>221</sup>.

Expedited removal allows immigration officers to bypass immigration judge removal proceedings and order such aliens removed. The only exception<sup>222</sup>, as noted, is where the alien subject to expedited removal claims a fear of persecution or other harm if returned or requests asylum.

<sup>213</sup> 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-104-publ208.pdf>.

<sup>214</sup> Sec. 235 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>215</sup> Sec. 235(a)(1) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>216</sup> Sec. 212(a) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>217</sup> Sec. 235(b)(2)(A) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>218</sup> See sec. 240 of the INA (2025) (“Removal proceedings”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>219</sup> Sec. 212(a)(7) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>220</sup> Sec. 212(a)(6)(C) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim>.

<sup>221</sup> Sec. 235(b)(1) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>222</sup> Sec. 235(b)(1)(A)(i) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

The immigration officer must send an alien claiming a fear of persecution to be interviewed by a USCIS asylum officer to determine whether the alien has a “credible fear of persecution”<sup>223</sup>, defined 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<sup>224</sup>.

If the asylum officer finds the alien has a credible fear, the alien leaves expedited removal and is referred to removal proceedings before an immigration judge<sup>225</sup>.

If the asylum officer finds that the alien does not have a credible fear, the alien can have that decision reviewed by an immigration judge in a truncated process separate from removal proceedings.<sup>226</sup>

If the immigration judge reverses the asylum officer's negative credible fear determination after review, the alien is then placed into removal proceedings.

If, however, the alien does not claim a fear of harm or does not request an immigration judge review of the asylum officer's negative credible fear determination, or if the immigration judge on review affirms the asylum officer's negative credible fear determination, the alien will be expelled.<sup>227</sup>

Under section 242(e) of the INA<sup>228</sup>, the only issues aliens subject to expedited removal have a right to have reviewed in federal court on habeas are claims they are U.S. citizens; whether they were ordered removed under section 235(b)(1) of the INA; and whether they can prove “by a preponderance of the evidence” they were admitted as lawful permanent residents or refugees or have been granted asylum.

In its June 2020 opinion in *DHS v. Thuraissigiam*<sup>229</sup>, the Supreme Court concluded expedited removal without further review under those standards in section 242(e) of the INA satisfied due process, even for aliens who had physically crossed and entered illegally (as opposed to being stopped at the ports).

As the Court held there:

<sup>223</sup> Sec. 235(b)(1)(B)(v) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>

<sup>224</sup> Sec. 208 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

<sup>225</sup> Sec. 235(b)(1)(B)(ii) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>226</sup> Sec. 235(b)(1)(B)(iii)(III) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>; see also 8 C.F.R. § 235.6(a)(2)(i) (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-235/section-235.6>.

<sup>227</sup> Sec. 235(b)(1)(B)(iii)(I) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>;

<sup>228</sup> Sec. 242(e)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1252&num=0&edition=prelim>.

<sup>229</sup> *DHS v. Thuraissigiam*, 591 US \_\_ slip op. at 11-33 (2020). Source: [https://www.supremecourt.gov/opinions/19pdf/19-161\\_g314.pdf](https://www.supremecourt.gov/opinions/19pdf/19-161_g314.pdf).

*In respondent's case, Congress provided the right to a "determin[ation]" whether he had "a significant possibility" of "establish[ing] eligibility for asylum," and he was given that right. [sections 235(b)(1)(B)(ii), (v) of the INA]. Because the Due Process Clause provides nothing more, it does not require review of that determination or how it was made. As applied here, therefore, [section 242(e)(2) of the INA] does not violate due process.<sup>230</sup>*

#### B. Due Process for Other Aliens

The expedited removal provisions in section 235(b)(1) of the INA also allow—but do not require—DHS to apply that limited-review process to aliens in the interior who have not “affirmatively shown, to the satisfaction of an immigration officer” that they have “been physically present in the United States continuously for the 2-year period immediately prior to the date” they are encountered by DHS.<sup>231</sup>

DHS published a notice<sup>232</sup> in late January announcing it would be taking advantage of that expansion in section 235(b)(1)(A)(iii) of the INA by expanding expedited removal to all illegal entrants who are unable to show they have been present here for at least two years.

That expansion is being challenged<sup>233</sup>, though a similar expansion during the first Trump administration was allowed to proceed<sup>234</sup>.

The real question, however, is whether the Supreme Court will ultimately find the truncated expedited review procedures in sections 235(b)(1) and 242(e) of the INA satisfy the due process rights of aliens who evaded apprehension and made their way into the interior before being detected, to the same degree they do for aliens stopped by DHS at the borders and the ports.

That decision could go either way, but Congress did permit such an expansion of expedited removal and the justices may leave it to the political branches to settle the matter.

With those “expedited removal” exceptions, Congress has charged immigration judges as an initial matter with ensuring the due process rights of all other aliens during removal proceedings.

<sup>230</sup> *Id.* at 36.

<sup>231</sup> See sec. 235(b)(1)(A)(iii) of the INA (2025) (“Application to certain other aliens. (i) In general—[DHS] may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (ii) as designated by [DHS]. Such designation shall be in the sole and unreviewable discretion of [DHS] and may be modified at any time. (ii) Aliens described --An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.”). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1225&num=0&edition=prelim>.

<sup>232</sup> *Designating Aliens for Expedited Removal*. 90 Fed. Reg. 8139 (Jan. 24, 2025). Source: <https://www.govinfo.gov/content/pkg/FR-2025-01-24/pdf/2025-01720.pdf>.

<sup>233</sup> See *Make the Road N.Y. v. Huffman*, 1:25-cv-00190, Complaint (D.D.C. Jan. 22, 2025). Source: [https://storage.courtlistener.com/recap/gov.uscourts.dcd.276674/gov.uscourts.dcd.276674.1.0\\_6.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.276674/gov.uscourts.dcd.276674.1.0_6.pdf).

<sup>234</sup> See *Make the Road New York v. Wolf*, 962 F.3d 612 (2020). Source: [https://www.judiciary.senate.gov/imo/media/doc/make\\_the\\_road\\_new\\_york\\_v\\_wolf.pdf](https://www.judiciary.senate.gov/imo/media/doc/make_the_road_new_york_v_wolf.pdf).

As noted, section 240 of the INA<sup>235</sup> governs removal hearings, and gives immigration judges authority to “administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses” in determining whether aliens should be excluded, admitted, deported, or granted certain immigration benefits<sup>236</sup>.

Under section 240(c)(2) of the INA<sup>237</sup>, aliens charged with inadmissibility bear the burden of proving “clearly and beyond doubt” they are “entitled to be admitted and” are “not inadmissible under” section 212(a) of the INA.

By contrast, the government under section 240(c)(3) of the INA<sup>238</sup> bears the burden of “establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable” under section 237(a) of the INA.

As that latter provision states: “No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.”<sup>239</sup>

In addition to the authorities and procedures for removal hearings in section 240, DOJ has published implementing regulations<sup>240</sup> to protect aliens’ due process rights in removal proceedings.

Those regulations ensure aliens understand the nature of the proceedings and their rights<sup>241</sup>, allow them to be represented at no expense to the government<sup>242</sup>, and provide for interpreters to be made available for those who don’t speak English<sup>243</sup>, as well as to govern the submission of evidence<sup>244</sup> and the immigration judge’s decision<sup>245</sup>.

Reviewing courts have found that failures by immigration judges to comply with those procedural regulations constitute due process violations.<sup>246</sup>

<sup>235</sup> Sec. 240(a)(1) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>236</sup> Sec. 240(b)(1) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>237</sup> Sec. 240(c)(2) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>238</sup> Sec. 240(c)(3) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>239</sup> *Id.*

<sup>240</sup> 8 C.F.R. § 1240.1, *et seq.* (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>241</sup> 8 C.F.R. §§ 1240.10(a)(1)-(4) (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>242</sup> 8 C.F.R. §§ 1240.10(a)(1) and (2) (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>243</sup> 8 C.F.R. § 1240.44 (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>244</sup> 8 C.F.R. § 1240.7 (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>245</sup> 8 C.F.R. § 1240.12 (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>246</sup> See *Due Process in Immigration Proceedings*. U.S. COURT OF APPEALS FOR THE NINTH CIR. (Feb. 2024), at pp. E-19- E-20 (“[T]he IJ must adequately explain the hearing procedures to the alien, including what he must prove to establish his basis for relief.’ *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002) (due process violation where IJ failed adequately to explain procedures to pro se applicant; IJ had an obligation to assist the pro se applicant in determining what evidence was relevant, and to explain how he could prove his claims); see also *Zamorano v. Garland*, 2 F.4th 1213, 1225 (9th Cir. 2021) (IJ has an obligation to explain what noncitizen must prove to establish the basis for the relief he seeks); *Jacinto v. INS*, 208 F.3d 725, 728 (9th Cir. 2000) (due process violation where noncitizen appeared pro se and IJ failed sufficiently to explain that noncitizen could be a witness even without an attorney, inadequately explained hearing procedures, and failed to explain what the noncitizen had to prove to establish eligibility for asylum”). Source: [https://cdn.ca9.uscourts.gov/datastore/uploads/immigration/immig\\_west/E.pdf](https://cdn.ca9.uscourts.gov/datastore/uploads/immigration/immig_west/E.pdf).



In addition, 8 C.F.R. § 1240.2<sup>247</sup> provides for DHS to appoint counsel (from ICE) in each case to present evidence on behalf of the United States and to interrogate, examine, and cross-examine the alien respondent and all other witnesses.

Note that in *Matter of S-M-J*, the BIA recognized the specific obligations that both government counsel and immigration adjudicators owe to respondents in asylum cases:

*Because this Board, the Immigration Judges, and the Immigration and Naturalization Service are all bound to uphold this law, we all bear the responsibility of ensuring that refugee protection is provided where such protection is warranted by the circumstances of an asylum applicant's claim*<sup>248</sup>.

Under 8 C.F.R. § 1240.15<sup>249</sup>, both aliens *and the government* are allowed to appeal immigration judge decisions to a different administrative DOJ tribunal, the BIA, as a matter of right (except where the respondent is ordered removed *in absentia*), and notably, section 240(c)(5) of the INA specifically states:

*If the immigration judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision and of the consequences for failure to depart under the order of removal, including civil and criminal penalties.*<sup>250</sup>

In addition to their right to appeal adverse immigration judge decisions to the BIA, aliens can also file petitions for review with the federal circuit courts having jurisdiction over the places where their removal hearings were held, under the limits in section 242 of the INA<sup>251</sup>, and can seek certiorari before the Supreme Court. Those courts, of course, can deny such petitions.

Reviewing courts have found that the procedures in sections 240 and 242 of the INA and in 8 C.F.R. § 1240.1 *et seq.* satisfy due process, and as even the Ninth Circuit has held: “Where an alien is given a full and fair opportunity to be represented by counsel, prepare an application for . . . relief, and to present testimony and other evidence in support of the application, he or she has been provided with due process”<sup>252</sup>.

That said, as with failures to comply with the procedural regulations, immigration judges have been found to have violated aliens’ due process rights when they prevented the full examination

<sup>247</sup> 8 C.F.R. § 1240.2 (2025). <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>248</sup> *Matter of S-M-J*, 21 I&N Dec. 722, 723 (BIA 1997). Source: <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3303.pdf>.

<sup>249</sup> 8 C.F.R. § 1240.15 (2025). Source: <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-B/part-1240>.

<sup>250</sup> Sec. 240(c)(5) of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1229a&num=0&edition=prelim>.

<sup>251</sup> Sec. 242 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1252&num=0&edition=prelim>.

<sup>252</sup> *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007). Source: [https://scholar.google.com/scholar\\_case?case=3469142116965520476&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=3469142116965520476&hl=en&as_sdt=6&as_vis=1&oi=scholar).

of aliens<sup>253</sup> and pressured aliens to drop certain avenues of relief<sup>254</sup>, and even when they have stood in “moral judgment” of an alien<sup>255</sup> and denied repeated continuances<sup>256</sup>.

If, however, you are wondering why removal cases can drag on for years, in my experience it’s largely because immigration judges are concerned they will be second-guessed by circuit court judges who are often too quick to find due process violations.<sup>257</sup>

## VI. IMMIGRATION ENFORCEMENT UNDER TRUMP II

Immigration enforcement has changed significantly under the second Trump administration.

### A. Border Security

Between February 1 and the end of May, CBP officers and Border Patrol agents encountered just over 116,300 inadmissible applicants for admission<sup>258</sup>—37,808 illegal entrants apprehended by Border Patrol agents and 78,514 aliens deemed inadmissible by OFO at the Southwest border ports.

