



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE U.S. HOUSE JUDICIARY COMMITTEE

HEARING ENTITLED "OVERSIGHT OF UNITED STATES
IMMIGRATION AND CUSTOMS ENFORCEMENT"

September 16, 2016

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The American Immigration Council (Immigration Council) is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding Immigration and Customs Enforcement (ICE) and its impact on immigrants and their communities.

We share in the Committee's interest in engaging in oversight of ICE and holding the agency accountable for their enforcement actions and treatment of immigrants in their custody. While the Immigration Council provides research and analysis on a range of related issues, we call to the Committee's attention our concerns about overbroad enforcement actions and detention of asylum seekers and families. The Immigration Council's publications on these critical issues should serve to inform the Committee's assessment of ICE's work in these areas and provide discrete areas in need of a policy or procedural shift.

Overbroad Enforcement:

While we welcomed the Administration's revisiting of enforcement priorities in 2014, the revised priorities remain overbroad, resulting in the placement of immigrants with old or minor criminal convictions into removal proceedings. ICE's Criminal Alien Program (CAP) has become the primary channel through which interior immigration enforcement takes place; between two-thirds and three-quarters of individuals removed from the interior of the United States are removed through CAP. Each year, Congress allocates over \$300 dollars to fund this program.

In its November 2015 Special Report, [*Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program*](#) (Attachment A), the Immigration Council reviewed government data and documents obtained through the Freedom of Information Act (FOIA) to examine CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013. The report details how, through CAP's enormous nationwide web, ICE has encountered millions of individuals-U.S. citizens, permanent residents, and other foreign nationals-and removed hundreds of thousands of people. Yet, CAP is not narrowly tailored to focus enforcement efforts on the most serious security or public safety threats—in part because CAP uses criminal

arrest as a proxy for dangerousness and because the agency's own priorities have been drawn more broadly than those threats

As a result, the program removed mainly people with no criminal convictions, and people who have not been convicted of violent crimes or crimes the Federal Bureau of Investigation (FBI) classifies as serious. CAP also has resulted in several anomalies, including that it appears biased against Mexican and Central American nationals. Mexican and Central American nationals are overrepresented in CAP removals compared to the demographic profiles of those populations in the United States. People from Mexico and the Northern Triangle (Guatemala, Honduras, and El Salvador) accounted for 92.5 percent of all CAP removals between FY 2010 and FY 2013, even though, collectively, nationals of said countries account for 48 percent of the noncitizen population in the United States.

In addition, as is explained in the Immigration Council's publication, [*The Criminalization of Immigration in the United States*](#) (Attachment B), there is abundant evidence that immigration is not linked to higher crime rates. Empirical data shows that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals. As our report details, high rates of immigration are associated with lower rates of violent crime and property crime. Our analysis of population and FBI data indicates that between 1990 and 2013, the violent crime rate in the United States declined 48 percent. This included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

Despite the evidence that immigration is not linked to higher crime rates and that immigrants are less likely to be criminals than the native-born, many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than hard data. The enforcement apparatus designed to support these laws has grown dramatically in the last three decades; we have spent billions of taxpayer dollars deporting millions of people who have committed only immigration violations. Such enforcement actions focus on quantity, not quality of deportations, while separating families.

There is no doubt that our nation is safer when everyone is accounted for and fully documented. Our communities would benefit from policies designed to update our immigration system, policies that would ensure every person in this country is "on the grid" of U.S. life—with driver's licenses, social security numbers, and other forms of identification. Such a system would help us make smart national security decisions. Working toward such practical policies is a benefit to all Americans and more productive than demonizing an entire group of people for the actions of a few.

The Detention of Asylum Seekers and Families:

Since the summer 2014, record numbers of unaccompanied children and families have been arriving at our Southern Border fleeing unprecedented levels of violence in Central America. Unfortunately, the knee-jerk response to the influx of women and children fleeing violence by the Obama Administration and ICE was to rapidly prop up family detention facilities. Families and others from the region have been apprehended, detained in poor conditions, and rushed through removal proceedings with little due process.¹ AS noted in our report, [*Detained Deceived and Deported: Experiences of Recently Deported Central American Families*](#) (Attachment C) many have been deported back to the dangerous circumstances from which they originally fled. The Administration's hope was that detaining families would deter others from coming to the United

¹ *Deplorable Medical Treatment at Family Detention Centers*, American Immigration Council, July 20, 2016, available at, <https://www.americanimmigrationcouncil.org/news/deplorable-medical-treatment-family-detention-centers>.

States, effectively ignoring the United States' long-held commitment to providing protection to those fleeing persecution.

All this has been done in the name of deterrence and national security when in reality these children and families are deserving of our protection and help. Our report, [*A Guide to Children Arriving at the Border: Laws, Policies and Responses*](#) (June 2015) (Attachment D), provides information about the tens of thousands of children—some traveling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border and why the current enforcement only response to their arrival is the wrong approach. The report also seeks to explain the basic protections the law affords them, what happens to the children once they are in U.S. custody, and what the government has done in response.

As described in the *Guide*, unaccompanied children and families are still fleeing Central American violence in large numbers. Organized crime, gangs, and violence are driving children, families, women, and men out of their hometowns and countries, a situation detailed in the report, [*Understanding the Central American Refugee Crisis: Why They are Fleeing*](#) (February 2016) (Attachment E), and the paper, [*No Childhood Here: Why Central American Children Are Fleeing Their Homes*](#) (July 2014) (Attachment F). Of more than 300 children interviewed in the first five months of 2014 for *No Childhood Here*, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls cited these factors as a reason for their emigration. Moreover, as described in *Understanding the Central American Refugee Crisis*, a survey of Central Americans considering migration concluded that crime and violence have the most powerful impact on someone's decision to migrate and knowing about migration risks had no significant impact on this decision.

Since 2014, El Salvador's murder rate has increased 70 percent, making the small country the murder capital of the Western hemisphere, while Honduras and Guatemala are ranked third and fifth, respectively.² This trend continued during the first quarter of 2016 with El Salvador averaging "nearly one homicide per hour."³ In January 2016 U.S. Peace Corps volunteers withdrew from El Salvador for the first time in 40 years, which followed the September 2012 withdrawal of volunteers from Honduras.⁴ Those fleeing violence face tremendous obstacles along the way, including trafficking, rape, and a fierce enforcement crackdown in Mexico, which only increases the risks they face in seeking protection.⁵

There are signs that the Administration is coming to understand the protection needs of this population, signaled by the recent announcement to expand its Central American Minors (CAM) Refugee/Parole program and commence regional refugee processing by the Department of Homeland Security of individuals from the Northern Triangle in need of resettlement in the U.S. or a third country. Those who cannot safely wait out the lengthy processing and who instead flee to the United States to seek protection should be treated no differently.

² Joshua Paltrow, *Why El Salvador Became the Hemisphere's Murder Capital*, Washington Post, January 5, 2016, available at, <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/>.

³ Dan Harris et al, *In El Salvador, the Murder Capital of the World, Gang Violence Becomes a Way of Life*, ABC News, May 17, 2016, available at, <http://abcnews.go.com/International/el-salvador-murder-capital-world-gang-violence-life/story?id=39177963>.

⁴ Peace Corp, Peace Corps in El Salvador, accessed September 21, 2016, available at, <https://www.peacecorps.gov/el-salvador/>; Freddy Cuevas and Adriana Gomez, *Peace Corps Honduras: Why Are All the US Volunteers Leaving?*, Associated Press, January 18, 2012, available at, <http://www.csmonitor.com/World/Latest-News-Wires/2012/0118/Peace-Corps-Honduras-Why-are-all-the-US-volunteers-leaving>.

⁵ Adam Isacson, Maureen Meyer and Hannah Smith, *Increased Enforcement at Mexico's Southern Border*, WOLA Advocacy For Human Rights in the Americas, November 2015, available at https://www.wola.org/files/WOLA_Increased_Enforcement_at_Mexico's_Southern_Border_Nov2015.pdf.

Statement for the House Hearing: "Oversight Of United States Immigration Customs Enforcement" | **American Immigration Council** | September 2016

TPS designation for this region is one tool among others to protect those who cannot be safely returned home—and it is long overdue.

* * *

We continue to urge Congress to strengthen protections for vulnerable populations and to work to comprehensively reform our outdated immigration system, in a way that meets our needs and reflects our proud history as a nation of immigrants.

ATTACHMENT A

ENFORCEMENT OVERDRIVE

A Comprehensive Assessment of ICE's Criminal Alien Program

By Guillermo Cantor, Ph.D., Mark Noferi, Esq., and Daniel E. Martínez, Ph.D.

ENFORCEMENT OVERDRIVE:

A COMPREHENSIVE ASSESSMENT OF ICE'S CRIMINAL ALIEN PROGRAM

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ACKNOWLEDGMENTS

For their valuable comments and suggestions on various drafts of this report, we wish to thank Marc Rosenblum, Deputy Director of the Migration Policy Institute's U.S. Immigration Policy Program, and Emily Creighton, Senior Staff Attorney at the American Immigration Council. We also wish to thank Yale Law School Professor Michael Wishnie, and his students Cody Wofsy, Caitlin Bellis, Charanya Krishnaswami, Josh Rosenthal, and Jason Glick—all of whom were involved in the FOIA litigation through which the data for this report was obtained. Finally, we would like to thank McKenzie Anderson of George Washington University for his assistance in the data coding process.

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at www.AmericanImmigrationCouncil.org and our blog at www.immigrationimpact.com.

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Executive Summary

The Criminal Alien Program (CAP) is a massive enforcement program administered by U.S. Immigration and Customs Enforcement (ICE) and has become the primary channel through which interior immigration enforcement takes place. Between two-thirds and three-quarters of individuals removed from the interior of the United States are removed through CAP.¹ Each year, Congress allocates hundreds of millions of dollars to fund this program. Until now, however, little has been known about how CAP works, whom CAP deports, and whether CAP has been effective in meeting its goals.

Based on government data and documents obtained through the Freedom of Information Act (FOIA), this report examines CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013. That data shows that through CAP's enormous web, ICE has encountered millions and removed hundreds of thousands of people. Yet, CAP is not narrowly tailored to focus enforcement efforts on the most serious security or safety threats—in part because CAP uses criminal arrest as a proxy for dangerousness and because the agency's own priorities have been drawn more broadly than those threats.

As a result, the program removed mainly people with no criminal convictions, and people who have not been convicted of violent crimes or crimes the Federal Bureau of Investigation (FBI) classifies as serious. CAP also has resulted in several anomalies, including that it appears biased against Mexican and Central American nationals. Moreover, the number of CAP removals differs significantly from state to state.

ICE's reliance on CAP to achieve its goals will likely continue as ICE further narrows its focus on removing noncitizens with criminal convictions and continues to seek partnerships with state and local law enforcement to find them. This examination of CAP's outcomes from fiscal years 2010 to 2013 offers important insights into CAP's operations over time and its potential impact on communities moving forward. In particular, it raises questions about the ability of a broad "jail check" program to effectively remove serious public safety threats without resulting in serious unintended consequences, such as those described in this report.

Background: CAP's Expansion over Time

While CAP was originally conceived as a "jail check" program narrowly tailored to remove noncitizens incarcerated for serious criminal convictions, it has become a massive enforcement web—indeed, the primary mechanism through which ICE removes people from the U.S. interior.

- When the former U.S. Immigration and Naturalization Service (INS) established CAP's predecessor programs in 1988, only a limited number of crimes rendered a person removable. These crimes were commonly considered "serious" or "violent." Subsequently, between 1990

and 1996, Congress expanded the criminal grounds for removal to potentially include minor crimes such as drug possession, simple assault, shoplifting, turnstile jumping, and disorderly conduct.

- The scope of CAP ballooned when Congress dramatically increased its funding nearly thirty-fold between fiscal years 2004 and 2008, from \$6.6 million to \$180 million. In fiscal year (FY) 2013, Congress began to dedicate the funding that Secure Communities had received towards CAP, resulting in a 64 percent increase in CAP funding, from \$196.7 million in FY 2012 to \$322.4 million in FY 2015.

CAP's Outcomes: Large Web, Few Removals of Immigrants with Serious or Violent Convictions

- Between FY 2010 and FY 2013, ICE encountered over 2.6 million persons through CAP, but removed fewer than 508,000. Of that number, 87,426 individuals had a conviction for a violent crime or a crime the FBI classifies as serious (a mere 3 percent of the total number of encounters).
- Out of more than half a million CAP removals that took place between FY 2010 and FY 2013, ICE classified the largest share (27.4 percent) as not “definite criminals”—i.e., ICE recorded no criminal conviction. The second- and third-most prevalent categories of CAP removals were of individuals whose “most serious” criminal conviction involved a “traffic offense” (20 percent) and “dangerous drugs” (18 percent), followed by “assault” (6 percent) and “immigration” (5 percent).
- During this time period, over 4 out of 5 CAP removals were of individuals with either no conviction or of individuals who have not been convicted of a violent crime or one that the FBI classifies as serious.
- Conversely, a very low percentage of individuals removed through CAP were convicted of extremely serious crimes. Specifically, 1.7 percent were convicted of burglary, 1.6 percent were convicted of robbery, 1.5 percent were convicted of sexual assault (including rape), 0.5 percent were convicted of homicide, 0.4 percent were convicted of kidnapping, and 0.1 percent were convicted of arson.

Do CAP Removals Match ICE's Removal Priorities?

- ICE has justified its interior removal efforts by stating that its intention is to remove “those convicted of the most serious crimes,” ranking immigrants with convictions as “Level 1, 2, or 3” offenders (in order of decreasing seriousness), and publicly emphasizing that an increasing share of its removals are of Level 1 or 2 offenders. But, in recent years, ICE's criminal removal

priorities have still encompassed many offenders besides those who had committed violent crimes or crimes the FBI classifies as serious.

- While the largest proportion (33 percent) of CAP removals falls into Level 1, almost two-thirds of all Level 1 removals were not associated with convictions for a violent crime or a crime that the FBI classifies as serious. Of all Level 2 removals, 76 percent involved individuals who have not been convicted of a violent crime or a crime classified as serious by the FBI. And among Level 3 removals, crimes other than those categorized as violent or serious accounted for 95 percent of removals.

CAP Appears to Be Biased against Mexican and Central American Nationals

- Mexican and Central American nationals are overrepresented in CAP removals compared to the demographic profiles of those populations in the United States. People from Mexico and the Northern Triangle (Guatemala, Honduras, and El Salvador) accounted for 92.5 percent of all CAP removals between FY 2010 and FY 2013, even though, collectively, nationals of said countries account for 48 percent of the noncitizen population in the United States. Nationals of those countries, however, are not markedly more likely to be convicted of violent crimes or crimes the FBI classifies as serious.

The Geography of Removals: State-by-State Results

- The number of CAP removals differs significantly from state to state. And this discrepancy is not associated with the size of the states' noncitizen populations.
- The states with the highest rates of removals include several with smaller immigrant populations (i.e., Mississippi, Wyoming, and West Virginia), as well as two with large immigrant populations (Texas and Arizona).
- Although further research is needed to explain these discrepancies in CAP removal rates, it is plausible that the state-by-state outcomes of CAP are related to local cooperation with ICE; ICE's local capacity and presence in those states; and the availability of public transportation and driver's licenses for undocumented immigrants.

Introduction

The Criminal Alien Program (CAP) has become the primary program through which Immigration and Customs Enforcement (ICE), a component of the U.S. Department of Homeland Security (DHS), conducts immigration enforcement in the interior of the United States. Between two-thirds and three-quarters of individuals ICE removes from the interior of the United States are removed through CAP²—the vast majority in cooperation with state and local law enforcement. Each year, Congress allocates hundreds of millions of dollars to fund CAP. And ICE’s reliance on CAP to achieve its goals will likely continue as ICE further narrows its focus on removing noncitizens with criminal convictions and continues to seek partnerships with state and local law enforcement to find them.³

There are reasons to question CAP’s efficacy and efficiency, and to look closely at unintended consequences. As this report discloses, CAP is not narrowly tailored to focus enforcement efforts on the most serious security or safety threats—in part because CAP uses criminal arrest as a proxy for dangerousness and because the agency’s own priorities have been drawn more broadly than those threats. As a result, the program is overbroad and arguably inefficient. CAP also has resulted in several anomalies, including an apparent bias against Mexican and Central American nationals, and the number of CAP removals differs significantly from state to state.

Prior to this report, little was known about how CAP works, whom CAP deports, and whether CAP has been effective in meeting its goals. As the debate grows over whether state and local cooperation with ICE helps or hinders public safety,⁴ this report provides crucial information regarding CAP’s evolution, operations, and outcomes between fiscal year (FY) 2010 and August 17, 2013, based on never-before-released government data⁵ and documents obtained by the American Immigration Council and the American Immigration Lawyers Association’s Connecticut Chapter through the Freedom of Information Act (FOIA). Yet, as this report highlights, much is still unknown about CAP, and the government’s lack of transparency and poor data collection and sharing means that a full assessment of CAP remains elusive.

What the data does show, however, is that from FY 2010 to August 17, 2013, ICE officers encountered over 2.6 million persons, and removed nearly 508,000 through CAP. As an initial matter, it is unclear why, in a program designed to target removable noncitizens in jails, ICE spends so much time, money, and resources encountering those whom ICE does not even arrest, let alone remove. Moreover, despite this massive enforcement web, only 3 percent of the total number of CAP encounters resulted in removal of an individual with a conviction for a violent crime⁶ or a crime the Federal Bureau of Investigation (FBI) classifies as serious. Indeed, strikingly, CAP removed mainly people with no criminal convictions and people who have not been convicted of violent crimes or crimes the FBI classifies as serious. Over four out of five CAP removals from FY 2010 to August 17, 2013—83 percent—fell into these categories.⁷ Among those noncitizens whom ICE removed through CAP, the most common “most serious” conviction that ICE recorded was none (27 percent).

Of those removed with a conviction, a sizable proportion had not been convicted of a violent crime or a crime the FBI classifies as serious. The most prevalent “most serious” convictions that ICE recorded were traffic offenses (20 percent) and drug offenses (18 percent).⁸ And among those persons removed with traffic and drug convictions, many had committed lesser offenses. For example, 30 percent of those whose most serious conviction was a traffic offense were convicted of non-DUI offenses, and 39 percent of those whose most serious convictions were drug offenses were convicted of possession, with another 23.2 percent not specified. Among all removed individuals whose most serious convictions were marijuana offenses, 53.6 percent were convicted of possession. This data complements other reports showing that DHS’ removals of those with criminal convictions have largely been removals of those who committed drug or lesser offenses—in some cases, with harsh impact compared to their equities in the United States.⁹ And even though this report shows that ICE, over time, began better tailoring its CAP removals to its own priorities, still, most removed through CAP did not commit violent crimes or crimes the FBI classifies as serious.

In addition to removing large numbers of minor offenders, ICE has removed through CAP disproportionately high numbers of Mexicans, Guatemalans, and Hondurans compared to the composition by national origin of both the foreign-born and the undocumented populations in the United States. Interestingly, the data also shows that nationals of those countries are not markedly more likely to be convicted of violent crimes or crimes the FBI classifies as serious.

Finally, as states and localities have adopted differing policies regarding cooperation with ICE, state-by-state disparities in CAP removals have emerged. CAP led to the removal of a disproportionately high number of noncitizens in certain states in FY 2013. In particular, states including Mississippi, Wyoming, West Virginia, Kentucky, South Dakota, Nebraska, Texas, and Arizona experienced the highest rates of CAP removals per 1,000 noncitizens. Meanwhile, some states with substantial immigrant populations, including Massachusetts, New York, Maryland, New Jersey, Washington D.C., Connecticut, Florida, and Illinois, experienced comparatively lower rates of CAP removals per 1,000 noncitizens. A possible explanation is the emergence of “community trust” policies in FY 2013, such as the introduction of anti-detainer policies by urban localities, which reduced local cooperation with ICE regarding non-serious offenders, as well as those charged but not convicted. Possible explanations also include ICE’s detention capacity in different states, and the necessity for immigrants to drive in rural states, which increases the chances of contact with local law enforcement or ICE.

Looking forward, as Congress, states, and localities debate the impact of state and local cooperation with ICE on public safety, and ICE attempts to further narrow its enforcement priorities, excluding from removal those with no convictions or only minor convictions, the data in this report is crucial to understand. ICE asserts that it is protecting public safety in the interior of the United States by removing the “worst criminals.”¹⁰ Most noncitizens removed through CAP, however, were not the worst criminals, and many were not criminals at the time of removal. The data calls into question whether CAP is designed to effectively and efficiently achieve the government’s stated policy goals. Given the comparatively few CAP removals involving individuals who committed violent crimes or crimes the FBI classifies as serious, relative to the financial and human cost of deporting minor offenders, the value of current CAP funding levels is questionable.

Background

While CAP was originally conceived as a “jail check” program narrowly tailored to remove noncitizens incarcerated for serious criminal convictions, it has become a massive enforcement web—indeed, the primary mechanism through which ICE removes people from the U.S. interior. ICE has both expanded the target population of CAP’s core “jail check” activities to include those charged with any crime, whether convicted or not, and expanded CAP’s mission outside jails into immigrant communities.¹¹ Meanwhile, Congress has consistently fueled those expansions with dramatic funding increases.

Rather than operating CAP as a freestanding program with specialized CAP officers, ICE merely designates its CAP work separately for budgetary purposes.¹² In other words, ordinary ICE officers record their work as CAP work when performing CAP duties. As CAP’s former unit chief stated, “[a]ny [ICE] ERO [Enforcement and Removal Operations] officer at any time can conduct a Criminal Alien Program duty,”¹³ if (s)he is pursuing removal of a noncitizen with a criminal history.¹⁴ Thus, in FY 2014, CAP was funded for 1,495 full-time employees nationwide,¹⁵ even though, as of 2013, CAP only operationally employed a unit chief and 10 staff officers who oversaw the program from ICE headquarters in Washington, D.C.¹⁶

CAP’s Traditional “Jail Check” Role

In CAP’s traditional “jail check” function, ICE identifies removable noncitizens who are incarcerated in jails or prisons and initiates removal proceedings against them.¹⁷ To this end, ICE collaborates with over 4,000 federal, state, and local facilities that provide ICE information about the foreign nationals in their custody.¹⁸ Federal facilities are required to report all self-identified foreign inmates to ICE, under an agreement between ICE and the federal Bureau of Prisons.¹⁹ Additionally, certain state and local facilities voluntarily provide ICE with lists of foreign nationals in custody, targeted lists of suspected noncitizens, or access to detainees or records, depending on the level of cooperation.²⁰ State and local law-enforcement agencies have provided the bulk of CAP’s work. From FY 2010 to FY 2013, only 6.4 percent of CAP encounters were referred from federal facilities, compared to 91.8 percent referred from state or local law enforcement.²¹

Once receiving information, the ICE officer ascertains a noncitizen’s removability either by screening records or traveling to a jail or prison to interview the noncitizen.²² Before November 2014, if the ICE officer found a noncitizen to be removable, the officer would typically lodge a “detainer” request for state or local law enforcement to hold the noncitizen, interview the noncitizen if necessary, and subsequently initiate removal proceedings if appropriate.²³ Under new November 2014 guidance ending Secure Communities and announcing the Priority Enforcement Program (PEP), ICE officers are directed to request state or local law enforcement to notify ICE of the noncitizen’s release, rather than issue a detainer request (absent special circumstances).²⁴

CAP's Reach into Immigrant Communities

Though CAP primarily functions in jails and prisons nationwide, ICE also has extended the program's reach into communities through what the agency terms "at-large" activities, including pursuing individuals on criminal probation or parole, and working with other ICE enforcement initiatives, such as the National Fugitive Operations Program.²⁵ In FY 2013, 97 percent of CAP removals appear to have been executed through CAP's traditional jail check functions.²⁶ It is generally unclear, though, when ICE arrests and removes noncitizens in the community, whether ICE counts those arrests as "CAP removals."

CAP's Dramatic Expansion in Mission, Scale, and Funding

CAP's expansion of its "jail check" targets, as well as its activities in communities, evolved out of several events: (1) Congress broadening the legal grounds for criminal deportability, (2) subsequent dramatic funding increases for CAP, (3) ICE establishing the controversial "Secure Communities" program, with its mission to remove every noncitizen deportable for a criminal offense, (4) ICE prioritizing the removal of noncitizens with criminal convictions, and (5) ICE folding Secure Communities' technology and operations into CAP, and apparently Secure Communities' broad mission, too.

U.S. immigration-enforcement agencies have prioritized the removal of noncitizens with criminal convictions since at least 1986.²⁷ When the former U.S. Immigration and Naturalization Service (INS) established CAP's predecessor programs in 1988, the crimes that resulted in removal were a limited number commonly considered "serious" or "violent"—i.e., murder, gun trafficking, and drug trafficking, which had been designated by Congress as "aggravated felonies."²⁸ Subsequently though, between 1990 and 1996, Congress expanded the criminal grounds for removal to potentially include less serious crimes such as drug possession, simple assault, shoplifting, turnstile jumping, and disorderly conduct.²⁹

The scope of CAP then ballooned when Congress dramatically increased CAP funding nearly thirty-fold from fiscal years 2004 through 2008, from \$6.6 million to \$180 million; and in FY 2009 began to allocate to ICE \$1 billion per year (and more in later years) through CAP and other programs to identify and remove "criminal aliens"³⁰ (albeit prioritized "by the severity of [their] crime") (Table 1).³¹

**Table 1: Appropriations for ICE, CAP, and Secure Communities,
FY 2004-2016 (in millions)**

Fiscal Year	Overall ICE Appropriations	CAP	Secure Communities
2004	\$3,669.6	\$6.6	-
2005	\$3,127.1	\$33.7	-
2006	\$3,866.4	\$93.0	-
2007	\$4,696.6	\$137.5	-
2008	\$5,054.3	\$180.0	\$200.0
2009	\$5,968.0	\$189.1	\$150.0
2010	\$5,741.8	\$192.5	\$200.0
2011	\$5,805.4	\$192.5	\$200.0
2012	\$5,983.0	\$196.7	\$189.1
2013	\$5,878.2	\$205.0	\$138.1
2014	\$5,610.7	\$294.2	\$25.3
2015	\$5,932.8	\$322.4	--
2016 (requested)	\$5,881.1	\$320.3	--

One of those other programs was “Secure Communities,” through which the fingerprints of those arrested by local law enforcement were shared with ICE.³² ICE established Secure Communities in 2008 following Congress’ directive to “identify and remove every deportable criminal alien”³³—not just those convicted of serious or violent crimes. Secure Communities’ mission also included targeting noncitizens in the community,³⁴ not just those incarcerated in jails. Both these functions were later integrated into CAP, expanding its massive reach.

In June 2010, ICE Director John Morton published a memorandum setting new civil enforcement priorities, with the goal of focusing removals on public safety and other threats. The priorities set out a three-tiered framework, with noncitizens who have criminal convictions as Priority 1—and, within Priority 1, individuals with convictions ranked by the severity of their crimes into three levels (Levels 1, 2, and 3).³⁵ Subsequently, though, when ICE management set numeric goals for removals with convictions, overall goals were set rather than goals by level. This may have resulted in ICE removing more offenders at lesser levels. For example, ICE management for FY 2012 set an aggressive goal of 225,000 removals with convictions,³⁶ stated that that goal was “[t]he only performance measure that will count,” and directed officers to “reallocate all available resources” to meet it.³⁷ In response, an ICE Assistant Field Director in Atlanta offered to “process more petty offenses,” among other proposals.³⁸

CAP's unit chief also testified in 2013 that CAP had targeted "any alien convicted of any crime" since 2010.³⁹ Additionally, ICE's internal "Criminal Alien Program Handbook" (May 2013) made clear that CAP targets included individuals "**regardless of the status of conviction**" (emphasis in original), i.e., even where the criminal charge was pending.⁴⁰ CAP's unit chief confirmed this practice.⁴¹ This guidance exists even though ICE has defined "criminality" in terms of a "recorded criminal conviction," following Morton's 2010 memorandum.⁴²

On January 22, 2013, ICE completed nationwide deployment of Secure Communities in all local jurisdictions.⁴³ ICE then stated that it would transfer "full responsibility" of the day-to-day management of Secure Communities to CAP,⁴⁴ and began to realign Secure Communities funding towards CAP.⁴⁵ In FY 2013, Congress began to direct the funding that Secure Communities had received towards CAP, resulting in a 64 percent increase in CAP funding from \$196.7 million in FY 2012 to \$322.4 million in FY 2015. By February 2014, CAP had assumed operational responsibility for Secure Communities.⁴⁶ In November 2014, DHS Secretary Jeh Johnson then stated that DHS was discontinuing the "Secure Communities program, as we know it," although it replaced it with PEP.⁴⁷

As CAP subsumed Secure Communities operationally, it appears that CAP also assumed its broad mission. Today, CAP's stated mission is essentially coextensive with ICE's general priorities—to remove noncitizens that in ICE's view are public safety threats, by using criminal history as a proxy for danger.⁴⁸ CAP also targets noncitizens not only in jails, but also in the community.⁴⁹

CAP's Outcomes: Large Web, Few Removals of Immigrants with Serious or Violent Convictions⁵⁰

Between October 1, 2009, and August 17, 2013, ICE encountered 2.6 million individuals under CAP. Such encounters consisted of an interview and/or screening of a person or his or her records to determine citizenship status, nationality, lawful presence, and legal right to remain in the United States.⁵¹ During the same period, ICE arrested over three-quarters of a million individuals through CAP, and removed more than half a million.⁵²

Over time, while the number of encounters through CAP has remained relatively high, the number of CAP arrests and removals has gone down. For instance, in FY 2010 there were roughly 329 arrests and 256 removals per 1,000 encounters. By 2013, that rate had decreased to 250 arrests and 139 removals per 1,000 encounters. In other words, CAP's web has remained large while its arrests—and particularly removals—have decreased (Table 2).

Table 2. CAP Encounters, Arrests, and Removals by Fiscal Year

FY	Encounters	Arrests	Removals
2010	668,079	219,477	171,281
2011	701,473	221,122	138,971
2012	674,368	200,254	120,371
2013*	556,708	139,375	77,231
Total	2,600,628	780,228	507,854

*Data provided for FY 2013 covers the period of October 1, 2012, through August 17, 2013.

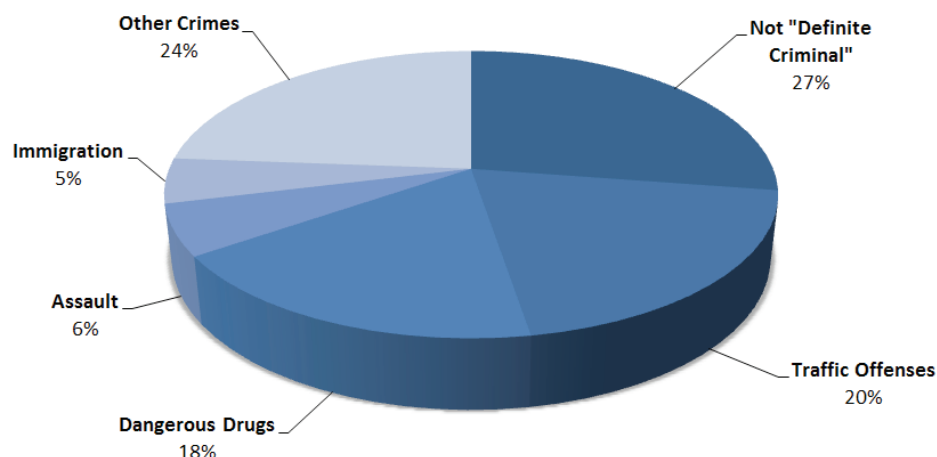
It is unclear why, in a program designed to target removable noncitizens in jails, ICE spends so much time, money, and resources encountering those whom ICE does not even arrest, let alone remove. Indeed, CAP's massive enforcement web even has ensnared U.S. citizens. In 2012, CAP and ICE management identified 278 U.S. citizens upon whom ICE had placed detainees.⁵³

That said, these overall numbers tell us little about the population that CAP has targeted and removed. Examining the details underlying the general numbers tells us more about CAP's effectiveness and efficiency in identifying, apprehending, and removing genuine public safety threats.⁵⁴

Most interestingly, of the over half-million CAP removals that took place between FY 2010 and FY 2013, ICE classified the largest percentage (27.4%) as not "definite criminals"—i.e., ICE recorded no criminal conviction in its ENFORCE database.⁵⁵ The second- and third-most prevalent categories of CAP removals were of individuals whose "most serious" criminal conviction, according to ICE, involved a "traffic offense" (20 percent) and "dangerous drugs" (18 percent), followed by "assault"

(6 percent) and “immigration” (5 percent). The FBI’s National Crime Information Center (NCIC) crime coding scheme, and ICE’s internal coding based upon it, classify all drug offenses under the rubric of “dangerous drugs,” without any “non-dangerous” category.⁵⁶ Collectively, people with no recorded conviction, or a drug, traffic, or immigration conviction, constituted 70.5 percent of all removals ICE attributed to CAP between FY 2010 and FY 2013 (Figure 1).

Figure 1: Most Serious Criminal Offense Convictions, FY 2010-2013



To more precisely examine CAP’s efforts to remove public safety threats, we classified removed individuals into three broad categories, following the Migration Policy Institute (MPI) and the FBI classification schemes:

- 1. Individuals with no conviction:** I.e., “definite criminal” no, according to ICE.
- 2. Serious or violent:** Individuals whose “most serious” conviction was a serious or violent conviction according to independent classification schemes.⁵⁷ These include (a) crimes that the FBI classifies as Part I; (b) a subset of those the FBI classifies as Part II (i.e., Part II-violent); and (c) domestic abuse crimes. According to the FBI’s decades-old crime classification system, “Part I”⁵⁸ includes eight types of crimes, which criminal scholars have commonly understood to represent the most serious crimes.⁵⁹ Those eight categories are murder and non-negligent homicide, forcible rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson.⁶⁰ Part II, on the other hand, includes a broad spectrum of crimes that range from more to less serious. In an effort to further disaggregate the broad universe of FBI-Part II crimes, MPI classifies them as violent or nonviolent. Part II-violent includes crimes such as assault, battery, kidnapping, hit and run, weapons offenses, and sex offenses. Following MPI’s approach, we included these crimes (Part II-violent), as well as domestic abuse crimes, in our “serious or violent” category.⁶¹
- 3. Other:** Individuals whose “most serious” conviction was for (a) a FBI Part 2 crime that is not violent according to MPI; (b) drug possession; (c) drug sale, distribution, or transportation; (d) an immigration crime (e.g., illegal entry or re-entry); (e) a nuisance crime; (f) driving under the influence (DUI); or (g) traffic offenses other than DUI.⁶²

Between FY 2010 and 2013, more individuals were removed through CAP without a criminal conviction (27.4 percent) than with a serious or violent conviction (17.2 percent). Put another way, based on this categorization, over 4 out of 5 CAP removals between FY 2010 and 2013 involved individuals with either no conviction or individuals who were not convicted of a crime classified as violent (following MPI's definition) or serious, according to the FBI (Table 3).

Table 3: Removals by Broad Type of Crime, FY 2010-2013

Crime Category	2010	2011	2012	2013 (through Aug. 17, 2013)	Total	Percent increase/ decrease of share (2010-2013)
<i>Not Definite Criminal</i>	64,867 (37.9%)	38,095 (27.4%)	25,280 (21%)	11,054 (14.3%)	139,296 (27.4%)	-62.3%
FBI Part 1	13,349 (7.8%)	10,226 (7.4%)	9,619 (8.0%)	6,557 (8.5%)	39,751 (7.8%)	9.0%
FBI Part 2 (Violent)	12,293 (7.2%)	10,631 (7.6%)	9,627 (8.0%)	7,008 (9.1%)	39,559 (7.8%)	26.4%
Domestic Abuse	2,314 (1.4%)	2,065 (1.5%)	2,224 (1.8%)	1,513 (2.0%)	8,116 (1.6%)	48.1%
<i>Total—Serious or Violent</i>	27,956 (16.3%)	22,922 (16.5%)	21,470 (17.8%)	15,078 (19.5%)	87,426 (17.2%)	19.5%
FBI Part 2 (Nonviolent)	13,127 (7.7%)	12,677 (9.1%)	11,705 (9.7%)	7,727 (10.0%)	45,236 (8.9%)	29.9%
Nuisance Crime	3,728 (2.2%)	4,106 (3.0%)	3,896 (3.2%)	2,428 (3.1%)	14,158 (2.8%)	40.9%
Drugs- Possession	19,085 (11.1%)	16,359 (11.8%)	15,251 (12.7%)	11,183 (14.5%)	61,878 (12.2%)	30.6%
Drugs- Sale, Distribution	11,814 (6.9%)	9,144 (6.6%)	9,690 (8.1%)	7,222 (9.4%)	37,870 (7.5%)	34.8%
Immigration	6,594 (3.8%)	6,240 (4.5%)	5,562 (4.6%)	4,379 (5.7%)	22,775 (4.5%)	50.0%
Traffic (DUI)	17,043 (10.0%)	20,694 (14.9%)	18,455 (15.3%)	12,657 (16.4%)	68,849 (13.6%)	65.7%
Traffic (Other than DUI)	7,061 (4.1%)	8,733 (6.3%)	9,062 (7.5%)	5,503 (7.1%)	30,359 (6.0%)	73.2%
<i>Total—Other</i>	78,452 (45.8%)	77,953 (56.1%)	73,621 (61.2%)	51,099 (66.2%)	281,125 (55.4%)	44.6%
Total	171,275 (100%)	138,970 (100%)	120,371 (100%)	77,231 (100%)	507,847 (100%)	

Moreover, although over time CAP removed fewer individuals overall and a higher percentage of them with convictions, it essentially replaced removals of people who had not been convicted of a crime with removals of people who had not been convicted of a violent crime or of a crime that the FBI classifies as serious. Specifically, while the share of those removed under CAP *without* a conviction decreased 62.3 percent over time—from 37.9 percent in FY 2010 to 14.3 percent in FY 2013—the share of those removed under CAP who had not been convicted of a serious or violent crime increased 44.6 percent over time—from 45.8 percent in FY 2010 to 66.2 percent in FY 2013.

Furthermore, the proportion of individuals removed through CAP whose most serious criminal conviction related to traffic, drug, or immigration offenses increased from FY 2010 to FY 2013. The proportion of individuals removed with a traffic offense conviction increased each year, from 14.4 percent to 24.0 percent; the proportion of individuals removed with a drug conviction grew from 17.2 percent to 20.5 percent; and the proportion of individuals removed with an immigration-related criminal conviction grew from 4.4 percent to 6.5 percent (Appendix 1).

Additionally, breaking down those most prevalent convictions by specific offense types reinforces that a sizable proportion of the individuals ICE removed through CAP, if convicted, were convicted of less serious crimes.⁶³ For example, 30 percent of all removed individuals whose most serious conviction was a traffic offense were convicted of non-DUI traffic offenses. Among “dangerous drug” offenders, 38.8 percent were convicted of possession and 23.2 percent did not have a “specified” conviction. Only 33.1 percent of the convictions were associated with selling, smuggling, or distributing drugs. Further, among all marijuana offenders, 53.6 percent were convicted for possession compared to 37 percent convicted of smuggling or selling drugs.

Lastly, a very low percentage of individuals removed through CAP were convicted of extremely serious crimes. Specifically, 1.7 percent were convicted of burglary, 1.6 percent of robbery, 1.5 percent of sexual assault (including rape), 0.5 percent of homicide, 0.4 percent of kidnapping, and 0.1 percent of arson (see Appendix 1).

In sum, given that the overwhelming majority of those removed through CAP do not fall within the most serious categories of crimes, as identified by the FBI, the data casts doubt on ICE officials’ assertions that ICE removals had narrowed to the worst public safety threats.

Do CAP Removals Match ICE’s Removal Priorities Targeting “Serious Criminals” or Public Safety Threats?

Although CAP removals have increasingly matched ICE’s removal priorities over time, ICE’s removal priorities did not necessarily correlate to the most serious criminal convictions or public safety threats.

When ICE Director Morton’s June 2010 memorandum classified all noncitizens with criminal convictions as “Priority 1,” it sub-classified offenders into three Criminal Offense Levels (“COLs”), with Level 1 and 2 receiving principal attention:

- Level 1 offenders: noncitizens convicted of “aggravated felonies,” as defined in §101(a)(43) of the Immigration and Nationality Act, or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: noncitizens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: noncitizens convicted of crimes punishable by less than one year.⁶⁴

The data indicates that CAP removal patterns increasingly reflected Morton’s prioritization. Specifically, between FY 2011 and FY 2013 the share of ICE Level 1 and Level 2 offenders among all CAP removals increased—while the share of individuals with no conviction declined (Table 4).⁶⁵

Table 4. Removal Criminal Offense Level by Fiscal Year

Criminal Offense Level	2011	2012	2013 (through Aug. 17, 2013)	Total
Level 1	39,584 (28.5%)	41,282 (34.3%)	31,299 (40.5%)	112,165 (33.3%)
Level 2	24,056 (17.3%)	22,504 (18.7%)	15,916 (20.6%)	62,476 (18.6%)
Level 3	37,245 (26.8%)	31,303 (26.0%)	18,959 (24.6%)	87,507 (26.0%)
NA	38,086 (27.4%)	25,280 (21.0%)	11,057 (14.3%)	74,423 (22.1%)
Total	138,971	120,369	7,231	336,571
(%)	(100%)	(100%)	(100%)	(100%)

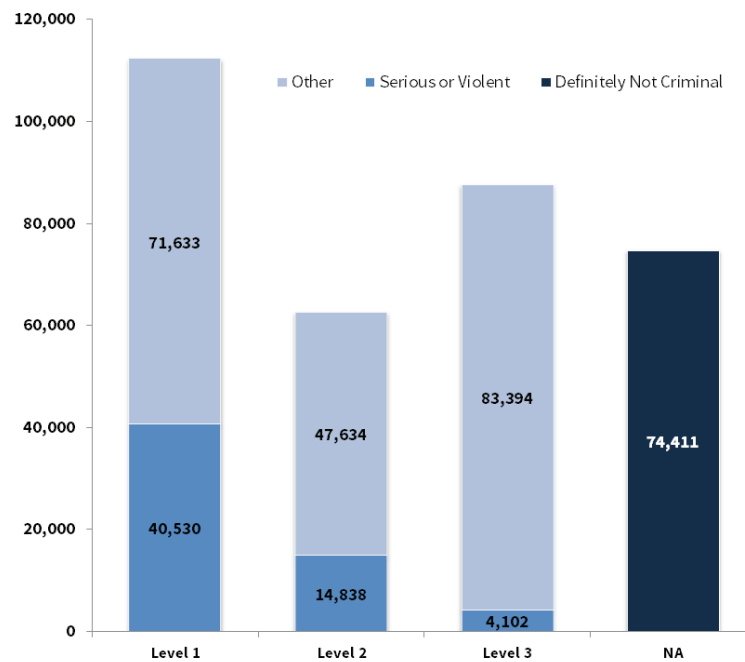
However, the majority of ICE Level 1 or Level 2 offenders removed by CAP did not commit offenses that were “violent,” according to MPI’s categorization, or “serious,” according to the FBI’s classification (Table 5, Figure 2).

Table 5. Removals by Broad Type of Crime and Removal Criminal Offense Level, 2011-2013

Crime Category	Removal Case Criminal Offense Level				
	Level 1	Level 2	Level 3	NA	Total
<i>Not Definite Criminal</i>	2	4	10	74,411	74,427
	(0.0%)	(0.0%)	(0.0%)	(100%)	(22.1%)
FBI Part 1	20,393	6,009	0	0	26,402
	(18.2%)	(9.6%)	(0.0%)	(0.0%)	(7.8%)
FBI Part 2 - Violent	17,540	7,379	2,347	0	27,266
	(15.6%)	(11.8%)	(2.7%)	(0.0%)	(8.1%)
Domestic abuse	2,597	1,450	1,755	0	5,802
	(2.3%)	(2.3%)	(2.0%)	(0.0%)	(1.7%)
<i>Total - Serious or Violent</i>	40,530	14,838	4,102	0	59,470
	36.1%	23.7%	4.7%	0.0%	17.7%
FBI Part 2 - Nonviolent	17,292	7,679	7,127	11	32,109
	(15.4%)	(12.3%)	(8.1%)	(0.0%)	(9.5%)
Drugs - possession	16,565	13,783	12,445	0	42,793
	(14.8%)	(22.1%)	(14.2%)	(0.0%)	(12.7%)
Drugs - sale, dist, trans	25,035	268	752	1	26,056
	(22.3%)	(0.4%)	(0.9%)	(0.0%)	(7.7%)
Immigration (strict)	2,165	4,293	9,723	0	16,181
	(1.9%)	(6.9%)	(11.1%)	(0.0%)	(4.8%)
Nuisance crime	1,542	2,266	6,622	0	10,430
	(1.4%)	(3.6%)	(7.6%)	(0.0%)	(3.1%)
Traffic (DUI)	6,159	12,716	32,931	0	51,806
	(5.5%)	(20.4%)	(37.6%)	(0.0%)	(15.4%)
Traffic (other than DUI)	2,875	6,629	13,794	0	23,298
	(2.6%)	(10.6%)	(15.8%)	(0.0%)	(6.9%)
<i>Total - Other</i>	71,633	47,634	83,394	12	202,673
	63.9%	76.2%	95.3%	0.0%	60.2%
Total	112,165	62,476	87,506	74,423	336,570
	(100.0%)	(100.0%)	(100.0%)	(100.0%)	(100.0%)

Note: Percentages may not sum to 100 due to rounding

Figure 2: Removals by Broad Type of Crime and Removal Criminal Offense Level, 2011-2013



In practice, among those removed through CAP, this data shows a sharp disconnect between ICE’s Criminal Offense Level prioritizations and independent classifications of “violent or serious” crime. For instance, while the largest proportion (33.3 percent) of CAP removals are classified as ICE Level 1, almost two-thirds of all ICE Level 1 removals (63.9 percent) involved individuals who had not been convicted of a violent crime or a crime that the FBI classifies as serious. Of all ICE Level 2 removals, 76.2 percent involved individuals who had not been convicted of such a violent or serious crime. And of all ICE Level 3 removals, 95.3 percent involved individuals who had not been convicted of such a violent or serious crime.

This disconnect largely existed because ICE classified many common FBI Part II-nonviolent offenses or drug offenses as “Level 1.” More than half (52.5 percent) of Level 1 offenders removed through CAP were convicted of FBI Part II-nonviolent offenses or drug offenses. In particular, drug offenders removed through CAP were overwhelmingly classified as “Level 1.” Namely, 38.7 percent of drug possession offenders, and 96.1 percent of drug sale, distribution, or transportation offenders, were classified as “Level 1”—even though drug “distribution” can encompass minor conduct such as sharing without money changing hands, as a Human Rights Watch report points out.⁶⁵ ICE still places a high priority on removing drug offenders, even as states have moved to decriminalize drugs such as marijuana.⁶⁷

Thus, while CAP has achieved some success in prioritizing removals according to ICE Levels, it has been less successful in narrowing enforcement removals to those who have been convicted of a violent crime or a crime that the FBI classifies as serious. Thus, CAP—and, in a broader sense, ICE’s prioritizations—may have facilitated to some extent ICE’s goal of removing the most “serious criminals” or public safety threats.⁶⁸ However, by using criminal convictions as a proxy for danger, CAP also has resulted in the removal of a large number of individuals who did not meet those criteria.

Mexican and Central American Nationals are Overrepresented in CAP Removals

Additionally, the data shows that Mexican and Central American nationals are overrepresented in CAP removals compared to the demographic profiles of those populations in the United States. Collectively, people from Mexico and the Northern Triangle (Guatemala, Honduras, and El Salvador) accounted for 92.5 percent of all CAP removals between FY 2010 and FY 2013 (Table 6).

**Table 6. Top Seven Countries Represented
Among Persons Removed Through CAP, FY 2010-2013**

Country	No.	Percent
Mexico	396,629	78.1%
Guatemala	32,003	6.3%
Honduras	24,357	4.8%
El Salvador	16,777	3.3%
Dominican Republic	5,374	1.1%
Colombia	3,561	0.7%
Jamaica	2,911	0.6%
All Other Countries	26,242	5.1%
Total	507,854	100%

When we compare this distribution to the composition by nationality of the noncitizen population, and that of the unauthorized population in particular, the disparities in national origin among CAP removals become evident. For example, the share of Mexicans removed through CAP is higher by almost 39 percent points than the proportion of Mexicans among foreign-born noncitizens living in the country, according to American Community Survey (ACS) estimates for 2011-2013. In addition, the proportion of Mexican nationals among CAP removals is significantly greater than the share of Mexicans among the undocumented population residing in the United States. The difference ranges from 19.1 percent points, when comparing to DHS estimates, to 25.7 percent points, when comparing to the Pew Research Center's estimates. Guatemalans and Hondurans also are overrepresented in CAP removals compared to their share among the noncitizen and the undocumented population living in this country (Table 7).

Table 7. Comparison of Top Seven Countries Represented Among CAP Removals and Other Data Sources, by Country of Origin

	CAP Removals (FY 2010-2013)	2012 Pew Estimates of Unauthorized Population⁶⁹	2012 CMS Estimates of Unauthorized Population⁷⁰	January 2011 DHS Estimates of Unauthorized Population⁷¹	2011-2013 ACS Estimates of Noncitizen Population⁷²
Country	(%)	(%)	(%)	(%)	(%)
Mexico	78.1%	52.4%	55.0%	59.0%	39.3%
Guatemala	6.3%	4.7%	4.4%	5%	3.0%
Honduras	4.8%	3.1%	2.8%	3%	1.8%
El Salvador	3.3%	6.1%	5.4%	6%	3.9%
Dominican Republic	1.1%	1.5%	1.8%	NA	2.2%
Colombia	0.7%	1.3%	1.3%	NA	1.4%
Jamaica	0.6%	0.9%	0.9%	NA	1.2%
All Other Countries	5.1%	30.0%	NA	NA	47.2%

Moreover, regardless of nationality, the proportion of individuals removed through CAP with convictions for violent crimes or for crimes that the FBI classifies as serious is relatively low, even across nationalities. For example, the share of Mexicans, Guatemalans, Dominicans, and Colombians among all people removed through CAP with a “violent or serious” conviction is slightly smaller than the share of nationals of the same countries among all CAP removals. Conversely, the proportion of nationals of Honduras, El Salvador, Jamaica, and “all other countries combined” among all people removed through CAP with a “violent or serious” conviction is slightly greater than the share of nationals of the same countries among all CAP removals (Table 8).

Table 8. Top Seven Countries by Broad Type of Crime, FY 2011-2013

Country	Percent of individuals removed	Not definite criminal	Serious (FBI) or violent	Other
Mexico	78.1%	76.3%	74.4%	80.1%
Guatemala	6.3%	8.4%	5.8%	5.4%
Honduras	4.8%	5.2%	5.3%	4.4%
El Salvador	3.3%	2.7%	5.4%	3.0%
Dominican Republic	1.1%	0.4%	1.0%	1.4%
Colombia	0.7%	0.7%	0.5%	0.8%
Jamaica	0.6%	0.2%	0.8%	0.7%
All Other Countries	5.1%	6.1%	6.9%	4.2%
Total	100%	100%	100%	100%

All in all, these data suggest that, considering their demographic profiles, nationals of Mexico, Guatemala, and Honduras seem to be overrepresented among overall CAP removals, while the proportion of those nationals in each broad category of crime is not very different from the representation of their nationality among overall CAP removals.

Further research is needed to establish why nationals of certain countries tend to be overrepresented among CAP removals. For example, reports have questioned whether local law-enforcement officers have racially profiled minority residents or conducted pre-textual arrests so that ICE's officers would check residents' immigration status, once residents' information was shared with ICE through CAP. A 2009 study of arrest data in Irving, Texas, found "strong evidence to support claims that Irving police engaged in racial profiling of Hispanics in order to filter them through the CAP screening system."⁷³ Our data raises concerns about whether racial disparities among arrests that lead to immigration enforcement may be more generalized practices.

The Geography of Removals: State-by-State Results

To identify the regions of the country in which CAP has been most active, we analyzed the location where individuals were apprehended prior to arrest and removal through CAP in FY 2013.⁷⁴ In order to account for the fact that a higher proportion of noncitizens are living in certain states, we estimated CAP arrest and removal rates standardized to 1,000 noncitizens in each state, utilizing 2013 ACS estimates of the noncitizen population (Table 9).

Table 9. DHS Criminal Alien Program Removals By U.S. State, FY 2013

State	CAP Arrests	CAP	Noncitizen Population	Arrests per 1,000 Noncitizens	Removals Per 1,000 Noncitizens
1,000,000+ Noncitizen Population					
Texas	39,169	18,513	2,791,229	14.0	6.6
California	31,623	18,812	5,384,868	5.9	3.5
Florida	5,977	2,665	1,826,711	3.3	1.5
New York	1,365	2,153	2,043,941	0.7	1.1
500,000 - 999,999 Noncitizen Population					
Arizona	6,148	3,566	544,807	11.3	6.6
Georgia	3,990	2,252	596,693	6.7	3.8
North Carolina	1,770	1,223	500,007	3.5	2.5
Illinois	1,924	1,439	995,759	1.9	1.5
New Jersey	2,519	1,158	911,565	2.8	1.3
250,000 - 499,999 Noncitizen Population					
Colorado	3,035	1,978	313,412	9.7	6.3
Pennsylvania	2,605	1,394	370,228	7.0	3.8
Washington	3,201	1,506	486,424	6.6	3.1
Virginia	2,960	1,351	482,627	6.1	2.8
Michigan	901	651	302,714	3.0	2.2
Maryland	1,324	528	434,148	3.0	1.2
Massachusetts	691	484	490,848	1.4	1.0
Nevada	2,175	266	296,213	7.3	0.9
100,000 - 249,999 Noncitizen Population					
Louisiana	953	649	104,788	9.1	6.2
Tennessee	1,784	1,137	192,749	9.3	5.9
Alabama	1,059	643	114,406	9.3	5.6
Kansas	991	683	126,512	7.8	5.4
Utah	1,237	783	150,978	8.2	5.2
New Mexico	1,068	688	134,929	7.9	5.1

South Carolina	1,374	717	147,292	9.3	4.9
Oklahoma	925	665	139,764	6.6	4.8
Minnesota	1,595	989	210,177	7.6	4.7
Ohio	1,870	925	233,939	8.0	4.0
Missouri	632	486	133,029	4.8	3.7
Indiana	1,670	726	200,505	8.3	3.6
Oregon	2,070	806	233,939	8.8	3.5
Wisconsin	670	332	153,641	4.4	2.2
Connecticut	544	368	254,839	2.1	1.4
Hawaii	125	77	106,779	1.2	0.7
50,000 - 99,999 Noncitizen Population					
Kentucky	1,565	737	93,159	16.8	7.9
Nebraska	957	548	76,064	12.6	7.2
Idaho	521	367	60,794	8.6	6.0
Iowa	789	454	84,966	9.3	5.3
Arkansas	581	348	93,717	6.2	3.7
Washington D.C.	131	72	51,343	2.6	1.4
Rhode Island	103	12	68,712	1.5	0.2
25,000 - 49,999 Noncitizen Population*					
Mississippi	697	770	44,198	15.8	17.4
Delaware	238	102	42,391	5.6	2.4
New Hampshire	114	54	34,488	3.3	1.6
10,000 - 24,999 Noncitizen Population*					
Wyoming	212	121	12,044	17.6	10.1
West Virginia	400	131	14,062	28.4	9.3
South Dakota	190	107	14,375	13.2	7.4
North Dakota	76	34	12,027	6.3	2.8
Maine	28	11	10,155	2.8	0.6
Vermont	9	3	10,519	0.9	0.3
Alaska	27	6	23,385	1.2	0.3
Less than 10,000 Noncitizen Population*					
Montana	22	42	9,241	2.4	4.5

Sources: DHS Criminal Alien Removals, 2013; American Community Survey, 2009-2013.

*Results should be interpreted with caution due to small cell sizes for ACS noncitizen estimates.

States with similar noncitizen population sizes do not necessarily present similar rates of CAP removals. In fact, a Pearson correlation test shows no statistically significant correlation between the two variables. In other words, whether the foreign-born population living in a particular state is large or small does not explain whether the state would have a higher or lower CAP removal rate.

The states with the highest rates of removal per 1,000 noncitizens include several with smaller immigrant populations—e.g., Mississippi (17.4 per 1,000 noncitizens), Wyoming (10.1 per 1,000), West Virginia (9.3 per 1,000), Kentucky (7.9 per 1,000), South Dakota (7.4 per 1,000), and Nebraska (7.2 per 1,000)—as well as two with large immigrant populations, Texas (6.6 per 1,000) and Arizona (6.6 per 1,000). The states with the lowest rates of removals per 1,000 noncitizens include several with comparatively small immigrant populations—e.g., Rhode Island (0.2 per 1,000), Alaska (0.3 per 1,000), Vermont (0.3 per 1,000), Maine (0.6 per 1,000), and Hawaii (0.7 per 1,000)—as well as several with comparatively larger immigrant populations—Nevada (0.9 per 1,000), Massachusetts (1.0 per 1,000), New York (1.1 per 1,000), Maryland (1.2 per 1,000), New Jersey (1.3 per 1,000), Washington D.C. (1.4 per 1,000), and Connecticut (1.4 per 1,000).

Several state-specific factors may have contributed to these varying arrest and removal patterns in FY 2013. Most relevant may be the extent of local cooperation with ICE generally, through programs such as 287(g) that deputize local officers to enforce immigration law,⁷⁵ and CAP specifically, through “jail check” agreements and policies regarding ICE detainer requests. For example, from 2011 to 2013, several large U.S. cities limited ICE’s access to their jails,⁷⁶ and stopped honoring ICE detainer requests for some or all noncitizens—particularly those with criminal charges, but not convictions, or those with lesser charges or convictions.⁷⁷ Other state-specific factors may include availability of public transportation and ICE’s detention capacity. Although these are plausible explanatory factors, further research is needed to understand the varying impact of CAP at the state level.

Conclusion and Looking Forward

This examination of CAP's outcomes from fiscal years 2010 to 2013 offers important insights into CAP's operations over time and its potential impact on communities moving forward. Understanding CAP is critical to understanding ICE's overall interior enforcement activities. This understanding takes on added importance as ICE begins implementing its 2014 enforcement priorities and engages state and local law enforcement through PEP.

Since the years for which this report examined data, CAP has remained the primary program through which ICE conducts enforcement in the interior of the United States. In FY 2014, CAP was responsible for 524,522 encounters, 122,826 arrests, and 68,244 removals, according to ICE⁷⁸—compared to ICE's 102,224 overall “interior removals” (in other words, removals of individuals apprehended in the interior).⁷⁹ With ICE still focusing on removing noncitizens with criminal convictions by leveraging state and local law-enforcement arrests,⁸⁰ and with Secure Communities (and now PEP) fingerprint-sharing from state and local law enforcement subsumed into CAP's operations, CAP will likely remain a key (if not the) linchpin of ICE's efforts to achieve interior removals.

That said, CAP's target population and removal processes will likely change. On November 20, 2014, DHS Secretary Johnson, among other actions, (1) narrowed ICE's removal priorities from any noncitizen convicted of any crime to those “convicted of specifically enumerated crimes,”⁸¹ and (2) changed CAP's enforcement processes after CAP receives information from local law enforcement, by replacing ICE “detainer” requests (i.e., to hold a noncitizen) with requests for notification of release, absent special circumstances.⁸²

Johnson's first change, the narrowing of ICE's priorities, could significantly reduce the numbers of noncitizens targeted through CAP in two key groups: (1) those without convictions (e.g., those only arrested or charged), which constituted 27.4 percent of those CAP removed from FY 2010 to 2013, and (2) those convicted of certain lesser offenses that no longer meet ICE's priorities, potentially as many as 34.4 percent of those CAP removed from FY 2010 to 2013. These latter individuals are those whose most serious conviction is for a Part II-nonviolent offense, a nuisance offense, drug possession, an immigration-related criminal offense, or a non-DUI traffic offense⁸³—but who do not remain an ICE priority because they have not committed a criminal felony, an “aggravated felony” under immigration laws, three misdemeanor offenses arising on separate occasions, or a misdemeanor with a 90-day sentence or longer.⁸⁴

The likelihood of a decline in the number of noncitizens targeted by CAP, however, depends on ICE's effective implementation of the 2014 Johnson Memo priorities. ICE would have to adjust CAP's daily work so as to **not** target and remove some of those individuals whom CAP has been removing in large numbers. For example, it is unclear whether the May 2013 CAP guidance that targets those without convictions remains in place following the 2014 Johnson

Memo.⁸⁵ Additionally, ICE would have to adjust its daily work based on criminal offense level classifications (i.e., Level 1-2-3), since a significant amount of Level 1 and Level 2 offenders will no longer meet ICE's new priorities⁸⁶—namely, 36.1 percent of Level 1 offenders and 55.5 percent of Level 2 offenders that CAP removed from FY 2011 through FY 2013.

But tellingly, this report shows that CAP encounter numbers have remained outsized relative to CAP removals—in FY 2014, nearly eight times as large, suggesting that the program may not be narrowly designed to target those who fall within the government's priorities. Logically, if CAP is targeting fewer individuals, encounters should drop. Whether reductions in encounters occur or not, since large numbers of encounters appear either unnecessary or inefficient, Congress may want to more closely examine current levels of CAP funding.

As to Johnson's second change—ICE's replacement of detainer requests with notification requests—the impact upon CAP will likely be state-specific, depending on the willingness of state and local authorities to cooperate with ICE. Many local law-enforcement leaders,⁸⁷ and the President's Task Force on 21st Century Policing,⁸⁸ note that cooperation with ICE inhibits community trust and thus local immigrant reporting of crimes.⁸⁹ States and localities have, to date, implemented a range of protocols regarding ICE cooperation.⁹⁰ Indeed, the state-by-state CAP arrest and removal data in this report may reflect differing levels of cooperation with ICE.

If ICE's goal is to remove serious public safety threats, a broad "jail check" program such as CAP may not be an efficient way to do it. Jail check or arrest check programs, by their nature, funnel into immigration enforcement those noncitizens apprehended by local law enforcement⁹¹—and those apprehended by local law enforcement tend to overwhelmingly be apprehended for lesser offenses. Congress should more closely examine CAP funding, given these dynamics. The government also should report on a regular basis statistics on encounters, arrests, and removals by specific types of criminal convictions. Finally, there must be more oversight over DHS's steps to forestall racial profiling, given the disproportionate numbers of Mexicans and Central Americans removed through CAP.⁹²

Glossary

Encounters: “An ICE encounter of a person is defined as the interview, screening, and determination of his/her citizenship, nationality, and lawful presence (i.e., whether or not the alien is present in the United States after the expiration of the period of stay authorized by the Secretary or is present in the United States without being admitted or paroled), and legal right to remain in the United States of America. An encounter, detainer or charging documents issued by ICE does not necessarily result in the individual being placed into ICE custody.”⁹³

Arrests: “The arrest date refers to the date in which an individual was either booked into ICE custody or processed prior to being booked into ICE custody.”⁹⁴

Removals: “FY2010-2013 Removals include Returns, which include Voluntary Returns, Voluntary Departures and Withdrawals under Docket Control.”⁹⁵

Lead Type: “The Lead Type is a category of event, incident, or anything of interest to immigration authorities. The Lead Source is a category of the origin of information regarding an occurrence.”⁹⁶

ICE Criminal Offense level: Since FY 2011, ICE has defined criminality as whether or not an alien has an ICE Threat Level (convicted criminal) or not (non-criminal immigration violator). For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel refer to the following offense levels: Level 1, Level 2, and Level 3 offenders. Level 1 offenders are those aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act, or two (2) or more crimes each punishable by more than 1 year, commonly referred to as “felonies.” Level 2 offenders are aliens convicted of any other felony or three (3) or more crimes each punishable by less than 1 year, commonly referred to as “misdemeanors.” Level 3 offenders are aliens convicted of “misdemeanor” crime(s) punishable by less than 1 year.⁹⁷

“Definite Criminal”: “The “Definite Criminal Yes No” column is populated based on whether a criminal conviction is recorded in ENFORCE’s Crime Entry Screen. Aliens may have criminal convictions that have not been recorded in the Crime Entry Screen.”⁹⁸

“Most Serious Criminal Charge”: Reflects “the most serious convicted criminal charge on record at the time of removal.”⁹⁹ These categories are drawn from the NCIC criminal charge code that ICE reported to us within its removals data. We used a list describing ICE’s internal “business rules” for using NCIC codes, publicly available and posted on TRAC’s website.¹⁰⁰ ICE’s data stated that this NCIC code reflects “the most serious convicted criminal charge on record at the time of removal.”¹⁰¹

NCIC code: Classification of criminal offenses based on codes from the Department of Justice’s National Crime Information Center (NCIC).

Aggravated Felony: An “aggravated felony” is a term of art, defined by an immigration statute, used to describe a category of criminal offenses carrying particularly harsh immigration consequences for noncitizens convicted of such crimes. Regardless of their immigration status, noncitizens who have been convicted of an “aggravated felony” are prohibited from receiving most forms of relief that would spare them from deportation, including asylum, and from being readmitted to the United States at any time in the future. An “aggravated felony” need not be aggravated nor a felony under criminal laws.¹⁰²

Reference Guide

CAP Initiatives

During its existence, ICE's Criminal Alien Program has engaged in several initiatives that complement its traditional "jail check" activities, expand its "at-large" activities in the community, or both. These initiatives include:

CAP Surges: A "CAP Surge" represents ICE's effort to focus resources to intensify and augment CAP's traditional "jail check" removals within a short time period. ICE does this within a particular geographical Field Office through a "Removal Surge Operation" (CAPRSO),¹⁰³ and, since FY 2014, has added ICE officers from across the country to a Field Office through the CAP "Surge Enforcement Team" (CAPSET).¹⁰⁴ The goal of a CAP Surge is to ensure that "100 percent of all priority criminal aliens booked into targeted facilities that are amenable to immediate removal obtain a removal order" (CAPRSO), or to "[i]ncrease the number of priority criminal aliens identified and fully processed prior to their release from custody" (CAPSET).¹⁰⁵

Threats to the Community (TC): CAP's new "Threats to the Community" (TC) initiative—an "at-large" initiative—consists of "targeted at-large enforcement operations led by CAP to investigate, arrest, and remove criminal aliens that pose the greatest threats to the community." The initiative "targets criminal aliens utilizing ICE priorities, focusing on at-large criminal aliens identified through interoperability" [i.e. Secure Communities fingerprint-sharing], "as well as those jurisdictions which limit or refuse ICE access to their facilities."¹⁰⁶ ICE first publicly disclosed the initiative in February 2015, in its FY 2016 budget request.

Joint Criminal Alien Removal Taskforce (JCART): In ICE's words, "ICE's Joint Criminal Alien Removal Taskforce (JCART) focuses on locating and arresting at-large criminal aliens with convictions for drug trafficking, violent crimes and sex offenses. Working closely with other agencies, JCART conducts special operations including criminal aliens who have been released from federal, state, or local custody."¹⁰⁷ In February 2013, ICE stated that JCART was then currently "active in the Los Angeles and New York Field Offices."¹⁰⁸ It appears that ICE may have since replaced JCART with the "Threats to the Community" (TC) initiative,¹⁰⁹ although ICE's website still lists JCART as an active initiative.¹¹⁰

Violent Criminal Alien Section (VCAS): CAP's Violent Criminal Alien Section (VCAS) initiative exists to facilitate federal criminal prosecutions of criminal violations that are discovered through ICE enforcement activities.¹¹¹ VCAS focuses on "recidivist" noncitizens with convictions (i.e. those have offended more than once),¹¹² so as to "enhance public safety" and deter future recidivism—either by deterring crime through prosecution, or simply incarcerating offenders.¹¹³ VCAS screens for recidivists encountered not only through CAP, but through local law enforcement or Fugitive Operations raids.¹¹⁴ VCAS then refers cases to federal prosecutors (i.e. the United States' Attorneys' Offices) for prosecution.¹¹⁵

Rapid Removal of Eligible Parolees Accepted for Transfer (Rapid REPAT Program): In ICE’s words, the “Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) Program is a joint partnership with state correctional/parole agencies designed to expedite the process of identifying and removing criminal aliens from the U.S. by allowing selected non-violent criminal aliens incarcerated in U.S. prisons and jails to accept early release in exchange for voluntarily returning to their country of origin.”¹¹⁶

Detention Enforcement and Processing Offenders by Remote Technology (DEPORT): In ICE’s words: “Approximately 27 percent of inmates in Federal Bureau of Prisons (BOP) custody are non-U.S. citizens. ERO created the Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in Chicago to process this population through CAP. ERO officers and agents assigned to the DEPORT Center conduct interviews of BOP inmates nationwide using video teleconference equipment. Through the combined effort of the DEPORT Center and local ERO resources, criminal aliens from all federal detention facilities are taken into ERO custody upon completion of their sentences.”¹¹⁷

Phoenix Law Enforcement Area Response (LEAR):¹¹⁸ This initiative, specific to ICE’s Phoenix, Arizona field office, “provides a method for state and local law enforcement agencies (LEAs) in Arizona to directly contact ICE regarding suspected immigration violators.”¹¹⁹ ICE’s LEAR staff would respond to local agencies 24/7; ICE officers would determine nationality, immigration status, and removability, place detainers, and process noncitizens for removal.¹²⁰ It is unclear if LEAR is still in operation. Since February 2013, ICE has not listed it in its annual budget requests.