That’s a greater than 88 percent decrease compared to overall encounters during the same four-month period in FY 2024 (991,447), a 93 percent decrease in apprehensions (February to May 2024: 533,592), and an 82.8 percent decrease in port encounters (February to May 2024: 457,577).<sup>259</sup>

The reasons for that decline are many, but none is more obvious than the fact that DHS under the current administration has returned to a historical policy of border deterrence.

The three key components of any successful border deterrence strategy are: (1) apprehension, detention, and removal of inadmissible aliens; (2) prosecutions for illegal entries and reentries; and (3) infrastructure.

<sup>253</sup> *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). Source: <https://law.justia.com/cases/federal/appellate-courts/F3/210/967/483872/>.

<sup>254</sup> *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). Source: <https://caselaw.findlaw.com/court/us-9th-circuit/1113619.html>.

<sup>255</sup> *Reyes-Melendez v. INS*, 342 F.3d 1001, 1007–09 (9th Cir. 2003). Source: <https://caselaw.findlaw.com/court/us-9th-circuit/1292799.html>.

<sup>256</sup> *Cruz Rendon v. Holder*, 603 F.3d 1104, 1111 (9th Cir. 2010). Source: <https://cdn.ca9.uscourts.gov/datastore/opinions/2014/08/22/10-72239.pdf>.

<sup>257</sup> See Arthur, Andrew. *The Massive Increase in the Immigration Court Backlog*. Center for Immigration Studies (Jul. 24, 2017) (“If an alien is unrepresented, the court will generally grant at least one continuance to find counsel. If the court subsequently goes ahead thereafter, notwithstanding the request of the alien for an additional continuance to find counsel, the case will likely be remanded, and the IJ runs the risk of being accused of denying due process. Similarly, an IJ who refuses to grant multiple continuances to an alien to file an application for relief, or to submit evidence in a case, may be accused by a reviewing court of violating due process. In such an instance, the IJ’s reputation would be besmirched, and the BIA or circuit court would simply remand the case, in essence granting the continuance requested.”). Source: <https://cis.org/Report/Massive-Increase-Immigration-Court-Backlog>.

<sup>258</sup> *Nationwide Encounters*. U.S. CUSTOMS AND BORDER PROTECTION (modified May 12, 2025). Source: <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>259</sup> *Id.*

Between February and the end of May, Border Patrol agents at the Southwest border released just seven illegal entrants with NTAs<sup>260</sup>, .09 percent as many as they had in the month of December alone.

And, in March 2025 alone, 1,596 aliens were charged<sup>261</sup> with misdemeanor improper entry under section 275 of the INA<sup>262</sup>, 240 percent more than in December, and 1,008 others were charged with felony improper reentry<sup>263</sup> under that provision, 18 percent more than in December.

Finally, in March, nearly 3,000 aliens were charged<sup>264</sup> with illegal reentry after removal under section 276 of the INA<sup>265</sup>, a 45-percent increase compared to December.

In April, DHS Secretary Kristi Noem issued waivers<sup>266</sup> for infrastructure construction at the Southwest border to close three “critical gaps” along 2.5 miles of fencing in California. That is just the start of planned improvements along the border that will serve as a force multiplier for agents and an impediment to smugglers.

In addition to deterrence, the Trump administration secured an agreement with the government of Mexico to send 10,000 Mexican National Guard and Army troops<sup>267</sup> to the south side of the international boundary to deter smugglers and illegal migrants from approaching the U.S. border.

And at the ports, one of the new president’s first actions was to shut down the CBP One app interview process<sup>268</sup>—likely the key reason for the marked decline in OFO Southwest border encounters.

That will free up CBO officers to find and interdict migrants and illegal drug smugglers who are attempting to move surreptitiously through those ports of entry and facilitate the free flow of lawful commerce and travel.

## B. Executive Actions

<sup>260</sup> See *Custody and Transfer Statistics, USBP Monthly Southwest Border Encounters by Processing Disposition*. U.S. CUSTOMS AND BORDER PROTECTION (modified May 12, 2025). Source: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

<sup>261</sup> *Prosecuting Immigration Crimes Report (PICR)*, U.S. DEP’T OF JUSTICE (updated Apr. 9, 2025). Source: <https://www.justice.gov/usao/resources/PICReport>.

<sup>262</sup> Sec. 275 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1325&num=0&edition=prelim>.

<sup>263</sup> *Prosecuting Immigration Crimes Report (PICR)*, U.S. DEP’T OF JUSTICE (updated Apr. 9, 2025). Source: <https://www.justice.gov/usao/resources/PICReport>.

<sup>264</sup> *Id.*

<sup>265</sup> Sec. 276 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1326&num=0&edition=prelim>.

<sup>266</sup> *DHS issues waiver to expedite new border wall construction in California*. U.S. CUSTOMS AND BORDER PROTECTION (April 8, 2025). Source: <https://www.cbp.gov/newsroom/national-media-release/dhs-issues-waiver-expedite-new-border-wall-construction-california>.

<sup>267</sup> *Mexico deploys the first of 10,000 troops to US border after Trump's tariff threat*. VOICE OF AMERICA (Feb. 6, 2025). Source: <https://www.voanews.com/a/mexico-deploys-the-first-of-10-000-national-guard-troops-to-us-border-after-trump-s-tariff-threat/7964846.html>.

<sup>268</sup> Heilweil, Rebecca. *Trump shuts down CBP One app, closing a pathway to America*. FEDSCOOP (Jan. 21, 2025). Source: <https://fedscoop.com/trump-shuts-down-border-app-cbp-one/>.



The new president issued a number of executive actions quickly after returning to office. Here are just a few

On January 20, he issued Executive Order (EO) 14161, “Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats”<sup>269</sup>, which directs DHS and the State Department to implement “enhanced vetting” for visa applicants and aliens in this country.

That day, he also issued EO 14165<sup>270</sup>, “Securing Our Borders”, which among other things ended CHNV parole, as well as Presidential Proclamation (PP) 10886<sup>271</sup>, “Declaring a National Emergency at the Southern Border of the United States”, which (again, among other things) authorizes the use of Department of Defense assets for border security.

Also on Inauguration Day, the president issued EO 14159<sup>272</sup>, “Protecting the American People Against Invasion”.

The Center has explained<sup>273</sup> that this EO:

*Declares that it is the policy of the United States to faithfully execute the immigration laws against all inadmissible and removable aliens and to achieve the total and efficient enforcement of those laws, including through lawful incentives and detention capabilities.*

*Revokes former President Biden’s immigration-related executive orders.*

*Directs executive agencies to take all appropriate action to promptly revoke all memoranda, guidance, or other policies based on former President Biden’s executive orders and to “employ all lawful means to ensure the faithful execution of the immigration laws of the United States”.*

*Instructs the Secretary of Homeland Security to take all appropriate action to enable the Director of U.S. Immigration and Customs Enforcement, the Commissioner of U.S. Customs and Border Protection, and the Director of U.S. Citizenship and Immigration Services to set priorities for their agencies that protect the public safety and national security interests of the American people, including by ensuring the successful enforcement of final orders of removal.*

<sup>269</sup> Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats. 90 Fed. Reg. 8451 (Jan. 20, 2025). Source: <https://www.federalregister.gov/documents/2025/01/30/2025-02009/protecting-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety>.

<sup>270</sup> Securing Our Borders. 90 Fed. Reg. 8467 (Jan. 20, 2025). Source: <https://www.federalregister.gov/documents/2025/01/30/2025-02015/securing-our-borders>.

<sup>271</sup> Declaring a National Emergency at the Southern Border of the United States. 90 Fed. Reg. 8327 (Jan. 20, 2025). Source: <https://www.federalregister.gov/documents/2025/01/29/2025-01948/declaring-a-national-emergency-at-the-southern-border-of-the-united-states>.

<sup>272</sup> Protecting the American People Against Invasion. 90 Fed. Reg. 8443 (Jan. 20, 2025). Source: <https://www.federalregister.gov/documents/2025/01/29/2025-02006/protecting-the-american-people-against-invasion>.

<sup>273</sup> Outline of President Trump’s January 20 Immigration and Border Executive Actions. CENTER FOR IMMIGRATION STUDIES (Jan. 27, 2025). Source: <https://cis.org/Report/Outline-President-Trumps-January-20-Immigration-and-Border-Executive-Actions>.

*Directs the Secretary of Homeland Security to ensure that the primary mission of U.S. Immigration and Customs Enforcement's Homeland Security Investigations division is the enforcement of the provisions of the INA and other Federal laws related to the illegal entry and unlawful presence of aliens in the United States and the enforcement of the purposes of this order.*

*Directs the Attorney General, in coordination with the Secretary of State and the Secretary of Homeland Security, to take all appropriate action to prioritize the prosecution of criminal offenses related to the unauthorized entry or continued unauthorized presence of aliens in the United States.*

*Instructs the Attorney General and Secretary of Homeland Security to establish homeland security task forces in all states to end the presence of criminal cartels, foreign gangs, transnational criminal organizations, dismantle cross border human smuggling, end human trafficking, and directs the task forces focus on offenses involving children.*

*Orders the Secretary of Homeland Security and Attorney General to announce and publicize the legal obligation of all unregistered aliens to comply with Chapter 12 of Title 8 of the U.S. Code, including registration requirements and ensure that failure to comply with the legal obligations is treated as civil and criminal enforcement priorities.*

#### C. Interior Enforcement

Perhaps the highest-profile aspect of the president's immigration policies, and the one most pertinent to today's hearing, is interior enforcement—an effort over which ICE has primary jurisdiction.

Spearheading that effort on behalf of the administration is Tom Homan, formally the “White House Executive Associate Director of Enforcement and Removal Operations” but better known as Trump's “border czar”.

As NPR has reported:

*Homan, a former police officer and Border Patrol agent, has worked under six presidents during his three decades in law enforcement. He was executive associate director of enforcement and removal operations for Immigration and Customs Enforcement under President Obama. During that administration, ICE carried out a record number of deportations.*<sup>274</sup>

<sup>274</sup> Treisman, Rachel. What to know about Tom Homan, the former ICE head returning as Trump's 'border czar'. NPR (Nov. 11, 2024). Source: <https://www.npr.org/2024/11/11/nx-s1-5186522/tom-homan-border-czar-trump>.

Under Homan's direction, ICE has partnered with CBP, the Federal Bureau of Investigation, the U.S. Drug Enforcement Administration, the U.S. Marshals Service and other federal agencies to apprehend aliens- and alien criminals in particular-- for detention, prosecution, and removal.<sup>275</sup>

ICE and its federal partners arrested an average of 660-plus removable aliens per day during Trump's first 100 days back in office<sup>276</sup>. Three-quarters were criminals, including ones with "convictions or charges for 9,639 assaults, 6,398 DWIs or DUIs and 1,479 weapon offenses"—as well as "498 . . . accused or convicted of murder".<sup>277</sup>

In addition, 65,682 aliens were removed in the administration's first 100 days, putting DHS on track for an annual removal rate of around 240,000.

Compared to an unauthorized population that the Center conservatively estimated<sup>278</sup> to be around 15.4 million in January 2025, 240,000 removals per year do not appear to be that significant.

Physical removals are not the only strategy that the Trump administration is using to decrease the unauthorized population, however. It's also prompting aliens to self-deport.

To that end, DHS launched a multi-million-dollar media campaign<sup>279</sup> to dissuade would-be illegal migrants from coming to the United States and to encourage those unlawfully here to leave "now or face deportation with the inability to return to the United States".

Whether the Trump administration is aware or not, its PR campaign takes a page out of President Obama's playbook when he was faced with a surge of Central American families and children entering illegally in 2014.<sup>280</sup>

<sup>275</sup> ICE, *federal partners arrest 133 alien offenders during enhanced operation in New York*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 4, 2025). Source: <https://www.ice.gov/news/releases/ice-federal-partners-arrest-133-alien-offenders-during-enhanced-operation-new-york>.

<sup>276</sup> *100 days of record-breaking immigration enforcement in the US interior*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Apr. 29, 2025). Source: <https://www.ice.gov/news/releases/100-days-record-breaking-immigration-enforcement-us-interior>.

<sup>277</sup> *Id.*

<sup>278</sup> Camarota, Steven A. and Zeigler, Karen. *Foreign-Born Number and Share of U.S. Population at All-Time Highs in January 2025*. CENTER FOR IMMIGRATION STUDIES (Mar. 12, 2025). Source: <https://cis.org/Report/ForeignBorn-Number-and-Share-US-Population-AllTime-Highs-January-2025>.

<sup>279</sup> *DHS Announces Nationwide and International Ad Campaign Warning Illegal Aliens to Self-Deport and Stay Out*. U.S. DEP'T OF HOMELAND SECURITY (undated). Source: <https://www.dhs.gov/news/2025/02/17/dhs-announces-ad-campaign-warning-illegal-aliens-self-deport-and-stay-out>.

<sup>280</sup> See *The Obama Administration's Government-Wide Response to Influx of Central American Migrants at the Southwest Border*. THE WHITE HOUSE (Aug. 1, 2014) ("On June 20, the Honduran government began a nationwide media campaign using CBP-provided materials highlighting the dangers of land-based migration, which is being shown on gas station screens and broadcast on 80 TV outlets and 120 radio stations. . . . Guatemala's First Lady launched the "Quédate!" campaign discouraging illegal immigration to the United States. Through public statements she is noting the dangers of the journey and urged parents not to send their children illegally to the United States. On June 26, Guatemala media Prensa Libre.El Quetzalteco, and Guatevisión launched an independent campaign on June 26 to raise awareness of the unaccompanied minors issue . . . . On July 14, the Government of El Salvador announced the launch of a six-month, \$1.2 million media campaign on the dangers of migration by children and families. Phase one will focus on the dangers of the trip, while phase two will highlight government efforts to reduce migration push factors. On July 10, the Mayor's Office of San Salvador, the Municipal Institute for Youth and the NGO Vision Democrática launched an unaccompanied minor campaign called "Sueño vs. Pesadilla" (Dream vs. Nightmare). The campaign, conducted in partnership with ten universities and 2,000 youth volunteers, includes earned media, social media and direct volunteer outreach to key communities in San Salvador."). Source: <https://obamawhitehouse.archives.gov/the-press-office/2014/08/01/obama-administration-s-government-wide-response-influx-central-american>.

In addition, Secretary Noem has announced<sup>281</sup> DHS would begin requiring aliens unlawfully present to register with the federal government and be fingerprinted in accordance with section 262 of the INA.<sup>282</sup>

As the department noted in a March 21 announcement on that requirement<sup>283</sup>, aliens who don't register or who fail to carry evidence of registration face prosecution and "a fine, imprisonment, or both" -- penalties provided for in section 266 of the INA.<sup>284</sup>

The Center has noted<sup>285</sup> that when DHS operated a more narrowly tailored registration program for nationals of certain designated countries in the early 2000s, "80,000 people complied with the registration law and 13,000 were placed in deportation proceedings, and an estimated 15,000 aliens from Pakistan, one of the designated countries, left on their own -- i.e., self-deported".

Perhaps the most exceptional Trump administration self-deportation plan, however, involves paying aliens unlawfully present to leave.

On May 5, DHS announced<sup>286</sup> "a historic opportunity for illegal aliens to receive both financial and travel assistance to facilitate travel back to their home country through the CBP Home App"<sup>287</sup>—a reconfigured version of the prior CBP One app.

Under that plan: "Any illegal alien who uses the CBP Home App to self-deport will also receive a stipend of \$1,000 dollars, paid after their return to their home country has been confirmed through the app."

In my analysis<sup>288</sup> of this "historic opportunity", I noted that: "While it may be controversial, it could also be a cost- and resource-effective way to drive down the unauthorized population — assuming enough people take the department up on its offer."

<sup>281</sup> *Secretary Noem Announces Agency Will Enforce Laws That Penalize Aliens in the Country Illegally*. U.S. DEP'T OF HOMELAND SECURITY (undated). Source: <https://www.dhs.gov/news/2025/02/25/secretary-noem-announces-agency-will-enforce-laws-penalize-aliens-country-illegally>.

<sup>282</sup> Sec. 262 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1302&num=0&edition=prelim>.

<sup>283</sup> *Secretary Noem Announces Agency Will Enforce Laws That Penalize Aliens in the Country Illegally*. U.S. DEP'T OF HOMELAND SECURITY (undated). Source: <https://www.dhs.gov/news/2025/02/25/secretary-noem-announces-agency-will-enforce-laws-penalize-aliens-country-illegally>.

<sup>284</sup> Sec. 266 of the INA (2025). Source: <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title8-section1306&num=0&saved=%7CZ3jhbnVsZWlkOIVTQy1wcmVsaW0tdGI0bGU4LXNlY3Rpb24xMzAy%7C%7C%7C0%7Cfalse%7Cprelim>.

<sup>285</sup> *Immigration in Trump's First 100 Days*. CENTER FOR IMMIGRATION STUDIES (Apr. 23, 2025). Source: <https://cis.org/Report/Immigration-Trumps-First-100-Days>.

<sup>286</sup> *DHS Announces Historic Travel Assistance and Stipend for Voluntary Self-Deportation*. U.S. DEP'T OF HOMELAND SECURITY (undated). Source: <https://www.dhs.gov/news/2025/05/05/dhs-announces-historic-travel-assistance-and-stipend-voluntary-self-deportation>.

<sup>287</sup> *CBP Home Mobile Application*. U.S. CUSTOMS AND BORDER PROTECTION (modified May 13, 2025). Source: <https://www.cbp.gov/about/mobile-apps-directory/cbphome>.

<sup>288</sup> Arthur, Andrew. *DHS to Pay Illegal Aliens to Leave*. CENTER FOR IMMIGRATION STUDIES (May 8, 2025). Source: <https://cis.org/Arthur/DHS-Pay-Illegal-Aliens-Leave>.

That is because deportation is costly, exceeding on average \$17,000 per removal, whereas self-deportation under this program would only cost an estimated \$4,500 per person.

Those payments, coupled with registration requirements and a credible risk of prosecution and deportation, would likely encourage hundreds of thousands of aliens unlawfully present to leave each year, and possibly more, up to a million.

And in fact, by the Center's calculations<sup>289</sup>, up to 1 million unauthorized aliens have already left the United States since January, the majority voluntarily, as the total foreign-born population has dropped to 52.355 million from more than 53.312 million in January.

## VII. "SANCTUARY POLICIES"

The Center uses the term "sanctuary jurisdictions"<sup>290</sup> to refer to states and localities with laws, ordinances, regulations, resolutions, policies, or other practices that obstruct immigration enforcement and shield criminal aliens from ICE enforcement— either by refusing ICE detainers or prohibiting agencies from complying with those detainers, imposing unreasonable conditions on detainer acceptance, denying ICE access to interview incarcerated aliens, or otherwise impeding communication or information exchanges between their personnel and federal immigration officers.

### A. History Of Sanctuary Policies

When I began my career as an INS trial attorney in San Francisco in the mid-1990s, it was virtually unheard of for states and localities to refuse to assist federal officers in their duties.

Immigration arrests took dangerous criminals off the street and spared localities the costs of reincarcerating recidivists.

Criminal recidivism is a serious issue for law enforcement. A May 2018 study from the Bureau of Justice Statistics<sup>291</sup> found that of 401,288 state prisoners released in 2005, 44 percent were rearrested during the first year after they were released, an estimated 68 percent within 3 years, 79 percent within 6 years, and 83 percent within 9 years.

That local cooperation with immigration enforcement changed, however, after the expansion<sup>292</sup> of the George W. Bush-era "Secure Communities"<sup>293</sup> program under the Obama administration.

As ICE has explained:

<sup>289</sup> Camarota, Steven and Ziegler, Karen. *Illegal Population Down Since January*. CENTER FOR IMMIGRATION STUDIES (Jun. 19, 2025). Source: <https://cis.org/Report/Illegal-Population-Down-January>.

<sup>290</sup> Vaughan, Jessica and Griffin, Bryan. *Map: Sanctuary Cities, Counties, and States*. CENTER FOR IMMIGRATION STUDIES (May 7, 2025). Source: <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

<sup>291</sup> *Special Report, 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATS. (May 2018). Source: <https://bjs.ojp.gov/content/pub/pdf/18upr9yfup0514.pdf>.

<sup>292</sup> *Activated Jurisdictions*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (May 3, 2011). Source: <https://web.archive.org/web/20110509095810/http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>.

<sup>293</sup> *Secure Communities*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (undated). Source: <https://www.ice.gov/secure-communities#:~:text=Secure%20Communities%20had%20a%20long,criminal%20aliens%20from%20the%20U.S..>



*For decades, local jurisdictions have shared the fingerprints of individuals arrested and/or booked into custody with the FBI to see if those individuals have a criminal record and outstanding warrants. Under Secure Communities, the FBI automatically sends the fingerprints to DHS to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable, ICE takes enforcement action – prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and risk to public safety – as well as those who have violated the nation's immigration laws.*<sup>294</sup>

Then-DHS Secretary Jeh Johnson ended Secure Communities in November 2014<sup>295</sup>, asserting that: “Governors, mayors, and state and local law enforcement officials around the country have increasingly refused to cooperate with the program, and many have issued executive orders or signed laws prohibiting such cooperation.”

By that point, however, state and local officials came to believe sanctuary policies were a winning political issue with their constituents, and many of them only “doubled down”<sup>296</sup> on those policies after Trump’s November 2016 election victory.

#### B. “Protecting the Rights of All Residents”

Most sanctuary jurisdictions contend they have adopted such policies for reasons roughly along the lines of Arlington County, Va.’s “Trust Policy”<sup>297</sup>, which states: “The County is committed to protecting the rights of all residents, regardless of their immigration or citizenship status, and to ensuring every person in Arlington has an equal opportunity to participate in our economy.”

As an aside, at a May 13 hearing, the Arlington County Board removed two sections of that policy “which previously allowed Arlington police to notify [ICE] when undocumented individuals **were arrested for serious crimes such as terrorism, gang activity, or human trafficking**”<sup>298</sup>—an unusual move for a jurisdiction that is home to the Pentagon.

<sup>294</sup> *Id.*

<sup>295</sup> Memorandum from Jeh Johnson, Secretary of Homeland Security. DEP’T OF HOMELAND SECURITY (Nov. 20, 2014). Source: [https://web.archive.org/web/20160401195026/https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](https://web.archive.org/web/20160401195026/https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

<sup>296</sup> See, e.g., Davis, Aaron. D.C. will go ‘beyond sanctuary,’ create legal defense fund for illegal immigrants. WASHINGTON POST (Jan. 9, 2017) (“In a statement, Bowser said the District is ‘doubling down’ on its status as a sanctuary city, where D.C. police have already been instructed to not cooperate with federal authorities working to deport residents.”). Source: [https://www.washingtonpost.com/local/dc-politics/dc-will-go-beyond-sanctuary-create-legal-defense-fund-for-illegal-immigrants/2017/01/09/0d6c7adc-d68e-11e6-9f9f-5cdb4b7f8dd7\\_story.html](https://www.washingtonpost.com/local/dc-politics/dc-will-go-beyond-sanctuary-create-legal-defense-fund-for-illegal-immigrants/2017/01/09/0d6c7adc-d68e-11e6-9f9f-5cdb4b7f8dd7_story.html).

<sup>297</sup> Arlington’s Commitment to Strengthening Trust with Our Immigrant Communities. ARLINGTON COUNTY BD. (updated May 13, 2025). Source: <https://www.arlingtonva.us/files/sharedassets/public/v/1/county-board/documents/trust-policy-updated-may-13-2025.pdf>; see also Fishman, George. Is Federal Anti-Sanctuary Law Constitutional? CENTER FOR IMMIGRATION STUDIES (Feb. 26, 2025) (review of sanctuary policies in the states of California and Illinois and the city of Chicago), Source: <https://cis.org/Report/Federal-AntiSanctuary-Law-Constitutional>.

<sup>298</sup> Gonzalez, John. Arlington board limits police collaboration with ICE, sparking debate over public safety. ABC NEWS 7 (May 15, 2025) (emphasis added). Source: <https://wlla.com/newsletter-daily/arlington-limits-police-collaboration-ice-united-states-immigration-customs-enforcement-county-board-immigrants-arrests-charges-violent-crimes-concerns-virginia-dmv-sparking-debate-public-safety>.

“Protecting the rights of all residents” is an inapt rationalization for such policies given that alien criminals generally live in and prey upon immigrant communities—meaning such sanctuary policies only protect those criminals, not the community as a whole.

Moreover, an October 2021 Center study<sup>299</sup> found no evidence that ICE cooperation reduces the rate at which immigrants report crimes locally, suggesting that the very rationale for sanctuary policies is based on an erroneous (or fallacious) premise.

### C. Detainers

Detainers are the primary tool ICE uses to take criminal aliens into custody. They are notices to other law enforcement agencies that ICE intends to assume custody of an alien, and include information on aliens’ previous criminal history, immigration violations, and potential threats to public safety or security.