APPENDIX 1: Most Serious Criminal Charge Category, by Fiscal Year

Most Serious Criminal Charge	2010		2011		2012		2013		Total	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Not “Definite Criminal”	64,867	37.9	38,095	27.4	25,280	21.0	11,054	14.3	139,296	27.4
Traffic Offenses	24,699	14.4	30,142	21.7	28,116	23.4	18,554	24.0	101,511	20.0
Dangerous Drugs	29,479	17.2	24,352	17.5	21,755	18.1	15,807	20.5	91,393	18.0
Assault	8,376	4.9	7,884	5.7	7,558	6.3	5,355	6.9	29,173	5.7
Immigration	7,510	4.4	6,967	5.0	6,281	5.2	5,000	6.5	25,758	5.1
Larceny	3,580	2.1	3,391	2.4	2,926	2.4	1,881	2.4	11,778	2.3
Burglary	2,960	1.7	2,189	1.6	2,064	1.7	1,373	1.8	8,586	1.7
Robbery	2,768	1.6	2,017	1.5	2,051	1.7	1,395	1.8	8,231	1.6
General Crimes	2,168	1.3	2,314	1.7	2,125	1.8	1,296	1.7	7,903	1.6
Sexual Assault	2,551	1.5	1,896	1.4	1,896	1.6	1,448	1.9	7,791	1.5
Fraudulent Activities	2,278	1.3	2,218	1.6	1,909	1.6	1,195	1.5	7,600	1.5
Family Offenses	2,373	1.4	1,927	1.4	1,325	1.1	750	1.0	6,375	1.3
Public Peace	1,723	1.0	1,691	1.2	1,655	1.4	1,022	1.3	6,091	1.2
Weapon Offenses	1,953	1.1	1,599	1.2	1,387	1.2	1,021	1.3	5,960	1.2
Forgery	1,737	1.0	1,626	1.2	1,233	1.0	799	1.0	5,395	1.1
Sex Offenses (Not Assault or omm .sex	1,818	1.1	1,212	0.9	1,281	1.1	1,007	1.3	5,318	1.0
Obstructing the Police	1,220	0.7	1,485	1.1	1,433	1.2	852	1.1	4,990	1.0
Obstructing Judiciary, Congress, Legislat.	920	0.5	1,073	0.8	957	0.8	614	0.8	3,564	0.7
Stolen Vehicle	1,220	0.7	867	0.6	740	0.6	461	0.6	3,288	0.6
Health & Safety	1,675	1.0	800	0.6	433	0.4	238	0.3	3,146	0.6
Invasion of Privacy	920	0.5	814	0.6	828	0.7	494	0.6	3,056	0.6
Stolen Property	934	0.5	697	0.5	620	0.5	375	0.5	2,626	0.5
Homicide	844	0.5	475	0.3	530	0.4	437	0.6	2,286	0.5
Kidnapping	531	0.3	468	0.3	566	0.5	496	0.6	2,061	0.4
Liquor	327	0.2	531	0.4	487	0.4	324	0.4	1,669	0.3
Commercialized Sexual Offenses	469	0.3	396	0.3	347	0.3	235	0.3	1,447	0.3
Flight & Escape	375	0.2	351	0.3	386	0.3	249	0.3	1,361	0.3
Damage Property	353	0.2	374	0.3	326	0.3	230	0.3	1,283	0.3
Threat	139	0.1	111	0.1	101	0.1	70	0.1	421	0.1
Smuggling	110	0.1	85	0.1	81	0.1	77	0.1	353	0.1
Arson	106	0.1	50	0.0	52	0.0	46	0.1	254	0.1
Conservation	49	0.0	48	0.0	36	0.0	24	0.0	157	0.0
Obscenity	53	0.0	26	0.0	30	0.0	30	0.0	139	0.0
Embezzlement	49	0.0	36	0.0	23	0.0	17	0.0	125	0.0
Extortion	38	0.0	25	0.0	20	0.0	24	0.0	107	0.0
Juvenile Offenders	35	0.0	21	0.0	31	0.0	16	0.0	103	0.0
Gambling	23	0.0	17	0.0	28	0.0	10	0.0	78	0.0
Bribery	18	0.0	14	0.0	17	0.0	9	0.0	58	0.0
Tax Revenue	15	0.0	10	0.0	10	0.0	8	0.0	43	0.0
Sovereignty	8	0.0	5	0.0	5	0.0	1	0.0	19	0.0
Military	1	0.0	1	0.0	2	0.0	1	0.0	5	0.0
Abortion	1	0.0	2	0.0	0	0.0	1	0.0	4	0.0
Civil Rights	1	0.0	2	0.0	0	0.0	0	0.0	3	0.0
Antitrust	0	0.0	1	0.0	0	0.0	1	0.0	2	0.0
Missing	7	0.0	666	0.5	3,440	2.9	2,934	3.8	7,047	1.4
Total	171,281	100	138,971	100	120,371	100	77,231	100	507,854	100.0

APPENDIX 2: “Most Serious Criminal Charge Category” by “Removal Criminal Offense Level”, FY2011-2013

Most Serious Criminal Charge	Level 1	%	Level 2	%	Level 3	%	NA	%	Total	%
Traffic Offenses	9,558	12.4	20,529	26.7	46,725	60.8	0	0.0	76,812	30.1
Dangerous Drugs	38,399	62.0	12,998	21.0	10,516	17.0	1	0.0	61,914	24.3
Assault	11,874	57.1	5,407	26.0	3,516	16.9	0	0.0	20,797	8.2
Immigration	4,232	23.2	4,293	23.5	9,723	53.3	0	0.0	18,248	7.2
Larceny	3,756	45.8	3,546	43.3	896	10.9	0	0.0	8,198	3.2
General Crimes	934	16.3	1,434	25.0	3,367	58.7	0	0.0	5,735	2.2
Burglary	4,487	79.8	1,077	19.1	62	1.1	0	0.0	5,626	2.2
Robbery	5,221	95.6	242	4.4	0	0.0	0	0.0	5,463	2.1
Fraudulent Activities	4,346	81.7	976	18.3	0	0.0	0	0.0	5,322	2.1
Sexual Assault	4,990	95.2	250	4.8	0	0.0	0	0.0	5,240	2.1
Public Peace	705	16.1	913	20.9	2,750	63.0	0	0.0	4,368	1.7
Weapon Offenses	3,079	76.8	928	23.2	0	0.0	0	0.0	4,007	1.6
Family Offenses	2,275	56.8	1,183	29.6	544	13.6	0	0.0	4,002	1.6
Obstructing the Police	1,277	33.9	1,436	38.1	1,057	28.0	0	0.0	3,770	1.5
Forgery	2,591	70.8	1,067	29.2	0	0.0	0	0.0	3,658	1.4
Sex Offenses (Not Involving Assault or Commercialized Sex)	2,723	77.8	745	21.3	32	0.9	0	0.0	3,500	1.4
Obstructing Judiciary, Congress, Legislature, Etc.	695	26.3	560	21.2	1,389	52.5	0	0.0	2,644	1.0
Invasion of Privacy	468	21.9	454	21.3	1,214	56.8	0	0.0	2,136	0.8
Stolen Vehicle	1,189	57.5	693	33.5	186	9.0	0	0.0	2,068	0.8
Stolen Property	1,020	60.3	672	39.7	0	0.0	0	0.0	1,692	0.7
Kidnapping	1,234	80.7	184	12.0	112	7.3	0	0.0	1,530	0.6
Health & Safety	266	18.1	307	20.9	898	61.0	0	0.0	1,471	0.6
Homicide	1,233	85.5	209	14.5	0	0.0	0	0.0	1,442	0.6
Liquor	165	12.3	293	21.8	884	65.9	0	0.0	1,342	0.5
Flight & Escape	807	81.8	69	7.0	110	11.2	0	0.0	986	0.4
Commercialized Sexual Offenses	239	24.4	165	16.9	574	58.7	0	0.0	978	0.4
Damage Property	228	24.5	226	24.3	476	51.2	0	0.0	930	0.4
Threat	268	95.0	3	1.1	0	0.0	11	3.9	282	0.1
Smuggling	24	9.9	86	35.4	133	54.7	0	0.0	243	0.1
Arson	131	88.5	17	11.5	0	0.0	0	0.0	148	0.1
Conservation	16	14.8	23	21.3	69	63.9	0	0.0	108	0.0
Obscenity	12	14.0	38	44.2	36	41.9	0	0.0	86	0.0
Embezzlement	40	52.6	36	47.4	0	0.0	0	0.0	76	0.0
Extortion	34	49.3	35	50.7	0	0.0	0	0.0	69	0.0
Juvenile Offenders	17	25.0	19	27.9	32	47.1	0	0.0	68	0.0
Gambling	8	14.5	10	18.2	37	67.3	0	0.0	55	0.0
Bribery	23	57.5	8	20.0	9	22.5	0	0.0	40	0.0
Tax Revenue	7	25.0	4	14.3	17	60.7	0	0.0	28	0.0
Sovereignty	11	100.0	0	0.0	0	0.0	0	0.0	11	0.0
Military	0	0.0	3	75.0	1	25.0	0	0.0	4	0.0
Abortion	0	0.0	2	66.7	1	33.3	0	0.0	3	0.0
Antitrust	0	0.0	0	0.0	2	100.0	0	0.0	2	0.0
Civil Rights	2	100.0	0	0.0	0	0.0	0	0.0	2	0.0
Total	108,584	42.6	61,140	24.0	85,368	33.5	12	0.0	255,104	100

Endnotes

1. In FY 2014, ICE reported that it conducted 102,224 “interior removals,” i.e., “removals of individuals apprehended in the interior of the United States.” U.S. DHS, Immigration and Customs Enforcement (ICE), “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 7. ICE separately reported that its CAP arrests in FY 2014 led to 68,244 removals. U.S. DHS, Immigration and Customs Enforcement “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59. In FY 2012, ICE conducted 164,127 interior removals. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 38. Based on the data analyzed in this report, of the 164,127 interior removals, ICE removed 120,371 through CAP—73 percent of the total number of interior removals. Similarly, in FY 2011, the number of CAP removals (138,971) constituted 74 percent of the total number of ICE interior removals. *Infra*, Table 2.
2. In FY 2014, ICE reported that it conducted 102,224 “interior removals,” i.e. “removals of individuals apprehended in the interior of the United States.” U.S. DHS, Immigration and Customs Enforcement (ICE), “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 7. ICE separately reported that its CAP arrests in FY 2014 led to 68,244 removals. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59. In FY 2012, ICE conducted 164,127 interior removals. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 38. Based on the data analyzed in this report, of the 164,127 interior removals, ICE removed 120,371 through CAP—73 percent of the total number of interior removals. Similarly, in FY 2011, the number of CAP removals (138,971) constituted 74 percent of the total number of ICE interior removals. *Infra*, Table 2.
3. Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
4. Compare statements of Richard Biehl, Chief of Police, Dayton Police Department, and Scott Jones, Sheriff, Sacramento County. *Sanctuary Cities: A Threat to Public Safety: Hearing Before the Committee on the Judiciary Subcommittee on Immigration and Border Security, House of Representatives*, 114th Cong., 1 (July 23, 2015) (Statements of Richard Biehl, http://judiciary.house.gov/?a=Files.Serve&File_id=F535F46D-35BE-466F-9270-D32CD7AD9582, and Scott Jones, http://judiciary.house.gov/?a=Files.Serve&File_id=079C632B-EC40-494A-9DED-4D3D31AE569).
5. This report analyzes CAP-specific data provided by ICE in three separate datasets—namely, “CAP encounters,” “CAP removals,” and “CAP arrests.” Period covered: October 1, 2009 – August 17, 2013. AIC vs. DHS (CAP) FY2010-2013 (on file with American Immigration Council).
6. The classification of “violent” we use in this report is made according to the FBI’s Uniform Crime Reporting program, which states “The seven Part I offense classifications [include] the violent crimes of murder and nonnegligent manslaughter, rape, robbery, and aggravated assault as well as the property crimes of burglary, larceny-theft, and motor vehicle theft. By congressional mandate, arson was added as the eighth Part I offense category in 1979.” U.S. Department of Justice Federal Bureau of Investigation, “Summary of the Uniform Crime Reporting (UCR) Program,” 2014, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/about-ucr/aboutucrmain_final.pdf, p. 2.
7. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 14-15, 44-47.
8. The remaining 55.4% consists of other offense categories, including Traffic-DUI (13.6%), Drug Possession (12.2%), Part 2-Nonviolent (8.9%), Drug Sale and Distribution (7.5%), Non-DUI Traffic (6.0%), Immigration (4.5%), and Nuisance Crime (2.8%). *Ibid.*, p. 14-15.
9. Human Rights Watch, “A Price Too High: US Families Torn Apart by Deportations for Drug Offenses,” June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>; Dallas Morning News, “Deportations of minor offenders soared even as Obama targeted serious criminals, analysis finds,” April 6, 2014, <http://www.dallasnews.com/news/local-news/20140406-deportations-of-minor-offenders-soared-even-as-obama-targeted-serious-criminals-analysis-finds.ece>; Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 11-20.
10. Testimony of Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement. *Oversight Of U.S. Immigration And Customs Enforcement: Hearing Before the Committee on the Judiciary, House of Representatives*, 114th Cong., 1, (April 14, 2015), <http://www.c-span.org/video/?325332-1/hearing-immigration-customs-enforcement>, at 32:35 (“In the United States in 2014, more than 102,000 were apprehended in the interior of the United States, and perhaps more importantly, 85% of those were immigrants previously convicted of a criminal offense. This demonstrates our renewed focus on the worst criminals...”).
11. ICE recently stated that CAP’s mission encompasses two functions: (1) supporting ICE in “apprehending and removing criminal aliens who are incarcerated within local, state, and federal prisons and jails,” and (2) to “actively investigate and arrest at-large criminal and other priority aliens that pose a significant risk to public safety and national security, or otherwise meet ICE priorities.” U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 58, 60.
12. American Immigration Council, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” August 2013, http://immigrationpolicy.org/sites/default/files/docs/cap_fact_sheet_8-1_fin_0.pdf, p. 4; *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 46:16-47:5 (Q: “...if anyone within ERO could be doing CAP duties, what makes them different from somebody specifically designated as a CAP official?” A. “There’s nothing. There’s no one specifically designated except for dealing with monetary purposes and budgetary issues.” Q. “Okay. So being specifically designated as a CAP officer, all that means is that your salary is coming from the pot of money that’s specified for CAP officers?” [objection] A. “Yes.”).
13. *Ibid.*, p. 45:13-18.
14. *Ibid.*, p. 46:4-14 (Q: “What does it mean to be a CAP officer now?” A: “It means that you’re conducting Criminal Alien Program duties, either within a jail or dealing with the criminal justice system. Somebody that circumvented the criminal justice system got released, somebody that has been identified but is no longer in jail, or someone that’s being prosecuted for any Title within the United States Code.”). Previously, CAP had conducted its work through a team-based model, under which dedicated “CAP teams,” a 10-person team with a supervisor, several agents, and assistants, pursued the removal of noncitizens with criminal convictions. *Ibid.*, 38:9-39:15; Around 2009 and 2010, however, ICE discarded that team-based model in favor of the current task-based model. *Ibid.*, 39:21-23, 44:17-25. See also U.S. DHS, Immigration and Customs Enforcement, “Budget-In-Brief, Fiscal Year 2008,” February 7,

- 2007, http://www.dhs.gov/xlibrary/assets/budget_bib-fy2008.pdf, p. 38.
15. U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 55.
 16. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 48:12-49:6; see also *Am. Immig. Council v. Dep’t of Homeland Security*, Declaration, Jamison Matuszewski, 12-cv-355, July 13, 2012, ¶ 20, http://www.legalactioncenter.org/sites/default/files/docs/lac/27-2_Matuszewski_Declaration_%282%29.pdf.
 17. American Immigration Council, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” August 2013, http://immigrationpolicy.org/sites/default/files/docs/cap_fact_sheet_8-1_fin_0.pdf, p. 1-2; Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens, (CRS Report No. R42057) (Washington, DC: Congressional Research Service, 2012), <https://www.fas.org/sgp/crs/homesec/R42057.pdf>, p. 13-19.
 18. *Ibid.*, p. 14, 28-29.
 19. *Am. Immig. Council v. Dep’t of Homeland Security*, Declaration, Jamison Matuszewski, 12-cv-355, July 13, 2012, ¶ 18, 20, http://www.legalactioncenter.org/sites/default/files/docs/lac/27-2_Matuszewski_Declaration_%282%29.pdf (“mandatory reporting by federal correctional institutions to DHS of foreign-born inmates continues today”); *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 228:20-230:2.
 20. American Immigration Council, “The Criminal Alien Program (CAP): Immigration Enforcement in Prisons and Jails,” August 2013, http://immigrationpolicy.org/sites/default/files/docs/cap_fact_sheet_8-1_fin_0.pdf, p. 4.
 21. Most of the CAP encounters were referred from local rather than state law enforcement (85.8 percent of all encounters). *Encounters Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013 (on file with American Immigration Council).
 22. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 59:16-60:2, 228:2-19; U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 61 (“CAP officers are still required to work these facilities on a daily basis— both to physically interview those criminal aliens identified through interoperability, as well as those for which there is a “no-match” (indicates foreign-birth, but no records to confirm this).”); U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 6-7 (on file with American Immigration Council, obtained through FOIA) (“However the interview is conducted, it must follow a distinct line of questioning that ultimately leads to a determination of alienage and removability.”).
 23. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 34:25-36:6
 24. U.S. Immigration and Customs Enforcement, “Priority Enforcement Program,” <https://www.ice.gov/pep> (accessed August 2015). The Secretary also noted that nothing “shall prevent ICE from seeking the transfer of an alien from a state or local law enforcement agency when ICE has otherwise determined that the alien is a priority... and the state or locality agrees to cooperate with such transfer.” Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
 25. In 2012, DHS’ budget requests began to state more broadly that “CAP also pursues at-large criminal aliens found removable after release based on criminal convictions.” U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2013 Congressional Justification, Salaries and Expenses,” February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 49.
 26. U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2014 Congressional Justification, Salaries and Expenses,” April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>.
 27. Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens, (CRS Report No. R42057) (Washington, DC: Congressional Research Service, December 20, 2012), <https://www.fas.org/sgp/crs/homesec/R42057.pdf>, p. 12-13.
 28. INS created the Alien Criminal Apprehension Program (ACAP) and Institutional Removal Program (IRP) in 1988, after the 1986 Immigration Reform and Control Act (IRCA) included a provision that sought to expedite the deportation of noncitizens convicted of a criminal offense. Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359, §701 (1986); 8 U.S.C. § 1252(i) (2005) (required the Attorney General “in the case of an alien who is convicted of an offense which makes the alien subject to deportation... [to] begin any deportation proceeding as expeditiously as possible after the date of the conviction.”). ACAP identified removable noncitizens that were in federal, state, or local custody, while IRP worked to initiate deportation proceedings during the noncitizen’s criminal incarceration. U.S. Department of Homeland Security, *Criminal Alien Program (CAP) Draft Transition Plan*, February 2006, <http://legalactioncenter.org/sites/default/files/docs/lac/CAP%20FOIA%2027-68.pdf>, p. 6. Concurrently, in 1988 Congress had created a new criminal ground for immigration removal, “aggravated felonies,” which then included murderers, drug traffickers and gun traffickers. *Anti-Drug Abuse Act of 1988*, Pub. L. No. 100-690, Sec. 7342 (1988).
 29. Mark Noferi, “Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings,” *Michigan Journal of Race & Law* 18:63-129, 2012, <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1015&context=mjrl>, p. 89-94. See also Human Rights Watch, “Forced Apart: Families Separated and Harmed by United States Deportation Policy,” July 2007, <http://www.hrw.org/reports/2007/us0707/us0707web.pdf>, p. 16-34 (citing *Immigration Act of 1990*, Pub. L. No. 101-649 (1990); *Immigration and Nationality Technical Correction Act of 1994*, Pub. L. No. 103-416 (1994); *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132 (1996); *Illegal Immigrant Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, Div. C (1996)).
 30. *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*, Pub. L. No. 110-329, 122 Stat 3659 (2008), <https://www.congress.gov/bill/110th-congress/house-bill/2638/text>, (“not less than \$1,000,000,000 ... shall be available to identify aliens convicted of a crime, and who may be deportable, and to remove them... once they are judged deportable...”). See also Jennifer E. Lake and Blas Nuñez-Neto, *Homeland Security Department: FY2009 Appropriations*, (CRS Report No. RL34482) (Washington, DC: Congressional Research Service, 2009), <http://fas.org/sgp/crs/homesec/RL34482.pdf>, p. 37-39. Currently, DHS’ FY 2015 appropriations act directs ICE to spend a minimum of \$1.6 billion. *Department of Homeland Security Appropriations Act, 2015*, Pub. L. No. 114-4, 129 Stat. 43 (2015), <https://www.congress.gov/bill/114th-congress/house-bill/240/text>.
 31. *Ibid.*
 32. See generally Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, (Washington, DC: American Immigration Council, November 2011 (updated)), <http://immigrationpolicy.org/special-reports/secure-communities-program-unanswered-questions-and-continuing-concerns>.
 33. *Consolidated Appropriations Act of 2008*, Pub. L. No. 110-161, 121 Stat. 1844, 2050-51 (2007) <http://www.gpo.gov/fdsys/pkg/PLAW-110publ161/pdf/PLAW-110publ161.pdf>.

34. In February 2010, DHS stated explicitly that Secure Communities also sought to “identify, detain, and remove criminal aliens” held “at large,” whether “fugitives [from immigration proceedings] or not.” U.S. DHS Immigration and Customs Enforcement, “Fiscal Year 2011 Congressional Justification, Salaries and Expenses,” http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf, p. 3, 67.
35. John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf. Morton then updated the memo in March 2011, although the ranking of individuals with convictions into Levels remained the same. John Morton, Director, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” March 2, 2011, http://www.ice.gov/doclib/foia/prosecutorial-discretion/civil-imm-enforcement-priorities_app-detrn-reml-aliens.pdf, p. 1-2.
36. Gary Mead, Executive Associate Director, ICE Office of Enforcement and Removal Operations, Email, “ERO Progress,” March 13, 2012, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/36-Mead_Gary_EROPProgress_email.pdf (“For FY 2012, to further the safety of our communities, it is my goal to build upon our past success and surpass last year’s accomplishments. This year we should effect nearly 225,000 convicted criminal alien departures and increase the percentage of alien departures for other priority cases.”).
37. David Venturella, Assistant Director for Field Operations, ICE Office of Enforcement & Removal Operations, Email chain, “Criminal Alien Removals,” April 17-19, 2012, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/37-Venturella_David_emails_April-2012.pdf, p. 187-188; see also *Ibid.*, p. 205-206 (“There is a lot of concern that criminal removals will fall below not only target but possibly lower than last year’s output.... what else would you need from HQ to help you accomplish this? More resources is a no brainer so need to ask; however, are there any standing orders or directives we have issued that need to be rescinded that may prevent you from carrying out this order?”).
38. Email, “RE: Criminal Alien Removals–ATL Fug Ops Suggestions,” April 18, 2012, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/37-Venturella_David_emails_April-2012.pdf, p. 202.
39. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 221:9-25.
40. The CAP Handbook defines a “CAP case” as “any removable alien identified in a federal, state, and local jail/prison or at-large in the community, **regardless of the status of conviction**.” U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 50 (emphasis intact).
41. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 222:4-223:3 (Q: “Does CAP identify individuals as removal noncitizens who have not been convicted of a crime?” A. “Yes.” Q: “Individuals who have been -- are in prisons or jails but have charges pending?” A: “Yes.” Q: “So if a person is identified by CAP but never convicted of a crime, are they included in those statistics of CAP removals?” A: “If they’re removed.”).
42. U.S. DHS, Immigration and Customs Enforcement, “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 19.
43. U.S. Immigration and Customs Enforcement, “Secure Communities,” <http://www.ice.gov/secure-communities> (accessed August 2015).
44. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2014 Congressional Justification, Salaries and Expenses,” April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 3 (“The program will continue its strategy, business transformation, and analytical roles by maturing and leveraging its analytic capabilities and systems.”).
45. The Administration accordingly proposed to realign \$74.3 million of funding from Secure Communities into CAP for FY 2014. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2014 Congressional Justification, Salaries and Expenses,” April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 57. Secure Communities ultimately received minimal transitional funding for FY 2014 (\$25 million). The Administration did not request separate Secure Communities funding for FY 2015. *Ibid.*, p. 140.
46. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2015 Congressional Justification, Salaries and Expenses,” <http://www.dhs.gov/sites/default/files/publications/DHS-Congressional-Budget-Justification-FY2015.pdf>, p. 3 (“CAP is also responsible for the day-to-day management of IDENT/IAFIS interoperability (Secure Communities), previously managed by Comprehensive Identification and Removal of Criminal Aliens (CIRCA) program.”). ICE stated that in FY 2015 ICE would “transition the remaining infrastructure components of Secure Communities” into CAP. *Ibid.*, p. 59.
47. Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
48. Jeh Johnson, Secretary, Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.
49. Immigration and Customs Enforcement, “Criminal Alien Program overview,” <http://www.ice.gov/criminal-alien-program> (accessed April 1, 2015) (“the Criminal Alien Program (CAP) provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, **as well as at-large criminal aliens**...” (emphasis added); see also Wes Bruer, “ICE arrests more than 2,000 fugitive immigrants,” *CNN.com*, March 9, 2015, <http://www.cnn.com/2015/03/09/politics/ice-arrests-immigrants/> (“[ICE] arrested more than 2,000 people as part of a five-day sweep aimed at detaining fugitive immigrants associated with gangs and other criminal backgrounds. The enforcement operation was called ‘Cross Check’ and targeted ‘the worst of the worst criminals,’” said Alejandro Mayorkas, deputy secretary of Homeland Security...); see also U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 58 (CAP targets “at-large” noncitizens in the community).
50. Data for fiscal years 2010 through 2012 are complete. All data for fiscal year 2013 are updated through August 17, 2013. Thus, the 2013 data is 45 days (12.3 percent) short of a full fiscal year (45/365). The *Removals Spreadsheet* states, in the “General Notes” section, that “FY2013 data are updated through 08/17/2013 (ICE Integrated Decision Support (IIDS) v. 1.14 run date 08/19/2013; ENFORCE Integrated Database as of 08/17/2013). FY2010-2012 data are historic and remain static.” (obtained through FOIA request, on file with American Immigration Council). The *Encounters Spreadsheet* states, in the “General Notes” section, that “FY2013 data are updated through 08/17/2013 (ICE Integrated Decision Support (IIDS) v. 1.14 run date 08/19/2013; ENFORCE Integrated Database as of 08/17/2013). FY2010-2012 data are historic and remain static.” (obtained through FOIA request, on file with American Immigration Council). The *Arrests Spreadsheet* indicates in the “General Notes” section that “FY2013 data are updated through 08/17/2013 (ICE Integrated

- Decision Support (IIDS) v. 1.14 run date 08/19/2013; ENFORCE Integrated Database as of 08/17/2013). FY2010-2012 data are historic and remain static.” (obtained through FOIA request, on file with American Immigration Council).
51. *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 58:3-60:2 (unit chief of the Criminal Alien Program stated that a “CAP encounter would be an individual screening of an individual done by a Criminal Alien Program assigned officer at the time...” Q: “a CAP encounter would be an officer either talking to someone, an interview, or looking at, for example, information in an ICE database screening?” A: “An ICE database or any other database available to that officer...An encounter can be anything from an at-large interview where a person’s on the street and you’re talking to the person on the street, going down to a screening of an individual’s records that is not incarcerated, and then on the reverse side doing the same thing to somebody that is incarcerated, either talking to or screening records.”); U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 6-7 (“Interviews conducted by ERO officers can take place in any number of environments... However the interview is conducted, it must follow a distinct line of questioning that ultimately leads to a determination of alienage and removability.”).
 52. Data for encounters, arrests, and removals was provided by ICE in three separate datasets. Because a unique identifier was not provided, it is not possible to track cases across datasets. In February 2015, ICE publicly reported for the first time CAP encounters data since FY 2010. For FY 2010 and FY 2011, ICE’s public data on encounters matches this data that ICE provided to the Council. For FY 2012, ICE publicly reported 661,506 CAP encounters, while ICE’s provided data reported 674,368 CAP encounters. For FY 2013, ICE publicly reported 620,903 CAP encounters, which is not out of line with ICE’s provided part-year data of 556,708 CAP encounters. For FY 2014, ICE publicly reported 524,522 CAP encounters and 122,836 CAP arrests. AIC vs. DHS (CAP) FY2010-2013 (obtained through FOIA, on file with American Immigration Council); U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59-60.
 53. A chart titled “FY 12 – Detainers for Citizenship of: UNITED STATES vs UNKNOWN,” reflecting data pulled as of Sept. 20, 2012, appears in multiple emails with the subject header “CAP Data Request.” Email, “CAP Data Request,” October 4, 2012, http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/53-USC_Detainer_Issue_email-9-26-12.pdf; A September 26, 2012 email, from the Acting Unit Chief of Field Operations-East, ICE ERO HQ, attached a spreadsheet and asked the recipient to “ensure that all of the cases have been updated by Friday, September 28, 2012.” Acting Unit Chief of Field Operations-East, Email, “USC Detainer Issue,” September 26, 2012, http://www.immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/53-USC_Detainer_Issue_email-9-26-12.pdf.
 54. Additionally, ICE recorded that 93.3 percent of CAP removals involved detention. Studies have shown that individuals who are detained typically have a more difficult time securing counsel, and are less likely to succeed in their case. Jayashri Srikantiah et al., *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California*, (Stanford, CA: Northern California Collaborative for Immigrant Justice, October 2014) <http://www.lccr.com/wp-content/uploads/NCCIJ-Access-to-Justice-Report-Oct.-2014.pdf>, p. 17-18.
 55. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 56. Compare “ICE Criminal Offense Levels Business Rules,” April 24, 2013, http://trac.syr.edu/immigration/reports/330/include/DocumentReleased_13-15734_Criminal_Offense_Level_Business_Rules.pdf, with National Crime Information Center (NCIC) Public List of Uniform Offense Classification Code, <https://wi-recordcheck.org/help/ncicoffensecodes.htm>. The NCIC is a national electronic clearinghouse of crime data. U.S. Federal Bureau of Investigation (FBI), “National Crime Information Center,” <https://www.fbi.gov/about-us/cjis/ncic>.
 57. We classify these individuals using ICE’s recording of the NCIC Uniform Offense Classification Code (a.k.a. NCIC offense code) for the “most serious criminal charge” crimes. Offenses are given a four-digit NCIC offense code number, of which there are hundreds. See U.S. Federal Bureau of Investigation (FBI), “Part 7: Uniform Offense Codes,” in *National Crime Information Center (NCIC) Code Manual*, First Edition (December 1982), <https://www.ncjrs.gov/pdffiles1/Digitization/87571NCJRS.pdf>. However, ICE uses a slightly hybrid version of NCIC codes, with some crimes classified into general “catch-all” categories.
 58. The FBI’s Uniform Crime Reporting (UCR) Program developed a system for collecting information about crimes nationwide in the 1920s. U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmmain> (accessed August 2015). Today, the FBI collects offense information for eight crimes, which it terms “Part I offenses” (also known as “index offenses”). U.S. Federal Bureau of Investigation (FBI), “UCR Frequently Asked Questions,” https://www2.fbi.gov/ucr/ucr_general.html (accessed August 2015). The FBI designated those eight crimes as Part I crimes because they are “serious crimes by nature and/or volume.” Ibid. Part II crimes include all other, less serious crimes, “except traffic violations.” U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmmain> (accessed August 2015). The majority of serious crimes committed, numerically, are not violent crimes. Paul E. Tracy and Vincent Morgan, “Big Brother and His Science Kit: DNA Databases for 21st Century Crime Control,” 90 J. Crim. L. & Criminology 635, (2000), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7047&context=jclc>, p. 647-48 (“the vast majority of serious crime is committed against property and not people... Violent Index crimes... account for only 12.4% of all Index crimes.”). Further, although the FBI notes that “some serious crimes,” such as kidnapping, are not Part I crimes because they “occur infrequently,” kidnapping and other crimes of a violent nature are separately classified by the Migration Policy Institute (MPI) as “violent” crimes. Compare U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmmain>, with Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, note 1, p. 44-47 (classifying kidnapping crimes as “FBI, Part 2, Violent”). Thus, the Part I crimes that the FBI has identified as serious and the crimes classified by MPI as violent together reflect crimes considered to be “serious” or violent” by independent assessors.
 59. John S. Baker, Jr., “United States v. Morrison and Other Arguments Against Federal “Hate Crime” Legislation,” 80 B.U. L. Rev. 1191, 1203 n. 71 (2000) (“Part 1 offenses are the more serious crimes,” while “Part 2 offenses are less serious...”); see also Paul E. Tracy and Vincent Morgan, “Big Brother and His Science Kit: DNA Databases For 21st Century Crime Control,” 90 J. Crim. L. & Criminology 635, (2000), p. 647-48 (“Index offenses are deemed to be the most serious offenses and are classified as Index crimes, or Part I crimes.”).
 60. U.S. Federal Bureau of Investigation (FBI), “Crime in the United States 2011, About the Uniform Crime Reporting (UCR) Program,” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/aboutucrmmain>.
 61. Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 44-47. While MPI termed these crimes “violent,” we term them “serious or violent.”
 62. Ibid., p. 47. In our dataset of CAP removals provided by ICE, all crimes

- listed fell into one of the categories classified by MPI except the following four crimes: (1) “Marijuana-Producing” (2,061 cases), which we classified under “Drugs—Sale, Distribution, Transportation”; (2) “Amphetamine (describe offense)” (945 cases), which we classified under “Drugs—Possession” (similar to MPI’s method of classifying “marijuana (describe offense)” under “Drugs—Possession”; (3) “Barbiturate (describe offense)” (four cases), which we similarly classified under “Drugs—Possession”; and (4) “1702--Federal-Material Witness” (11 cases), which we classified under “FBI Part 2—Nonviolent,” as similar to other obstruction of justice crimes. See *ibid.*, p. 44-47.
63. We did so by referring to the NCIC offense code that ICE recorded. U.S. Federal Bureau of Investigation (FBI), “Part 7: Uniform Offense Codes,” in *National Crime Information Center (NCIC) Code Manual*, First Edition (December 1982), <https://www.ncjrs.gov/pdffiles1/Digitization/87571NCJRS.pdf>.
 64. John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf.
 65. Data for FY 2010 is not available, since Morton announced these “Secure Communities” levels partway through FY 2010. *Ibid.*
 66. Human Rights Watch, “A Price Too High: US Families Torn Apart by Deportations for Drug Offenses,” June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>, p. 27-33.
 67. Christie Thompson, “Get Caught with Pot, Face Deportation,” *The Marshall Project*, June 16, 2015, <https://www.themarshallproject.org/2015/06/16/get-caught-with-pot-face-deportation> (“War-On-Drugs-era legislation left immigration judges unable to weigh the difference between a major drug trafficker and a kid who sold a little pot while smoking a little pot.”) (internal quotations omitted).
 68. ICE’s prioritizations did not capture the length of time since a conviction, which may also relate to the level of threat to public safety. Mark Noferi and Robert Koulisch, “The Immigration Detention Risk Assessment,” *Georgetown Immigration Law Journal*, 29: 45-94, 79 (2014) (“immigration proceedings are not necessarily triggered by recent criminal activity as criminal proceedings commonly are, since no statutes of limitations exist regarding immigration detention or deportation”); Shima Baradaran and Frank McIntyre, “Predicting Violence,” *Texas Law Review*, 90: 497-570, 560 (2012) (older criminal pretrial defendants are over-detained compared to their public safety risk).
 69. Jeffrey S. Passel and D’Vera Cohn, “Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases,” Pew Research Center’s Hispanic Trends Project, November 2014, http://www.pewhispanic.org/files/2014/11/2014-11-18_unauthorized-immigration.pdf, p. 18.
 70. Robert Warren, “Democratizing Data about Unauthorized Residents in the United States: Estimates and Public-Use Data, 2010 to 2013,” *Journal on Migration and Human Security* (2014), <http://jmhs.cmsny.org/index.php/jmhs/article/view/38>, p. 310.
 71. Michael Hoefer et al., “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011,” *Population Estimates, Department of Homeland Security* (March 2012), http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.
 72. U.S. Census Bureau; American Community Survey 3-Year Estimates; Public Use Microdata Sample, 2011-2013; generated by the American Immigration Council (September 3, 2015).
 73. Trevor Gardner II and Aarti Kohli, “The CAP Effect: Racial Profiling in the ICE Criminal Alien Program,” The Chief Justice Earl Warren Institute on Race, Ethnicity, & Diversity, Berkeley Law Center for Research and Administration, September 2009, http://www.motherjones.com/files/policybrief_irving_FINAL.pdf, p. 1. Local police collaborating with ICE may erode community trust and increase a community’s fear of reporting crime to police. Andrea Guttin, Esq., “The Criminal Alien Program: Immigration Enforcement in Travis County, Texas,” American Immigration Council, February 2010, http://www.immigrationpolicy.org/sites/default/files/docs/Criminal_Alien_Program_021710.pdf, p. 14.
 74. Data on removal landmarks was only provided for 2013 in the “removals” data set, therefore we only focus on 2013 to allow for reasonable comparison between the “arrests” and “removals” data sets. *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 75. Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens (CRS Report No. R42057) (Washington, DC: Congressional Research Service, 2012), <https://www.fas.org/sgp/crs/homesec/R42057.pdf>, p. 16-17.
 76. In 2014, New York City terminated the ICE office at its main jail at Rikers Island. Jillian Jorgensen, “Council Passes Bills to Stop Cooperation with Federal Immigration Detainers,” *New York Observer*, October 22, 2014, <http://observer.com/2014/10/council-passes-bills-to-stop-cooperation-with-federal-immigration-detainers/>. Los Angeles also terminated ICE’s office at its main jail in May 2015. Kate Linthicum and Joseph Tanfani, “L.A. County ends contract with ICE, then OKs future collaboration,” *Los Angeles Times*, May 12, 2015, <http://www.latimes.com/local/lanow/la-me-ln-ice-los-angeles-287g-20150512-story.html>.
 77. House Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2015, H.R. Rep. No. 113-481, (2014), <http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt481/pdf/CRPT-113hrpt481.pdf>, p. 55-58 (compiling list of localities and states that had adopted anti-detainer policies as of April 2014). Those localities included Chicago (in July 2012, stopped cooperating regarding misdemeanor charges, unless an outstanding criminal warrant existed); Washington, DC (in July 2012, stopped cooperating regarding any charges); Berkeley, CA (in October, 2012, stopped cooperating regarding any charges that were not a “serious or violent felony”); Los Angeles, CA (in December, 2012, stopped cooperating regarding any charges except for “serious offenses”); New York City (in November 2011, passed a law under which it refused ICE detainers for those without any criminal convictions, and in May 2013, stopped cooperating regarding some misdemeanor charges, with exceptions); Newark, NJ (in July 2013, stopped cooperating with all ICE detainer requests); New Orleans, LA (in August 2013, stopped cooperating regarding any charges except for first or second degree murder, aggravated rape, aggravated kidnapping, treason, or armed robbery with the use of a firearm). *Ibid.*; see also Mirela Iverac, “City Limits Cooperation With Federal Immigration Officials at Rikers,” *WNYC News*, November 22, 2011, <http://www.wnyc.org/story/171985-blog-city-limits-cooperation-ice-rikers/>. Conversely, in Texas, all counties cooperate with ICE detainer requests on the basis of *de facto*, local decisions. “ICE Detainers FAQs,” Travis County Sheriff’s Office, <https://www.tcsheiff.org/inmate-a-jail-info/ice-detainers-faq> (accessed December 2, 2014) (In response to the question “How many sheriff’s offices in Texas do not participate in this program?” the Sheriff’s Office stated that it is “not aware of any Texas Sheriff who has decided that they will no longer honor federal detainers or not send in fingerprints in accordance with the law.”); see generally “States and Localities That Limit Compliance With ICE Detainer Requests,” Catholic Legal Immigration Network, November 2014, <https://cliniclegal.org/resources/articles-clinic/states-and-localities-limit-compliance-ice-detainer-requests-jan-2014> (listing states and counties that limited compliance with ICE detainers as of October 2014). Arizona counties have adopted a patchwork of policies on immigration detainers in the years since its pro-immigration enforcement law, SB 1070, was struck down in 2012. Most famously, Maricopa County (including Phoenix) grants the highest number of detainers in the nation. “Immigration Holds at Maricopa County Jail in Arizona Top Nation, Study Says,” *The Huffington Post*, February 26, 2013, http://www.huffingtonpost.com/2013/02/26/immigration-holds-at-maricopa-county-jail_n_2767417.html. South Tucson, however, limited its detainer practices as the result of a lawsuit brought on behalf of a detainee by the ACLU. See South Tucson Police Department, “Immigration Policy 2014,” http://www.ilrc.org/files/documents/1_-_south_tucson_policy.pdf, p. 4-5. See generally Ming H. Chen, “Secure Communities and State Noncooperation as Policy (re)making in Immigration Enforcement,” 91 Chicago Kent L Review Symposium Issue, forthcoming 2015 (draft on file with authors).
 78. U.S. DHS, Immigration and Customs Enforcement, “Fiscal Year 2016 Congressional Justification, Salaries and Expenses,” February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 59-60. Separately, ICE attributed 68,073 removals to Secure

Communities information-sharing in FY 2014. *Ibid.*, p. 62. It is not clear if each of these removals through Secure Communities was also attributed to CAP.