As ICE explains<sup>300</sup>, it issues those requests because:

*When jails, prisons or other confinement facilities agree to honor immigration detainers, ICE officers can take custody of removable aliens in a safe, controlled environment instead of at-large in the community.*

*At-large arrests are unpredictable and can be dangerous to the public, aliens and federal law enforcement officers. It’s safer to assume custody of removable aliens in a secure, private environment.*

*Detainers also conserve scarce government resources and taxpayer dollars. When a confinement facility allows ICE to take custody of removable aliens when they’re released, the agency doesn’t need to expend resources to locate and arrest an alien in the community.*

Simply put, when sanctuary jurisdictions refuse to honor ICE detainers, “officers pursue the alien in the community. These at-large arrests are more dangerous for the public, aliens and officers.”<sup>301</sup>

In April, my colleague Jessica Vaughan reported<sup>302</sup> that from the beginning of FY 2022 to February 6, 2025, “more than 25,000 detainers were declined by” jails in sanctuary jurisdictions, and “in more than 1,400 instances the jails failed to give adequate notification to ICE to take custody of the aliens”.

<sup>299</sup> Camarota, Steven and Zeigler, Karen. *No Evidence that Cooperation with ICE Reduces Immigrant Crime Reporting*. CENTER FOR IMMIGRATION STUDIES (Oct. 19, 2021). Source: <https://cis.org/Camarota/No-Evidence-Cooperation-ICE-Reduces-Immigrant-Crime-Reporting>.

<sup>300</sup> *Immigration Detainers*. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (undated). Source: <https://www.ice.gov/immigration-detainers>.

<sup>301</sup> *Id.*

<sup>302</sup> Vaughan, Jessica. *Which Sanctuary Jurisdictions Have Released the Most Criminals?* CENTER FOR IMMIGRATION STUDIES (Apr. 9, 2025). Source: <https://cis.org/Vaughan/Which-Sanctuary-Jurisdictions-Have-Released-Most-Criminals>.

That included 72 releases notwithstanding ICE detainers for aliens with homicide charges and convictions.<sup>303</sup>

#### D. Communications Under 8 U.S.C. §§ 1373(a) and 1644

As a legal matter, many of those sanctuary policies appear to violate federal law. Specifically, 8 U.S.C. § 1373(a)<sup>304</sup> states:

*Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.*

Similarly, 8 U.S.C. § 1644<sup>305</sup> provides:

*Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.*

Attorney General Pam Bondi specifically referenced section 1373(a) in a February 5 memo<sup>306</sup> in which she announced that: “Sanctuary jurisdictions should not receive access to federal grants administered by the Department of Justice.”

The next day, DOJ filed a federal complaint<sup>307</sup> against Illinois and the city of Chicago<sup>308</sup>, alleging sanctuary policies in those jurisdictions: “undermine federal immigration law’s protections for information sharing and are thus preempted” by and violate the Supremacy Clause<sup>309</sup>, discriminate against the federal government by “singl[ing] out federal immigration officials, expressly and implicitly, for unfavorable and uncooperative treatment when other law enforcement officials are not so treated”; and unlawfully regulate the federal government in that, “By refusing to honor civil detainers and warrants expressly authorized by Congress, Defendants

<sup>303</sup> *Id.*

<sup>304</sup> 8 U.S.C. § 1373(a) (2025). Source: <https://www.law.cornell.edu/uscode/text/8/1373>; see also Fishman, George. *Is Federal Anti-Sanctuary Law Constitutional?* CENTER FOR IMMIGRATION STUDIES (Feb. 26, 2025) (legislative history of section 1373(a)). Source: <https://cis.org/Report/Federal-AntiSanctuary-Law-Constitutional>.

<sup>305</sup> 8 U.S.C. § 1644 (2025). Source: <https://www.law.cornell.edu/uscode/text/8/1644>; see also Fishman, George. *Is Federal Anti-Sanctuary Law Constitutional?* CENTER FOR IMMIGRATION STUDIES (Feb. 26, 2025) (legislative history of section 1644). Source: <https://cis.org/Report/Federal-AntiSanctuary-Law-Constitutional>.

<sup>306</sup> *Sanctuary Jurisdiction Directives, Memorandum from Pam Bondi, Attorney General*. U.S. DEP’T OF JUSTICE (Feb. 5, 2025). Source: <https://www.justice.gov/ag/media/1388531/dl?inline>.

<sup>307</sup> *U.S. v. Illinois*, No. 1:25-cv-1285, Complaint (N.D. Ill. 2025). Source: [https://storage.courtlistener.com/recap/gov.uscourts.ilnd.473062/gov.uscourts.ilnd.473062.1.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.ilnd.473062/gov.uscourts.ilnd.473062.1.0_2.pdf).

<sup>308</sup> See Fishman, George. *Is Federal Anti-Sanctuary Law Constitutional?* CENTER FOR IMMIGRATION STUDIES (Feb. 26, 2025) (review of sanctuary policies in the state of Illinois and the city of Chicago). Source: <https://cis.org/Report/Federal-AntiSanctuary-Law-Constitutional>.

<sup>309</sup> See U.S. CONST. art. VI, §. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”). Source: [https://constitution.congress.gov/browse/essay/artVI-C2-1/ALDE\\_00013395/](https://constitution.congress.gov/browse/essay/artVI-C2-1/ALDE_00013395/).



have unlawfully eliminated these means for federal immigration officials to carry out their statutory functions”.

#### E. Policies Barring ICE Detention

Several sanctuary states and localities have also attempted to bar ICE from detaining aliens within their jurisdictions.

For example, in August 2021, New Jersey enacted Assembly Bill (AB) 5207<sup>310</sup>, which prohibited the state, its political subdivisions, and (most importantly) private entities from contracting prospectively with ICE to own or operate detention facilities.

“Three New Jersey counties previously housed ICE detainees in their jails, but they stopped in 2021, just about the time the law in question took effect.”<sup>311</sup> That left CoreCivic, a private entity, operating the only remaining ICE detention facility in the state (the Elizabeth Detention Center<sup>312</sup>), under a contract set to expire on August 31, 2023.

Consequently, in February 2023, CoreCivic filed a complaint<sup>313</sup> in federal district court in New Jersey, seeking declaratory and injunctive relief and alleging AB 5207 was unconstitutional because it was:

*in conflict with federal immigration law, interferes with the purpose behind the federal immigration law, presents a substantial obstacle to the purposes of Congress in enacting the federal immigration law and, in intruding into federal immigration law, improperly imposes into an area where Congress has manifested its intent to occupy the entire field.*

On August 23, 2023, Judge Robert Kirsch of the U.S. District Court for the District of New Jersey struck down<sup>314</sup> that bill in part as unconstitutional, ruling:

*Enforcing AB 5207 against [CoreCivic] would close the last remaining facility in New Jersey to which ICE has access. The result of any one of New Jersey's neighboring states passing a comparable law — let alone an ensuing domino effect to other states — would result in nothing short of chaos. **Although reference to the federal government was conveniently omitted from AB 5207, the statute is a dagger aimed at the heart of the federal government's immigration enforcement mission and operations. Congress's assignment to the federal government the responsibilities to enforce the civil immigration laws,***

<sup>310</sup> A.B. 5207 (2021), N.J. (enacted). Source: <https://www.nileg.state.nj.us/bill-search/2020/A5207>.

<sup>311</sup> DeFillippo, Dana. *N.J. law barring prison operator from contracting with ICE is unconstitutional, judge says*. NEW JERSEY MONITOR (Aug. 29, 2023). Source: <https://newjerseymonitor.com/2023/08/29/law-banning-immigrant-detention-in-new-jersey-is-unconstitutional-judge-rules/>.

<sup>312</sup> *Elizabeth Detention Center*. CORECIVIC (undated). Source: <https://www.corecivic.com/facilities/elizabeth-detention-center>.

<sup>313</sup> *CoreCivic v. Murphy*, No. 23-967, Complaint (D. N.J. Feb. 17, 2023), at 1, 14. Source: [https://www.documentcloud.org/documents/23686412-complaint\\_230220\\_074306/](https://www.documentcloud.org/documents/23686412-complaint_230220_074306/).

<sup>314</sup> *CoreCivic v. Murphy*, No. 23-967, Opinion (D. N.J. Aug. 28, 2023). Source: <https://newjerseymonitor.com/wp-content/uploads/2023/08/8-29-23-Corecivic.pdf>.

*including, when necessary, through detention, renders AB 5207 unconstitutional under the Supremacy Clause. [Emphasis added.]*

The state has appealed that order.<sup>315</sup>

The constitutionality of such laws aside, however, it's not clear sanctuary jurisdictions have considered the consequences of barring ICE detention in their localities.

If ICE cannot detain aliens in New Jersey or another sanctuary state, the agency is not going to release those aliens — it will send them to another jurisdiction, likely one far away from their lawyers and families and more amenable to immigration enforcement.

As I have noted<sup>316</sup>:

*One issue in the case of Mahmoud Khalil — a Columbia University graduate and Palestinian activist currently facing removal on foreign policy grounds — is that after his arrest at his Manhattan apartment on March 8, DHS sent him briefly to New Jersey before then transporting him to ICE detention in Jena, La.*

*As I reported on April 15, Khalil filed a habeas petition in federal district court in New York on March 9, the day after he was arrested, prompting the government to file a motion to dismiss or instead transfer that case to the U.S. District Court for the Western District of Louisiana, with jurisdiction over Jena.*

*On March 19, however, the New York judge transferred the case instead to federal district court in New Jersey, because that's where Khalil was (briefly) being detained when he filed that petition.*

I am unsure why Khalil was transferred from New Jersey to Louisiana, but it is possible—if not likely—it had something to do with a lack of ICE detention space in the former.

#### CONCLUSION

It would be an understatement to say that the rhetoric surrounding ICE enforcement is currently heated and becoming more so by the day.

That heat, however, is rising to the point that immigration officers and members of our communities are imperiled.

<sup>315</sup> See Nieto-Munoz, Sophie. *Federal appeals court to hear New Jersey immigrant detention case*. NEW JERSEY MONITOR (Apr. 28, 2025) ("In March, the state Attorney General's Office asked the 3rd Circuit to finally hear the state's appeal, stressing that while the appeal is active, the state cannot enforce the 2021 law as it pertains to private companies. The hearing is scheduled for May 1 at 9:30 a.m."). Source: <https://newjerseymonitor.com/2025/04/28/federal-appeals-court-to-hear-new-jersey-immigration-detention-case/>.

<sup>316</sup> Arthur, Andrew. *Why All the Hullabaloo Over ICE Detention in New Jersey?* CENTER FOR IMMIGRATION STUDIES (May 14, 2025). Source: <https://cis.org/Arthur/Why-All-Hullabaloo-Over-ICE-Detention-New-Jersey>.

On May 14, the U.S. Attorney's Office for the Central District of California issued a press release<sup>317</sup> captioned "South Los Angeles Man and Woman Arrested on Federal Charge for Impeding Federal Agents Engaged in Immigration Enforcement", which states:

*According to an affidavit filed with the complaint, on the morning of February 28, Homeland Security Investigations (HSI) and United States Border Patrol agents executed four search warrants at separate residences in Los Angeles, one of them occurring at an address in South Los Angeles. A small crowd began to concentrate outside the residence and some bystanders in the crowd directed hostile remarks at the agents, who later got in their government vehicles and left the area.*

*At the intersection of 61st Street and Broadway in South Los Angeles, Torres and Flores – driving a Honda Fit – allegedly pulled in front of one of the government vehicles and blocked its pathway at the intersection. The defendants also drove westbound on 61st Street in an opposing lane, passing another two government vehicles. The defendants allegedly pulled in front of one of the vehicles and slammed on the brakes, which the agents believed was an attempt to cause a collision.*

*Torres and Flores aggressively followed one of the government vehicles for two miles, attempting to cross multiple lanes of traffic as it followed it and the other cars.*

On March 19, a federal grand jury in Kansas indicted<sup>318</sup> a Mexican national, Diego Barron-Esquivel, for "forcibly assaulting and causing bodily harm to an [ICE] deportation officer while the officer was performing his official duties" in February.

On May 10, the New York Post reported<sup>319</sup>: "A Massachusetts police union is calling for charges against a City Councilmember who allegedly assaulted local and federal officers — and incited a caught-on-video chaotic protest of an [ICE] arrest of an accused violent criminal."

The violence has only increased since then.

On the morning of July 7, 27-year-old Ryan Luis Mosqueda<sup>320</sup> appeared at a Border Patrol facility in McAllen, Tex., allegedly sporting tactical gear and carrying a rifle.