79. U.S. DHS, Immigration and Customs Enforcement, “ICE Enforcement and Removal Operations Report, Fiscal Year 2014” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 7.
80. Secretary Johnson stated that “the goal of Secure Communities [to more effectively identify and facilitate the removal of criminal aliens in the custody of state and local law enforcement agencies] remains in my view a valid and important law enforcement objective.” Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf, p. 1.
81. *Ibid.*, p. 2; compare John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf, p. 2 (prioritizing “aliens convicted of crimes”).
82. *Ibid.*, p. 2-3.
83. Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Secure Communities,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf, p. 2, citing Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf, ¶¶ 1(a), 1(c), 1(d), 1(e), 2(a), and 2(b). Most likely, those offenders who have committed violent offenses according to MPI or serious offenses according to the FBI will remain priorities. See *ibid.*, note 2 ¶ 1(d) (criminal felonies remain priorities), ¶ 1(e) (“aggravated felonies” under the immigration laws remain priorities), ¶ 2(b) (domestic violence, sex offenses, burglary and weapons offenses remain priorities, even if a misdemeanor; and DUI offenses and drug distribution and trafficking offenses remain a priority, even if a misdemeanor).
84. *Ibid.*
85. U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Criminal Alien Division, “Criminal Alien Program Handbook, Version 1.0,” Doc. No. ERO 11157.1 (effective date May 14, 2013), http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/22-ERO_CAP_Handbook_5-14-13.pdf, p. 50; *Am. Immig. Council v. Dep’t of Homeland Security*, Deposition, Jamison Matuszewski, 12-cv-355, February 1, 2013, http://immigrationpolicy.org/sites/default/files/docs/ipc/Enforcement%20Overdrive/12-Matuszewski_Jamison_Deposition.pdf, p. 222:4-223:3. Morton’s June 2010 memo made all those with convictions Priority One, and also included “outstanding criminal warrants” in Priority One. John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” June 30, 2010, https://www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf, p. 2. Johnson’s 2014 memo scales back the priorities to certain convictions, and does not include those with “outstanding criminal warrants,” but leaves open removal based on “important federal interests.” Jeh Johnson, Secretary, U.S. Department of Homeland Security, Memorandum, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf, p. 2, 5.
86. ICE’s criminal offense level classifications appear to remain the same following the 2014 Johnson memoranda. Notably, Johnson’s memoranda did *not* rescind Morton’s June 2010 memorandum that set out ICE’s criminal offense level classifications into Level 1, 2 and 3. *Ibid.*, p. 2. Additionally, ICE published its FY 2014 enforcement statistics report, which used ICE’s current criminal offense level classifications, in December 2014, about a month after Johnson’s memo. U.S. DHS, Immigration and Customs Enforcement, “ICE Enforcement and Removal Operations Report, Fiscal Year 2014,” December 19, 2014, <https://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>, p. 19.
87. National Immigration Forum, “Law Enforcement Immigration Task Force Principles,” January 28, 2015, <http://immigrationforum.org/blog/leitf-principles/>.
88. President’s Task Force on 21st Century Policing, *Final Report*, (Washington, DC: Office of Community Oriented Policing Services 2015), http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, p. 18 (“whenver possible, state and local law enforcement should not be involved in immigration enforcement.... Immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement.”).
89. *Examining the Adequacy and Enforcement of Our Nation’s Immigration Laws: Hearing Before the Committee on the Judiciary, House of Representatives*, 114th Cong., 1 (2015) (statement of Paul Babeu, Sheriff, Pinal County, http://judiciary.house.gov/_cache/files/3f5d0b44-bb28-493a-9412-050d19e6dc9d/babeu-testimony.pdf).
90. Some honor no ICE detainers; some honor detainers for those with criminal convictions, but not charges; some honor detainers for more serious convictions, or charges; some honor detainers only supported by a warrant based on probable cause, with judicial review; while some honor all detainers, or go further to cooperate with ICE in other ways. See House Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2015, H.R. Rep. No. 113-481 (2014), <http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt481/pdf/CRPT-113hrpt481.pdf>, p. 55-58.
91. Marc R. Rosenblum and William A. Kandel, Interior Immigration Enforcement: Programs Targeting Criminal Aliens (CRS Report No. R42057) (Washington, DC: Congressional Research Service, 2012), <https://www.fas.org/sgp/crs/homsec/R42057.pdf>.
92. U.S. DHS, Office of Civil Rights and Civil Liberties, “Mission Statement,” <http://www.dhs.gov/office-civil-rights-and-civil-liberties> (accessed August 2015).
93. Definition used by ICE in the *Encounters Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Encounters Notes section (on file with American Immigration Council).
94. Definition used by ICE in the *Arrests Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Arrests Notes section (on file with American Immigration Council).
95. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council). The inclusion of “voluntary returns” here matches the definition used by ICE in reporting ICE’s statistics, but differs from the definition used by the DHS Office of Immigration Statistics. Compare U.S. DHS Immigration and Customs Enforcement, “ERO Annual Report: FY 2013 ICE Immigration Removals,” <https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>, p. 5 (similar language), with U.S. DHS Office of Immigration Statistics, “Immigration Enforcement Actions: 2013,” September 2014, https://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf, p. 1-2, fn. 2 (“Removals and returns are counted separately); see also Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 22, n. 42 (explaining difference between DHS and ICE data). However, “Any voluntary return on or after June 1, 2013, whose case does not have an ICE book-in will not be recorded as an ICE removal.” Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
96. Definition used by ICE in the *Encounters Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Encounters Notes section (on file with American Immigration Council).
97. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American

- Immigration Council); Definition used by ICE in the *Arrests Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Arrests Notes section (on file with American Immigration Council). For an overview of ICE's use of "criminal offense levels," see Marc Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change*, (Washington, DC: Migration Policy Institute, October 2014), <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>, p. 9, 12-15.
98. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 99. Ibid.
 100. ICE's usage of NCIC codes differs slightly from standardized usage of NCIC codes, in that ICE since FY 2011 has used hybrid NCIC codes with an "AA" or "AB" suffix—for example, "03AA" and "03AB," which seem to be some sort of catch-all for "immigration crimes" (0301, 0302, 0303, and 0399). Compare "ICE Criminal Offense Levels Business Rules," April 24, 2013, http://trac.syr.edu/immigration/reports/330/include/DocumentReleased_13-15734_Criminal_Offense_Level_Business_Rules.pdf, with National Crime Information Center (NCIC) Public List of Uniform Offense Classification Code, <https://wi-recordcheck.org/help/ncicoffensecodes.htm>.
 101. Definition used by ICE in the *Removals Spreadsheet*, AIC vs. DHS (CAP) FY2010-2013, CAP Removals Notes section (on file with American Immigration Council).
 102. "Aggravated Felonies: An Overview," American Immigration Council, March 2012, <http://www.immigrationpolicy.org/sites/default/files/docs/aggravated-felony-fact-sheet-march-2012.pdf>, p. 1 (citing 8 U.S.C. § 1101(a)(43)(A)-(U)).
 103. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 61 ("CAPRSO is a focused deployment of local CAP resources used to ensure 100 percent of all priority criminal aliens booked into targeted facilities that are amenable to immediate removal obtain a removal order, or are voluntarily returned to their country of citizenship once released from local law enforcement custody, or otherwise are placed into removal proceedings.").
 104. Ibid.
 105. Ibid.
 106. Ibid., p. 60.
 107. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p.49. ICE first publicly mentioned JCART in its FY 2011 budget request, published in February 2010. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2011 Congressional Justification, Salaries and Expenses," http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf, p. 57-58.
 108. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2014 Congressional Justification, Salaries and Expenses," April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 60.
 109. ICE's FY 2015 budget request did not mention JCART, and ICE's FY 2016 budget request mentioned TC but not JCART. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 60.
 110. See U.S. Immigration and Customs Enforcement, "Criminal Alien Program: Key Initiatives," <http://www.ice.gov/criminal-alien-program> (accessed August 2015).
 111. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 63 ("Violent Criminal Alien Section (VCAS) enforces violations of the United States Criminal Code discovered through ICE's enforcement activities."). ICE's first mention of VCAS was in its FY 2010 budget request. U.S. DHS Immigration and Customs Enforcement, "Fiscal Year 2010 Congressional Justification, Salaries and Expenses," February 2009, http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2010.pdf, p. 44.
 112. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50.
 113. Ibid.; U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 63.
 114. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50.
 115. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2016 Congressional Justification, Salaries and Expenses," February 5, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>, p. 63.
 116. Ibid. In FY 2013, additional language read: "Eligible aliens must agree to waive appeal rights associated with their state convictions. If aliens re-enter the country following removal under the Rapid REPAT program, state statutes may provide for revocation of parole and incarceration for the remainder of the alien's original sentence. Additionally, aliens illegally re-entering may face additional federal charges and penalties. Rapid REPAT also helps participating states reduce the costs associated with detention." U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 51.
 117. U.S. Immigration and Customs Enforcement, "Criminal Alien Program: Key Initiatives," <http://www.ice.gov/criminal-alien-program> (accessed August 2015). The DEPORT program is not mentioned in ICE budget requests.
 118. First mentioned in 2011, despite being founded in 2006. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2011 Congressional Justification, Salaries and Expenses," http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf, p. 57-58 and U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2012 Congressional Justification, Salaries and Expenses," <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>, p. 41. In 2013 and 2014, listed as an "initiative" in the CAP Program Performance Justification. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50 and U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2014 Congressional Justification, Salaries and Expenses," April 10, 2013, <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>, p. 60. Not found in the 2015 or 2016 ICE budget requests.
 119. U.S. DHS, Immigration and Customs Enforcement, "Fiscal Year 2013 Congressional Justification, Salaries and Expenses," February 13, 2012, <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 50.
 120. Ibid.

ATTACHEMENT B

THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES

By Walter A. Ewing, Ph.D., Daniel E. Martínez, Ph.D., and Rubén G. Rumbaut, Ph.D.

THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES

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ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

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EXECUTIVE SUMMARY

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are less likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with lower rates of violent crime and property crime. This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. In other words, the overwhelming majority of immigrants are not “criminals” by any commonly accepted definition of the term. For this reason, harsh immigration policies are not effective in fighting crime.

Unfortunately, immigration policy is frequently shaped more by fear and stereotype than by empirical evidence. As a result, immigrants have the stigma of “criminality” ascribed to them by an ever-evolving assortment of laws and immigration-enforcement mechanisms. Put differently, immigrants are being defined more and more as threats. Whole new classes of “felonies” have been created which apply only to immigrants, deportation has become a punishment for even minor offenses, and policies aimed at trying to end unauthorized immigration have been made more punitive rather than more rational and practical. In short, immigrants themselves are being criminalized.

Immigrants are Less Likely to be Criminals Than the Native-Born

Higher Immigration is Associated with Lower Crime Rates

- Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million.
- During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

Immigrants are Less Likely than the Native-Born to Be Behind Bars

- According to an original analysis of data from the 2010 American Community Survey (ACS) conducted by the authors of this report, roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born. This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses. In each of those years, the incarceration rates of the native-born were anywhere from two to five times higher than that of immigrants.
- The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma. In 2010,

less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men.

Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior

- A variety of different studies using different methodologies have found that immigrants are less likely than the native-born to engage in either violent or nonviolent “antisocial” behaviors; that immigrants are less likely than the native-born to be repeat offenders among “high risk” adolescents; and that immigrant youth who were students in U.S. middle and high schools in the mid-1990s and are now young adults have among the lowest delinquency rates of all young people.

Criminalizing Immigration and Expanding the Apparatus of Enforcement

Despite the abundance of evidence that immigration is not linked to higher crime rates, and that immigrants are less likely to be criminals than the native-born, many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than substance. These laws are criminalizing an ever broadening swath of the immigrant population by applying a double standard when it comes to the consequences for criminal behavior. Immigrants who experience even the slightest brush with the criminal justice system, such as being convicted of a misdemeanor, can find themselves subject to detention for an undetermined period, after which they are expelled from the country and barred from returning. In other words, for years the government has been redefining what it means to be a “criminal alien,” using increasingly stringent definitions and standards of “criminality” that do not apply to U.S. citizens.

Of course, these increasingly punitive laws are only as effective as the immigration-enforcement apparatus designed to support them. And this apparatus has expanded dramatically over the past three decades. More and more immigrants have been ensnared by enforcement mechanisms new and old, from worksite raids to Secure Communities. Detained immigrants are then housed in a growing nationwide network of private, for-profit prisons before they are deported from the United States. In short, as U.S. immigration laws create more and more “criminal aliens,” the machinery of detention and deportation grows larger as well, casting a widening dragnet over the nation’s foreign-born population in search of anyone who might be deportable. With the technologically sophisticated enforcement systems in place today, being stopped by a police officer for driving a car with a broken tail light can culminate in a one-way trip out of the country if the driver long ago pled guilty to a misdemeanor that has since been defined as a deportable offense.

The scale of the federal government’s drive to criminalize immigration and expand the reach of the enforcement dragnet becomes very apparent when the proliferation of immigration laws, policies, and enforcement mechanisms is tracked over the past three decades. Two bills passed by Congress in 1996 stand as the most flagrant modern examples of laws which create a system of justice for non-U.S. citizens that is distinct from

the system which applies to citizens. And, from old-fashioned worksite raids to the modern databases which are the heart of initiatives such as Secure Communities and the Criminal Alien Program (CAP), the government's immigration-enforcement mechanisms continue to expand and reach deeper and deeper into the immigrant community. In the process, basic principles of fairness and equal treatment under the law are frequently left by the wayside.

The “Great Expulsion”

The United States is in the midst of a “great expulsion” of immigrants, both lawfully present and unauthorized, who tend to be non-violent and non-threatening and who often have deep roots in this country. This relentless campaign of deportation is frequently justified as a war against “illegality”—which is to say, against unauthorized immigrants. But that justification does not come close to explaining the banishment from the United States of lawful permanent residents who committed traffic offenses and who have U.S.-based families. Nor does it explain the lack of due-process rights accorded to so many of the immigrants ensnared in deportation proceedings. Likewise, the wave of deportations we are currently witnessing is often portrayed as a crime-fighting tool. But, as the findings of this report make clear, the majority of deportations carried out in the United States each year do not actually target “criminals” in any meaningful sense of the word.

INTRODUCTION

In November 2013, NPR reported that U.S. Immigration and Customs Enforcement (ICE) had been instructed by Congress since 2009 to fill 34,000 beds in detention facilities across the country with immigrant detainees every day. It was immediately apparent that this sort of inmate quota would never fly if applied to native-born prisoners. As the NPR story puts it: “Imagine your city council telling the police department how many people it had to keep in jail each night.”¹ Clearly, such a concept has nothing to do with fighting crime or protecting the public. But when it comes to the detention (and deportation) of immigrants, very different standards of justice and reason are at work.

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are *less* likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with *lower* rates of violent crime and property crime.² This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. In other words, the overwhelming majority of immigrants are not “criminals” by any commonly accepted definition of the term. For this reason, harsh immigration policies are not effective in fighting crime.

Unfortunately, immigration policy is frequently shaped more by fear and stereotype than by empirical evidence, which is partly why immigrants are often treated like dangerous criminals by the U.S. immigration system. More precisely, immigrants have the stigma of “criminality” ascribed to them by an ever-evolving assortment of laws and immigration-enforcement mechanisms. From the Immigration Reform and Control Act of 1986 (IRCA) to

Operation Streamline (launched in 2005), immigrants are being defined more and more as threats.³ Whole new classes of “felonies” have been created which apply only to immigrants, deportation has become a punishment for even minor offenses, and policies aimed at trying to end unauthorized immigration have been made more punitive rather than more rational and practical. Moreover, as a growing body of “crimmigration” law has reimagined noncitizens as criminals and security risks, immigration law enforcement has increasingly adopted the securitized approach of criminal law enforcement.⁴ In short, immigrants themselves are being criminalized.⁵ As prominent immigration scholar Douglas Massey has written with regard to the plight of unauthorized immigrants in particular, “not since the days of slavery have so many residents of the United States lacked the most basic social, economic, and human rights.”⁶

This report tackles the criminalization of immigration from two angles. First, it documents the fact that immigration is not associated with “crime” as it is commonly understood. For more than two decades, rates of violent crime and property crime have fallen in the United States as the immigrant population (including the unauthorized population) has grown. Moreover, immigrants are less likely than the native-born to be behind bars or to engage in typically “criminal behaviors.” Second, the report describes the ways in which U.S. immigration laws and policies are re-defining the notion of “criminal” as it applies to immigrants, while also ramping up the enforcement programs designed to find anyone who might be deportable. More and more, a zero-tolerance policy has been applied by the federal government to immigrants who commit even the slightest offense or infraction. “Crimes” which might result in a fine or a suspended sentence for natives end up getting immigrants detained and deported. This represents a double standard of justice for immigrants in which the scale of the punishment (detention and deportation) far outweighs the severity of the crime (traffic offenses, for example). Unfortunately, this double standard has been the guiding principle behind a litany of immigration-enforcement laws and programs, such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the 287(g) program, Secure Communities, and the “Consequence Delivery System” implemented by U.S. Customs and Border Protection (CBP) in 2011.

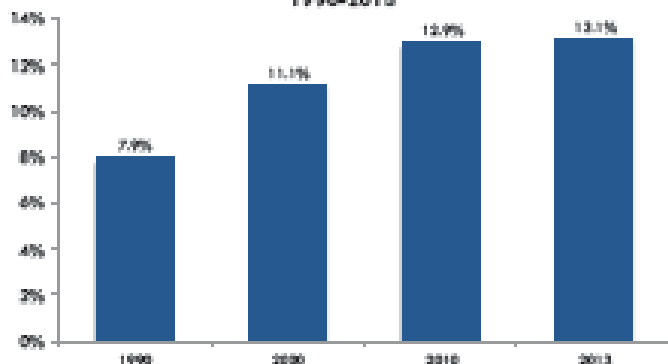
IMMIGRANTS ARE LESS LIKELY TO BE CRIMINALS THAN THE NATIVE-BORN

The evidence that immigrants tend *not* to be criminals is overwhelming. To begin with, there is an inverse relationship between crime and immigration. Crime rates in the United States have trended downward for many years at the same time that the number of immigrants has grown. Second, immigrants are *less* likely to be incarcerated than the native-born. And, third, immigrants are *less* likely than the native-born to engage in the criminal behaviors that tend to land one in prison. No matter how you look at the issue, the inescapable conclusion is that immigrants are, on average, less prone to criminality than the U.S. native-born population.

Higher Immigration is Associated with Lower Crime Rates

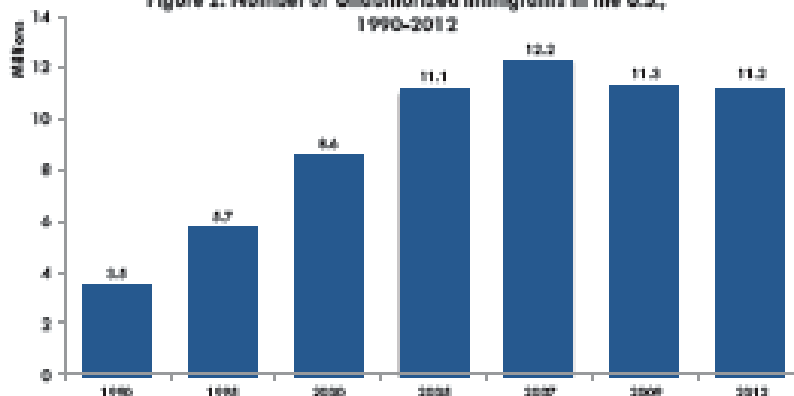
As the number of immigrants in the United States has risen in recent years, crime rates have fallen. Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent {Figure 1}⁷ and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million {Figure 2}.⁸ During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder {Figure 3}.⁹ Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary {Figure 4}.¹⁰ This decline in crime rates in the face of high levels of new immigration has been a steady national trend, and has occurred in cities across the country.¹¹

Figure 1: Foreign-Born Share of the U.S. Population, 1990-2013



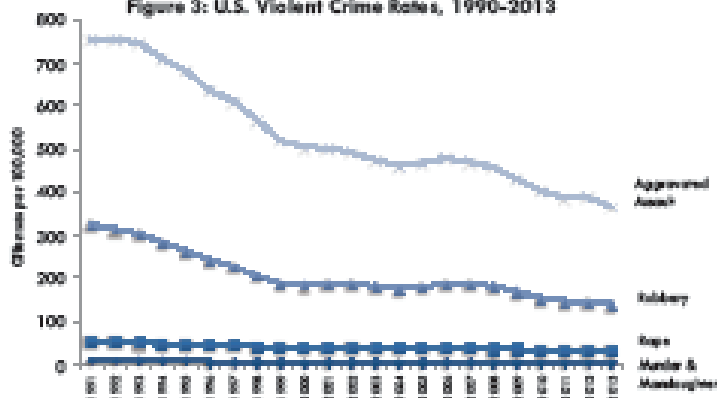
Source: Elizabeth M. Grieco, et al., *The Size, Place of Birth, and Geographic Distribution of the Foreign-Born Population in the United States: 1990 to 2010* (Washington, DC: U.S. Census Bureau, October 2013), p. 19; 2013 ACS 1-Year Estimates.

Figure 2: Number of Unauthorized Immigrants in the U.S., 1990-2012



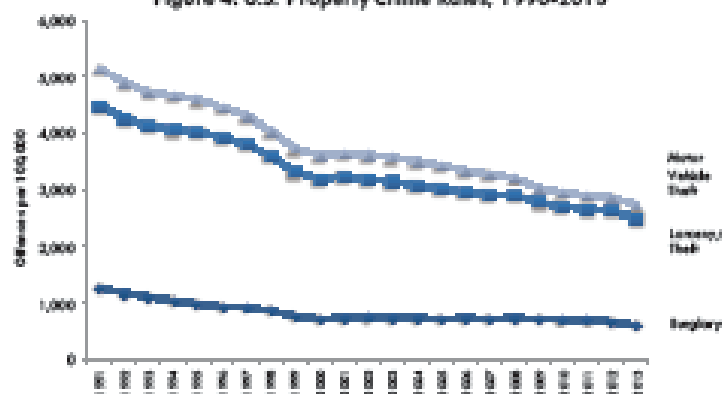
Source: Jeffrey S. Passolunghi & Steve Cohen, *Unauthorized Immigrant Trends Since 2000: Fall to 14* (Washington, DC: Pew Hispanic Center, November 18, 2014), Table A1.

Figure 3: U.S. Violent Crime Rates, 1990-2013



Source: FBI, Uniform Crime Reports.

Figure 4: U.S. Property Crime Rates, 1990-2013



Source: FBI, Uniform Crime Reports.

The most thoroughly studied aspect of this phenomenon has been the drop in rates of violent crime since the early 1990s in cities that have long been “gateways” for immigrants entering the United States, such as Miami, Chicago, El Paso, San Antonio, and San Diego.¹² However, the inverse relationship between immigration and crime is also apparent in “new” immigrant gateways, such as Austin, where rates of both violent crime and serious property crime have declined despite high levels of new immigration.¹³ Declining rates of property crime have also been documented in metropolitan areas across the country.¹⁴ Some scholars suggest that new immigrants may revitalize dilapidated urban areas, ultimately reducing violent crime rates.¹⁵

In short, to quote sociologist Robert J. Sampson, “cities of concentrated immigration are some of the safest places around.”¹⁶ The reason for this is straightforward. Immigrants as a group tend to be highly motivated, goal-driven individuals who have little to gain by running afoul of the law. As law professor and public-policy expert Michael Tonry puts it: “First-generation economic immigrants are self-selected risk takers who leave their homes, families, and languages to move to a new country to improve their and their children’s lives. They have good reasons to work hard, defer gratifications, and stay out of trouble.”¹⁷ Sampson and colleagues also find that immigrant communities are insulated from crime because they tend to display “social cohesion among neighbors combined with their willingness to intervene on behalf of the common good.”¹⁸

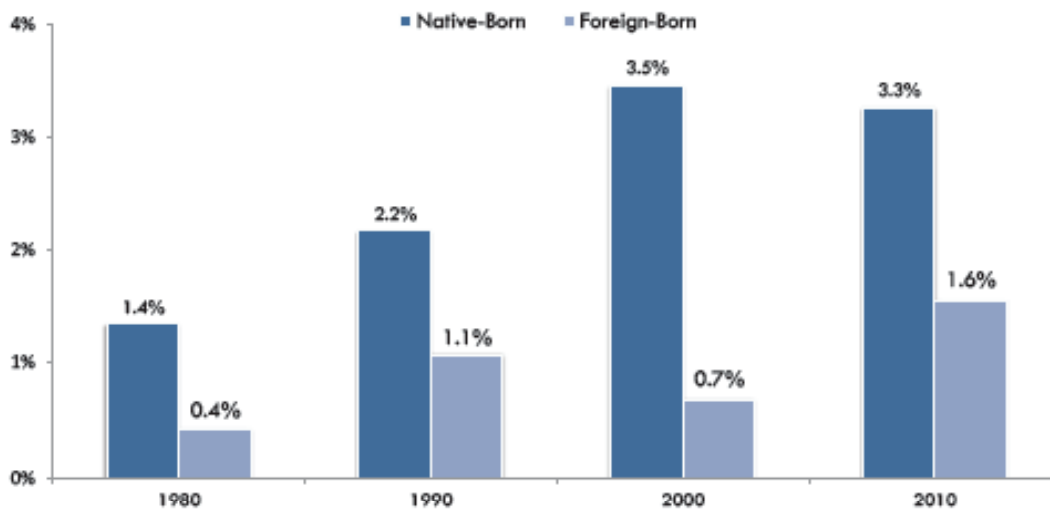
There is a sense of *déjà vu* in these modern-day findings. In the first three decades of the 20th century, during the last era of large-scale immigration, three government commissions studied the relationship between immigrants and crime and came to the same conclusion as contemporary researchers. The Industrial Commission of 1901, the [Dillingham] Immigration Commission of 1911, and the [Wickersham] National Commission on Law Observation and Enforcement of 1931 each set out to measure how immigration increases crime. But each found lower levels of criminality among immigrants than among their native-born counterparts.¹⁹ A century ago, the report of the Dillingham Commission concluded:

No satisfactory evidence has yet been produced to show that immigration has resulted in an increase in crime disproportionate to the increase in adult population. Such comparable statistics of crime and population as it has been possible to obtain indicate that immigrants are less prone to commit crime than are native Americans.²⁰

Immigrants are Less Likely than the Native-Born to Be Behind Bars

Another concrete indication that immigrants are less likely than the native-born to be criminals is the fact that relatively few prisoners in the United States are immigrants. According to an original analysis of data from the 2010 American Community Survey (ACS) conducted by the authors of this report, roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born.²¹ This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses {Figure 5}. In each of those years, the incarceration rates of the native-born were anywhere from two to five times higher than that of immigrants.²²

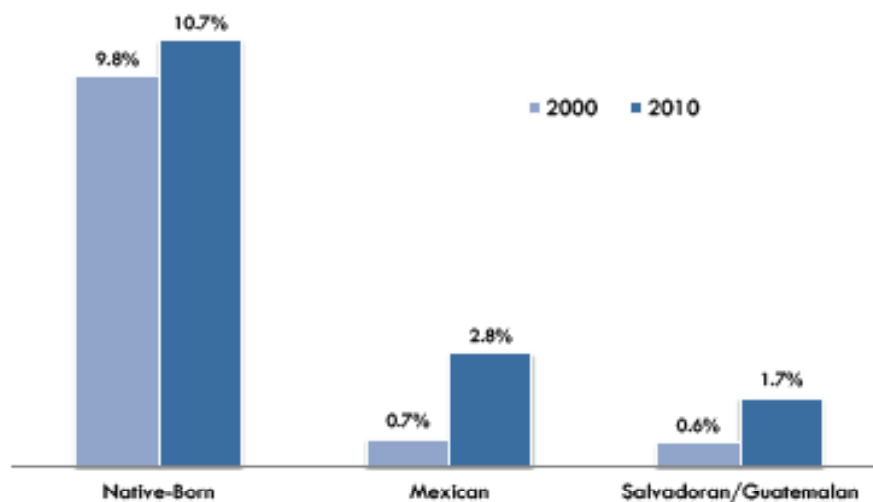
Figure 5: U.S. Incarceration Rates of Men Age 18-39, by Nativity, 1980-2010



Source: Kristin F. Butcher and Anne Morrison Piehl, *Why are Immigrants' Incarceration Rates so Low?* (Cambridge, MA: National Bureau of Economic Research, July 2007), Table 2; 2010 ACS.

The pronounced difference between immigrants and the native-born in terms of incarceration rates also holds true in the case of those immigrants most likely to be unauthorized. The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma. In 2010, less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men {Figure 6}.²³

Figure 6: U.S. Incarceration Rates of Native-Born, Mexican, and Salvadoran/Guatemalan Men, Age 18-39, Without a High-School Diploma, 2000 & 2010



Source: 2000 Decennial Census; 2010 ACS.

Research also indicates that such statistics are not simply the product of an effective immigration-enforcement system that removes immigrants from the country rather than holding them in U.S. prisons. According to a study by economists Kristin Butcher and Anne Morrison Piehl, the “evidence suggests that deportation and deterrence of immigrants’ crime commission from the threat of deportation are not driving the results. Rather, immigrants appear to be self-selected to have low criminal propensities and this has increased over time.”²⁴ The study begins by using data from the 1980, 1990, and 2000 Censuses to demonstrate that immigrants have had lower incarceration rates than the native-born for quite some time, and that this effect has been growing more pronounced with each passing decade.²⁵ But the study then goes on to answer the question of whether these decreasing incarceration rates are the result of harsh immigration policies enacted in the 1990s, either because more immigrants were deported or because more were deterred from criminal behavior because of the threat of deportation. The answer to this question proved to be “no.”

Nevertheless, it is clear from the ACS statistics that the incarceration rates for immigrant men rose between 2000 and 2010 (although they remained much lower than for native-born men). However, this is likely the product of changes in how immigration laws are enforced, not an indication of some immigrant predisposition towards “criminality” in the commonly understood sense of the word. The most probable explanation for the increase is that many more immigrant men were incarcerated for immigration-related offenses during the first decade of the 21st century as Congress redefined more and more immigration offenses as criminal (such as unauthorized entry or re-entry into the country),²⁶ thus triggering criminal incarceration before deportation.

These same factors also explain why immigrants are over represented in the federal prison system: while some may be there for committing a serious criminal offense, a great many more may be there because of an immigration violation. Moreover, it is important to keep in mind that the characteristics of the federal prison population do not necessarily speak to the U.S. prison population as a whole because the overwhelming majority of prisoners are not in federal prisons. According to data from the U.S. Bureau of Justice Statistics, federal inmates accounted for only 9 percent of all prisoners in 2010. Well over half (58 percent) were incarcerated in state prisons and a third (33 percent) in local jails.²⁷ So, when anti-immigrant activists and politicians trumpet the out-of-context statistic that one-quarter of the inmates in federal prisons are foreign-born,²⁸ that figure should not be taken at face value.

Although there is no reliable source of data on immigrants incarcerated in state prisons and local jails, the U.S. Government Accountability Office (GAO) sought to overcome this limitation in a 2011 study. Not only did the study examine immigrants in federal prison during the Fiscal Year (FY) 2005-2010 period, but also non-federal immigrant prisoners for whom state and local governments had sought federal reimbursement of some incarceration costs through the U.S. Department of Justice’s State Criminal Alien Assistance Program (SCAAP) during the FY 2003-2009 period.²⁹ The GAO found that, among the immigrant prisoners in its sample, 65 percent had been arrested at least once for (although not necessarily convicted of) an immigration violation, 48 percent for a drug offense, and 39 percent for traffic violations—all of which are generally non-violent acts. In compari-

son, 8 percent had been arrested at least once for homicide and 9 percent for robbery.³⁰ The GAO also analyzed data from the U.S. Sentencing Commission and found that, in FY 2009, the “federal primary conviction” for 68 percent of offenders who were immigrants was an immigration-related violation—not a violent offense or any sort of crime which could be construed as a threat to public safety.³¹

Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior

The available evidence indicates that immigrants are not only less likely to end up behind bars than the native-born, but that immigrants are also less likely to commit criminal acts to begin with. For instance, a 2014 study found that “immigrants to the US are less likely to engage in violent or nonviolent antisocial behaviors than native-born Americans. Notably, native-born Americans were approximately four times more likely to report violent behavior than Asian and African immigrants and three times more likely than immigrants from Latin America.”³² The study analyzed data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC) to determine how often natives and immigrants engage in a wide range of violent and nonviolent “antisocial behaviors,” from hurting another person on purpose and using a weapon during a fight to shoplifting and lying.³³

In a related vein, another 2014 study tracked 1,354 “high risk” adolescents over the course of seven years and found that the immigrants in the sample were less likely than the native-born to be repeat offenders. In the words of the authors, immigrants “appear to be on a path toward desistance much more quickly than their peers.”³⁴ All of the adolescents in question had been convicted of a serious offense (usually a felony) in either a juvenile or adult court in Maricopa County, Arizona, or Philadelphia County, Pennsylvania. The study sought to determine who became a “persistent offender” and who did not.³⁵

A 2010 study yielded similar findings based on data from the National Longitudinal Study of Adolescent Health (Add Health).³⁶ Add Health offers a “national, longitudinal account of delinquency by gender, race/ethnicity, and immigrant group from the onset of adolescence (ages 11-12) to the transition into adulthood (ages 25-26).”³⁷ The study found that “immigrant youth who enrolled in U.S. middle and high schools in the mid-1990s and who are young adults today had among the lowest delinquency rates of all youth.”³⁸ The authors conclude that the national-level data gathered by Add Health “debunk(s) the myth of immigrant criminality. Fears that immigration will lead to an escalation of crime and delinquency are unfounded.”

CRIMINALIZING IMMIGRATION AND EXPANDING THE APPARATUS OF ENFORCEMENT

Despite the abundance of evidence that immigration is not linked to higher crime rates, and that immigrants are less likely to be criminals than the native-born, many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than substance. These laws are criminalizing an ever broadening swath of the immigrant population by applying a double standard when it comes to the consequences for criminal behavior. Immigrants who experience even the slightest brush with the criminal justice system, such as being convicted of a misdemeanor, can find themselves subject to detention for an undetermined period, after which they are expelled from the country and barred from returning. This reality is at the core of what law professor Juliet Stumpf calls “cimmigration”—the “criminalization of immigration law.”³⁹ Stumpf argues that “as criminal sanctions for immigration-related conduct and criminal grounds for removal from the United States continue to expand, aliens become synonymous with criminals.”⁴⁰ In other words, for years the government has been redefining what it means to be a “criminal alien,” using increasingly stringent definitions and standards of “criminality” that do not apply to U.S. citizens.

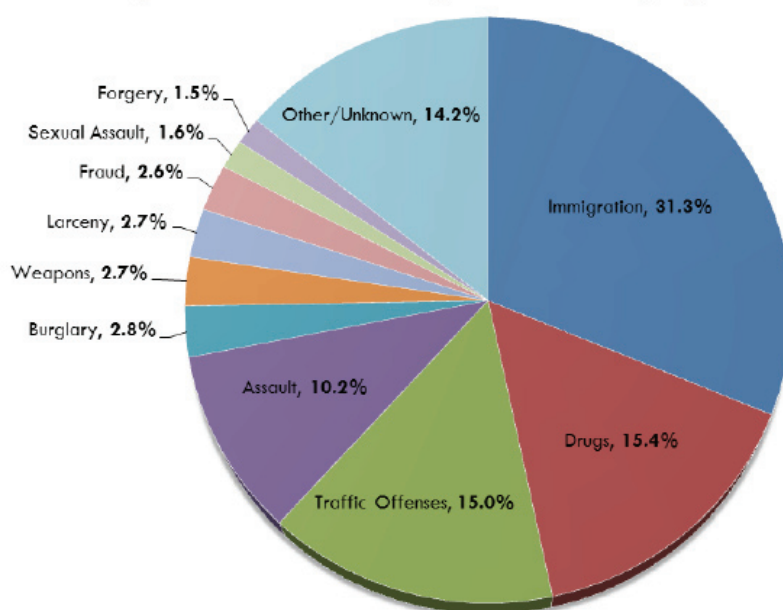
Of course, these increasingly punitive laws are only as effective as the immigration-enforcement apparatus designed to support them. And this apparatus has expanded dramatically over the past three decades.⁴¹ More and more immigrants have been ensnared by enforcement mechanisms new and old, from worksite raids to Secure Communities. Detained immigrants are then housed in a growing nationwide network of private, for-profit prisons before they are deported from the United States.⁴² In short, as U.S. immigration laws create more and more “criminal aliens,” the machinery of detention and deportation grows larger as well, casting a widening dragnet over the nation’s foreign-born population in search of anyone who might be deportable. With the technologically sophisticated enforcement systems in place today, being stopped by a police officer for driving a car with a broken tail light can culminate in a one-way trip out of the country if the driver long ago pled guilty to a misdemeanor that has since been defined as a deportable offense.

Misleading Language in the “Official” Deportation Statistics

The definition of “criminal alien” used by the federal government is clearly inconsistent with the general public’s understanding of serious crime. The term represents a terminological sleight-of-hand used to justify a punitive approach to immigration enforcement that is based on incarceration and deportation. An important part of the government’s attempt to redefine what it means to be a “criminal alien,” with all the social and legal implications this label carries, becomes clear upon closer consideration of the data on enforcement actions that is released by the U.S. Department of Homeland Security (DHS). According to DHS, 438,421 foreign nationals were removed from the United States in FY 2013. Among those removed, roughly 45 percent (198,394) were classified as “known criminal aliens.”⁴³ (Along these lines, the director of ICE testified before Congress that “eighty-five percent of individuals removed or returned from the interior were previously convicted of a criminal offense”).⁴⁴

However, a more detailed examination of the data clearly illustrates that the majority of “criminal aliens” are in fact *not* being removed for what most Americans perceive to be serious crime, such as the FBI’s eight Index Crimes, which consist of “Part I” offenses (homicide, assault, forcible rape, and robbery) and “Part II” offenses (larceny, burglary, motor vehicle theft and arson).⁴⁵ In fact, DHS’s FY 2013 enforcement actions indicate that serious crimes such as “Assault,” “Robbery,” “Burglary,” and “Sexual Assault” collectively make up only one-fifth of the crime categories for which “criminal aliens” were removed. Nearly one-third (31.3 percent) of “criminal aliens” were removed for “Immigration” offenses (i.e., illegal entry or reentry into the United States), followed by 15.4 percent for “Dangerous Drugs” (which includes possession of marijuana), and 15 percent for “Criminal Traffic Offenses” (including both Driving Under the Influence (DUI) and “hit and run”). Also noteworthy are an additional 14.2 percent of “criminal aliens” who were removed for “All other categories, including unknown” {Figure 7}.⁴⁶

Figure 7: Removals by Crime Category, FY 2013



Source: John F. Simanski, *Immigration Enforcement Actions: 2013* (Washington, DC: U.S. Department of Homeland Security, September 2014), p. 7.

Immigrant Incarceration and the Rise of the Private Prison Industry

The criminalization of immigration involves much more than the manipulation of official deportation statistics. It is also driven by a massive expansion in the infrastructure for the detention of immigrants who fit one or more of the growing list of offenses that qualify as “criminal” for immigration purposes. The immigrant-detention industry began to expand in earnest during the early 1980s following the creation of the Krome Avenue Detention Center in Miami to detain Mariel refugees from Cuba. Moreover, at the same time the immigration detention system has grown, the nation’s prison system has become increasingly privatized.⁴⁷ The end result is the federal government’s reliance upon private prison corporations, such as Corrections Corporation of America (CCA) and The GEO Group, to handle the burgeoning inflows of “criminal aliens.”⁴⁸

As the immigrant-detention industry grew, so did the redefinition of “immigrants” as an inherently dangerous group of people. This can be attributed in part to the fact that private prison companies work actively to shape the federal and state laws governing corrections and law-enforcement. The companies make sizeable campaign contributions to politicians, and lobby Congress and state legislatures on bills that affect their interests. These companies also belong to organizations such as the American Legislative Exchange Council (ALEC), which champions free markets, limited government, and public-private partnerships that bring together federal and state legislators with members of the private sector. These partnerships can wield considerable power. For instance, there are indications that ALEC and CCA may have played a major role in drafting the legislation that would become Arizona’s infamous anti-immigrant law, SB 1070.⁴⁹ This scenario represents a conflict of interest in which a company that has a vested financial interest in the incarceration of as many people as possible is influencing legislation that will increase the flow of prisoners into that company’s prisons. One can only wonder if this business ethic is behind the fact that ICE is now required by law “to maintain an average daily population of 34,000 detainees.”⁵⁰

A Chronology of Criminalization and the Expansion of Immigration Enforcement

The scale of the federal government’s drive to criminalize immigration and expand the reach of the enforcement dragnet becomes very apparent when the proliferation of immigration laws, policies, and enforcement mechanisms is tracked over the past three decades.⁵¹ The 1996 laws stand as the most flagrant modern examples of laws which create a system of justice for non-U.S. citizens that is distinct from the system which applies to citizens.⁵² And, from old-fashioned worksite raids to the modern databases which are the heart of initiatives such as Secure Communities and the Criminal Alien Program (CAP), the government’s immigration-enforcement mechanisms continue to expand and reach deeper and deeper into the immigrant community. In the process, basic principles of fairness and equal treatment under the law are frequently left by the wayside.

Worksite Immigration Raids

For decades, worksite raids of businesses employing unauthorized immigrants were a mainstay of immigration enforcement in the United States. In recent times, their economic and social destructiveness are perhaps best exemplified by the case of Postville, Iowa. On May 12, 2008, 389 workers were arrested during an immigration raid at Postville’s Agriprocessors, Inc. meat-packing plant. The consequences for the community and the local economy have been dire.⁵³ According to the authors of *Postville U.S.A.*, one year after the raid, Postville “lost 40% of its pre-raid population, the economy was in shambles, the city government teetered on the brink of financial collapse, and the future of the town’s major employer grew increasingly doubtful with time.”⁵⁴ Long after the Agriprocessors raid, Postville was still what its leaders described as “a human and economic disaster area.”⁵⁵ The population loss meant steep losses for Postville in taxes and utility revenue. Local businesses closed, rental units remained empty, and the town couldn’t pay its bills. According to the book’s authors: “Attempts to come up with simple black-and-white solutions, such as arresting undocumented workers or closing down the companies that employ them, often causes a host of far more complex situations that do little to address any of the real concerns expressed by either side in the immigration debate.”⁵⁶

The use of worksite raids as an enforcement mechanism has waned in recent years, although unauthorized workers are occasionally still swept up in such raids. According to ICE, in FY 2012, the agency made “520 criminal arrests tied to worksite enforcement investigations. Of the individuals criminally arrested, 240 were owners, managers, supervisors or human resources employees.” The remaining were workers who faced charges “such as aggravated identity theft and Social Security fraud.”⁵⁷

Criminal Alien Program

The Immigration Reform and Control Act of 1986 (IRCA) is perhaps best known for providing an avenue to legal status for most unauthorized immigrants in the country at that time. However, IRCA also spurred the creation of new immigration-enforcement programs targeting noncitizens with criminal convictions.⁵⁸ Among those programs were two that eventually became ICE’s Criminal Alien Program (CAP)⁵⁹—a moniker which actually encompasses a number of different systems designed to identify, detain, and begin removal proceedings against deportable immigrants within federal, state, and local prisons and jails. CAP is currently active in all state and federal prisons, as well as more than 300 local jails throughout the country. It is one of several so-called “jail status check” programs intended to screen individuals in federal, state, or local prisons and jails for removability. CAP is by far the oldest and largest such interface between the criminal justice system and federal immigration authorities. CAP also encompasses other activities, including the investigation and arrest of some noncitizens who are not detained.⁶⁰

Regardless of its official intent, in practice CAP encourages local police to engage in ethnic profiling. In particular, police are motivated to arrest as many Latinos as possible in order to snare as many deportable immigrants as possible. For instance, one study found:

compelling evidence that the Criminal Alien Program tacitly encourages local police to arrest Hispanics for petty offenses. These arrests represent one part of an implicit, but relatively clear logic: the higher the number of Hispanic arrests, the larger the pool of Hispanic detainees; the larger the pool of detainees, the more illegal immigrants that can be purged from the city via the CAP screening system.⁶¹

The War on Drugs

Starting in the mid-1980s, the expansion of the infrastructure for detention in the United States was based not only on an escalating crackdown on immigrants, but was also a central component of the “war on drugs.” While IRCA and the Immigration Act of 1990 specifically expanded immigration detention, prisons were also filled with offenders—immigrant and native-born alike—on the basis of the Anti-Drug Abuse Act of 1988 (which created the concept of the “aggravated felony”), the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994, among other laws. In fact, the battles against illegal drugs and “illegal aliens” were frequently linked to each other in the political rhetoric of the time.⁶² The result was a growing number of prisons and a growing number of offenders to fill them.

1996 Laws

The year 1996 was pivotal in terms of the criminalization of immigration. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) transformed immigration law in two profound ways. First, the laws mandated the detention and deportation of noncitizens (lawful permanent residents and unauthorized immigrants alike) who had been convicted of an “aggravated felony,” including individuals who may have pled guilty to minor charges to avoid jail time by opting for probation. Second, the laws expanded the list of offenses that qualify as “aggravated felonies” for immigration purposes, and applied this new standard retroactively to offenses committed years before the laws were enacted.⁶³

A classic example of just how unfair these laws can be is the case of Mary Anne Gehris, who was born in Germany in 1965 but adopted by U.S.-citizen parents when she was two years old and taken to live in the United States. In 1988, she got into a fight with another woman over a boyfriend, pulled that woman’s hair, and ended up pleading guilty to misdemeanor assault. In 1999, she applied for U.S. citizenship and found herself in deportation proceedings instead because the 1996 immigration reforms defined her 1988 misdemeanor assault conviction as a “crime of violence.” Fortunately, the Georgia Board of Pardons intervened on Ms. Gehris’s behalf and pardoned her, thereby sparing her from deportation and allowing her to become a U.S. citizen.⁶⁴ But many other non-citizens have not been so lucky and have found themselves deported to countries they have not seen since they were children.

287(g) Program

Created by IIRIRA in 1996, 287(g)—which refers to the relevant section of the Immigration and Nationality Act (INA)—allows DHS to deputize select state and local law-enforcement officers to perform the functions of federal immigration agents. Like employees of ICE, so-called “287(g) officers” have access to federal immigration databases, may interrogate and arrest noncitizens believed to have violated federal immigration laws, and may lodge “detainers” against alleged noncitizens held in state or local custody. The program has attracted a wide range of critics since the first 287(g) agreement was signed more than 10 years ago. Among other concerns, opponents say the program lacks proper federal oversight, diverts resources from the investigation of local crimes, and results in profiling of Latino residents—as was documented following the entry into a 287(g) agreement with Sheriff Joe Arpaio of Maricopa County, Arizona. Following the nationwide expansion of the Secure Communities program, which has its own drawbacks but is operated exclusively by federal authorities, critics have asked whether the 287(g) program continues to offer any law-enforcement benefit.⁶⁵ In its budget justification for FY 2013, DHS sought \$17 million *less* in funding for the 287(g) program, and said that in light of the expansion of Secure Communities, “it will no longer be necessary to maintain the more costly and less effective 287(g) program.”⁶⁶

While 287(g) may be on the way out, it is important to keep in mind that state governments have repeatedly sought to enlist their police forces in immigration enforcement without the cooperation or permission of federal authorities. Arizona’s SB 1070 and

Alabama's HB 56 are the most notorious examples of sweeping anti-immigrant laws that sought to turn police officers into immigration-enforcement agents. Although major provisions of these laws were struck down in the courts as a preemption of federal immigration-enforcement powers, other onerous provisions have survived. In Arizona, for instance, the U.S. Supreme Court upheld the provision of SB 1070 that permits police to conduct immigration status checks during law-enforcement stops.⁶⁷ Even if 287(g) programs eventually cease to exist, anti-immigrant laws introduced in state houses will remain a very real equivalent.

September 11

The U.S. government responded to the attacks of September 11, 2001, in the same way it has in so many other times of national crisis: by using “national security” as a justification for incarcerating and deporting greater numbers of immigrants. “Foreigners” were broadly defined as potential threats and were detained on immigration-related charges that do not require the same standard of proof that is necessary in a criminal investigation.⁶⁸ Although federal authorities first targeted Arabs, Muslims, and South Asians in the aftermath of 9/11, the “war on terror” has had an impact on all immigrants regardless of ethnicity or legal status—including Latin American immigrants, particularly Mexicans, who comprise the majority of immigration detainees.⁶⁹ Post-9/11 policies not only increased funding for various immigration-enforcement functions as part of the broader effort to enhance national security, but fostered an “us or them” mentality in which “they” are the foreign-born.⁷⁰

More precisely, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, the Homeland Security Act of 2002, and the Enhanced Border Security and Visa Entry Reform Act of 2002 collectively “illustrate the accelerating criminalization of the immigration system.”⁷¹ This intersection of criminal and immigration law has led to a notable increase in deportations.⁷² As Stumpf notes, in the period “between 1908 and 1980, there were approximately 56,000 immigrants deported based on criminal convictions. In 2004 alone, there were more than 88,000 such deportations.”⁷³ While immigration law had been used by U.S. authorities to remove non-citizens who came into contact with the criminal justice system in the pre-9/11 era, the relationship between these two systems of law intensified after 9/11.⁷⁴ As law professor Teresa A. Miller notes, “After the attacks, zero-tolerance enforcement of immigration laws was extended to immigrants who had not passed through the criminal justice system, such as asylum seekers and undocumented immigrants.”⁷⁵ The PATRIOT Act in particular allowed federal officers to apprehend and detain “non-citizens on immigration grounds without legal review and without public disclosure of the specific charge for a period of seven days, or for a maximum of six months if the case is deemed a national security risk.”⁷⁶

The “war on terror” thus had immediate implications for foreign-born individuals residing in the United States. As Miller states: “In January of 2002, Deputy Attorney General Larry Thompson announced a new initiative to ‘locate, apprehend, interview, and deport’ approximately 314,000 noncitizens who had been ordered deported, but had failed to comply with their deportation orders.”⁷⁷ This initiative led to the arrest of more than 1,100 Muslim and Arab men without formally charging them with a crime.⁷⁸ However, the

consequences of the PATRIOT Act extended beyond these individuals and into immigrant communities, ultimately being manifested through “racial profiling and scapegoating, mass detentions and mistreatment, and the government’s refusal to disclose information about those detained.”⁷⁹

A prime example of the enforcement-only mindset of DHS and its component agencies in the post-9/11 era is “Operation Endgame”—the name given to the “Office of Detention and Removal Strategic Plan, 2003–2012,”⁸⁰ which was released on June 27, 2003, by Anthony S. Tangeman, Director of ICE’s Office of Detention and Removal Operations (DRO). Tangeman succinctly explains the rationale underlying his department’s new strategic plan:

As the title implies, DRO provides the endgame to immigration enforcement and that is the removal of all removable aliens. This is also the essence of our mission statement and the ‘golden measure’ of our success. We must endeavor to maintain the integrity of the immigration process and protect our homeland by ensuring that every alien who is ordered removed, and can be, departs the United States as quickly as possible and as effectively as practicable. We must strive for 100% removal rate.⁸¹

However, Tangeman’s assertions about how best to “protect our homeland” ring hollow given that the vast majority of immigrants aren’t criminals (let alone terrorists), and that even minor infractions can render an immigrant “deportable” under current law. Yet the Tangeman memo, and the strategic plan it introduces, treat all immigrants as potential security risks—a paranoid worldview that has become widespread not only throughout the federal government, but in many state and local governments as well.

Operation Streamline

The federal government’s detention-and-deportation machine is also being fed by Operation Streamline, a program begun in 2005 in the southwest of the country under which unauthorized border-crossers are prosecuted in group trials and convicted of illegal entry into the country—a misdemeanor. If they cross again, they may be convicted of an aggravated felony and face up to two years in prison.⁸² Although these offenses have been on the books since 1929, they are being applied under Operation Streamline more widely than they ever were before.⁸³ Yet the structure of Operation Streamline—in which up to 80 immigrants are tried at a time, and each defendant has only a few minutes to speak to an attorney—practically guarantees the violation of basic legal and human rights.⁸⁴

In addition, Streamline—which currently operates in all but three southwestern Border Patrol Sectors—has fueled a surge in immigration prosecutions over the past decade, severely straining the capacities of courtrooms along the border and clogging the courts with petty immigration offenses. According to Justice Department data analyzed by the Transactional Records Access Clearinghouse (TRAC), immigration prosecutions “reached an all-time high” in FY 2013 with 97,384 (53,789 for “illegal entry” and 37,346 for “illegal re-entry”). This marks an increase of 367 percent over the number of prosecutions 10 years earlier.⁸⁵ Between FY 2005–2012, a “total of 208,939 people were processed

through Operation Streamline,” which represents 45 percent of the 463,051 immigration-related prosecutions in Southwest border districts during this time period.⁸⁶ U.S. Sentencing Commission data analyzed by the Pew Research Center finds that the “Dramatic growth over the past two decades in the number of offenders sentenced in federal courts has been driven primarily by enforcement of a particular immigration offense—unlawful reentry into the United States.”⁸⁷ Predictably, Operation Streamline has diverted resources away from drug and human smuggling prosecutions.⁸⁸ All this means that massive amounts of time, money, and manpower are being wasted on the prosecution of non-violent immigrants who do not represent a threat to public safety or national security.

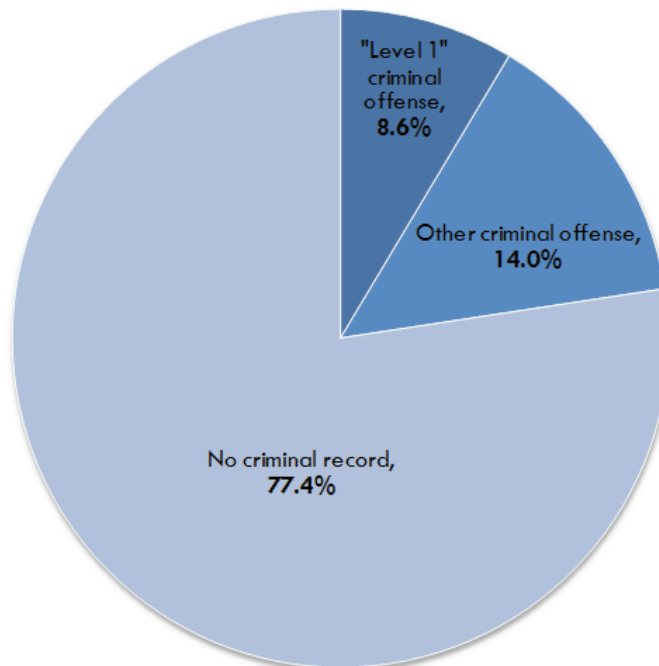
Secure Communities

Although the double standards inherent in immigration law have been applied to immigrants for more than a decade and a half, they took on new meaning starting in 2008 with the launch and dramatic expansion of Secure Communities. This was (or still is, depending on one’s perspective) a DHS program, eventually activated in all 3,181 jurisdictions across the United States,⁸⁹ which used biometric data to screen for deportable immigrants as people were being booked into jails.⁹⁰ Under Secure Communities, an arrestee’s fingerprints were run not only against criminal databases, but immigration databases as well. If there was an immigration “hit,” ICE could issue a “detainer” requesting that the jail hold the person in question until ICE could pick them up.

Not surprisingly, given the new classes of “criminals” created by IIRIRA, most of the immigrants scooped up by Secure Communities were non-violent and not a threat to anyone. In fact, one report found that in Los Angeles County, “the vast majority of those deported through Secure Communities have merely had contact with local law enforcement and have not committed serious crimes.”⁹¹ Moreover, as the program metastasized throughout every part of the country, more and more people were thrown into immigration detention prior to deportation, which led to mounting financial costs.⁹² As of September 30, 2013, 306,622 immigrants convicted of crimes had been removed from the United States after identification through Secure Communities.

More broadly, regardless of whether they were identified through Secure Communities or not, the overwhelming majority of people receiving ICE detainers while in the custody of local, state, and federal law-enforcement officials had no criminal record.⁹⁴ For instance, among the nearly one million detainers issued by ICE during a 50-month period during FY 2008-2012, over 77 percent consisted of individuals who “had no criminal record—either at the time the detainer was issued or subsequently.”⁹⁵ Records from this same time period illustrate that for “the remaining 22.6 percent that had a criminal record, only 8.6 percent of the charges were classified as a Level 1 offense” {Figure 8}.⁹⁶

Figure 8: Targets of ICE Detainers, by Criminal Record, FY 2008-2012



Source: Transactional Records Access Clearinghouse, "Who Are the Targets of Ice Detainers?" (Syracuse, NY: Syracuse University, February 20, 2013).

Secure Communities was not a practical or responsible approach to public safety. It undermined community policing by creating distrust of local law enforcement within immigrant communities, which in turn made community members less likely to report crimes or cooperate with local authorities in on-going investigations due to fear of deportation. This had negative consequences for public safety.⁹⁷ Secure Communities, along with other programs of its kind, also led to the separation of U.S.-citizen children from their parents.⁹⁸ These were issues that could not be fixed by simply altering the program. Further, one study found that "ICE's failure to adhere to its own stated priorities is a feature rather than a reparable flaw of the program" and "has led to increased use of racial profiling in policing."⁹⁹

The current status of Secure Communities is somewhat murky. In February 2013, ICE stated that it would transfer "full responsibility" for the day-to-day management of Secure Communities to CAP, and began to redirect Secure Communities funding towards CAP.¹⁰⁰ But Homeland Security Secretary Jeh Johnson announced in a November 20, 2014, memo that, due to widespread opposition to the program by law-enforcement officers and elected officials, "the Secure Communities program, as we know it, will be discontinued."¹⁰¹ It is to be replaced by the "Priority Enforcement Program" (PEP), under which ICE can "issue a request for detention" to state or local law-enforcement agencies if it can "specify that the person is subject to a final order of removal or there is other sufficient probable cause to find that the person is a removable alien."¹⁰² It remains to be seen how substantively different PEP will be from Secure Communities.

CBP's Consequence Delivery System

The systematic criminalization of unauthorized immigrants in particular has intensified along the U.S.-Mexico border. In 2011, CBP, in collaboration with ICE, rolled out a program described as the Consequence Delivery System (CDS). Rooted in the notion of specific deterrence, CDS is designed “to break the smuggling cycle and deter a subject from attempting further illegal entries or participating in a smuggling enterprise.”¹⁰³ The program “guides management and agents through a process designed to uniquely evaluate each subject and identify the ideal consequences to deliver to impede and deter further illegal activity.”¹⁰⁴ Possible “consequences” under this initiative include, but are not limited to, being processed through the Alien Transfer and Exit Program (commonly referred to as a “lateral repatriation,” often resulting in people being sent to unfamiliar and dangerous Mexican border towns plagued with drug war violence), being repatriated to Mexico in the middle of the night, or being charged with “unauthorized entry” (a misdemeanor) or “unauthorized re-entry” (a felony), which commonly occurs through Operation Streamline. Not only has CDS contributed to the further criminalization of immigration, but it has also needlessly contributed to the increased vulnerability of the already vulnerable unauthorized population.

Executive Action

With Congress perennially deadlocked over comprehensive immigration reform legislation, the Obama administration eventually took matters into its own hands. On November 20 and 21, 2014, President Obama announced a series of “executive actions” that would grant a temporary reprieve from deportation, and work authorization, to as many as 5.3 million unauthorized immigrants (5.8 million remain ineligible).¹⁰⁵ This would be accomplished through expansion of the already functioning 2012 Deferred Action for Childhood Arrivals (DACA) program, as well as the creation of a new deferred action program called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). DACA offers temporary relief from deportation (and temporary work authorization) to qualified young adults who were brought to the United States as children. DAPA would grant temporary relief from deportation, as well as temporary work authorization, to some unauthorized parents of U.S. citizens or lawful permanent residents.¹⁰⁶ However, neither DAPA nor the expansion of DACA can get off the ground until the legal challenges to them are resolved in court. So it remains to be seen how the President’s “executive action” will impact the drive to deportation that still permeates the U.S. immigration system.¹⁰⁷ Moreover, the rhetoric used by the Obama administration in justifying executive action—such as saying that immigration authorities will now target only “felons, not families”¹⁰⁸—fails to account for the fact that there are a great many “felons” who have committed only immigration offenses and pose a threat to no one.

CONCLUSION

There are many signs that the U.S. immigration-enforcement system has run amok. Deportations during the Obama Administration have exceeded the two-million mark.¹⁰⁹ Families and communities have been and are being needlessly torn apart in the process.¹¹⁰ And each year, billions upon billions of dollars are spent on border and interior enforcement, while hundreds of migrants die in the deserts and mountains of the southwest trying to cross into the country from Mexico—sometimes while trying to reach their families in the United States.¹¹¹ These are tragedies that could be prevented—if only Congress would choose to inject proportionality, discretion, and a little humanity back into the immigration system.

While lawmakers repeatedly justify their crackdown on immigrants as a means of fighting crime, the reality is that crime in the United States is not caused or even aggravated by immigrants, regardless of their legal status. This is hardly surprising since immigrants come to the United States to pursue economic and educational opportunities not available in their home countries and to build better lives for themselves and their families. As a result, they have little to gain and much to lose by breaking the law. Unauthorized immigrants in particular have even more reason to not run afoul of the law given the risk of deportation that their lack of legal status entails. But the terminological sleight-of-hand inherent in the government’s definition of “criminal alien” perpetuates and exacerbates the fallacy of a link between immigration and crime.

Public policies must be based on facts, not anecdotes or emotions. And the fact is that the vast majority of immigrants are *not* “criminals” in any meaningful sense of the word. The bulk of the immigration-enforcement apparatus in this country is not devoted to capturing the “worst of the worst” foreign-born criminals. Rather, as Secure Communities exemplifies all too well, the detention-and-deportation machine is designed primarily to track down and expel non-violent individuals, including legal residents of the United States who have worked and raised families here for many years. This brand of immigration policy is cruel, pointless, shortsighted, and counterproductive. And it is not an effective substitute for immigration reform which makes our immigration system responsive to the economic and social forces which drive migration in the first place.

The United States is in the midst of a “great expulsion” of immigrants, both lawfully present and unauthorized, who tend to be non-violent and non-threatening and who often have deep roots in this country.¹¹² This relentless campaign of deportation is frequently justified as a war against “illegality”—which is to say, against unauthorized immigrants.¹¹³ But that justification does not come close to explaining the banishment from the United States of lawful permanent residents who committed traffic offenses and who have U.S.-based families. Nor does it explain the lack of due-process rights accorded to so many of the immigrants ensnared in deportation proceedings. Likewise, the wave of deportations we are currently witnessing is often portrayed as a crime-fighting tool. But, as the findings of this report make clear, the majority of deportations carried out in the United States each year do not actually target “criminals” in any meaningful sense of the word.

Policymakers who look at the entire foreign-born population of the United States through a law-enforcement lens are seeing things that aren't really there. As renowned psychologist Abraham H. Maslow wrote many years ago, "it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail."¹⁴ The blunt weapon that is the U.S. immigration-enforcement apparatus is being wielded against a widening swath of the immigrant community, regardless of their ties to this country, regardless of whether or not they are actually criminals. It is long past time for U.S. immigration policies to accurately reflect the diversity and complexity of immigration to this country, based not on a reflexive politics of fear and myth, but on sound analysis and empirical evidence.

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ATTACHMENT C

A dark silhouette of a woman with long, wavy hair, seen from the back and slightly to the side. She is looking down, and her hands are clasped in front of her. The background is a light blue gradient with a subtle pattern of thin, parallel lines.

DETAINED, DECEIVED, AND DEPORTED

Experiences of Recently Deported Central American Families

By Guillermo Cantor, Ph.D. and Tory Johnson

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Acknowledgements

For their invaluable contribution, we would like to thank all the individuals who shared their personal experiences with us and made this report possible. We also wish to thank Leanne Kathleen Purdum, doctoral student at the University of Georgia, who conducted the interviews for this report. Finally, we would like to acknowledge the CARA Family Detention Pro Bono Project staff and volunteers who helped us reach the individuals we interviewed.

About the American Immigration Council

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the American Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

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EXECUTIVE SUMMARY

Over the last few years, the escalation of violence in Honduras, El Salvador, and Guatemala (collectively known as the Northern Triangle of Central America) has reached dramatic levels. Thousands of women and their children have fled and arrived in the United States with the hope of finding protection. But for many of them, their attempts to escape merely resulted in detention, deportation, and extremely difficult reintegration in Central America. In fact, for some, the conditions they face upon being repatriated are worse than those they tried to escape in the first place.

Between February and May, 2016, the American Immigration Council interviewed eight individuals who were deported (or whose partners were deported) from the United States after being detained in family detention facilities, during which time they came into contact with the CARA Pro Bono Project.¹ These women (or in two of the cases, their partners) shared their experiences—both describing what has happened to them and their children since returning to their country and recounting the detention and deportation process from the United States.

First-hand accounts from Central American women and their family members interviewed for this project reveal the dangerous and bleak circumstances of life these women and their children faced upon return to their home countries, as well as serious problems in the deportation process. The testimonies describe how women are living in hiding, fear for their own and their children's lives, have minimal protection options, and suffer the consequences of state weakness and inability to ensure their safety in the Northern Triangle. The stories presented in this report are those of a fraction of the women and children who navigate a formidable emigration-detention-deportation process in their pursuit of safety. The process and systems through which they passed only contribute to the trauma, violence, and desolation that many Central American families already endured in their home country.

INTRODUCTION

In the summer of 2014, an unprecedented number of indigent Central American mothers and children crossed the United States' southern border fleeing murder, rape, and other forms of violence in their home countries. In response to this humanitarian crisis, the U.S. government reinstituted the practice of large-scale family detention. On December 19, 2014, the Department of Homeland Security (DHS) opened the South Texas Family Residential Center, a 2,400-bed family detention center in Dilley, Texas. Around the same time, the agency took steps to double the size of the Karnes County Residential Center, an existing 500-bed family detention facility in Karnes City, Texas. The existing Berks Family Residential Center (in Berks County, Pennsylvania), with 96 beds, began almost exclusively to detain asylum-seeking families.

The U.S. government's renewed use of large-scale family detention is specifically designed to curtail the flow of asylum-seeking women and children migrating from Central America to the United States—that is, to deter future migration. In addition to increasing the use of detention against women and children apprehended at the border, the government's deterrence strategy also includes increased collaboration with the Mexican government to prevent Central American migrants from arriving at U.S. borders; a multimedia public awareness campaign;² expedited removal of women and children from the United States; and raids in search of individuals with outstanding removal orders. The effectiveness of this aggressive, multi-prong deterrence strategy, however, has not been corroborated. In fact, knowledge of the dangers that surround migration to the United States does not seem to play a role in the decision of those considering migration.³ Yet, such a strategy has an extremely high human cost.

Day after day, women and children seeking protection in the United States are sent back to the Northern Triangle of Central America (Honduras, Guatemala, and El Salvador), and, consequently, forced to face the same dire conditions that they fled—or worse. The Northern Triangle is one of the most dangerous regions in the world and in recent years the influence of complex organized criminal groups has grown in the region, driving up murder rates, gender-based violence, and other forms of serious harm.⁴ It is also a region devastated by poverty⁵ and food insecurity.⁶ This precarious socioeconomic context, in turn, contributes to a vicious circle of socio-economic exclusion and violence. As has been previously documented, poverty and inequality are likely to increase this region's vulnerability to certain types of crime (e.g., gang activity).⁷

Perhaps one of the most palpable indicators of the catastrophic conditions in the Northern Triangle countries is the weakness of their state apparatuses. According to one of the most widely accepted definitions, “a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.”⁸ The Northern Triangle of Central America, however, is dominated by what political scientist Guillermo O’Donnell calls “brown areas”:

Let us imagine a map of each country in which the areas covered by blue would designate those where there is a high degree of presence of the state (in terms of a set of reasonably effective bureaucracies and of the effectiveness of properly sanctioned legality), both functionally and territorially; the green color would indicate a high degree of territorial penetration but a significantly lower presence in functional/class⁹ terms; and the brown color a very low or nil level in both dimensions.¹⁰

Previous research has shown that vast stretches of territory (and much of the population) in Central America have been abandoned by the state. In the absence of strong and capable states, the rule of law is also nonexistent, and organized crime groups (including transnational criminal organizations) compete for control of the territory.¹¹ In Honduras, Guatemala, and El Salvador, criminal organizations exploit territories under the influence of local *caudillos*.¹² For example, previous reports estimate that 40% of the territory in Guatemala is dominated by drug traffickers and organized criminals.¹³ To make things worse, dysfunctional judicial systems have been closely associated with high levels of impunity and corruption.¹⁴

In the last few years, the escalation of violence in the Northern Triangle has reached dramatic levels. This, in turn, has resulted in the increasing number of people fleeing the region.¹⁵ But for many of them, their attempts to escape to what is viewed as a promised land result in a journey to detention, deportation, and extremely difficult reintegration in Central America. For many asylum seekers, the conditions they face upon repatriation are worse than those they tried to escape in the first place.¹⁶ Paradoxically, this means that people who are trying to flee stateless areas dominated by violence and anomie must navigate a powerful, complex, and sometimes unnavigable state system once they reach U.S. territory.

This report features first-hand accounts from eight women recently deported to Central America after being held with their children at one of the family detention centers in Dilley or Karnes City, Texas or Berks County, Pennsylvania. The testimonies reveal that for the most part, upon return these women live in hiding, are terrified to leave their homes, are confronted with extreme hardship, receive frequent threats, and have no access to any protections or assistance from state institutions. The testimonies from these women and their partners also expose the traumatic conditions that characterize the removal process, which regularly involve the use of misleading information and threatening tactics by U.S. authorities.

The rushed removal of women and their children raises serious concerns about both the conditions these women and children confronted upon return and the deportation methods utilized. The descriptions provided by women¹⁷ interviewed upon return highlight some recurring problems:

Increased vulnerability and exposure to threats

Upon return, women are often targeted by and experience direct threats from gang members, often the same individuals who drove the families to flee. These threats include pressure to join criminal groups, pay money or “rent” to them, or sell drugs.