<sup>317</sup> *South Los Angeles Man and Woman Arrested on Federal Charge for Impeding Federal Agents Engaged in Immigration Enforcement*. U.S. ATTY'S OFF., C.D. CAL. (May 14, 2025). Source: <https://www.justice.gov/usao-cdca/pr/south-los-angeles-man-and-woman-arrested-federal-charge-impeding-federal-agents>.

<sup>318</sup> *Mexican national indicted for assaulting federal agent*. U.S. ATTY'S OFF., D. KANS. (Mar. 19, 2025). Source: <https://www.justice.gov/usao-ks/pr/mexican-national-indicted-assaulting-federal-agent>.

<sup>319</sup> Galvin, Shane. *Mass. pol Etel Haxhij assaulted officers, incited chaotic melee over ICE arrest of violent illegal migrant: police union*. NEW YORK POST (May 10, 2025). Source: <https://nypost.com/2025/05/10/us-news/chaotic-video-shows-massachusetts-ice-arrest-being-disrupted-by-unruly-crowd-leading-to-2-arrests/>.

<sup>320</sup> Lybrand, Holmes. *Officer shot and man with rifle killed after exchange of fire at Border Patrol facility in Texas*. CNN (Jul. 7, 2025). Source: <https://www.cnn.com/2025/07/07/us/border-patrol-mcallen-shooting>.

He fired “dozens of rounds”, according to reports<sup>321</sup>, and agents responded in kind. One local McAllen officer, Officer Ismael Garcia, was shot in the knee after he responded to the scene, and a second officer and a Border Patrol agent were injured.

Mosqueda was killed, but the law enforcement officers while injured are otherwise fine.

Mosqueda’s car had “*Cordis Die*” (“Heart Day” in Latin) spraypainted on it.<sup>322</sup> As CNN noted<sup>323</sup>, the phrase “appears in a ‘Call of Duty’ video game, according to a local law enforcement official and a source familiar with the matter”.

McAllen Police Chief Victor Rodriguez was unable “to explain a connection between the phrase and the shooting”<sup>324</sup>, but he did note that Mosqueda “was loaded for bear” after officers found “another rifle and other assaultive weapons” in his car<sup>325</sup>.

I’ve been to the Border Patrol McAllen sector annex in question, and while Mosqueda’s motive may be “unclear”, if he hadn’t gone there intending to kill agents, it’s a big coincidence that he picked that spot.

That attack followed a July 4 incident<sup>326</sup> outside of ICE’s Prairieland Detention Facility<sup>327</sup> in Johnson County, Tex., during which a local Alvarado police officer was shot in the neck.

The NBC affiliate in Dallas reports<sup>328</sup> that the acting U.S. Attorney for the Northern District of Texas, Nancy Larson, “described the encounter as an ‘organized ambush’ carried out by armed individuals dressed in black military-like clothing who reportedly first detonated fireworks outside the federal facility”.

Why an “organized ambush?” According to the local U.S. Attorney’s Office<sup>329</sup>:

*After approximately 10 minutes of convening, one or two individuals broke off from the main group and began to spray graffiti on vehicles and a guard structure in the parking lot at the facility. An Alvarado police officer responded to the*

<sup>321</sup> See *id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> Oler, Bobby. Photos: Border Patrol kills man after he shot officer, police say. NEWSNATION (Jul. 7, 2025). Source: <https://www.newsnationnow.com/us-news/immigration/border-coverage/border-patrol-shooting-mcallen-texas/>.

<sup>325</sup> Lybrand, Holmes. Officer shot and man with rifle killed after exchange of fire at Border Patrol facility in Texas. CNN (Jul. 7, 2025). Source: <https://www.cnn.com/2025/07/07/us/border-patrol-mcallen-shooting>.

<sup>326</sup> Casiano, Louis. Planned ambush at Texas ICE facility leaves officer shot, as 10 charged with attempted murder, authorities say. FOX NEWS (Jul. 7, 2025). Source: <https://www.foxnews.com/us/texas-police-officer-shot-near-ice-detention-center-trump-officials-promise-zero-tolerance>.

<sup>327</sup> Prairieland Detention Facility. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (updated Jun. 2, 2025). Source: <https://www.ice.gov/detain/detention-facilities/prairieland-detention-facility>.

<sup>328</sup> Guerrero, Maria and Yeomans, Meredith. Officer injured in ‘organized ambush’ at Alvarado ICE detention facility; 10 in custody. 5 NBC DFW (updated Jul. 8, 2025). Source: <https://www.nbcdfw.com/news/local/officer-injured-ice-detention-center-alvarado-prairie-land/3880134/>.

<sup>329</sup> Press Release: Ten Individuals Charged with Attempted Murder of Federal Officers and Firearms Offenses in Alvarado Police Officer Shooting. U.S. ATTY’S OFF., N.D. TEX. (Jul. 8, 2025). Source: <https://www.justice.gov/usao-ndtx/pr/ten-individuals-charged-attempted-murder-federal-officers-and-firearms-offenses>.

*scene after correctional officers called 911 to report suspicious activity. When the Alvarado police officer arrived, one alleged defendant positioned in nearby woods shot the officer in the neck area. Another alleged assailant across the street fired 20 to 30 rounds at unarmed correctional officers who had stepped outside the facility.*

*As alleged in the complaint, AR-style rifles were found at the scene. The assailants fled from the detention center but were stopped by additional law enforcement officers. Some defendants were wearing body armor, some were armed, and some had two-way radios. A total of twelve sets of body armor were found during searches of vehicles associated with the defendants, on their persons, and in the area around the Prairieland Detention Center.*

*Additionally, officers found spray paint, flyers stating, “FIGHT ICE TERROR WITH CLASS WAR!” and “FREE ALL POLITICAL PRISONERS,” and a flag stating, “RESIST FACISM – FIGHT OLIGARCHY.” One of the alleged attackers had cell phones inside a “Faraday bag,” used to block phone signals and commonly used by criminal actors to try to prevent law enforcement from tracking their location.*

Ten individuals have been charged with attempted murder and firearms violations in connection with that attack, identified as Cameron Arnold, Savanna Batten, Nathan Baumann, Zachary Evetts, Joy Gibson, Bradford Morris, Maricela Rueda, Seth Sikes, Elizabeth Soto, and Ines Soto<sup>330</sup>. If convicted, each of them faces 10 years to life in federal prison.

These are just allegations, and the accused are entitled to a presumption of innocence. If those allegations are true, however, it underscores the dangers posed by those seeking to impede ICE operations.

Respectfully, I take such attacks personally, having been subject to threats in my capacity as an immigration prosecutor and an immigration judge<sup>331</sup>, and with the same respect, I ask you to take them seriously as well.

The purpose of the Laken Riley Act—the first bill passed this Congress—was to force ICE to take criminal aliens into custody and detain them. And yet just 174 days after that bill was enacted, some argue ICE should not enforce the law at all.

In her November 29, 2023, Memorandum Opinion and Order in *Texas v. U.S. DHS*<sup>332</sup>, U.S. District Court Judge Alia Moses explained:

<sup>330</sup> *Id.*

<sup>331</sup> See Arthur, Andrew. *Unmasking ICE — or Throwing Agents to the Wolves?* CENTER FOR IMMIGRATION STUDIES (Jul. 11, 2025).

Source: <https://cis.org/Arthur/Unmasking-ICE-or-Throwing-Agents-Wolves>.

<sup>332</sup> *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:

*The immigration system . . . 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 Judge Moses was ruling in favor of the Biden administration when she made those finding, 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 agreed with the administration's actions.

Many Americans who have watched the gyrations of sundry immigration policies over the past decade may agree with Judge Moses's conclusions about "the status quo".

As explained *supra*, 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 faithfully 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 and allowed to work.

If the immigration laws are harsh and unfair, I have faith in the American people to realize it and prompt their representatives to amend the laws; in the interim, the constitution mandates that those laws be enforced<sup>333</sup>.

Thank you, and I look forward to your questions.

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<https://www.texasattorneygeneral.gov/sites/default/files/images/press/Concertina%20Wire%20PI%20Denial%20File%20Stamped.pdf>.

<sup>333</sup> See U.S. CONST. art. II § 3 (the president "shall take Care that the Laws be faithfully executed"). Source: [https://constitution.congress.gov/browse/essay/artII-S3-3-1/ALDE\\_00001160/](https://constitution.congress.gov/browse/essay/artII-S3-3-1/ALDE_00001160/).



Good morning Chairman and members of the committee. My name is Victor Avila. I am retired ICE/Homeland Security Investigations Supervisory Special Agent.

HSI is responsible for investigating crimes involving immigration, trade, customs, and border security that threaten the security of the American Homeland. While serving with HSI, I personally led criminal investigations of human traffickers, drug smugglers, and violent criminals, many of whom were criminal illegal aliens.

During my tenure as a federal officer, I served under three administrations. As an HSI Special Agent, I served on the border and as an accredited diplomat to Mexico, Spain, and Portugal. I advised these governments on complex and wide-ranging criminal investigations including narcotics trafficking, arms trafficking, human trafficking, financial violations, commercial fraud, and counterterrorism.

While on official assignment in Mexico, I suffered multiple gunshot wounds and survived a violent ambush by the Mexican Los Zetas cartel where Special Agent Jaime Zapata tragically lost his life in the line of duty.

I've witnessed what a human being is capable of doing to another, especially a child. I describe it as pure evil. Drug Trafficking, Human Trafficking, Human Smuggling are just a few crimes that illegal aliens are involved with. I have experienced the violence and imminent threat we currently face from the Mexican Cartels.

What is happening today with our ICE Officers and Agents is unprecedented. The doxing of our men and women of ICE and accusing them of "kidnapping" and "disappearing" people simply must stop. They are upholding their oath and performing their scope of duties. Vilifying ICE officers because some people disagree with the enforcement of the law or because it contradicts their ideology is not acceptable. Thousands of police officers arrest people every day and the officer is not singled out for doing their job. Why are ICE officers being targeted? This is a politically driven issue.

How did we get here? The Biden administration opened the border utilizing illegal policy like the CBP One APP and exploiting our Asylum criteria and Parole systems. The Biden admin was successful in:

- Limiting ICE budget
- Morale in law enforcement was at an all-time low
- Identity was lost
- Stripped of their authority
- Hands were tied
- Interior enforcement was almost non-existent (worksite enforcement)

- Silenced (no media)
- DHS leadership (Mayorkas)
- Limited their scope of employment

The priority of ICE is the removal of criminal illegal aliens; those with existing criminal history in the US or their home country. However, there are illegals in the US that were not properly vetted by the Biden admin and although no criminal history is registered in our databases, many are affiliated with a gang/cartel activity. Those caught as a collateral, will be processed for removal as well.

Illegal aliens detected and arrested by ICE ARE receiving due process. It's important to note that not all illegals face the same removal proceedings. It depends how the illegal entered the US, where they entered, their country of origin, etc. Some illegals are subject to mandatory detention while others can be removed immediately (Visa Overstays). The illegals with final removal orders had their due process through an immigration court making them subject to arrest and removal immediately.

Just to be clear: ICE Officers and HSI Special Agents do NOT require a warrant to conduct an arrest. 90% + of the arrest I conducted in my career were without a warrant.

It is important for Congress to engage with other countries for removal process and establish MOU's with Mexico, Central America and other countries regarding the flow of migrants coming through their countries by holding them accountable and shifting the burden back on countries of origin to care for their citizens and deter illegal immigration. With the help of ICE offices around the world, they can assist in approaching the host country diplomatically.

Congress has a vital role to better support the mission of U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). The President and Congress must focus on strengthening manpower, infrastructure, technology, and policy. Under CBP, there are three core operational components that, while distinct, share the unified mission of protecting the American people and safeguarding our borders: the Office of Field Operations (OFO), the U.S. Border Patrol, and Air and Marine Operations (AMO). Each play a critical role in securing our land, air, and sea borders, and each requires tailored support to operate at peak effectiveness.

First and foremost, **adequate manpower** is essential. For Border Patrol in particular, which is responsible for directly patrolling thousands of miles of border, this means ensuring sufficient trained agents, and the necessary equipment—particularly patrol vehicles—to effectively cover large, remote, and often dangerous terrain. More agents must also be matched with **expanded infrastructure**, including properly sized and



strategically located Border Patrol stations and sector headquarters. Completing physical barriers like the border wall in key areas remains a crucial part of deterring illegal crossings and enabling better control of border zones.

Billions of tax dollars have been spent on centralized processing centers designed to manage high volume of illegal entrants by the previous administration. Those resources could have been better spent in upgrading outdated CBP and ICE facilities that are long overdue for modernization.