“ The men who were threatening me before I left have called me three times since I got back to El Salvador. They call demanding that I join their gang, because they have asked me for money again and I won’t give it to them [...] The first time they called they told me that if I didn’t join the gang they were going to kill me and take my children.” (Gabriela)

“ Now that these men know they [interviewee’s wife and child] have returned, and that they failed in trying to escape, they are even more seriously pursuing them both, demanding that both of them sell drugs for the gang now or that the gang will make both of them ‘disappear’.” (Brenda’s husband)

Living in hiding

Most of the women interviewed for this report revealed that upon return they were forced to live in hiding as a way to protect themselves from violent groups.

“ When I was gone [...] they were monitoring my house, always around, looking for me. Now that I had to come back I live a little bit away from my own home, but I have to stay hidden. We don’t have any freedom. My kids don’t know what is going on, and I won’t tell them.” (Francisca)

“ I have been hiding ever since I got back. The fact is I can’t go back anymore to live in my mom’s house because she said they have been threatening my family. I can’t go back there because if I go back there my whole family is in danger, especially my kids.” (Andrea)

Lack of protection

Upon being sent back home, the women interviewed reported feeling extremely vulnerable and unprotected. In the absence of any help from the government, some of them were able to adopt informal strategies to protect themselves—e.g., by going out in groups, seeking refuge at a family member’s home, or paying for “private security” services. Some of them, however, live completely isolated.

“ I don’t have protection. I don’t have the protection of anyone and it’s very scary. There are a lot of gang members here everywhere on the corners of my neighborhood. And so I can’t go out because I’m really afraid, so that’s why I stay home almost all the time, because I’m very afraid of going out alone.” (Gabriela)

“ We are paying these people [private security] to make sure our daughter gets safely to and from our house every day.” (Brenda’s husband)

State weakness and gang territorial control

The women interviewed experience the lack of state control of territory—and, in particular, of public spaces—in a very direct and dramatic way. Further, the testimonies analyzed reveal instances of complicity between state agents and gang members. Because of this perception of inefficacy or corruption, crime usually goes unreported.

“ The police may take your complaint if you go to report some kind of crime or if someone is threatening you. But if that person finds out you went to the police, you will be found dead the next day. And the police can’t stop anyone from hurting you.” (Ana)

“ We are not being protected by the government or by anything... by no one. No one.” (Brenda’s husband)

Severe economic hardship

Individuals returned to Central America usually find themselves in an extremely challenging economic situation, in many cases aggravated by debts acquired to help fund their journey to seek protection in the United States.

“ I’ve had to give up my business because it was in the market. I can’t work there anymore because some of the people that are looking for me could see me.” (Francisca)

“ The situation now is that I don’t have much, don’t have many resources. The reality is I am much poorer now... I invested all my money in going there [the United States].” (Maria)

Traumatic removal methods

The women interviewed—and their children—suffered several forms of trauma during their attempt to seek protection in the United States. In addition to their time in detention, the deportation process itself tormented the families and compounded the abrupt end to a trip they hoped would free them from the violence and hardship that they fled. Specifically, the interviewees’ accounts highlight the lack of information, or use of misleading information, as one recurring element that dominated the removal process.

“ And now when [my daughter] calls me this is what she cries about...she cries because she says that the official told her ‘you will be on the plane soon and it will be for you to go see your daddy.’ But in reality when she got on the plane it was to send her back to Guatemala, and no one told her that.” (Brenda’s husband)

“ The day she [interviewee’s wife] was deported, they woke them up at midnight, and they called me and told me to be waiting, that they were going to the state of Virginia, I think...she was tricked! Totally tricked when they took them out. Then directly they drove them to the airport, and they deported them.” (Rosa’s husband)

The testimonies compiled in this report, while limited in number, are a glimpse into the experiences of hundreds of women and children who navigate a formidable emigration-detention-deportation system in their pursuit of safety. This process and the system through which they pass contribute to the trauma, violence, and desolation that many Central American families already endured in their home country.

FIRST-HAND NARRATIVES FROM WOMEN WHO WERE RECENTLY DEPORTED

What follows are the stories of eight¹⁸ women who were deported from the United States after being detained, during which time they came into contact with the CARA Pro Bono Project.¹⁹ These women (or, in two of the cases, their husbands) shared their experiences, recounting the deportation and detention process in the United States and what has happened since returning to their countries.

Francisca - 29, El Salvador

Francisca fled El Salvador with her two sons, ages two and nine, in 2015 after receiving threats from the MS-13 gang—a powerful transnational criminal organization—for not meeting their extortion demands. She stated: “Four days before I left El Salvador, [two men] showed up at my store and identified themselves as members of the MS gang. They told me that I had to pay them \$50 a week. They told me that they were going to kill me if I didn’t pay them. They told me that they knew where I was living and who my parents are.” Francisca feared retaliation from gang members if she went to the police and never filed a complaint due to this fear and mistrust. Francisca explained, “I know that the police don’t help people anyway. I know that the police are corrupt.”

Francisca and her sons sought asylum in the United States and were detained at the Karnes detention center for approximately 27 days. Francisca and her two sons were deported to El Salvador in late 2015 after the asylum office determined they did not have credible fear²⁰ and elected not to reconsider their case.

The Deportation Process

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...When we had to leave the United States my children cried and said, ‘Mama we want to stay here in the United States.’ [Immigration officials] took us out of our rooms at 8:00 p.m. and put us in separate rooms. [Immigration officials] never told me that I would be deported. They told me I was going to change rooms, and they put us in a room until 1:00 a.m.

We were there all night in a freezing room; [my children] were saying, ‘Mommy it is so cold in here.’ I think the children were traumatized by this, staying all night in that cold room in the detention center, waiting for the deportation like that. They were trembling from cold and no one knew what would happen to us. Then they showed me these papers that I thought were saying something about our detention, but they weren’t. It turns out they were papers to send me back.

They sent us home without me signing any deportation order. They told us we were moving to another room. But that was a lie. They tricked us and sent us home. It was very unjust.

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Francisca’s Life after Deportation

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Since I’ve been deported I am living imprisoned in my own home. I don’t go out because I am afraid. Afraid that they—the people I am running from—can do something to me, or to my two kids.

When I was gone, while I was in the United States, they were monitoring my house... coming around looking for me and asking for me. Those guys, so far they don’t know I am here, and I haven’t seen them either. We couldn’t return to where we lived before because they were looking for me. So we had to come live with my mother, but I can’t go anywhere since no one [can know] I am here. We don’t have any freedom. I am hiding from them...for now we are only safe until one of them finds out [we are back]. We are trusting and hoping in God that no one finds out.

My kids don’t know what is going on, and I won’t tell them. This isn’t something that little kids should know about, and I don’t want them to know. They would be traumatized if they knew. I live imprisoned and I can’t go out to the street because they could do something to me and my kids.

I changed the school my kids go to; we had to find another school for them to go to when we came back. When they go to school now, my mom has to take them. I've had to give up my business because it was in the market. I can't work there anymore because some of the people that are looking for me could see me. Now I have to go out to wash other people's things right here in this area to make money. It's the only way I make any money to have something for my kids. And look, the reality is that there are [no protection options] here. We see that the police are somehow connected to the gangs. So you realize it's better to resolve things on your own, because they [the police] are in with the gangs. There are probably others [police officers] that are afraid of the gangs. But either way, they can't help.

The truth is that I am terrified here and I want to try again to leave. But, I am also very afraid that someone could grab my children on the way [to the United States]. I am very worried about risking my children on the way through Mexico, because it's a very difficult journey. They have to suffer hunger and fear, and I have second thoughts about putting them through that again.

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Rosa - 36, Honduras

Rosa and her 15-year-old son fled Honduras in 2015 after a powerful transnational criminal organization, the Mara 18 gang, tried to recruit Rosa's son near his school and subsequently demanded money and physically assaulted him. Rosa went to the police, but was told that they could not help unless her son was dead. Rosa also has a daughter, who is married and remained in El Salvador with her husband. After Rosa and her son left for the United States, the gang members went to her daughter's house looking for Rosa and her son.

Rosa's husband fled Honduras and came to the United States nearly ten years ago after being robbed multiple times and receiving death threats.

Rosa and her son sought asylum in the United States in the fall of 2015 and were detained at the Dilley detention center for approximately 32 days. They were deported to Honduras after an asylum officer and immigration judge determined they did not have credible fear.

The Deportation Process

It was too difficult for Rosa to talk about her experience, so her husband shared his family's experience.

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[My wife] told me many things that happened...The day she was deported [the immigration officials] woke them up at midnight, and they called me and told me to be waiting, that they were going to the state of Virginia, I think. She was tricked! Totally tricked when they took them out [of their rooms].

The worst thing she told me was that the officers locked them in the van for two hours while they went into a restaurant and ate. This was on the way to the airport in Houston. They stopped on the way and the officers locked them in with the key, her and my son and another woman and her kid. Then, they kept driving around for a long time, circling around, until it was time for the flight. [My family] went on a commercial plane, with all the other passengers and an official with them.

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Rosa's Life after Deportation

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I [told] my wife and my son [to leave Honduras]. He's my only son. I only have him and my daughter. He is 15 and in my country they kidnap boys this age and make them join the gangs. I was hoping we could get them out of harm's way, but they couldn't win their case. I came to the United States for the same reasons, because of threats against me, because of my business. And when I couldn't stop the threats, I had to leave my family.

There are many people [still] threatening my family. There is the case of my son being threatened by the gangs, who say they want him to work for them, and the person who is after my daughter.

My daughter has continued to be threatened by this person, and so she finally made a report to the local authorities. One of the guys who threatened my daughter was [someone] from the neighborhood. [My family is] in another place now. But they might go back to the old house because this person who is threatening my daughter is always very close to the house... We are hoping the police will help monitor and see if we can catch him making these threats. And yes, going to the police is a risk. But also we had to have some kind of documentation and some security that if something happens it will be clear who did it. We are trying to go through the legal channels.

[There are not protection options in Honduras]—no, no, no. Everyone is leaving there to come [to the United States], to make a better life. [My children] had to start going to another school. I found a private one that has security and protects them while they are there. We also pay a company to accompany them to school and back. Many families have to do that.

People [in the United States] hear things about Central Americans and they think that we come here to start trouble or to bring that delinquency here and it's not true. We come [to the United States] to protect our families and to overcome the obstacles to have a better life. I truly hope that some kind of

legal option can become available to help people who are trying to get away from threats and violence, like my family. Because we need it now more than ever.

I feel like I am split in two, with my children gone. Part of me is here in the United States, and another part of me is in my country with my children. And it's very sad because children are the most important part of life. I wish there were some way to help them, to find some asylum for them, to bring them [to the United States] and make sure they are safe. Even though it breaks my heart, I can't do anything about it.

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Brenda - 30, Guatemala

In 2015, Brenda and her 13-year-old daughter fled Guatemala because “men who were known for raping teenage girls and who are part of the drug ring that runs [their] town” tried to kidnap her daughter. Brenda was too afraid to call the police because “the police in [Guatemala] are corrupt” and believed she would be putting her and her daughter’s lives at greater risk.

Brenda and her daughter sought asylum in the United States. They were detained at the Dilley detention center for approximately 33 days. Brenda and her daughter were deported while their requests for reconsideration of their negative credible fear determination were pending with the asylum office.

The Detention and Deportation Process

When asked about her experience, Brenda told her husband:

“

I am kind of traumatized by what happened, when they had me jailed there [in detention], sick the whole time, you know? So if they just want to know about my deportation and what happened, then please don’t have [the interviewers] call me...I don’t plan to talk to anyone anymore.

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Brenda's husband, who lives in the United States, spoke on behalf of his wife and described what his family experienced:

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My daughter was affected the most because of the trauma she lived in detention. She says they took her into a meeting with the official [all by herself]—without her mother, not in front of the judge or anything. The official asked her [if she wanted to be with her dad]. Of course she said, ‘Yes, I do. I want to go be with my Daddy.’ And this official told her, ‘Well, if that is what you want, then you better behave very well, and not cause any trouble. Don’t say anything out of line to the immigration officers or no one here in the detention center because if you do it’s going to go very bad here in this detention center’...

Now when [my daughter] calls me...she cries because she says that the official told her, ‘You will be on the plane soon and it will be for you to go see your daddy.’ But in reality when she got on the plane it was to send her back to Guatemala, and no one told her that. She says, ‘I was happy because this official told me that I would be able to see you. And why did they deport me then?’ And I try to console her and say, ‘Don’t worry honey. Only they know why they did that.’ Like I said, we respect the law. They have their jobs. I don’t know if they are doing them correctly, but they have their jobs.

Eight days before they were deported [immigration officials] had gotten them up at 9:00 p.m. and put them in a van and taken them to the airport...they brought them to a plane and had them in their seats, [but then] they took them off again at the last minute. And I can’t even tell you why this was because I have absolutely no idea. [But] exactly seven or eight days later they deported them. They never said why. And my wife and daughter will ask me, ‘Why do you think this happened to us, did something happen? What did we do?’ And the truth is I am in the same place as them, I have absolutely no idea.

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Brenda's Life after Deportation

When asked about how his wife and daughter were faring upon their return to Guatemala, Brenda's husband explained:

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The truth is [my family is] worse. The men who were threatening them found out they left, they realized they were gone. Now that these men know that they have returned, and that they failed in trying to escape, they are **even more** seriously pursuing them both, demanding that both of them sell drugs for the gang now, or the gang will make both of them ‘disappear’.

I took them out of the house they were living in and I put them in another place that—well, only I and they know where they are. I don't and I won't tell **anyone** where they are. Because all of this happened where we used to live. Now they are in another place, and they are in a, let's say a little calmer, place, but they are still having to flee and hide always. Unfortunately...all of our family is in another place and where they are now we don't have any family members that can watch over them. But they call me every day. They are really suffering, but that's just the way it goes. We have to try and live this way.

They have completely had to change their way of life. It used to be that my daughter could go to and from school. But now she has had to join a group of people that protect other students going to school, because there is security in numbers. We are paying these people to make sure our daughter gets safely to and from our house every day. And other parents also pay these people. And that might seem like an extreme measure to take, but honestly since we were not able to reunite safely in the United States we have to take action so that we can get away from the delinquency that is so terrible here. We are not being protected by the government or by anything... by no one. No one.

In fact, now when I send money to her I have to send it in the name of someone else so that these people won't find out where they are right now, through the bank or any other way. The gangs have run off many mothers whose husbands live in the United States. They've made them run off to other parts of the country and try to hide when they are in the same situation as my wife.

They were coming to the United States because I told them to, because I realized that they had no other alternative. Because she was calling me regularly telling me, 'They—some gang members—are leaving me anonymous notes under the door telling me to give my daughter to the gangs and that she has to sell drugs. And that if I don't submit my daughter to the gangs to work they are going to rape her and kill me.' I told her 'Nothing is going to happen to you, be patient, be patient.' But then, my wife...found out from a man in our neighborhood that his daughter had been raped by the same people that had chased my daughter several times and threatened her.

Look, we were making all of this effort for them to get [to the United States] for the good of my daughter... Because we believe in the system of laws in the United States. But, unfortunately, they didn't give us the opportunity to reunite as a family. So that is why they are there and I am here, and they are very uncomfortable where they are.

She told me that she wanted to come back, and I told her she had to come with my daughter again [too]. She is worried, because what if they put them back in detention, and this time for what, two months? And really, going through Guatemala and Mexico is very hard. It's really hard going through everything that happens in Mexico. She says, 'It's too hard to risk our daughter going through Mexico again, and I don't think I will do it.' That's why I have them where I have them now. If God blesses me with life until August, I am going to go back and take care of them.

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Gabriela - 27, El Salvador

Gabriela fled El Salvador with her two-year old daughter and two sons, ages nine and six, in the fall of 2015 after they received threats and were extorted by a powerful transnational criminal organization, the MS-18 gang.

Gabriela and her three children sought asylum in the United States and were detained at the Dilley detention center and later at the Berks detention center for approximately 48 days. Gabriela and her children were deported while their requests for reconsideration of their negative credible fear determination were pending with the asylum office.

The Detention and Deportation Process

A few days before Gabriela and her children were actually deported, she thought she was being deported, but returned to detention after witnessing the deportation of another family. She described that experience to her attorneys:

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I was awoken [at about midnight] by officers wearing red shirts who work in the resident areas of this detention center. They told me to get all my things ready and pack them because they were going to take me to the office.

I called my husband and he told me that immigration officers had called my mother in El Salvador and told her that I would be at the airport in El Salvador at noon the next day (today). I cried when he told me that I was going to be deported. No officer had told me about any of this...

At 3:00 a.m. two officers wearing green uniforms, a man and a woman, took [the other family] and me and my children outside to a van. We left and they did not tell me where we were going. We were in the van for about an hour and a half. They did not tell us anything the entire time. I was very distressed.

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Although she was returned to the detention center later that night, less than 48 hours later, ICE agents woke Gabriela and her children after 2:30 am and told them to pack their things. She did not know they were being deported.

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“...When we left the kids were weak and sick with the flu and cough. They left [detention] really weak. That’s bothering them right now.

When officers tried to deport me, we didn’t really know what was going on. They drove us to the airport and we were all confused and very sad that we were being deported, because I hadn’t been told we would be deported. When my oldest son, who is nine, found out that we were going to be deported he got very, very angry and he told me he wanted to go be with his dad. He had a very hard time, and he was angry and sad and it was really hard on him. It tore me apart. It was a very difficult time for us.

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Gabriela’s Life after Deportation

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The men who were threatening me before I left have called me three times since I got back to El Salvador. They call demanding that I join their gang, because they have asked me for money again and I won’t give it to them. These are the same men that were threatening my sons before we left the country, and now that they know I am back they are calling to threaten me too. They are telling me I have to join the gang now...it’s really distressing.

The first time they called they told me that if I didn’t join the gang they were going to kill me and take my children. Then they called me again and told me I had to join the gang. The last time they called me was [a few months ago], because I keep changing my phone number...The last time I got a new phone number [I] thought they weren’t going to call me anymore, but within four days they were calling me again.

Here, because of the MS (gang), the police can't take care of the neighborhood and are the ones that are helping the gangs. And the gangs say they are taking care of the neighborhood...but there's no protection from anything because they are the ones threatening everyone, harassing everyone. How would there be any protection for me here?

I don't have the protection of anyone and it's very scary. It's extremely hard for me to be here, without the protection of my husband, without protection of my family or anyone. There are a lot of gang members here everywhere on the corners of my neighborhood...I'm always afraid that I might run into one of them and they're going to hurt me. For now I just ask God to help me. At night I make sure that I lock the door before it gets dark and I stay inside with the kids.

The kids are going to school. But I'm not about to let them go out into the street. I'm always afraid. I'm always thinking what if they do something to my kids? I talk with the teachers and tell them to be careful and not let them go anywhere. As for me, I go out to go to church, but I'm always really afraid. I stay home almost all the time, because I'm very afraid of going out alone.

My kids don't really know what's going on. I try not to let them know what's happening, but my older boy saw me get a message from [the gangs] once and he asked me what it was. So I told him. And it's hard because my kids are really bright and they want to know everything.

My husband really wants us to come back to the United States, but it's such a difficult trip with three kids. For me, considering how much the children have suffered, sometimes I think it's better for me to be here imprisoned than to put the kids through that again. They got so sick and they vomited and they had fever [during the last trip].

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Ana - 32, Guatemala

Ana fled Guatemala in 2015 with her daughter, age 16, and son, age 12, after they were targeted by gangs. Ana and her daughter suffered direct threats and physical violence from the gang, and a relative was killed shortly before Ana left with her children. She hoped to find safety in the United States, where Ana's husband lives.

Ana and her two children sought asylum in the United States and were detained at the Dilley detention center for approximately 25 days. Ana and her children were deported while their requests for reconsideration of their negative credible fear determination were pending with the asylum office.

The Deportation and Detention Process

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It was so terrible for me and my kids. At the end of the day I think I was treated very unfairly. We were treated terribly by the border officers, and put into the *hielera*²¹ and treated terribly, and then we went to the detention center. It has been very traumatizing.

I never got a fair chance to get my case heard. They do these interviews [for asylum] that determine your fate, but my interview was during a time when I was not well. I was sick and I was so depressed from being detained that I didn't get a fair chance to explain myself or to know what was going on. Then the judge also rejected me, and I was deported before I ever really had a fair chance. I begged them, please, for my children give me another chance to explain why I am here. But they didn't. I know [the lawyers] tried to help me, but I'm really sad. It smashed my dreams of getting [my children] to safety and reuniting them with their father. The truth is I am very, very sad about it all.

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I am afraid because at any minute the people who were threatening me and my daughter can be back. The same people who followed her and who hurt me before we left. They can be back at any moment. Nothing has changed. We are in the same situation, always fighting for our lives.

For the first two months [after being deported] we lived in another part of the country, but we couldn't make it there. We don't have anything now and we are in so much debt that we really can't go anywhere else. I don't have much education and there are no jobs here, so the very little I earn doesn't go far enough. We rely on the little money my husband sends us.

We've only been back in our old house for a short time. So far no one has called or come to my house, but I have taken the old chip out of my phone. We never go anywhere alone and we don't call any attention to ourselves. My daughter goes to school, but I always take her there and bring her back. Someone always has to be with her. [My daughter] is always afraid that someone is following her, like they did before we left.

There are no options for [protection] here. The police may take your [complaint] if you go to report some kind of crime or if someone is threatening you, but if that person finds out you went to the police, you will be found dead the next day. And the police can't stop anyone from hurting you.

You never get accustomed to living in fear. You never get used to having your daughter followed and threatened. I've been telling my kids that what I really want is for us to get very far away from here...from this situation. And that road isn't easy either. There is danger here and there is danger on the journey. It's very hard to know what to do now because they aren't safe here and they can't stay here living this way, so we have some very hard decisions to make.

As a mother the only thing I really want is for my children to be safe and happy. As their mother, I'd give anything to give them the opportunity to not be struggling through life here, to not be in danger here. I'm not the one that matters. Even if it means I have to be here alone, because we don't have the resources for us all to make that journey again.

What I really want is to have a legal way for me and my children to be able to come to the United States as a family.

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Maria - 42, Honduras

Maria fled Honduras in 2015 with her daughter and son, ages two and nine, after she began receiving threats and was robbed. A single mother living alone with her children, Maria felt targeted because of her living situation. She lives in a remote area with almost no police presence and feared escalating violence from the perpetrators for any official complaints she made.

Maria and her two children sought asylum in the United States and were detained at the Dilley detention center for approximately 24 days. They were deported to Honduras in late 2015 while their requests for reconsideration of their negative credible fear determination were pending with the asylum office.

The Detention and Deportation Process

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The border was not good. I was in the place they called the perrera [dog pound]. After they get you at the river they take you there. I don't know really how many days I was there because after you are put in there you really don't have any idea what time it is. They took me out in the morning, but I have no idea how much time we were in there. But then we went to the detention center...

At 1:00 a.m. they told me to gather all my things. I couldn't sleep all night, just thinking, 'What is going to happen to me? Are they going to deport me?' This was on my 20th day of detention. And my lawyer had given me a piece of paper and said, 'If they come to deport you, you show them this.' But I did and [the immigration officials] told me the paper didn't count. I showed it to the people that get your bags together when you leave, but they didn't pay me any attention.

They didn't explain anything. They didn't tell me anything. They gave me a [document], but it was in English. I asked other people what it said, but they didn't know. [Immigration officials] told me [to] wait and see, wait and see. It was morning when I finally knew the truth—that they were going to deport me. They came and said, 'We are only following orders.'

I didn't get [to Honduras] until 3:00 p.m., and it had been hours since I had eaten anything, since I had any water. I suffered all day, without eating anything.

I told the truth there. I don't know why they deported me. Why they denied my case. I don't understand at all. You just don't know why they decide to deport you.

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Maria's Life after Deportation

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I am still getting lots of threats. My children are in danger too. I had to move to another house because I didn't feel safe there [in my previous home]. It wasn't safe for me or my kids. They try to harass me. I'm a single mother. My older son tells me, 'Mommy, let's get out of here. Let's leave here. We can't live here anymore.' That's how it is here [in Honduras].

They [the people threatening me before] know I have had to come back here. They have told me not to report anything they do to me, or tell on them for the things they stole from me. I am afraid to report anything I know about them or [what] they do to me...

Life is not the same [here] as it is in the United States. I think the laws there are better than they are [in Honduras]. I [can't] go to anyone for help. It's better for me to put up with the problems than go to the police.

The situation is very depressing here. You can't say one word about anything that goes on here because if you do, what happens is they kill your children or they kill you. You watch the news. So you know this, but women are fleeing from here just like the men are. And we can't look to legal avenues here because the authorities don't even listen. So how are we supposed to solve all these problems? There is no way! That is exactly why people suffer that journey to get there, and hope they find luck when they do.

Going through Mexico they assault you, and they carry huge machetes! And that's why I am so afraid of taking that journey. I didn't see many police at the [southern Mexico] border, but if you go out in to the mountains you will see them everywhere. Not many at the border there, but if you go out in to the mountains (el monte) you will see them everywhere. And I am afraid of being captured by them. I think of how dangerous it could be with them. So that journey is truly very difficult.

I have definitely thought of coming back. But I'm not sure if I can... You really have to think about taking that journey again...I would have to bring my children. But my fear is that they would deport me again. I don't want to be deported again. I might have to just do it, because I can't take the poverty and the problems here [...] You fix one problem and another one appears. And you have to invest so much in traveling [to the United States]. That's one reason we are so poor. But I didn't even pay anyone to bring me there. I just was resolved to leave here, and go. I did it once...I will think about doing it again. God help me.

The situation now is that I don't have much, don't have many resources. The reality is I am much poorer now... I invested all my money in going there [the United States]. I don't feel OK. I'm sad.

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Andrea - 26, Guatemala

Andrea fled Guatemala in 2015 with her three-year-old daughter because she feared gangs and extortion of her and her family.

Andrea and her daughter sought asylum in the United States and were detained at the Dilley detention center and later the Berks detention center for approximately 46 days. After an asylum officer and immigration judge determined Andrea and her daughter did not have credible fear, Andrea could no longer take the detention of her daughter and accepted deportation in early 2016.

The Deportation Process

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“You know, an adult can handle [detention]. But little kids can’t. They don’t understand being kept caged-in like that for such a long time. I don’t know why they had me detained so long. I finally decided to be deported because of my daughter. We had been detained so long I finally decided [it was] better to be deported than stay in there anymore. She couldn’t do anything there, and they wouldn’t tell us anything about if they were going to let me go. I didn’t know how long we would be there, so I finally had to decide.

In there they don’t explain anything. You can ask them, but they still don’t answer anything about what is happening or why.”

”

Andrea's Life after Deportation

“

I have been hiding ever since I got back. The fact is I can't go back anymore to live in my mom's house because she said they have been threatening my family. I can't go back there because if I go back there my whole family is in danger, especially my kids. My husband actually left Guatemala because he was being threatened so much, and he is now in the United States. Before I was in the detention center, they threatened my family and they were threatening us. So we couldn't go back [to that neighborhood] now that we were deported; I have to struggle to keep my kids safe.

I don't go out. I live practically encaged here, because I can't risk going out in case they see me. I stay in close to my kids more than anything. We had to move to another part of the country, because when I came back they found out I was back. Now we live alone because my family is not near here. I sell little things to make money, to be able to care for my kids.

Yes, [I have received threats since returning to Guatemala]. I don't know how they get everyone's phone numbers. It really scares me. I filed a police report, but here if anyone finds out they will hurt you. I did try to go [to the authorities], but they don't do anything.

I have thought about coming [back to the United States]. But actually they told me in the detention center that I can't come back now for five years.

”

Esperanza - 34, Guatemala

Esperanza fled Guatemala in late 2015 with her two-year-old son and nine-year-old daughter after she was physically and emotionally abused by her son's father and believed this man returned to her neighborhood to take her son and hurt her family. She never reported him or went to the police because she feared it would make her situation worse. Additionally, she explained that it is difficult to even reach the police in the remote area of Guatemala where she is from.

Esperanza and her children sought asylum in the United States and were detained at the Dilley detention center for approximately 22 days. Esperanza and her children were deported to Guatemala in early 2016 after she received a negative credible fear determination from the asylum office, which was upheld by an immigration judge.

The Detention and Deportation Process

“

“It was so shameful, all the things I had to tell [the asylum officers]. But I did. I told them about when he threw a hot iron on me and burned my foot very bad. And I told the lawyers everything. They were so attentive to me and I put all my trust in them, and I even told them that he sexually abused me. But when I went to have my interview, I just couldn't bring myself to tell the [male officer] that part. It was really difficult as a woman to tell [him] this. I didn't want to relive that.”

”

Esperanza recounted what she and her children experienced when immigration officials came to deport them:

“

I remember it was a Tuesday and they took me out of my room at 10:00 p.m. All they [the immigration officials] did was tell me I was leaving, and they took us outside and told us we had to sign some papers. I [refused to sign anything]. My kids were there too, watching this, and crying—crying with me. I cried the whole day. I couldn't even eat [after] 10:00 p.m. when they came to take me out of that room...

When we pulled up to the airplane I broke down and I begged them, 'Please don't do this. Please don't deport me and my kids.' And they talked between themselves and then they told me, 'No, there is nothing we can do about it.' They said 'We are going to give your lawyers time to get here before you leave. Starting at 8:00 a.m., we are going to see if your lawyers get here while you are on the plane.' I realized, how are the lawyers going to get here on time if they probably don't even know what is happening right now? If the officials don't notify them?

They didn't explain anything at all. They just said, 'You are being deported. You have to go back.' And that's why when the flight lifted off I was so heartbroken, because I [thought I could still fight my case].

I think my children suffered more than anything while we were being deported...When they realized we weren't going to be with Grandma and that we were being sent back, they cried. They were so hurt...It's been so sad since we got back.

”

“

So far he [my son's father] hasn't been back to take my child or do anything to me, but I am really worried. A friend who knows of his whereabouts told me he has seen him around here—always drunk and drugged up—wandering around [my neighborhood]. My friend told me, 'Be very careful. It's such a shame you weren't able to make it [in the United States], because he has the same plans to take your son from you.'

I already suffered so much with him. He used to hit me, and come and sexually abuse me. And he made me...he would make me do things to him. Always while he was drunk. That's the fear I have—that this man is going to come back and do something to [my children] or to me. He wanted to take my little one who is just turning two... I don't know if you are a mother, but if you are, you would know that no one would let anyone harm their children or take them away...

The only times I go out are to wash my clothes, in the river near me. It's not very far and I will only go early in the morning. I don't really have any employment. I wash clothes for people when they have something for me to do, but there is no consistent work for me. And I wash things, but while I do I have to constantly be watching out for this man, [to make sure] he won't show up and hurt my kids. And I can't go out to work because I have no one to leave my children with. I have a little 2 year old and a 9 year old. So who would watch them for me?

My mom sends me what she can, but it's not enough. She calls me every few days, to ask about the kids. She calls to make sure this man isn't doing anything to me. She is upset that we weren't able to come live with her and she is worried about something happening to my kids and me. I am afraid of that too, but I don't have anywhere to go. I think about going to another place, but I am worried this man would find me. So I have to stay hiding in here. I am afraid, but here I am.

And here [in Guatemala] there is nothing...there is hardly even enough food. My kids don't even have milk. My daughter told me on the plane the day we were deported... 'Mommy, let's not go back [to Guatemala].' I would like to be able to [go to the United States again], but because it is so expensive I don't know how. I just pray to find some legal way to go back to the United States... Thank God I have the church here; that lifts my spirits some. But really what I hoped was to be with my mother, to see her again. Since I didn't get to be with my mom I just feel so sad and sick. I am so scared that this man will come hurt me and take my boy. I don't have any support here. They are all so far away.

”

CONCLUSION

The testimonies from Francisca, Rosa, Brenda, Gabriela, Ana, Maria, Andrea, and Esperanza are just the tip of the iceberg of a vicious circle of widespread violence, migration, detention, deportation, trauma, and extremely difficult reintegration. They also exemplify the journey from lawless territories and powerless states to the United States, which, in the name of efficacy and deterrence, detains and removes individuals in record time. The rushed removal of asylum-seeking families raises concerns about the potential harms that these mothers and children are likely to be exposed to after their deportation. With no support available upon return, these individuals have limited chances of living a normal, safe, and healthy life.

Endnotes

1. CARA is a partnership of four organizations that joined forces in the spring of 2015 in response to the mass detention of children and their mothers. CARA consists of the Catholic Legal Immigration Network, Inc. (CLINIC), the American Immigration Council, Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association (AILA). CARA represented the families whose stories are presented in this report, and their staff and volunteers were instrumental in helping us reach their clients upon return to Central America.
2. In July 2014, U.S. Customs and Border Protection (CBP) launched a multimedia public awareness campaign known as the “Dangers Awareness Campaign,” which involved the use of print, radio, and TV ads to deliver the message that the journey was too dangerous and that children would not get legal papers if they made it to the United States. “CBP Addresses Humanitarian Challenges of Unaccompanied Child Migrants,” *U.S. Customs and Border Protection*, last accessed May 2016, <https://www.cbp.gov/border-security/humanitarian-challenges>.
3. Jonathan Hiskey et al., *Understanding the Central American Refugee Crisis: Why They Are Fleeing and How U.S. Policies are Failing to Deter Them* (Washington, DC: American Immigration Council, February 2016), <http://www.immigrationpolicy.org/special-reports/understanding-central-american-refugee-crisis-why-they-are-fleeing>.
4. United Nations High Commissioner for Refugees António Guterres, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (Washington, DC: UNHCR, October 2015), <http://www.unhcr.org/5630f24c6.html>.
5. According to the World Bank, in 2014 about 63 percent of Hondurans, 59 percent of Guatemalans, and 32 percent of Salvadorans lived in poverty. See World Bank Open Data Country Profiles for Honduras, <http://data.worldbank.org/country/honduras>; Guatemala, <http://data.worldbank.org/country/guatemala>; and El Salvador, <http://data.worldbank.org/country/el-salvador>, accessed April 17, 2016.
6. The World Food Program estimates that 2.3 million people are moderately or severely food insecure in this region. See World Food Program, *Global Food Security Update*, Issue 20 (December 2015), http://vam.wfp.org/sites/global_update/December_2015/Index.htm.
7. United Nations Office on Drugs and Crime, *Crime and Development in Central America: Caught in the Crossfire* (UNODC, May 2007), 25, https://www.unodc.org/pdf/research/Central_America_Study_2007.pdf.
8. Max Weber, “Politics as a Vocation,” published as “Politik als Beruf,” *Gesammelte Aufsätze zur Wissenschaftslehre* (Tübingen, 1922), 396-450, based on a speech at Munich University in 1918. See H.H. Gerth and C. Wright Mills, trans. and eds., *Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), 77-128, <http://anthropos-lab.net/wp-content/uploads/2011/12/Weber-Politics-as-a-Vocation.pdf>.
9. Uneven presence of the state in functional or class terms means that democratic legality, publicness, and citizenship operate differently for different social classes or other socially defined groups.
10. Guillermo O'Donnell, “On the State, Democratization and Some Conceptual Problems,” (Working Paper #192, The Helen Kellogg Institute for International Studies, April 1993), <https://www3.nd.edu/~kellogg/publications/workingpapers/WPS/192.pdf>.
11. Cynthia J. Arnson and Eric L. Olson, eds., introduction to *Organized Crime in Central America: The Northern Triangle* (Washington, DC: The Wilson Center, November 2011), 1-17, https://www.wilsoncenter.org/sites/default/files/LAP_single_page.pdf.
12. Jorge Vargas Cullell, “Advancing the Study of Stateness in Central America: Methodology and Some Illustrative Findings,” in *Handbook of Central American Governance*, ed. Diego Sánchez-Ancochea and Salvador Martí i Puig (New York: Routledge, 2014), 119-133.
13. Cynthia J. Arnson and Eric L. Olson, eds., *Organized Crime in Central America: The Northern Triangle* (Washington, DC: The Wilson Center, November 2011), 174, https://www.wilsoncenter.org/sites/default/files/LAP_single_page.pdf.
14. *Ibid.*, 1-17.
15. United Nations High Commissioner for Refugees António Guterres, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (Washington, DC: UNHCR, October 2015), <http://www.unhcr.org/5630f24c6.html>.
16. Victoria Rietig and Rodrigo Dominguez Villegas, *Stopping the Revolving Door: Reception and Reintegration Services for Central American Deportees* (Washington, DC: Migration Policy Institute, December 2015), <http://www.migrationpolicy.org/research/stopping-revolving-door-reception-and-reintegration-services-central-american-deportees>.
17. For confidentiality reasons, all names were replaced with pseudonyms.
18. The American Immigration Council attempted to reach 54 individuals. Many women and families spoke with us, but were not willing to share their experience—for many it is simply too difficult to discuss.
19. CARA is a partnership of four organizations that joined forces in the spring of 2015 in response to the mass detention of children and their mothers. CARA consists of the Catholic Legal Immigration Network, Inc. (CLINIC), the American Immigration Council, Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association (AILA). CARA represented the families whose stories are presented in this report, and their staff and volunteers were instrumental in helping us reach their clients upon return to Central America.
20. A credible fear interview is used to determine if the individual can show that there is a significant possibility that he/she can satisfy the qualifications for asylum. The interview takes place if someone expresses a fear of persecution or a desire for asylum and arrives in the United States with false documents or no documents, which makes the person subject to expedited removal. National Immigrant Justice Center “Basic Procedural Manual for Asylum Representation Affirmatively and in Removal Proceedings,” March 2016, 69, http://immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20Asylum%20Manual_03%202016%20final.pdf. See p. 8 and 25 for more general information on the asylum process and asylum law.
21. Spanish for “freezers” or “iceboxes,” the name used to describe the “short-term” detention facilities run by Border Patrol near the U.S.-Mexico border.