**Technology** is another cornerstone of border security. Cutting-edge surveillance and counter-surveillance systems, including drones and real-time monitoring capabilities, allow agents to detect and respond quicker to illegal activities. At ports of entry, CBP must have access to advanced detection tools to uncover hidden drugs, weapons, and other illicit materials with greater speed and accuracy. These tools not only enhance security but improve operational efficiency.

Beyond equipment and staffing, CBP and ICE need **consistent and supportive policies**. This administration has taken significant steps in disrupting the smuggling networks as well as deliver consequences for those who violate our immigration laws. These gains should not be reversed for political reasons. Cementing these policies with legislation would prevent future administrations from dismantling our borders like the past four years.

Lastly, Congress must show **support for the agents and officers** tasked with enforcing our laws. These men and women risk their lives daily to protect our nation. It is imperative they know and feel the full backing of the legislative and executive branches—not just through words, but through actions and funding that reflect the importance of their mission. The targeting of ICE and CBP personnel will not be tolerated.

Thank you for the opportunity to be here today and I look forward to answering your questions.

**Testimony for the Record - Alejandro Barranco**  
**Senate Committee on the Judiciary**  
**Subcommittee on Border Security and Immigration**  
**For the Hearing**  
**Biden's Border Betrayal: Criminal Aliens in America**  
**July 22, 2025**

Chairman Cornyn, Ranking Member Padilla, and Members of the Subcommittee:

Good afternoon, my name is Alejandro Barranco. I am a proud Marine and the son of Narciso Barranco who was violently attacked and detained on Saturday, June 21, 2025 in Santa Ana, California, while working a job he held since the 1990s. My father was surrounded by masked men who did not identify themselves and never presented any type of warrant. Terrified, he ran. They chased him, pointed a gun at him, pepper sprayed him, and eventually tackled him to the ground and kicked him. After he was handcuffed, these men held him down while another beat him repeatedly in the neck and head area. After all of this, they then threw him in the backseat of an unmarked vehicle.

Growing up, my father was always working from sun up to sun down. He always did his best to provide for our family even if it meant working 7 days a week and extremely long hours. We always had food on the table, a roof over our heads, and clothes to wear to school. He always taught us to be good people and try our best to give back to this great country. He always told us to respect our country and be thankful for all the opportunities we would have growing up in America.

I was the first in my family to graduate high school and eventually go to college, a dream come true for my parents. While in college, I would keep asking myself if I was doing the best I could or if I could maybe do more for myself and my family. That's when I looked into joining the military. I joined the Marine Corps out of the love I have for this country and continue to bring honor to my family name. When I told my dad I was going to enlist, he cried with pride. He told me to give it everything I had, because we do anything and everything to give back to our country. I deployed to Kabul in 2021 to support the evacuation, standing alongside Marines who made the ultimate sacrifice. I helped carry their caskets home.

Today, both of my brothers are also serving in active duty. My father tells everyone, "All three of my sons are Marines." He is so proud that he raised sons who wanted to serve. I believe my brothers and I are a reflection of who my father really is, a law abiding, proud, and patriotic man. My father has no criminal record and should have never been attacked

by these people. My dad is a human being, but he was not treated with the dignity he deserved. He has always made sure to do his best in giving back and supporting this country just like we all do. That is who he is. That is who our country punched, threw in detention, and is trying to deport. What I saw in the video of that day broke my heart.

Since my father was detained, it has been a nightmare for my family. He was held in a cage with 70 to 100 other people. One toilet. No shower. No change of clothes. People were in work uniforms, because they were literally taken while just trying to do their jobs supporting their families and community. When he went to another facility, Adelanto, conditions were still grim. He went 14 hours without water. The plumbing failed. Dirty blankets made people sick. When he finally got a hearing, the government attorney arrived unprepared. If we didn't have a lawyer, we wouldn't have even known he had a court date.

My father was eventually granted bond and came home. But the trauma of that day, and the brokenness of this system, remains in our hearts.

My father is an outstanding member of the community and should have never been attacked the way he was. These people had no warrant for him and had no reason to chase and beat him. He was working his job which he has done since the 90s when he arrived here. I believe my father was racially profiled which led to a lot of stress and mental trauma to everyone in my family. We have received an overwhelming amount of support from everyone in the community, from our neighbors to councilwomen and members of Congress. This kindness is the country I know and love. But I also know this is not the only case in which officers have crossed the line and ignored all types of training in how to detain someone.

I do believe that the vast majority of undocumented people in this country are here to work and support the country as well as raising children like my brothers and me. In fact, an estimated 1 in 12 U.S. residents are either undocumented or live with an undocumented individual; among Latinos, it's 1 in 3. I'm here today because I want other people who've had their family members taken like my dad was, to know they are not alone. Thousands of families like ours are being ripped apart, and their stories matter. I want this committee to understand the human impact of the immigration policies of this administration. I want them to know that the people being ripped from our communities are hardworking, honest, patriotic people, who are raising America's teachers, nurses, and Marines. Deporting them doesn't just hurt my family, it hurts all of us. It makes our communities less safe, less prosperous, and less resilient.

The current system is broken. Cruel and indiscriminate raids are tearing families apart and punishing hardworking people who contribute to our communities every day. My father –

like so many others – deserves a fair chance to stay in the country he calls home. This country is better because of people like my dad. It is time our policies reflected that. Thank you.

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Testimony of Sheriff Roy Boyd

Goliad County, Texas

To the

Committee on the Judiciary

United States Senate

Subcommittee on Border Security and Immigration

For A Hearing Titled:

*“Biden’s Border Betrayal: Criminal Aliens in America”*

July 22, 2025

2:30 p.m.

Room 226, Dirksen Senate Office Building

Washington, D.C. 20515

Tuesday, July 22, 2025

U.S. Senate Committee on the Judiciary  
Border Security and Immigration  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

To the Honorable Chair and Members of the Senate Committee on Border Security and Immigration,

My name is Roy Boyd and I am the Sheriff of Goliad County, Texas. Goliad is a rural south Texas county of around seven thousand souls, situated about halfway between Houston and Laredo, along U.S. Highway 59. This puts us about one-hundred and sixty miles from Mexico, and along a main travel corridor for legitimate and illegitimate product shipment to and from the border.

I have been a Peace Officer for thirty-one years, and retired from the Victoria Police Department and Victoria County Sheriff's Office prior to becoming the Sheriff of Goliad County.

I am here to speak about the impacts of the open border practices of the previous administration and how it affected the citizens of the community I serve. Throughout my career I have had many occasions to come into contact with those illegally in our country and have witnessed how the criminal activity of the Mexican cartels and their associates in the United States directly impact and victimize the citizens of America. However, beginning in 2021, the frequency of these activities exploded in our communities impacting our citizens far more frequently than at any point in my life.

Goliad is a rural county that has enjoyed relative safety and peace in the past several decades. During the five years prior to 2021, the Goliad County Sheriff's Office averaged 77 arrests per year. In contrast, it averaged 413 arrests per year from 2021 through 2024. I have found no previous cases for Smuggling of Persons or Engaging in Organized Criminal Activity in our records prior to 2021. This increase in criminal activity has been a challenge for our resources and has only been able to be met thanks to grant funding from the Office of Governor Abbott and the Stonegarden initiative through Border Patrol.

After taking Office, our first pursuit and bailout was on February 1, 2021. I was conducting traffic enforcement after receiving complaints about motorists running a particular stop sign. During my second stop of the morning, the driver of a Camaro fled, turned down a side street, and drove into a resident's back yard where he crashed into a parked truck. Approximately fourteen people exited the vehicle and fled into the brush. We apprehended four of the occupants, all of which were illegally in the U.S. For the next year and a half, the Goliad County Sheriff's Office was involved in pursuits and bailouts with smugglers transporting illegal aliens on behalf of Mexican cartels almost weekly.

As the evidence of mass cartel activities continued to increase in the spring of 2021, we began to uncover cartel stash sites throughout the county. These locations are where cartel operatives will trespass on private property and set up waypoints where they store stolen trucks used to transport illegal aliens, conduct logistical resupplies for their personnel, stash illegal aliens while in transit from the border to Houston, and to hide from law enforcement when they have successfully evaded apprehension. The presence of cartel activity in rural areas led many residents to fear being alone on their property at night, as citizens could often hear activity and voices in remote areas of the county after dark. Our investigations eventually revealed sixteen cartel stash sites in Goliad County.

Our first large scale investigation related to the Mexican cartels began in early 2021, with the discovery of a group of smugglers working under Jalisco New Generation Cartel from Michoacan, Mexico that was conducting a human smuggling operation out of Miguel Aleman, Mexico, directly across from Roma, Texas. This group was working with numerous criminal organizations within the United States to steal trucks, steal license plates, identify and set up stash sites, provide logistical support, and transport people illegally brought into our country. According to our federal partners on the case, it was estimated that this contract organization was moving about 100,000 people from the border region to Houston per year. After numerous pursuits and an exhaustive effort by local, state, and federal law enforcement working together, we were able to identify the primary participants on the Texas side of the border and make the necessary apprehensions to dismantle the organization. The primary persons overseeing the organization in Texas were all illegally in the United States and were all armed with numerous weapons.

The above organization is but one of the numerous groups of various sizes we discovered during the past four years working under the direction of cartels in Mexico. Between 2021 and 2025 the Goliad County Sheriff's Office has arrested ninety-six people for Smuggling of Persons and one-hundred and twenty-six for Engaging in Organized Criminal Activity. During that same time, we arrested one-hundred and fifteen illegal aliens on two-hundred and sixty-six criminal charges. We also turned over an additional one-hundred and forty-five illegal aliens to Border Patrol from other contacts made in the course of conducting daily business.

The real cost of the open border has not been realized nor calculated in totality. Unlike what people often hear, cartels are highly compartmentalized organizations. They primarily operate in Mexico and utilize liaisons, contractors, sub-contractors, and affiliates to conduct business inside the United States. As an example, the business of human smuggling is a complex model that requires numerous isolated cells creating numerous victims for each step of the process. There are guides who take new arrivals from the Rio Grande illegally through private property to pick-up points in border communities. From there illegal aliens are moved to stash houses or hotels where they await transportation north where they will be dropped off south of a checkpoint. Once dropped off, a "coyote" will guide them on a trail circumventing the Border Patrol checkpoint where they will trespass on numerous ranches while moving north. This is where many will die in the harsh brush country of south Texas. There are groups who are responsible for stealing trucks for transporting illegal aliens from north of the checkpoints.

Other organizations steal front license plates from vehicles that match the year, make, model, and color of the various stolen trucks in use at that time. Throughout the small towns between the pickup point and Houston, the organizations have scouts to drive along the roadways and let smugglers know about any law enforcement on the roadways. They also act as interference occupying law enforcement by committing minor violations to distract officers and pick up illegal aliens and smugglers after they bail out after a pursuit. Other scouts look for remote private properties where stash sites can be set up without the knowledge and consent of the owners.

Other uncalculated costs are the damages done by smugglers and illegal alien groups. In south Texas, the McAllen ranch has recently sustained more than \$100,000 per year in fence repairs alone. Many other ranches across south Texas have damage amounts that are similar. The vast amount of trash left on ranches is staggering, with ranchers being forced to rent industrial size dumpsters and hiring full-time staff just to pick up trash and prevent their cattle from ingesting it and becoming ill and dying. All throughout Texas fences have been damaged by thousands of events in which smugglers have left roadways and driven through fences. Agricultural buildings have been ruined by smugglers and illegal aliens. Rural houses have been burglarized, squatted in, and made uninhabitable as a result of the volume of people being brought through who have no care for the personal property of others.

While the above examples touch on the damage to property we have witnessed, it is the human tragedy that is most difficult to count. Psychological and physical damage has been done to our citizens and to many of the illegal aliens who have found themselves in indentured servitude throughout the United States.

On April 24, 2021, the Goliad County Sheriff's Office stopped Brisa Santana of Irving, Texas. Santana had three females in her vehicle. Questioning revealed that the girls were being smuggled from the border to Houston. Santana was arrested. Upon arrival at the Goliad County Jail, it was discovered that she possessed fictitious social security cards in the panties she was wearing for each of the three illegal aliens. It was determined that the three girls already had family members in the United States illegally and thought they were coming to America where they would reunite with family members smuggled in previously. The investigation revealed that the girls were unaware that they were actually being taken to the "Chinatown" area of Houston where they were intended to be placed into forced prostitution by the organization that brought them into the U.S. The girls were considered "especials" due to their youth and beauty and were determined to be too valuable in the sex slave market to be taken to their intended destinations. Santana said that she had been recruited to smuggle the girls by a man from Mexico while at a bar in Dallas.