ATTACHMENT D

The background of the entire page is a photograph of dark asphalt. In the upper left, there is a shadow of a hand with fingers spread. In the upper right, there is a larger shadow of a person's arm and torso, also with fingers spread, as if reaching out. The shadows are cast from the top left, suggesting a light source from that direction.

A GUIDE TO CHILDREN ARRIVING AT THE BORDER:

Laws, Policies and Responses

A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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OTHER PROPOSED RESPONSES**
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The American Immigration Council is updating this Guide which was first issued in summer 2014. It provides information about the tens of thousands of children—some travelling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. This Guide seeks to explain the basics. Who are these children and why are they coming? What basic protections does the law afford them? What happens to the children once they are in U.S. custody? What have the U.S. and other governments done in response? What additional responses have advocates and legislators proposed? The answers to these questions are critical to assessing the U.S. government’s responses and understanding the ongoing debate about whether reforms to the immigration laws and policies involving children are needed.

BACKGROUND: WHO ARE THE CHILDREN, WHY ARE THEY COMING, AND WHAT OBLIGATIONS DO WE HAVE?

What does “unaccompanied children” mean?

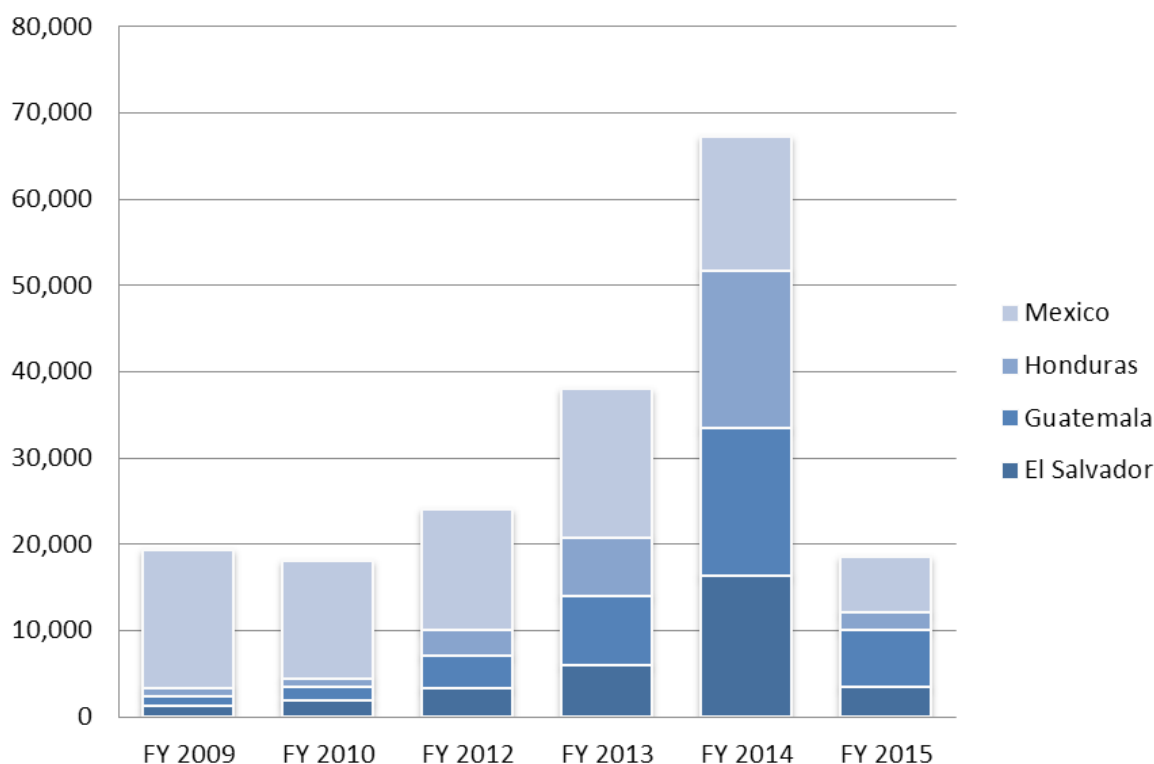
Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. “Unaccompanied alien child” (UAC) is a technical term defined by law as a child who “(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”¹ Due to their vulnerability, these young migrants receive certain protections under U.S. law. The immigration laws do not define the term “accompanied” children, but children arriving in the United States with a parent or guardian are considered accompanied.

Where are these children and families coming from?

The vast majority of unaccompanied children and families arriving at the southwest border come from Mexico, Guatemala, Honduras, and El Salvador, although unaccompanied children may arrive from any country. Over the past few years, increasing numbers of children and families have been fleeing violence in Guatemala, Honduras, and El Salvador—a region of Central America known as the “Northern Triangle.” According to U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), between October 1, 2013 and September 30, 2014, CBP encountered 67,339 unaccompanied children. The largest number of children (27 percent of the total) came from Honduras, followed by Guatemala (25 percent), El Salvador (24 percent), and Mexico (23 percent).² The number of unaccompanied children arriving at the southern border has decreased since its peak in the summer and fall of 2014. Between October 1, 2014 and April 30, 2015, CBP apprehended 3,514 unaccompanied minors from El Salvador, 6,607 from Guatemala, 1,977 from Honduras, and 6,519 from Mexico.³ This represents approximately a 45 percent decrease from the same time period the prior year.⁴ The apprehensions of “family units” (children with a parent or legal guardian) also declined. There were 16,997 family unit apprehensions from October 1, 2014 to April 30, 2015, a 35 percent decrease from 26,341 apprehensions during the same time frame the year before.⁵

As discussed below, this decrease in apprehensions likely is tied to increases in apprehensions in Mexico and increased security measures along Mexico's southern border.

Unaccompanied Migrant Children Encountered FY 2009-FY 2015*



Source: CBP.

*FY 2015 through April 30, 2015.

Why are children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary motivation for recent migration, while identifying additional causes including poverty and family reunification.⁶ A report by the [Assessment Capacities Project \(ACAPS\)](#), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively.⁷ A 2014 analysis conducted by Tom Wong, a University of California-San Diego political science professor, took the UNDOC data and compared it to the data on unaccompanied children provided by CBP. Wong found a positive relationship between violence and the flow of children: “meaning that higher rates of homicide in countries such as Honduras, El Salvador, and Guatemala are related to greater numbers of children fleeing to the United States.”⁸

While a child may have multiple reasons for leaving his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a primary motivation for fleeing. Research conducted in El Salvador on child migrants who were returned from Mexico found that 60 percent listed crime, gang threats, and insecurity as a reason for leaving.⁹ In a United Nations High Commissioner for Refugees (UNHCR) survey of 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico, 48 percent of the children “shared experiences of how they

had been personally affected by the...violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors.”¹⁰ Furthermore, the violence frequently targets youth. Recruitment for gangs begins in adolescence—or younger—and there are incidents of youth being beaten by police who suspected them of gang membership.¹¹

Are children coming to the United States because of DACA?

No. U.S. immigration enforcement policy, including deferred action programs that would allow certain undocumented immigrants to remain in the United States temporarily, is not a primary cause of the migration. Notably, the rise in violence and corresponding increase in unaccompanied child arrivals precede both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of an immigration reform bill S.744—positive developments that are sometimes cited as pull factors by Obama Administration critics. In fact, in its 2012 report, the Office of Refugee Resettlement (ORR) stated that “in a five month period between March and July 2012, the UAC program received almost 7,200 referrals—surpassing FY2011’s total annual referrals,” showing that the rise in UACs predated the implementation of the DACA program. Furthermore, individuals who arrived in the country after January 1, 2007 would not be eligible for DACA.

Would more Border Patrol resources deter border crossers?

There is little evidence to support the proposition that the border must be further fortified to deter an influx of children and families. Treating the current situation as simply another wave of unauthorized immigration misses the broader policy and humanitarian concerns driving these children and families’ migration. In fact, many women and children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.¹²

Furthermore, CBP’s resources along the southwest border are already significant. There were 18,156 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2014.¹³ The annual Border Patrol budget stood at \$3.6 billion in FY 2014.¹⁴ The Border Patrol has at its command a wide array of surveillance technologies: ground radar, cameras, motion detectors, thermal imaging sensors, stadium lighting, helicopters, and unmanned aerial vehicles.¹⁵

What are our obligations under international law?

The United States has entered into treaties with other countries to ensure the protection and safe passage of refugees.¹⁶ Among the most important are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture, prohibits the return of people to a country where there are substantial grounds to believe they may be tortured.¹⁷

The United States has implemented these treaties in various laws and regulations. They form the basis for both our refugee program and asylum program. (An asylee is simply a refugee whose case is determined in the United States, rather than outside it.) In fact, under our laws, anyone in the United States may seek asylum, with some exceptions, or protection from torture with no exceptions. It can be difficult and complicated to determine whether an individual has a valid claim for asylum

or protection from torture. To meet its protection obligations, the United States should ensure that children are safe, have an understanding of their situation and their rights, and have adequate representation when they tell their stories to a judge.

Do Central American children qualify for protections under international and U.S. law?

Many of the children fleeing to the United States have international protection needs and could be eligible for humanitarian relief. According to UNHCR's [survey](#) of 404 unaccompanied children from Mexico, El Salvador, Honduras, and Guatemala, 58 percent "were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection." Notably, of those surveyed, UNHCR thought 72 percent of the children from El Salvador, 57 percent from Honduras, and 38 percent from Guatemala could merit protection.¹⁸ While international protection standards are in some cases broader than current U.S. laws, the fact that over 50 percent of the children UNHCR surveyed might qualify as refugees suggests that a thorough and fair review of these children's claims is necessary to prevent them from being returned to danger.

Moreover, children may qualify for particular U.S. forms of humanitarian relief for victims of trafficking and crime, or for children who have been abused or abandoned by their parents. A 2010 survey conducted by the Vera Institute of Justice indicated that 40 percent of children screened while in government custody could be eligible for relief from removal under U.S. laws.¹⁹ Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining whether these children qualify for some form of protection can be a time-consuming process.

What types of U.S. immigration relief do children potentially qualify for?

The most common types of U.S. immigration relief for which children potentially are eligible include:

Asylum: Asylum is a form of international protection granted to refugees who are present in the United States. In order to qualify for asylum, a person must demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group.

Special Immigrant Juvenile Status (SIJS): SIJS is a humanitarian form of relief available to noncitizen minors who were abused, neglected, or abandoned by one or both parents. To be eligible for SIJS, a child must be under 21, unmarried, and the subject of certain dependency orders issued by a juvenile court.

U visas: A U visa is available to victims of certain crimes. To be eligible, the person must have suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

T visas: A T visa is available to individuals who have been victims of a severe form of trafficking. To be eligible, the person must demonstrate that he or she would suffer extreme hardship involving unusual or severe harm if removed from the United States.

What is the Trafficking Victims Protection Reauthorization Act (TVPRA)?

The original Trafficking Victims Protection Act was signed into law in 2000 to address human trafficking concerns. It was subsequently reauthorized during both the Bush and Obama Administrations in 2003, 2005, 2008, and 2013.

The TVPRA of 2008, signed by President Bush, responded to concerns that unaccompanied children apprehended by the Border Patrol “were not being adequately screened” for eligibility for protection or relief in the United States.²⁰ The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated. At the outset, unaccompanied children must be screened as potential victims of human trafficking.²¹ However, as described further below, procedural protections for children are different for children from contiguous countries (i.e., Mexico and Canada) and non-contiguous countries (all others). While children from non-contiguous countries are transferred to the Department of Health and Human Services (HHS) for trafficking screening, and placed into formal immigration court removal proceedings, Mexican and Canadian children are screened by CBP for trafficking and, if no signs of trafficking or fear of persecution are reported, may be summarily returned home pursuant to negotiated repatriation agreements.²² The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (e.g., a one-year filing deadline).²³ It also required HHS to ensure “to the greatest extent practicable” that unaccompanied children in HHS custody have counsel, as described further below—not only “to represent them in legal proceedings,” but to “protect them from mistreatment, exploitation, and trafficking.”²⁴

Can new arrivals obtain a grant of Temporary Protected Status?

Although Salvadorans and Guatemalans in the United States have been eligible for Temporary Protected Status (TPS) in the past, there currently is no category that would include children or families arriving today or at any point since the spring of 2014. TPS is a limited immigration status that allows an individual to remain temporarily in the United States because of civil war, natural disasters, or other emergency situations that make it difficult for a country to successfully reintegrate people. TPS requires a formal designation by the Secretary of Homeland Security, in consultation with the Secretary of State, and requires, among other things, that a country formally request this designation from the U.S. government.

How have other countries in the region responded to the increase in child migrants?

Mexico, with support from the United States, has responded to the increasing number of children and families fleeing Central America by expanding its security measures along its southern border as well as its internal enforcement. Part of the Mexican government’s southern border security plan is funded through the Mérida Initiative and as of October 2014, about \$1.3 billion dollars in U.S. assistance went to Mexico through this initiative.²⁵

According to the Migration Policy Institute, migrants report an “increased presence of immigration officials in pickup trucks patrolling the roads and bus stations en route to the train line. Raids on hotels and restaurants where migrants shelter in traditional cities [i.e., cities along previously established migrant routes] have occurred. And immigration agents, in raids supported by federal

police and the military, are targeting the trains, removing migrants from the train cars and detaining them.²⁶ The companies that run the cargo trains on whose roofs migrants travel (referred to as “La Bestia”) also are working with the Mexican government to increase train speed in order to prevent migrants from riding on them.²⁷

Deportations from Mexico to the Northern Triangle countries increased significantly over the course of 2014, and this trend has continued into 2015. Mexico apprehended more than 15,795 minors between January and August of 2014, compared to 9,727 minors for all of 2013.²⁸ According to a Pew Research Center analysis of data from the Mexican government, Mexico deported 3,819 unaccompanied minors from Central America during the first five months of FY 2015—a 56% increase over the same period from FY 2014.²⁹

A report by the Human Rights Institute at Georgetown Law School found that while “Mexican officials are supposed to screen unaccompanied children for international protection needs, they often fail to meet this responsibility.”³⁰ The report also found that the detention conditions deterred children from accessing the asylum process and that the Mexican government is failing to consistently inform children of their rights or screen them for international protection eligibility.³¹ Without these practices, the report argued, “current practices place a burden on migrant children to investigate the law and procedures and affirmatively apply for asylum.”³²

What is in-country processing?

In November 2014, the U.S. Department of State announced the launch of its in-country refugee processing program in El Salvador, Guatemala, and Honduras. The program is intended “to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States.”³³ The new program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to submit an application to have their children join them in the United States if they qualify for refugee status or humanitarian parole.

Parents may submit applications for this program to the State Department. Once the application is submitted, the International Organization for Migration (IOM) will work with the child in country and invite them to pre-screening interviews. Both the child and the parent will have to submit to DNA testing to ensure the biological relationship, and DHS will conduct an interview for refugee eligibility. As with all refugees, the children will have to submit to and pass security checks to be eligible for refugee status.³⁴ If they do not qualify for refugee status, it is possible that they may qualify for humanitarian parole on a case-by-case basis. Although humanitarian parole permits a person to travel safely to the United States to reunite with a parent, unlike refugee status, it does not provide a path to citizenship.

While this program will help some eligible children and a parent, its impact is expected to be limited. Any refugees admitted under this program would count against the current limit of 4,000 refugee admissions for Latin America and the Caribbean. In contrast, 68,541 children crossed the border in FY 2014. The program itself is rigorous, and its requirements—a parent with legal status and DNA and security checks—will limit who qualifies. Eleanor Acer of Human Rights First argued that “[p]ractically speaking, the program will need to actually extend protection in a timely manner to a meaningful number of applicants if it is to be viewed as a credible alternative to some families with at-risk children.” Additionally, Acer note that in the past, U.S. officers have used “the existence of in-country resettlement...to limit access to protection.”³⁵

PROCEDURES AND POLICIES: WHAT HAPPENS TO CHILDREN AND FAMILIES WHEN THEY ARRIVE AT THE BORDER?

How are unaccompanied children treated compared to adults and children arriving in families?

How a noncitizen is treated upon apprehension depends on where the person is apprehended (near the border or in the interior), what country he or she is from (a contiguous country or a noncontiguous country), and whether he or she is an unaccompanied minor.

Adults and families, when apprehended in the interior, typically are placed in removal proceedings before an immigration judge.³⁶ However, that is not necessarily the case for adults or families apprehended at or near the border. In FY 2013, 83 percent of adults removed by the U.S. were deported through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.³⁷ The most common summary removal processes are expedited removal, used when a noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents,³⁸ and reinstatement of removal, used when a noncitizen unlawfully reenters after a prior removal order.³⁹

As discussed in detail below, unaccompanied children receive greater protections under U.S. law.

What happens to unaccompanied children once they are in U.S. custody?

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP.⁴⁰ Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings.⁴¹

Children from non-contiguous countries, such as El Salvador, Guatemala, or Honduras, are placed into standard removal proceedings in immigration court. CBP must transfer custody of these children to Health and Human Services (HHS), Office of Refugee Resettlement (ORR), within 72 hours, as described below.

Each child from a contiguous country—Mexico or Canada—must be screened by a CBP officer to determine if he or she is unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these conditions apply, CBP will immediately send the child back to Mexico or Canada through a process called “voluntary return.” Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process.⁴²

Non-governmental organizations (NGOs) have expressed concern that CBP is the “wrong agency” to screen children for signs of trauma, abuse, or persecution.⁴³ The public justice group Appleseed issued a report that stated, “as a practical matter” CBP screening “translates into less searching inquiries regarding any danger they are in and what legal rights they may have.”⁴⁴ Appleseed also expressed concern that the U.S.-Mexico repatriation agreement has been geared towards “protocols of repatriations logistics,” rather than best practices for child welfare.⁴⁵

Do children get attorneys?

In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the “privilege” of being represented “at no expense to the Government.”⁴⁶ This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel to represent them free of charge are represented in immigration court. And, although Congress has directed the Secretary of Health and Human Services (HHS) to ensure the provision of counsel to unaccompanied children “to the greatest extent practicable,” Congress further explained that the Secretary “shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.”⁴⁷

A vast network of pro bono legal service providers has responded to the call, and during the past year, the Obama Administration provided some funding to legal service providers in order to increase representation for unaccompanied children. The justice AmeriCorps program, announced in June 2014, awarded \$1.8 million for representation of certain children in immigration court,⁴⁸ and HHS subsequently provided an additional \$9 million for representation in FY 2014 and FY 2015.⁴⁹

But while pro bono legal service providers represent many children nationwide, they still are unable to meet the need. As of April 2015, children in over 38,000 pending cases remained unrepresented.⁵⁰ These children are forced to appear before an immigration judge and navigate the immigration court process, including putting on a legal defense, without any legal representation. In contrast, DHS, which acts as the prosecutor in immigration court and argues for the child’s deportation, is represented in every case by a lawyer trained in immigration law. As a result, advocates, including the American Immigration Council, filed a nationwide class-action lawsuit challenging the federal government’s failure to provide children with legal representation in immigration court. The case, JEFFM v. Holder, is currently pending before a federal district court in Washington State.

How have immigration courts responded to the increased volume of cases?

In the summer of 2014, the Executive Office for Immigration Review (EOIR), the division within the Department of Justice which houses the immigration courts, adopted a new policy with respect to prioritizing cases for adjudication. The stated goal of this new policy was to “[f]ocus the department’s immigration processing resources on recent border crossers” (i.e., individuals who arrived on or after May 1, 2014). Under the policy, the immigration courts are to prioritize the following cases: (1) unaccompanied children who recently crossed the southwest border; (2) families who recently crossed the border and are held in detention; (3) families who recently crossed the border but are on “alternatives to detention” and (4) other detained cases.⁵¹ Immigration courts now schedule a first hearing for unaccompanied children within 21 days of the court’s receiving the case.⁵² Given the speed at which these cases progress, the expedited children’s dockets often are referred to as “rocket dockets.” Children on the rocket dockets may be provided with less time to find attorneys before immigration courts move forward with their cases—and, as a result, may be required to explain why they should not be deported without the help of an attorney. If they are unable to do so, unrepresented children may be ordered removed or required to “voluntarily” depart from the United States.⁵³

Can unaccompanied children be detained?

Yes, but special laws govern the custody of children based on child welfare standards that take the “best interests” of the child into account. Unaccompanied children must be transferred by DHS to the custody of HHS within 72 hours of apprehension, under the Homeland Security Act of 2002 and TVPRA of 2008.⁵⁴ HHS’s Office of Refugee Resettlement (ORR) then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.

Under the TVPRA of 2008, HHS is required to “promptly place” each child in its custody “in the least restrictive setting that is in the best interests of the child.”⁵⁵ As such, children in ORR care are generally housed through a network of state-licensed, ORR-funded care providers, who are tasked with providing educational, health, and case management services to the children.⁵⁶

Under international law, children “should in principle not be detained at all,” according to UNHCR.⁵⁷ Detention, if used, should only be a “measure of last resort” for the “shortest appropriate period of time,” with an overall “ethic of care.”⁵⁸ Detention has “well-documented” negative effects on children’s mental and physical development,⁵⁹ including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.⁶⁰

Children who arrive with a parent may be detained by DHS in family detention centers, described below.

Can unaccompanied children be released from custody?

Yes. ORR seeks to reunify children with family members or release them to other individual or organizational sponsors whenever possible, on the grounds that children’s best interests are served by living in a family setting. ORR also is required to ensure that individuals taking custody of the children are able to provide for their well-being.⁶¹ Federal regulations, following a court settlement in the case *Flores v. Reno*, outline the following preferences for sponsors: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child’s parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.⁶² The sponsor must agree to ensure that the child attends immigration court.

As of May 2014, ORR reported that the average length of stay in its facilities was approximately 35 days and that about 85 percent of the children served are released while their deportation proceedings are in progress.⁶³

Does the Government detain families?

Yes. The increase in families fleeing violence and arriving at the southwest border—frequently mothers with children—has reignited a debate over the appropriate treatment of families in the immigration system. Family immigration detention has a complicated and troubled history in the U.S.⁶⁴

Prior to 2006, ICE commonly detained parents and children separately. In FY 2006 appropriations language, however, Congress directed ICE to either “release families,” use “alternatives to detention

such as the Intensive Supervised Appearance Program,” or, if necessary, use “appropriate” detention space to house families together.⁶⁵ ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. But, as the Women’s Refugee Commission explained, the “Residential Center” was a “former criminal facility that still look[ed] and [felt] like a prison.”⁶⁶ The Hutto detention center became the subject of a lawsuit, a human rights investigation, multiple national and international media reports, and a national campaign to end family detention.⁶⁷ In 2009, ICE ended the use of family detention at Hutto, withdrew plans for three new family detention centers, and said that detention would be used more “thoughtfully and humanely.”⁶⁸

Yet, in the summer of 2014, in response to the increase in families fleeing violence and arriving at the southwest border, the federal government established a makeshift detention center on the grounds of the Federal Law Enforcement Training Center in Artesia, New Mexico, a remote location more than three hours’ drive from the nearest major city. According to the DHS Secretary, the detention and prompt removal of families was intended to deter others from coming to the United States.⁶⁹

Over the course of the summer and fall 2014, over hundreds of women and children were detained in Artesia. The facility was ultimately closed several months later, but the government has continued its policy of detaining women and children. Currently families are housed in three facilities: the South Texas Family Residential Center in Dilley, Texas, Karnes County Residential Center in Karnes City, Texas, and Berks Family Residential Center in Leesport, Pennsylvania. Both the Dilley and Karnes facilities are owned and operated by private prison companies. By the end of May 2015, Dilley’s capacity will be 2,400, making it by far the largest family detention center in the United States.

Family detention is rarely in the “best interests of the child,” as opposed to community-based alternatives.⁷⁰ Detaining children leads to serious mental health problems and chronic illnesses, and detaining families can have long-lasting effects on the psychological well-being of both parents and children.⁷¹

In 2014 and 2015, several detained families filed lawsuits to challenge various aspects of family detention. One case challenges the government’s policy of detaining families as a means to deter others from coming to the United States. In this case, *RILR v. Johnson*, a federal court issued a preliminary injunction to prevent the government from using deterrence as a factor in making a bond determination.⁷² In a second case, lawyers for children held in family detention facilities have claimed that the government is violating the terms of the settlement agreement in *Flores*, discussed above. This settlement established national standards for the detention, release and treatment of children detained by DHS for deportation.

Can alternatives to detention be used for families?

Yes. ICE operates two alternatives to detention (ATD) programs for adult detainees—a “full service” program with case management, supervision, and monitoring (either by GPS or telephone check-in), and a “technology-only” program with monitoring only.⁷³ According to U.S. government data, 95 percent of participants in ICE’s full service program appeared at scheduled court hearings from fiscal years 2011 to 2013.⁷⁴ Further, in FY 2012 only 4 percent were arrested by another law enforcement agency.⁷⁵ ICE’s alternatives program, as well as being more humane, is also less expensive than detention—\$10.55/day as opposed to \$158/day.⁷⁶ As to asylum seekers, a prior

U.S. government-commissioned study found that “asylum seekers do not need to be detained to appear,” and “[t]hey also do not seem to need intensive supervision.”⁷⁷ Bipartisan support has emerged for alternatives to immigration detention.⁷⁸ ICE, in early 2015, issued requests for proposals for “family case management services” for up to 300 families apiece in Baltimore/Washington, NYC/Newark, Miami, Chicago and Los Angeles.⁷⁹

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

During the summer of 2014, the Obama Administration’s response to Central American children and families arriving in the U.S. focused largely on enforcement measures, rather than humanitarian measures that had previously received legislative support, and would have been more tailored towards the vulnerable arriving population.

The Administration requested significant funding to support an “aggressive deterrence strategy” and implemented family detention and “rocket docket” for children and families. Its in-country refugee processing program has been expected to assist relatively few people. Congressional legislative proposals, at the time and since, have largely focused on rolling back procedural protections for children. That said, proposals also exist to more holistically protect children and families reaching the United States, several of which passed the Senate in 2013 as part of its comprehensive immigration reform bill.

U.S. Government Response—Administration’s and Congress’ Actions

The following table summarizes the Administration’s and Congress’ major actions since summer 2014:

Date	Who	Action Taken
June 2, 2014	President Obama	Declared “ urgent humanitarian situation ” and directed a coordinated federal response under emergency homeland security authorities. ⁸⁰
June 20, 2014	DHS	Announced intention to detain families at the Border Patrol training center in Artesia, NM. ⁸¹ Detainees arrived in Artesia around the beginning of July. ⁸²
June 30, 2014	President Obama	Sent letter to Congressional leaders declaring intent to seek emergency funding for “an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers.” ⁸³
July 8, 2014	President Obama	Sent letter to Speaker Boehner (attaching OMB analysis) requesting \$3.7 billion in emergency appropriations. ⁸⁴ Request included: ⁸⁵ <ul style="list-style-type: none"> • HHS: \$1.8 billion for care of unaccompanied children • DHS-ICE: \$1.1 billion (incl. \$879 million for detention and removal) • DHS-CBP: \$432 million (incl. \$364 million for additional apprehensions) • State: \$295 million in Central American foreign aid • DOJ-EOIR: \$45 million for additional immigration judges, \$15 million to provide lawyers for children.
July 9, 2014	DOJ-EOIR	Immigration courts prioritized cases of recent border crossers who are unaccompanied children, families in detention, and families on alternatives to detention. ⁸⁶

July 11, 2014	DHS	Modified contract with Karnes County, TX to detain families at ICE's existing detention facility for adults there. ⁸⁷
July 31, 2014	Senate	Bill to provide \$2.7 billion in emergency appropriations failed in procedural vote. ⁸⁸
August 1, 2014	House of	<ul style="list-style-type: none"> • Passed legislation to repeal DACA.⁸⁹ • Also passed legislation to provide \$694 million in emergency appropriations,⁹⁰ and the "Secure the Southwest Border Act" to roll back procedural protections for Central American unaccompanied children.⁹¹
August 1, 2014	DHS	<ul style="list-style-type: none"> • Announced intent to transfer \$405 million from other DHS programs to address humanitarian challenge. Congressional Appropriations Committees finished approving transfers to ICE on August 6.⁹² • ICE began to detain families at Karnes, TX detention facility.⁹³
September 22, 2014	DHS	Agreed to pay town of Eloy, AZ to modify its existing agreement with ICE so that the private company CCA can build a new family detention facility in Dilley, TX. ⁹⁴ DHS publicly confirmed the opening of Dilley the next day. ⁹⁵
November 18, 2014	DHS	Announced ICE will close the Artesia, NM family detention facility and transfer the detainees to the new Dilley, TX family detention facility. ⁹⁶
December 3, 2014	State Dep't	Launched in-country refugee processing program in El Salvador, Guatemala, and Honduras. ⁹⁷
December 16, 2014	Congress and President Obama	FY 2015 "Cromnibus" appropriations bill, signed by President, provided: ⁹⁸ <ul style="list-style-type: none"> • HHS: \$80 million increase to care for unaccompanied children⁹⁹ • State: \$260 million to implement a "prevention and response strategy" in Central America¹⁰⁰ • DOJ-EOIR: \$35 million increase for immigration courts¹⁰¹ • Education: \$14 million to assist state and local educational agencies experiencing increases in immigrant youth.¹⁰²
February 2, 2015	President Obama and DHS	The Administration's request for DHS funding for FY 2016 included: ¹⁰³ <ul style="list-style-type: none"> • DHS-ICE: \$893 million for salaries and expenses over FY '15 request, incl. \$615 million increase for detention (\$435 million for family detention) • DHS-CBP: \$743 million increase for salaries and expenses over FY '15 request.
March 4, 2015	Congress and President Obama	FY 2015 DHS Appropriations bill, signed by President, provided: ¹⁰⁴ <ul style="list-style-type: none"> • DHS-ICE: \$703 million increase for salaries and expenses, incl. \$539 million increase for detention (\$362 million for family detention)¹⁰⁵ • DHS-CBP: \$314 million increase for salaries and expenses over FY '14.
May 27 and June 1, 2015	House and Senate	136 Representatives and 33 Senators wrote letters asking DHS Secretary Johnson to end family detention. ¹⁰⁶

Recent Legislative Proposals

Since the summer of 2014, most legislative proposals have focused on rolling back the procedural protections that the TVPRA affords to Central American unaccompanied children. For example, the House's 2014 "Secure the Southwest Border Act" would have amended the TVPRA to (1) treat children from non-contiguous countries similarly to Mexican and Canadian children, but (2) strike the current requirement that the child be able to make an "independent decision to withdraw the child's application for admission" before proceeding with voluntary return; (3) require those children who may have been trafficked or fear return [or require the remaining children] to appear before an immigration judge for a hearing within 14 days of screening; and (4) impose mandatory detention until that hearing.¹⁰⁷

Other proposals have offered variations on these themes. For example, the "Protection of Children Act of 2015," which the House Judiciary Committee moved forward on March 4, 2015, would enact the above four changes—but additionally, expand from 72 hours to 30 days the time limit for CBP to transfer remaining unaccompanied children to HHS custody.¹⁰⁸ That bill, among others, also proposes restricting HHS' ability to provide counsel to unaccompanied children.¹⁰⁹ Or, the "HUMANE Act," sponsored by Sen. John Cornyn (R-TX) and Rep. Henry Cuellar (D-TX) in 2014,¹¹⁰ would have gone further to place children with a fear of return into a new 7-day expedited process, during which the child would be required to prove her eligibility for immigration relief to an immigration judge while mandatorily detained, before moving on to a standard removal proceeding in immigration court.¹¹¹

Proposed Solutions

Before summer 2014, bipartisan support existed for legislative reforms to more holistically protect children and families reaching the United States. Since then, NGOs and advocacy groups have reiterated support for those reforms, as well as for aid to address root causes of child and family migration from Central America.

These reforms include:

Incorporating a "best interests of the child" standard into all decision-making, not just custody decisions.¹¹²

Bipartisan immigration reform legislation which passed the Senate in 2013 (S. 744) would have required the Border Patrol, in making repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."¹¹³ Amendment 1340 to S. 744, which was not voted on as part of a compromise, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.¹¹⁴ Organizations have also recommended adopting more child-specific procedures.¹¹⁵

Child welfare screening to replace or augment Border Patrol screening. Border Patrol agents are currently tasked with screening Mexican and Canadian children for trafficking and persecution and preventing their return to persecutors or abusers. NGOs have uniformly questioned Border Patrol's ability to do so adequately,¹¹⁶ and reform proposals have ranged from improved training for CBP officers (included in S. 744),¹¹⁷ to pairing CBP screeners with child welfare experts (also in S. 744)¹¹⁸ or NGO representatives,¹¹⁹ to replacing CBP screeners with USCIS asylum officers.¹²⁰ CBP Commissioner Kerlikowske recently expressed openness towards similar proposals.¹²¹

Due process protections and resources. NGOs have advocated for a system that provides procedural protections and resources to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.¹²² Proposals include appointed counsel,¹²³ additional resources to legal orientation programs¹²⁴ and additional resources to backlogged immigration courts (all included in S. 744).¹²⁵ More recent proposals also include additional U.S. Citizenship and Immigration Services (USCIS) asylum officers,¹²⁶ and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.¹²⁷

Detention reforms. NGOs have proposed that children be detained as little as possible,¹²⁸ released to families or other sponsors whenever appropriate,¹²⁹ and if detained, supervised in a community-based setting¹³⁰ because of detention's severe impact on children.¹³¹ At least one Senator has promised legislation to end the detention of asylum-seeking families if no family member poses a threat to the public or a flight risk.¹³² Along these lines, organizations and legislators have recommended improving detention conditions,¹³³ and expanding alternatives to detention (as S. 744 proposed),¹³⁴ by reallocating detention funding to those cheaper alternatives.¹³⁵

Aid to sending countries. NGOs have proposed aid to sending countries and Mexico, to invest in systems that protect and care for children, help youth live productive lives, and ultimately reduce violence and address root causes of flight.¹³⁶ In January 2015, the White House announced it was seeking \$1 billion in Central American assistance in its FY 2016 budget.¹³⁷

¹ 6 U.S.C. § 279(g) (2012), <https://www.law.cornell.edu/uscode/text/6/279>.

² U.S. Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” May 12, 2015, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 2014, http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf; Elizabeth Kennedy, *No Childhood Here: Why Central American Children Are Fleeing Their Homes*, American Immigration Council, July 1, 2014, <http://www.immigrationpolicy.org/perspectives/no-childhood-here-why-central-american-children-are-fleeing-their-homes>.

⁷ Assessment Capacities Project, “Other Situations of Violence in the Northern Triangle of Central America: Invisible Borders, Vicious Spirals, and the Normalisation of Terror,” May 2014, http://acaps.org/resourcescat/download/other_situations_of_violence_in_the_northern_triangle_of_central_america_executive_summary_may_2014/230.

According to the Observatorio de la Violencia de la Universidad Nacional Autónoma, in 2014 the murder rate in Honduras dropped to 68 per 100,000. While still one of the world’s highest homicide rates, this is lower than the rate for Honduras reported in the UNDOC study. HispanTV Nexa Latino, “Disminuye en Honduras tasa de homicidios en 2014,” March 26, 2015, <http://www.hispantv.com/newsdetail/Sociedad/25421/Disminuye-en-Honduras-tasa-de-homicidios-en-2014>.