On July 3, 2025, the Goliad County Sheriff's Office arrested Jovani Rodriguez-Aboytes when we discovered him trespassing in an agricultural field. Aboytes was wanted for a murder he was seen on video committing earlier that same date in Galveston, Texas. He was also wanted out of Indianapolis, Indiana for Aggravated Robbery for breaking into a house and committing an assault. Aboytes had been previously deported as a violent felon and had illegally reentered the



U.S. At the time of his apprehension, Aboytes was found to be in possession of the clothes he was wearing on video at the time of the murder, as well as the handgun he was suspected of using. At the time of apprehension, Aboytes claimed to be from Mexico. However, previous government documents indicate that his hometown is Isfahan, Iran. As of this time, we have not received verification of his true origin.

While some may wish you to believe that there is no violence associated with what they claim as an immigration issue, I am here to state that the victimization of citizens and non-citizens alike have drastically increased as a result of the previous administration ceding control of our border to the Mexican cartels. To be fair, the border has always been a location of criminal activity, however, I have never witnessed such a sudden increase in blatantly open criminal activity as I did between 2021 and 2024.

I have lived in south Texas my entire life. My family has been here since Texas was part of Mexico. I have interviewed smugglers, sicarios, victims of smugglers and cartels, and have been to more dead bodies of illegal aliens unceremoniously dumped in ditches than I can recall. We now have millions of people in our nation who are part of a peon class of slaves who were brought here on a promise of a better life but have found themselves in a never-ending cycle of work and debt to their masters. They live ten to fifteen together in one bedroom apartments where their owners charge them rent and utilities while they work in kitchens, on farms, in hotels, or in other jobs where they are not paid directly for their labor. And these are the lucky ones who are not placed into forced prostitution.

For any who do not believe that these things are happening in America, I leave you with the words from the opening of a letter I found in a backpack in a house where sex slaves were being kept in Rockport, Texas.

“In USA we sometimes have something like a slave boy and slave girl. We call it indentured servant...”

This letter goes on to articulate that it takes five to thirteen years for these slaves to buy their freedom. That is, unless they are sold to a new master before the debt is paid off.

Thank you for your time and consideration to this most important matter.

I yield for any questions you may have.

Humbly Submitted,

Roy Boyd  
Sheriff – Goliad County, TX

**Testimony for the Record**  
**Senate Committee on the Judiciary**  
**Subcommittee on Border Security and Immigration**  
**For the Hearing**  
**Biden's Border Betrayal: Criminal Aliens in America**  
**July 22, 2025**  
**Deborah T. Fleischaker, Former Acting U.S. Immigration and Customs Enforcement**  
**Chief of Staff; Principal Consultant, Blackbird Ventures, LLC**

Chairman Cornyn, Ranking Member Padilla, and Members of the Subcommittee:

Thank you for the opportunity to testify today. My name is Deborah Fleischaker. I currently serve as Principal Consultant at Blackbird Ventures LLC. Prior to that, I spent nearly 14 years at the U.S. Department of Homeland Security (DHS), including more than a decade as a career civil servant. From May 2021 to November 2023, I held senior leadership roles at U.S. Immigration and Customs Enforcement (ICE), including Assistant Director for Regulatory Affairs and Policy and later as Acting Chief of Staff. I concluded my government service as DHS's Executive Secretary and Acting Chief Privacy Officer.

Let me be clear: the views I express today are my own and do not reflect the official positions of DHS or ICE.

**A Data-Driven, Public-Safety-Oriented Perspective**

At the core of this hearing is a fundamental question: How can we best enforce immigration laws while protecting national security, ensuring public safety, and upholding constitutional rights? The answer must be rooted in facts, law enforcement professionalism, and the strategic use of limited resources—not fear-based narratives or indiscriminate tactics.

Unfortunately, the Trump Administration's immigration enforcement strategy continuously strays from these principles. Rather than focusing on dangerous individuals or recent unauthorized border crossers, the administration has embraced a quota-driven, dragnet-style approach that weakens—not strengthens—public safety.

**A Quota System That Undermines Enforcement Effectiveness**

One of the government's most sacred responsibilities is protecting the public. Federal law enforcement officers, including those at ICE, work hard—often at personal risk—to fulfill this mission. But within law enforcement, prioritization is essential. Resources are finite. Targeting must be strategic.

The Clinton, Bush, Obama, and Biden Administrations all implemented enforcement priorities that focused ICE's efforts on individuals who posed real threats: those with serious criminal convictions, risks to national security, or recent unlawful entries. These frameworks helped ICE allocate resources effectively, reduce recidivism, and reinforce public safety. And the evidence demonstrates that these priorities were effective. According to DHS data, over 90% of interior arrests during the Biden Administration involved individuals with criminal convictions or public safety concerns. And this was despite a bizarre litigation effort to hamstring the Biden administration from doing any prioritization at all. Eight justices of the Supreme Court ultimately rejected the lawsuit—upholding the executive branch's “discretion over arrests and prosecutions [that] extends to the immigration context.”

In stark contrast, the Trump Administration eliminated these priorities. Instead, it mandated mass enforcement without meaningful distinctions. As widely reported, ICE has been pressured to meet a target of 3,000 arrests per day—many of them administrative, civil arrests involving individuals with no criminal background. When the number of arrests becomes more important than the quality of those arrests, it becomes tempting to focus on individuals who are less dangerous and easier to find and apprehend. This is borne out in the data. As of June 2025, 45% of people arrested by ICE had no criminal history at all, not even an arrest.

This quota-driven model is not only unjust; it is strategically flawed and a misuse of limited resources. It pulls officers away from high-impact targets who are serious risks to public safety, overwhelms detention and immigration court systems, and erodes morale within ICE itself. It reduces public safety by focusing on volume over risk.

#### **Aggressive Tactics That Fracture Communities**

The Trump Administration has also dismantled long-standing safeguards against overreach—leading to a rise in aggressive and indiscriminate enforcement tactics that endanger community trust.

This includes the rollback of protections at sensitive locations like schools, hospitals, places of worship, and most alarmingly, courthouses. ICE arrests at courthouses have surged, deterring victims of crime from seeking protection and discouraging witnesses from cooperating with law enforcement. It also punishes people for following the law and appearing in court - including immigration court - when required.

We've also seen a sharp uptick in roving patrols and arrests at worksites and in the community—often without regard to an individual's background, ties to the community, or the severity of any prior offenses. These tactics create fear and confusion, not safety.

Studies have consistently shown that community cooperation with law enforcement decreases when people fear that any interaction—whether as a victim or witness—may result in detention or deportation. This chilling effect makes entire neighborhoods, where U.S. citizens and noncitizens alike both live, less safe.

These sorts of indiscriminate enforcement actions also lead to mistakes and the arrest of U.S. citizens. As the reconciliation bill funnels virtually unprecedented amounts of money toward immigration enforcement, we should expect these sorts of mistakes not only to continue, but to increase in number.

#### **Concealed Identity and Lack of Accountability**

The Trump Administration has also permitted ICE officers to conduct operations while concealing their identities—a practice that is deeply at odds with professional law enforcement standards. Masked agents, carrying weapons sanctioned by the government, often operating without visible badges or name tags, erodes public trust and undermines accountability. We do not want violence in American streets simply because a civilian has no reasonable basis to know whether the masked man with a gun in front of them is an agent of the state.

To be clear, doxing or threatening federal law enforcement officers is completely unacceptable and should be unequivocally condemned. Officers deserve to be safe. But safety cannot come at the expense of transparency. In a democracy, the people have a right to know who is exercising government power—and under what authority.

When you combine the masking and failure to identify themselves with the Trump Administration's actual elimination of the ICE body worn camera program and the functional elimination of Congressionally authorized and appropriated DHS oversight offices like the Office for Civil Rights and Civil Liberties, the intention to avoid true accountability becomes stark.

#### **Diverting Resources From Real Criminal Threats**

Perhaps most troubling is how the Trump Administration's strategy has diverted law enforcement resources away from serious threats.

Law enforcement time and personnel should be devoted to public safety threats such as combatting organized crime, child exploitation, drug trafficking, and human smuggling, but are instead being redirected to civil immigration enforcement. Even within ICE, Homeland Security Investigations, the portion of the agency that focuses on serious criminal offenses such as transnational crime, has been redeployed to focus significantly on civil immigration enforcement. As was reported recently, this change in focus has led to a

significant reduction in morale and “[e]ven those that are gung ho about the mission aren’t happy with how they are asking to execute it – the quotas and the shift to the low-hanging fruit to make the numbers.”

ICE has also expanded the use of 287(g) agreements, deputizing local law enforcement officers to carry out immigration enforcement—often with little to no training in immigration law. This blurs the line between local policing and federal immigration enforcement, undermines community trust, and exposes municipalities to serious legal and constitutional risk.

Immigration enforcement is complex, and best left to trained professionals. Enforcing civil immigration laws without proper oversight or expertise increases the likelihood of unlawful arrests, civil rights violations, and costly litigation.

#### **Smart Enforcement, Not Spectacle**

In conclusion, we do not need broader enforcement. We need smarter, more targeted enforcement rooted in law, guided by priorities, and accountable to the people. The Trump Administration’s mass-arrest approach prioritizes numbers over risk, fear over trust, and chaos over strategy. That approach makes us all less safe.

Immigration policy must be driven by a commitment to protecting communities, upholding the Constitution, and focusing limited resources where they matter most.

Thank you for the opportunity to speak with you today. I welcome your questions.

## Senate Hearing

## Biden's Border Betrayal: Criminal Aliens in America

July 22<sup>nd</sup>, 2025

Good morning to the members of the committee and thank you for allowing me to speak.

On July 27th, 2022, I received the worst news that a parent can ever get—that my newly 20-year-old daughter, Kayla Hamilton, was found dead with injuries consistent with homicide. There are no words that describe the heart wrenching, soul crushing pain of losing your child so horrifically. Kayla was a happy and loving person. She loved life and God. She loved going to church and learning about Jesus and the Bible stories. She showed the world that being yourself was ok and you didn't have to follow everyone else. She was extremely ambitious and, despite having autism, she was determined to make her way in this world. She loved animals, especially her cat Oreo, and cared about the homeless.

At first, we knew very few details of the murder until an arrest. At the end of March of 2022, Walter Javier Martinez was apprehended by Border Patrol crossing illegally into the U.S. at the southwest border in Rio Grande City, Texas. Martinez stated that he was 16 years old and feared gang activity in his home country of El Salvador. As an unaccompanied alien child, Martinez was granted access into the United States with no background checks or vetting. Health and Human Services and Homeland Security did not verify the sponsor and allowed Martinez to go live in Frederick, Maryland. Martinez had behavior issues when he was living with the sponsor, so he ended up staying with his half-brother who lived in the same neighborhood mobile home park as Kayla. His half-brother also had issues with Martinez's behavior, so the half-brother called the property manager/owners of the mobile home park, which I thought was a legit company. We learned that an illegal immigrant, who was a priest, owned some of the mobile homes in the park, and allowed his cousin to rent a home to this 16-year-old gang member in the same mobile home park as Kayla. Through the investigation of Kayla's murder, we found out that this priest and his cousin knew Walter Javier Martinez because they came from the same area of El Salvador. They also knew he was running from a homicide that he had committed in El Salvador. Kayla, her boyfriend and the young family did not know their rental rights and didn't know that they had a right to say no to Martinez living in the same community. They were all afraid to say no because they feared getting kicked out

on the streets, so they said nothing.

Martinez was living there less than 5 days before he violently and brutally murdered my daughter. Walter Javier Martinez broke into Kayla's room while she was sleeping that morning. Kayla left a voicemail on her boyfriend's phone. In the voicemail you can hear a struggle going on in the background and Kayla can be heard crying, groaning, and struggling to breathe. Martinez can be heard on the voicemail hushing her and near the end telling her "I'm sorry" in Spanish while strangling her with her phone cord. After Kayla was dead, Martinez tied her up and sexually assaulted her. This was confirmed by the anal swabs that matched Martinez's DNA. Kayla fought for her life that day. She had bruises up and down her arms, her fingers, the left side of her face, her back and down her leg and deep wounds to her neck from the cord.

Local police knew right from the beginning that Martinez was the main suspect just by their initial investigation. It took the Aberdeen police to confirm that Martinez was a known gang member of MS-13, and that Martinez had a criminal record in El Salvador in 2020. If Health and Human Services or Homeland Security had done a background check, then they would have known this, and Martinez wouldn't have been able to be on U.S. soil. With Martinez being 16 years old, Maryland Child Protective Services (CPS) took custody of him until the DNA results came back. The Aberdeen Police department was very transparent to CPS. The Aberdeen Police department demanded that Martinez be held in a secure location because he was a threat to society based on the murder of, and injuries to Kayla.

It was later learned after Kayla's murder Child Protective Services placed Martinez in a group home with other children where he was able to attend a public high school and then placed Martinez in a foster home which allowed him to enroll into another high school. While in jail a letter was intercepted that Martinez wrote confessing to 4 murders and 2 rapes and admitting he was a MS-13 gang member. Martinez ended up pleading guilty and taking the plea deal of 70 years. Since he was a juvenile at the time, even though he was tried as an adult, Martinez could not be sentenced to life without the possibility of parole. Not only was Kayla's life put at risk and taken, but so many other children and adults were at risk. The Biden-Harris Administration did not put the safety of American citizens first.

We need to ensure the safety of our citizens and protect the children from being with the wrong peers and/or placement in group homes with unsuspected gang members. Background checks and vetting should be required right from the start so the agencies can check for criminal records and gang affiliation in their home country. Sponsors also need to be screened and verified. Under the *Kayla Hamilton Act* introduced last week by Representative Fry, Health and Human Services would be required to gather background information on all potential sponsors and every adult in their household. If Homeland Security and Health and Human Services had checked Walter Javier Martinez's background, they would have known that he was a known MS-13 gang member, and my precious daughter, Kayla, would still be alive today. All these agencies had to do was make one phone call to El Salvador and they would have known that Martinez was a known MS-13 gang member and that he had a criminal record in El Salvador for illicit gang activity. To prevent such tragedies happening again, The *Kayla Hamilton Act* will mandate background checks on all unaccompanied alien children (UACs) and their sponsors so that no person will be at risk.



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Testimony of Mrs. Marie Vega

Angel Mom – Mother of Slain Border Patrol Officer Javier Vega, Jr.

To the

Committee on the Judiciary

United States Senate

Subcommittee on Border Security and Immigration

For A Hearing Titled:

*“Biden’s Border Betrayal: Criminal Aliens in America”*

July 22, 2025

2:30 p.m.

Room 226, Dirksen Senate Office Building

Washington, D.C. 20515

## Open Borders: The Consequences and Pain that Follows

My name is Marie Herrera Vega; I am the mother of two incredible sons.

Javier “Harvey” Vega Jr. my first born, one of my two pride and joys. An amazing grandson, son, brother, husband, father, nephew, friend, classmate, and coworker with a heart of gold, like no one you have ever met. An American with a love for his country, law enforcement, life, and family. Harvey joined the United States Marine Corps 5 months after graduating from High School. Served 4 years, after leaving the Marine Corps, attended college, while working a full-time job. Immediately after graduation he was hired by Christus Spohn Hospital as a bio-med technical engineer. In 2006 he joined the United States Border Patrol until 2014. **Javier “Harvey” Vega Jr., REMEMBER THAT NAME.**

Jordy Vega my second baby, another amazing son, joined the United States Marine Corps as well, same as his big brother. He was deployed to Iraq three times; we nearly lost Jordy when the convoy he was travelling in hit an IED. On his fourth deployment, this time to Afghanistan, he and his men were ambushed and Jordy was shot in the arm. He served 9 years in the military. Jordy now lives in Louisiana and works for a large American company.

Sunday, August 3, 2014, was a day that started off with wonderful memories of our U.S. Marine and Border Patrol Agent son, and his family visiting us. The entire day was planned, good quality family time, a barbeque, shopping, rifle sighting in preparation for hunting season, and some fishing to end the day, before he headed back home. Instead, late that afternoon our beautiful day turned into a nightmare, when two criminal illegal aliens decided to ambush us in attempt to steal both 4-wheel drive trucks. The two illegals jumped out of the stolen vehicle they were driving and without hesitation or a warning they began shooting at us without even asking us to hand over the keys. In the process Harvey was shot in the chest. My husband, Javier was shot in the back and the rest of us which included me, my daughter-in-law, two grandsons and their friend. When I heard the yelling coming from the illegals, while they shot at us, I fell back off the chair I was sitting on and I struggled to get up, but instead had to crawl to my son who had picked up an AR which he had left leaning by the truck. Do you know what it is like to see your son go down after being shot? Do you know what it is like to hear the gun shots, bullets whizzing past you? Do you what its like when your mind is trying to process everything, telling your grandchildren to duck, while thinking your son is on the ground with a bullet in his chest? Do you know what its like to hear your son telling his father, “KEEP SHOOTING DAD”? Do you have any idea what it was like for me to pick up an AR and shoot back to protect my family? The illegals not only possessed a stolen vehicle, the guns they possessed were stolen as well. They each had a long list of crimes, including holding a gun to a toddler’s head if the family did not hand over their phones, keys, and money. They had served time in county jails, been previously deported, fined \$10.00 and ordered to self-deport again. These same illegals had robbed our friend, Douglas Light, on his very own ranch in La Feria, holding a gun to his grandson, Paul’s ribcage and threatening to shoot him if our Doug did not hand over the keys to his truck. Doug did as he was told, and the illegals drove off with the truck, trailer, and lawn equipment. Going back to the nightmare we lived, had my husband and I not returned fire, the illegals would have killed everyone there, leaving no witnesses, and that is including my innocent grandbabies.

Five days from today it will be Harvey’s 11<sup>th</sup> Angelversary, 11 years is how long I have lived with survivor’s guilt. 11 years I have struggled to survive without my baby. 11 years I have lived with flashbacks during every waking moment. 11 years we have celebrated the boys’ birthdays, graduations, weddings, starting new families, new careers, and amazing accomplishments. 11

years I have witnessed how his killing has impacted the community, our families, his work families, his childhood friends, I have seen the heartbreak in everyone's voice, hearts, and actions.

Illegal aliens have impacted American lives in a very negative way. They have no regard for human life, as I witnessed firsthand. The illegals that killed Harvey, also shot my husband in the back and shot at innocent children, and women. My grandbabies and their friend were only 8 and 11 years old. Take a moment and imagine your child or grandchild witnessing this horror. How does that make you feel? Would you be okay with this? Had our immigration laws been enforced, our son would be here. Barrack Obama failed me, my family, our community, and our nation.

My husband now suffers from P.T.S.D., he is handicapped because of the extent of damage the bullet caused. Nerves and ligaments were severed when that 45-caliber bullet travelled from one side of his waist, narrowly missing his spine before exiting on the other side of his body.

I want you to know that we do not have an issue with people coming to America legally, we do have immigration laws in place for a reason. And they need to be enforced and as politicians you need to allow those in charge to enforce these laws. We are not a lawless nation. I, myself was not born in America. I am the daughter of an American born father and a Mexican born mother. However, my father did not smuggle or sneak us into this country. After marrying my mother, he stayed by her side in Mexico, until he applied to move us back to his Country. He waited patiently, filled out all the necessary documents and paid fees. He never even asked for government assistance, making do with his pay as a farmer and carefully planning for times when the weather did not permit work. He taught me and my siblings to be God fearing, hard-working and law-abiding citizens. My siblings and I are proud Naturalized Citizens.

La Feria, Texas, my little town's population is about 7000, our little community has lost three young lives to illegal alien crime.

- Noemi Dominguez, a 26-year-old teacher, murdered by criminal illegal alien, Angel Maturino Resendiz in 1999. Some of you might remember him as The Railroad Killer. He was a serial killer that murdered so many people throughout America.
- Javier "Harvey" Vega, Jr., 36 years old, father of three boys, a U.S. Marine, and Border Patrol Agent, murdered in cold blood in front of his family, by Gustavo Tijerina Sandoval and Ismael Hernandez Vallejo in 2014. They both had a long list of crimes they committed throughout the Rio Grande Valley.
- Maria Macias, a 37-year-old mother of three beautiful young daughters, killed in a car accident caused by illegal alien, Bedelin Alegria in 2022, who instead of trying to render aid, fled from the scene of the accident.

This is what family separation really looks like. Not one Angel Family will ever see our loved ones again – loved ones whose lives were taken by illegal aliens.

Now that you know a mother that had to shoot back to defend and protect her family, do you still believe we should have OPEN BORDERS? Open Borders have consequences and you can see from what I have experienced, because of the crimes committed by illegals, the PAIN lives with us for the rest of our lives.

You took an oath to work for "WE THE PEOPLE"! That means working with your fellow politicians regardless of which side of the aisle you are on. You are supposed to work together

representing us, ensuring that those coming in are obeying our immigration laws. They need to be properly vetted for their safety, yours, and ours.

**Testimony for the Record - Dr. Giovanni Veliz, Retired Police Commander**  
**Senate Committee on the Judiciary**  
**Subcommittee on Border Security and Immigration**  
**For the Hearing**  
**Biden's Border Betrayal: Criminal Aliens in America**  
**July 22, 2025**

Chairman Cornyn, Ranking Member Padilla, and Members of the Subcommittee:

Good afternoon. My name is Gio Veliz. It is my honor and duty to appear before this committee to provide testimony on community policing and safer communities for all.

My academic and professional background aligns on the intersections of police legitimacy and building trust with immigrant communities. I am a retired Police Commander with over thirty years of law enforcement experience, during which I served in a variety of critical roles: patrol, investigative, and administrative. Administrative Sergeant to two different Chiefs of Police, United States Drug Enforcement (DEA) Task Force, Federal Bureau of Investigations (FBI) Task Force, Director of Police Activities League, and Police Commander of the Special Crimes Investigations Division.

I am best known in police reform circles for my work in strengthening trust and partnerships between law enforcement and community stakeholders, particularly within immigrant communities. My efforts have centered on safeguarding constitutional and human rights, improving police legitimacy, and fostering mutual understanding between officers and the communities they serve. My extensive experience in reducing crime in partnership with communities reflects years of sustained engagement, trust-building, and open communication – this approach supports both effective public safety and the safety of honorable sworn police officers who have taken an oath to protect communities with due process and dignity. Thus, my testimony today reflects my personal views and experience, and does not reflect the official positions of the Minneapolis Police Department.

Early in my career, I recognized the profound value of community relationships. By actively engaging with residents, local business owners, and attending countless community meetings, I gained insight into their needs and concerns. I was privileged to be welcomed by immigrant families and community leaders into spaces where I listened to the stories of perilous journeys to the United States – stories of hardship, resilience, and a yearning for safety and opportunity. These families often expressed fear of crime and reluctance to contact law enforcement, shaped by past experiences with abuse or unjust justice

systems. I learned much from these encounters, and they compelled me to reflect on the value of providing voice to the voiceless and treating every individual with dignity and respect.

In response to the call for stronger relationships with the immigrant community, I led initiatives in partnership with community stakeholders, including the creation of a multicultural advisory committee and the development of educational workshops tailored to immigrant communities. These workshops reached thousands of families, teaching them about police services and engaging them to build trust with police officers and help reduce crime in their neighborhoods. This program was showcased by the Community Oriented Policing Services magazine as a best practice to increase trust. The trust and cooperation generated through these efforts led to critical public safety outcomes, including information in major drug trafficking investigations, the rescue of a kidnapped community member, the apprehension of suspects in shootings, and successful large-scale fraud investigations involving organized crime in Minnesota and beyond.

I respectfully share my concern that the increased local law enforcement involvement in aggressive and fear-based raids of immigrant communities are already eroding trust, cooperation, and public safety in our neighborhoods. When residents fear law enforcement, their willingness to report crime, cooperate with investigations, or assist in identifying violent offenders is diminished. The erosion of trust not only undermines crime prevention efforts but also places both officers and community members at greater risk.

Trust between law enforcement and the communities we protect is vital and can only be achieved through community cooperation. My career as a law enforcement leader and lifelong advocate for justice has taught me this isn't just a buzz word, it's the key to achieving true public safety. Without community cooperation, police agencies across the country will have a difficult time identifying and apprehending violent offenders, this will more likely create risks on the safety of police officers and community members.

Today, I offer this testimony grounded in my experience – as a law enforcement leader, scholar, and lifelong advocate for justice and community partnership. I urge this committee to fully recognize the dangerous consequences to public safety these aggressive tactics present, and work together with community leaders and public safety experts to rebuild trust and keep our communities safe. Thank you.

## A P P E N D I X

**The following submissions are available at:**

*<https://www.govinfo.gov/content/pkg/CHRG-119shrg61892/pdf/CHRG-119shrg61892-add1.pdf>*

**Submitted by Ranking Member Padilla:**

National Bureau of Economic Research (NBER), statement ..... 2