⁸ Professor Tom Wong, “Statistical Analysis Shows that Violence, Not U.S. Immigration Policies, Is Behind the Surge of Unaccompanied Children Crossing the Border,” University of California-San Diego Center for Comparative Immigration Studies, July 11, 2014, <http://ccis.ucsd.edu/wp-content/uploads/Wong-UACs1.pdf>, p. 2.

⁹ Kennedy, 2014, note 6, p. 2, 6.

¹⁰ UNHCR, *Children on the Run*, 2014, note 6, p. 6.

¹¹ Kennedy, 2014, note 6, p. 4.

¹² Molly Hennessy-Fiske, “On the Texas border, patrol chief sees younger faces,” *LA Times*, June 27, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-texas-border-patrol-20140627-story.html>.

¹³ U.S. Border Patrol, “Border Patrol Agent Staffing by Fiscal Year (as of September 20, 2014),” accessed May 20, 2015, http://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf, p. 3.

¹⁴ U.S. Border Patrol, “Enacted Border Patrol Program Budget by Fiscal Year,” accessed May 20, 2015, <http://www.cbp.gov/sites/default/files/documents/BP%20Budget%20>

History%201990-2014_0.pdf.

¹⁵ Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry*, Congressional Research Service, May 3, 2013, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=146454>, pp. 6, 17-18.

¹⁶ UNHCR, *Convention and Protocol Related to Refugees*, (Text of the 1951 Convention Relating to the Status of Refugees; Text of the 1967 Protocol Relating to the Status of Refugees), 2010, <http://www.unhcr.org/3b66c2aa10.html>; United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1985, <http://www.hrweb.org/legal/cat.html>.

¹⁷ United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1985, <http://www.hrweb.org/legal/cat.html>.

¹⁸ UNHCR, *Children on the Run*, March 2014, note 6, p. 6.

¹⁹ Vera Institute of Justice, *The Flow of Unaccompanied Minors Through the Immigration System*, 2012, <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>, pp. 24-25.

²⁰ Lisa Seghetti, Alison Siskin, and Ruth Ellen Wasem, “Unaccompanied Alien Children: An Overview,” Congressional Research Service, June 13, 2014 [hereinafter “CRS, UAC Overview”], <http://fas.org/sgp/crs/homesec/R43599.pdf>, p. 4.

²¹ William Wilberforce Trafficking Victims Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also Polaris Project, “Current Federal Laws,” accessed May 12, 2014, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/current-federal-laws>.

²² 8 U.S.C. § 1232 (2013), <https://www.law.cornell.edu/uscode/text/8/1232>. See also Deborah Lee et. al., “Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Practice Advisory,” February 19, 2009, pp. 2-5, http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf.

²³ Pub. L. No. 110-457, 122 Stat. 5044, § 235(d)(7)(A), <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also Deborah Lee et. al., 2009, note 22, p. 9.

²⁴ Pub. L. No. 110-457, 122 Stat. 5079, sec. 235(c)(5), <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>; 8 U.S.C. § 1232(c)(5).

²⁵ Clare Ribando Seelke, “Mexico: Background and U.S. Relations,” Congressional Research Service, December 16, 2014, <https://www.fas.org/sgp/crs/row/R42917.pdf>, p. 15.

The U.S. government has also historically supported Mexico’s border security efforts through donated helicopters, patrol boats, intelligence sharing, and “training on interdictions, operations of checkpoints, and capacity building” by CBP. See also Jesuit Refugee Service & Washington Office on Latin America, “U.S. Support and Assistance for Interdictions, Interceptions, and Border Security Measures in Mexico, Honduras, and Guatemala Undermine Access to International Protection,” 2014, <http://www.jesuit.org/>

[assets/Publications/File/US_Border_Externalization_2014_v1.pdf](#), p. 7.

²⁶ Rodrigo Dominguez Villegas, “Central American Migrants and ‘Le Bestia’: The Route, Dangers, and Government Responses,” Migration Policy Institute, September 10, 2014, http://www.migrationpolicy.org/print/14816#.VKv_yCvF98E.

²⁷ Ibid.

²⁸ Seelke 2014, note 25, p. 23.

²⁹ Ana Gonzalez-Barrera and Jens Manuel Krogstad, “With help from Mexico, number of child migrants crossing U.S. border falls,” Pew Research Center, April 28, 2015, <http://www.pewresearch.org/fact-tank/2015/04/28/child-migrants-border/>.

³⁰ Georgetown Law Human Rights Institute, “The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children’s Access to International Protection,” April 13, 2015, http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/HRI-Fact-Finding-Report-Stemming-the-Tide-Web-PDF_English.pdf, p. 2.

³¹ Ibid., pp. 35-37, 48-50.

³² Ibid., p. 25.

³³ U.S. Department of State, “In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States,” November 14, 2014, <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm>.

³⁴ American Immigration Council, “Refugees: A Fact Sheet,” December 2014, <http://immigrationpolicy.org/just-facts/refugees-fact-sheet>.

³⁵ Eleanor Acer, “In-Country Refugee Processing for At-Risk Children in Central America: Potential Benefits and Risks,” *Human Rights First Blog*, October 3, 2014, <http://www.humanrightsfirst.org/blog/country-refugee-processing-risk-children-central-america-potential-benefits-and-risks>.

³⁶ 8 U.S.C. § 1229a (2012), <https://www.law.cornell.edu/uscode/text/8/1229a>.

³⁷ Mark Noferi, “Latest Numbers Show Record-Breaking Deportations in 2013,” *Immigration Impact*, October 6, 2014, <http://immigrationimpact.com/2014/10/06/latest-numbers-show-record-breaking-deportations-in-2013/>.

³⁸ 8 U.S.C. § 1225(b)(1)(A)(i) (2012) (expedited removal provisions), <https://www.law.cornell.edu/uscode/text/8/1225>; § 1182(a)(6)(C) (fraud and misrepresentation provisions), § 1182(a)(7)(A)(i)(I) (insufficient documents provisions), <https://www.law.cornell.edu/uscode/text/8/1182>.

³⁹ 8 U.S.C. § 1231(a)(5) (2012), <https://www.law.cornell.edu/uscode/text/8/1231>; 8 C.F.R. § 1241.8 (2014), <https://www.law.cornell.edu/cfr/text/8/1241.8>.

⁴⁰ CRS, UAC Overview, note 20, p. 4.

⁴¹ Pub. L. No. 110-457, 122 Stat. 5044.

⁴² CRS, UAC Overview, note 20, p. 4.

⁴³ Appleseed, *Letter to Congressional Research Service* (on file with American Immigration Council), May 23, 2014 [hereinafter Appleseed 2014], p. 2; Appleseed, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>, p. 6, 32; Women’s Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009), <https://womensrefugeecommission.org/component/zdocs/document/196-halfway-home-unaccompanied-children-in-immigration-custody>.

⁴⁴ Appleseed 2014, note 43, p. 4.

⁴⁵ Ibid.

⁴⁶ 8 U.S.C. § 1362 (2012), <https://www.law.cornell.edu/uscode/text/8/1362>.

⁴⁷ 8 U.S.C. § 1232(c)(5) (2013), <https://www.law.cornell.edu/uscode/text/8/1232>.

⁴⁸ Dep’t of Justice Office of Public Affairs, “Justice Department and CNCS Announce \$1.8 Million in Grants to Enhance Immigration Court Proceedings and Provide Legal Assistance to Unaccompanied Children,” Sept. 12, 2014, <http://www.justice.gov/opa/pr/justice-department-and-cnsc-announce-18-million-grants-enhance-immigration-court-proceedings>.

⁴⁹ “Announcement of the Award of Two Single-Source Program Expansion Supplement Grants To Support Legal Services to Refugees Under the Unaccompanied Alien Children’s Program,” 79 Fed. Reg. 62159, Oct. 16, 2014, <https://federalregister.gov/a/2014-24555>.

⁵⁰ Transactional Records Access Clearinghouse, “Juveniles—Immigration Court Deportation Proceedings, Court Data through April 2015,” accessed June 2, 2015, <http://trac.syr.edu/phptools/immigration/juvenile/>.

⁵¹ Department of Justice, “EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/iso/opa/resources/214201479112444959.pdf>; Department of Justice, “EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us>.

⁵² Brian M. O’Leary, “Docketing Practices Relating to Unaccompanied Children Cases in Light of New Priorities,” Memorandum from Brian M. O’Leary, Chief Immigration Judge to All Immigration Judges, Department of Justice, Executive Office for Immigration Review, September 14, 2014, <http://www.justice.gov/sites/default/files/eoir/legacy/2014/09/30/Docketing-Practices-Related-to-UACs-Sept2014.pdf>, p. 1.

⁵³ Kristin Macleod-Ball, “Unrepresented Children Still Being Fast-Track Through Immigration Hearings,” *Immigration Impact*, February 6, 2015, <http://immigrationimpact.com/2015/02/06/unrepresented-children-still-fast-tracked-immigration-hearings/>.

⁵⁴ 8 U.S.C. § 1232(b)(3) (2013).

⁵⁵ 8 U.S.C. § 1232(c)(2).

⁵⁶ U.S. Department of Human Services, Administration for Children and Families, “Fact Sheet,” May 2014, <https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied-childrens-services-fact-sheet.pdf>.

⁵⁷ UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <http://www.unhcr.org/505b10ee9.html>, p. 34.

⁵⁸ UNHCR *Detention Guidelines* 2012, note 57, p. 35.

⁵⁹ *Ibid.*

⁶⁰ PHR (Physicians for Human Rights) *Punishment before Justice: Indefinite Detention in the US*, 2011, https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf, p. 2, 11; Alice Farmer, “The impact of immigration detention on children,” *Forced Migration Review*, September 2013, <http://www.fmreview.org/detention/farmer>.

⁶¹ 8 U.S.C. § 1232(c)(3).

⁶² 8 C.F.R. § 1236.3(b) (2014), <https://www.law.cornell.edu/cfr/text/8/1236.3>; see also CRS, UAC Overview, note 20, p. 8.

⁶³ U.S. Department of Human Services, Administration for Children and Families, 2014, note 56.

⁶⁴ Women’s Refugee Commission (WRC) and Lutheran Immigration and Refugee Service (LIRS), *Locking Up Family Values: The Detention of Immigrant Families*, 2007, http://www.womensrefugeecommission.org/component/docman/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families-locking-up-family-values-the-detention-of-immigrant-families?q=locking+family, p. 2.

⁶⁵ *Ibid.*, p. 6.

⁶⁶ *Ibid.*, p. 2.

⁶⁷ Margaret Talbot, “The Lost Children,” *The New Yorker*, March 3, 2008, http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_talbot?currentPage=all.

⁶⁸ Nina Bernstein, “U.S. to Reform Policy on Detention for Immigrants,” *N.Y. Times*, Aug. 5, 2009, <http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&r=0>.

⁶⁹ Jeh Johnson, Written Testimony, “Written testimony of DHS Secretary Jeh Johnson for a Senate Committee on Appropriations hearing titled ‘Review of the President’s Emergency Supplemental Request,’” July 10, 2014 (citing government’s “aggressive deterrence strategy,” and stating “Our message is clear to those who try to illegally cross our borders: you will be sent back home”), <https://www.dhs.gov/news/2014/07/10/written-testimony-dhs-secretary-jeh-johnson-senate-committee-appropriations-hearing>.

⁷⁰ Human Rights Watch, “Trauma in Family Immigration Detention,” May 15, 2015, <http://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention>.

⁷¹ Declaration of Luis H. Zayas, *RILR v. Johnson*, No. 15-cv-11, Dkt. #38-7 (D.D.C. April 17, 2015), https://www.aclu.org/sites/default/files/field_document/38_2015.4.17_declaration_of_luis_zayas.pdf, p. 2-3.

⁷² *R. I. L-R. v. Johnson*, No. 15-cv-11, Memorandum Opinion, Dkt. #33 (D.D.C. Feb. 20, 2015), <https://www.aclu.org/legal-document/rilr-v-johnson-memorandum-opinion>; *R. I. L-R. v. Johnson*, No. 15-cv-11, Order, Dkt. #32 (D.D.C. Feb. 20, 2015), <https://www.aclu.org/legal-document/rilr-v-johnson-order>.

⁷³ U.S. Government Accountability Office (GAO), “Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness,” GAO-15-26, November 13, 2014, <http://www.gao.gov/products/GAO-15-26>, pp. 9-10. In the full-service program, 52 percent are monitored by telephone and 48 percent by GPS, while in the “technology-only” program, 97 percent are monitored by telephone and 3 percent by GPS. *Ibid.*, p. 26.

⁷⁴ *Ibid.*, p. 30-31.

⁷⁵ U.S. Department of Homeland Security, Office of Inspector General, “U.S. Immigration and Customs Enforcement Alternatives to Detention (Revised),” OIG-15-22, Feb. 4, 2015, https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf, pp. 6-7, 23.

⁷⁶ *Ibid.*, p. 14. See also National Immigration Forum, “The Math of Immigration Detention,” August 2013 (calculating potential savings from use of alternatives to detention), <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

⁷⁷ Vera Institute, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program 2000*, http://www.vera.org/sites/default/files/resources/downloads/INS_finalreport.pdf, p. 31. The Vera study showed 84 percent compliance by asylum seekers even with minimal supervision without potential redetention, and 78 percent compliance by those simply released without supervision. *Ibid.*

⁷⁸ Council on Foreign Relations, Jeb Bush and Thomas F. McLarty III, Chairs, *Independent Task Force Report No. 63, U.S. Immigration Policy*, July 2009, http://www.cfr.org/immigration/us-immigration-policy/p20030?breadcrumb=/bios/2472/edward_alden?page=2, pp. 106-107; Human Rights First, “Elisa Massimino and Grover Norquist on Immigration Detention,” May 2, 2013, <https://www.youtube.com/watch?v=rOGc7PWdhWg>.

⁷⁹ “Family Case Management Services,” FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=ce539b68d84cd9aa9f59ea99c906b56a&tab=core&_cview=1 (Baltimore/Washington); “Family Case Management Services—NY,” FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=ec67398fe25f07d71361dc09c11a2394&tab=core&_cview=1 (New York City and Newark); “Family Case Management Services—Miami,” FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=a9cc4a72fd8a46d5165d40da4a1ec68b&tab=core&_cview=1; “Family Case Management Services—CHI,” FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=3278335b5d772d1beaea5b237590778a&tab=core&_cview=1 (Chicago); “Family Case Management Services—LA,” FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=8009f850fc1b7f29f5915d3da81f72d2&tab=core&_cview=1 (Los Angeles).

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⁸¹ Alicia Caldwell, “US to open immigrant family detention center in NM,” *Associated Press*, June 20, 2014, <http://news.yahoo.com/us-open-immigrant-family-detention-center-nm-002246367--politics.html>.

⁸² U.S. DHS Secretary Jeh Johnson, “Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations,” July 10, 2014, <http://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations>.

⁸³ Barack Obama, Letter, “Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation’s Southwest Border,” June 30, 2014, [hereinafter “June 30 Letter to Congress”], <https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.

⁸⁴ Barack Obama, Letter, July 8, 2014, [hereinafter “July 8 Letter to Speaker”], p. 1, https://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf.

⁸⁵ *Ibid.*, p. 5-6.

⁸⁶ Department of Justice, “EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/iso/opa/resources/214201479112444959.pdf>; Department of Justice, “EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us>.

⁸⁷ U.S. DHS, “South Texas ICE Detention Facility to House Adults With Children,” July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

⁸⁸ The bill did not include DACA repeal or rollbacks of procedural protections. “Emergency Supplemental Appropriations Act, 2014,” S. 2648, 113th Cong., <https://www.congress.gov/bill/113th-congress/senate-bill/2648>. This bill appropriated \$1.2 billion to HHS, \$763 million to ICE (with no limit on detention funding), \$343 million to CBP, over \$60 million for immigration judges, \$50 million for lawyers for unaccompanied children, \$212.5 million to the President’s “Economic Support Fund” to address root causes of Central American migration, and \$85 million to the Department of State for “International Narcotics Control and Law Enforcement.” U.S. Senate Committee on Appropriations, “Chairwoman Mikulski Releases Summary of Emergency Supplemental Funding Bill,” July 23, 2014, <http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill>. The bill died in a cloture vote, with 50 Senators voting to continue and 44 opposed. Democratic Sens. Mary Landrieu of Louisiana and Joe Manchin of West Virginia joined with Republicans in opposing the bill. Elise Foley, “Senate Fails on Border Control Funding,” *Huffington Post*, July 31, 2014, at http://www.huffingtonpost.com/2014/07/31/senate-border-crisis_n_5639727.html.

⁸⁹ “An Act to prohibit certain actions with respect to deferred action for aliens . . .,” H.R. 5272, 113th Cong. (2014), <https://www.congress.gov/bill/113th-congress/house-bill/5272>. The bill passed 216 to 192, largely along party lines. “Four Democrats -- Reps. John Barrow (D-Ga.), Nick Rahall (D-W.Va.) Mike McIntyre (D-N.C.) and Collin Peterson (D-Minn.) -- voted with Republicans. A larger group of 11 Republicans voted with Democrats against the bill: Reps. Jeff Denham (R-Calif.), David Valadao (R-Calif.), Cory Gardner (R-Colo.), Mike Coffman (R-Colo.), Ileana Ros-Lehtinen (R-Fla.), Mario Diaz Balaré (R-Fla.), Dave Reichert (R-Wash.), Adam Kinzinger (R-Ill.), Joe Heck (R-Nev.), Mark Amodei (R-Nev.) and Fred Upton (R-Mich.).” Elise Foley, “House Votes To Strip Deportation Relief From Dreamers,” *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-bill-daca_n_5643287.html.

⁹⁰ “An Act making supplemental appropriations . . .,” H.R. 5230, 113th Cong., <https://www.congress.gov/bill/113th-congress/house-bill/5230>. That bill appropriated \$197 million to HHS, \$334 million to ICE (\$262 million for detention), \$71 million to CBP, \$70M to various National Guard units, \$40 million in Central American aid, and \$22 million for temporary immigration judges and video technology. *Ibid.*, Division A, “Supplemental Appropriations and Rescissions.” The bill also expanded waivers of other federal laws (such as environmental laws) for CBP activities on federal land, but prohibited placing unaccompanied alien children at military installations if it would “interfere with activities of the Armed Forces.” *Ibid.*, Division B, Title III. The bill passed 223 to 189. One Democrat, Rep. Henry Cuellar of Texas, joined Republicans voting for the bill, while four Republicans joined Democrats in opposition: Reps. Stephen Fincher of Tennessee, Paul Broun of Georgia, Thomas Massie of Kentucky and Walter Jones of North Carolina. Elise Foley, “House Passes Dead-On-Arrival Bill to Address Border Crisis,” *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-border-bill_n_5643259.html.

⁹¹ “Secure the Southwest Border Act of 2014,” H.R. 5230, 113th Cong., Division B, Title I, at <https://www.congress.gov/bill/113th-congress/house-bill/5230>. Other sections in this Title would have prioritized removal hearings for unaccompanied children for those children whom had “most recently arrived” (i.e., “last in, first out”) (Sec. 102); directed EOIR to designate up to 40 temporary immigration judges for the duration of the humanitarian crisis (Sec. 103); tightened screenings for custodians of unaccompanied children to require “a mandatory biometric criminal history check” based on fingerprints, and prohibit as custodians whom had been convicted of a sex offense or human trafficking (Sec. 104); and unrelated to unaccompanied children, barred from asylum any individual who had committed “any drug-related offense punishable by a term of imprisonment greater than 1 year” before arriving in the United States (Sec. 105).

⁹² Mark Felsenthal, “U.S. administration transferring \$405 million for border operations,” *Reuters* (Aug. 1, 2014) (DHS notified Congress on August 1 that it would “reprogram” funds), at <http://news.yahoo.com/u-administration-transferring-405-million-border-operations-024645833.html>. Ultimately, DHS reprogrammed \$333.8 million from other DHS agencies into ICE—\$267.6 million from the Federal Emergency Management Agency’s (FEMA’s) disaster relief fund, \$31.5 million from the Coast Guard, and \$34.7 million from the Transportation Security Administration (TSA) into (1) ICE’s Custody Operations account (\$261.1 million), which operates ICE detention, and (2) ICE’s Transportation and Removal Programs account (\$72.7 million), which operates planes that deport individuals. U.S. DHS, “Budget-in-Brief Fiscal Year 2016,” p. 54, February 5, 2015, <http://www.dhs.gov/publication/fy-2016-budget-brief>. The Senate Appropriations Committee approved that transfer on August 4, and the House Appropriations Committee approved that transfer on August 6. *Ibid.* *Reuters* also reported on August 1 that CBP would internally move \$70.5 million from other activities to “meet increased demands from the border situation.” It is not clear from public budget documents if and from where that transfer occurred.

⁹³ U.S. DHS, “South Texas ICE Detention Facility to House Adults With Children,” July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

⁹⁴ John Burnett, “How Will A Small Town In Arizona Manage An ICE Facility In Texas?,” *NPR*, Oct. 28, 2014, <http://www.npr.org/2014/10/28/359411980/how-will-a-small-town-in-arizona-manage-an-ice-facility-in-texas>; “City of Eloy Request for Council Action,” requested Sept. 17, 2014 (obtained through the Freedom of Information Act, on file with American Immigration Council).

⁹⁵ Daniel González, “Feds detaining migrant families despite criticism,”

Arizona Republic, Sept. 24, 2014, <http://www.azcentral.com/story/news/politics/immigration/2014/09/24/migrant-family-detentions-expanded-despite-criticism/16139209/>.

⁹⁶ Amanda Peterson Beadle, “DHS Announces the Transfer of Immigrant Families from Artesia to New Facility,” *Immigration Impact*, Nov. 18, 2014, <http://immigrationimpact.com/2014/11/18/dhs-announces-transfer-immigrant-families-artesia-new-facility/#sthash.6kRqlyWw.dpuf>.

⁹⁷ U.S. Department of State, “Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States,” Dec. 3, 2014, <http://www.state.gov/r/pa/prs/ps/2014/12/234655.htm>.

⁹⁸ “Consolidated and Further Continuing Appropriations Act, 2015,” H.R. 83, Pub. L. No. 113-235, 113th Congress, Dec. 16, 2014, <https://www.congress.gov/bill/113th-congress/house-bill/83/text>.

⁹⁹ *Ibid.*, Division G, Title II, “Administration for Children and Families, Refugee and Entrant Assistance”; see also U.S. Senate Committee on Appropriations, “Summary: Fiscal Year 2015 Omnibus Appropriations Bill,” Dec. 9, 2014, p. 34 [hereinafter “Senate Omnibus Summary”], <http://www.appropriations.senate.gov/newsroom/summary-fiscal-year-2015-omnibus-appropriations-bill>.

¹⁰⁰ *Ibid.*, Division J, Title VII, Sec. 7045(a) (“Central American Migration Prevention and Response,”) and (d) “Guatemala,” (f) “Honduras,” and (g) “Mexico.” See also Senate Omnibus Summary, note 99, p. 53. Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83, Cong. Record H9307-H10003, at p. H9951-52, H9956-57 (Dec. 11, 2014) [hereinafter “Omnibus Explanatory Statement”], available at <https://www.congress.gov/crc/2014/12/11/CREC-2014-12-11-pt2-PgH9307.pdf>.

¹⁰¹ *Ibid.*, Division B, Title II, “Administrative Review and Appeals.” See also U.S. DOJ, “Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2015 Budget Request At a Glance,” accessed May 31, 2015, p. 1-2 (requesting \$35 million increase for FY 2015, from \$312.2 million to \$347.2 million), <http://www.justice.gov/sites/default/files/imo/legacy/2014/07/09/eoir.pdf>; Omnibus Explanatory Statement, note 100, p. H9345. The Explanatory Statement states, “The agreement includes funding for 35 new Immigration Judge Teams Allowing EOIR to adjudicate up to 39,000 more cases annually.” *Ibid.* The Explanatory Statement also provides generally supportive language regarding legal orientation programs and lawyers for children, although it does not provide specific funding amounts. *Ibid.* (“Within the amounts provided, EOIR shall take steps as specified in the House and Senate reports to expand adjudication capacity, enhance the Legal Orientation Program, improve court efficiency and better serve vulnerable populations such as children through continuation of fiscal year 2014 pilot programs.”).

¹⁰² *Ibid.*, Division G, Title III, “English Language Acquisition.”

¹⁰³ U.S. DHS, “Congressional Budget Justification FY 2016,” Feb. 2, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>.

¹⁰⁴ Department of Homeland Security Appropriations Act, 2015, H.R. 240, Pub. L. No. 114-4, Mar. 4, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/240/text>. See also Mark Noferi, “DHS Funding Controversy Over, But Enforcement-First Approach Remains,” *Immigration Impact*, Mar. 6, 2015, <http://immigrationimpact.com/2015/03/06/dhs-funding-controversy-enforcement-first-approach-remains/>.

¹⁰⁵ Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding H.R. 240, Department of Homeland Security Appropriations Act, 2015, Jan. 15, 2015, <http://docs.house.gov/billsthisweek/20150112/114-HR240-ES.pdf>, pp. 25-26.

¹⁰⁶ Roque Planas, “House Democrats Tell Obama Administration to End Family Detention,” *Huffington Post*, May 27, 2015, http://www.huffingtonpost.com/2015/05/27/democrats-family-detention_n_7453008.html; Elise Foley, “Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On,” *Huffington Post*, June 2, 2015, http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495282.html.

¹⁰⁷ “Secure the Southwest Border Act of 2014,” note 91, Sec. 101, amending U.S.C. § 1232(a)(2), (5).

¹⁰⁸ “Protection of Children Act of 2015,” H.R. 1149, 114th Cong., Sec. 2, <https://www.congress.gov/bill/114th-congress/house-bill/1149/text>.

¹⁰⁹ *Ibid.*, Sec. 2(a)(3)(b), amending 8 U.S.C. § 1132(c)(5), to change the statutory direction to HHS from ensuring that children “have counsel” to “have access to counsel” (emphasis added), and clarifying that such access will be “at no expense to the Government.” See also “Asylum Reform and Border Protection Act of 2015,” H.R. 1153, 114th Cong., Sec. 2 (“Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in removal proceedings”), <https://www.congress.gov/bill/114th-congress/house-bill/1153/text>.

¹¹⁰ “Helping Unaccompanied Minors and Alleviating National Emergency Act” (HUMAN Act), S. 2611, 113th Cong., <https://www.congress.gov/bill/113th-congress/senate-bill/2611/text>.

¹¹¹ *Ibid.* at Secs. 101(1)-(2), 102.

¹¹² The “best interests of the child” standard is internationally recognized. In the U.S. child welfare system, it applies special importance to “family integrity, health, safety, protection of the child, and timely placement.” The United States Conference of Catholic Bishops (USCCB) has thus recommended a “transnational family approach,” with a holistic assessment of all family members for potential reunification, performed by child welfare professionals. United States Conference of Catholic Bishops (USCCB), Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee, June 25, 2014, [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf, p. 12.

¹¹³ “Border Security, Economic Opportunity, and Immigration Modernization Act,” S. 744, 113th Cong., Sec. 1115(b)(1)(B), <http://www.lawandsoftware.com/bseioima/bseioima-senate-1115.html>. If repatriation occurs, the ABA first recommends screening by a legal advocate, and the involvement of a formal intercountry child welfare agency. James Silkenat, President, American Bar Association, Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014, [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/unacategorized/GAO/2014june25_unaccompaniedalienminors_t_authcheckdam.pdf, p. 3.

¹¹⁴ S. 744, 113th Cong., Amt. 1340, <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1340/text>. See also The Young Center for Immigrant Children’s Rights, <http://theyoungcenter.org/news/historic-senate-bill-protecting->

¹¹⁵ USCCB and others have thus recommended procedures reflecting this paradigm—an appointed lawyer and child advocate in the process, repatriation only after screening by a child welfare advocate, the development of child-appropriate asylum procedures, and separate children's dockets in immigration court, with specialized training for judges. USCCB HJC Testimony, note 112, p. 11-12; National Immigrant Justice Center (NIJC), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014 [hereinafter NIJC HJC Statement], <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf>, p. 8. S. 744 would also have instituted a multi-year program to ensure "safe and sustainable repatriation." S. 744, 113th Cong., Sec. 3612 (j), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>.

¹¹⁶ Appleseed, *Children at the Border*, 2011, note 43, p. 6, 32. As one organization put it, children "do not divulge their complex histories of abuse and neglect during a first meeting with strangers," let alone "armed strangers in uniform." Center for Refugee and Gender Studies, *Calling on President Obama to Protect Child Migrants*, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), <http://cgrs.uchastings.edu/our-work/june-2014-policy-statement-children>. Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, "Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers. . . . That's not our job." David Nakamura, "Border agents decry 'Diaper Changing, Burrito Wrapping' with influx of children," *Washington Post*, June 20, 2014, http://www.washingtonpost.com/politics/border-agents-decry-diaper-changing-burrito-wrapping-with-influx-of-children/2014/06/20/1a6b6714-f579-11e3-8aa9-dad2ec039789_story.html.

¹¹⁷ S. 744, 113th Cong., Sec. 3611 (requiring training by child welfare professionals of CBP officials "likely to come into contact with unaccompanied alien children"), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3611.html>; Sec. 1115(c) (requiring training on preserving children's best interests), <http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>; see also Women's Refugee Commission, *Halfway Home*, Feb. 2009, note 43, p. 2; American Immigration Lawyers Association (AILA), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014 [hereinafter AILA HJC Statement], <http://www.aila.org/content/default.aspx?docid=49015>, p. 6.

¹¹⁸ "Child Trafficking Victims Prevention Act," S. 744, 113th Cong., Sec. 3612(d), (e), (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>; USCCB HJC Testimony, note 112, p. 10.

¹¹⁹ Lutheran Immigration and Refugee Service (LIRS), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors," June 25, 2014, p. 2 [hereinafter LIRS HJC Statement] (on file with American Immigration Council).

¹²⁰ Appleseed, *Children at the Border*, 2011, note 43, p. 6.

¹²¹ Mark Noferi, "Commissioner Kerlikowske Offers Vision of Change at CBP," *Immigration Impact*, Apr. 24, 2015, at <http://immigrationimpact.com/2015/04/24/commission->

[er-kerlikowske-offers-vision-of-change-at-cbp/](#), citing House Committee on Appropriations, "Budget Hearing - United States Customs and Border Protection" (Apr. 23, 2015), <http://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394143>.

¹²² Conversely, USCCB and other organizations have stated that "subjecting these families to expedited removal procedures, as intended by the Administration, could undercut their due process rights." USCCB HJC Testimony, note 112, p. 10.

¹²³ S. 744, 113th. Cong. Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and the particularly vulnerable), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3502.html>. The Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others in the 113th and 114th Congresses, would provide counsel to unaccompanied children and the mentally disabled. <https://www.congress.gov/bill/114th-congress/house-bill/1700/text>; Richard Simon, "Lawmakers seek legal aid for youths caught crossing Southwest border," *Los Angeles Times*, June 23, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-immigrants-legal-aid-20140623-story.html>. Those bills would not provide counsel in DHS expedited removal processes, were Congress to change the law to allow DHS expedited removal or summary return of unaccompanied children.

Organizations have uniformly recommended counsel for unaccompanied children. See American Immigration Council, *Two Systems of Justice*, March 2013, http://www.immigrationpolicy.org/sites/default/files/docs/aic_two-systemsofjustice.pdf, p. 12 ("Counsel should be appointed in cases where an immigrant is unable to retain a lawyer, beginning with minors"). See also, e.g., USCCB HJC Testimony, note 112, p. 12; AILA HJC Statement, note 117, p. 6; NIJC HJC Statement, note 115, pp. 5-7; ABA HJC Statement, note 113, p. 3. Children fleeing abuse and violence are often particularly incapable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony, note 112, p. 11.

Organizations have also reported that counsel assists in ensuring children attend court proceedings. American Immigration Council, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court (July 2014)* (92.5 percent of children represented in immigration proceedings appear), http://immigrationpolicy.org/sites/default/files/docs/taking_attendance_new_data_finds_majority_of_children_appear_in_immigration_court_final_1.pdf; Safe Passage Project, Statement to the House Judiciary Committee, June 25, 2014, ("Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel."), <http://www.safepassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/>, p. 2.

Organizations have also called the "justice AmeriCorps" program of pro bono lawyers it a "step in the right direction," but "not adequate to meet overwhelming need." See, e.g., NIJC HJC Statement, note 115, p. 6 ("given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant children remains.")

¹²⁴ Organizations also have recommended increasing Legal Orientation Program funding to provide know-your-rights presentations to all detainees nationwide. Lutheran Immigration and Refugee Service (LIRS) and Women's Refugee Commission (WRC), *Locking Up Family Values Again*, October 2014, http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf, p. 17; Human Rights First, *How to Manage the Increase in Families at the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>. S. 744 would have

provided such an increase. S. 744, 113th Cong., Sec. 3503, <http://www.lawandsoftware.com/bseoima/bseoima-senate-3503.html>.

¹²⁵ Bipartisan support has emerged for providing additional resources to backlogged immigration courts, even before the recent children's crisis. See American Immigration Council, *Empty Benches: Underfunding of Immigration Courts Undermines Justice*, May 2015, <http://immigrationpolicy.org/just-facts/empty-benches-underfunding-immigration-courts-undermines-justice>, p. 1 & n. 10. Recently, the House of Representatives passed appropriations legislation that would provide the largest increase in immigration judges in history—\$74 million for 55 new immigration judge teams. H.R. 2578, 114th Cong., <https://www.congress.gov/bill/114th-congress/house-bill/2578/text>; Mark Noferi, “Bi-Partisan House Bill Recommends Largest Increase Ever in Immigration Judges,” *Immigration Impact*, May 21, 2015, <http://immigrationimpact.com/2015/05/21/bi-partisan-house-bill-recommends-largest-increase-ever-in-immigration-judges/#sthash.4lkzFDxk.dpuf>. S. 744 would have added 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. S. 744, 113th Cong., Sec. 3501(a). S. 744 did not include extra funding for USCIS asylum officers.

¹²⁶ Human Rights First, *How to Manage the Increase*, June 2014, note 124, p. 2.

¹²⁷ USSCB HJC Testimony, note 112, p. 10-11 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services); LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22. USSCB also recommended improving background checks for sponsors, as well as increased funding to the Legal Orientation Program for Custodians (LOPC), to inform sponsors of their responsibilities. USSCB HJC Testimony, note 112, p. 11.

¹²⁸ UNHCR *Detention Guidelines*, note 57, “Guideline 9.2, Children,” ¶¶ 51-57, 2012; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 2-3.

¹²⁹ USSCB HJC Testimony, note 112, p. 11.

¹³⁰ More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. Women's Refugee Commission, *Halfway Home*, 2009, note 43, p. 37-38; USSCB HJC Testimony, note 112, p. 13.

¹³¹ UNHCR *Detention Guidelines*, ¶ 52; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 7-8.

¹³² Senator Richard Blumenthal, “Stop locking up child refugees,” *The Hill*, Feb. 25, 2015, <http://thehill.com/opinion/op-ed/233659-stop-locking-up-child-refugees>.

¹³³ In particular, groups have criticized conditions in CBP's short-term detention facilities. ABA HJC Statement, note 113, p. 2; AILA HJC Statement, note 117, p. 5; WRC, *Halfway Home*, note 43, p. 5-12. On June 11, 2014, a group of civil, immigrant, and human rights organizations filed an administrative complaint on behalf of 116 children who had reported abuse and mistreatment while in CBP custody, such as shacking, inhumane conditions, inadequate access to medical care, and verbal, sexual, and physical abuse. ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention*, June 11, 2014, <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>. Additionally, the American Immigration Council released a report detailing the lack of accountability for complaints filed against CBP officials by individuals in custody. American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014 (of 809 complaints of alleged abuse, 97 percent resulted in “no

action taken”), <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>.

Several legislative proposals have been introduced to address short-term CBP detention conditions. These include H.R. 3130, the Protect Family Values at the Border Act, introduced by Rep. Lucille Roybal-Allard (D-CA) in the 113th Congress, <http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3130>; and Amendment 1260 to S. 744, introduced by Sen. Barbara Boxer (D-CA) in the 113th Congress, <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1260/text>. Additionally, H.R. 4303, the Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, introduced by Rep. Steve Pearce (R-NM) and Rep. Beto O'Rourke (D-TX) in the 113th Congress, would have established an ombudsman over border-related concerns. <https://beta.congress.gov/bill/113th-congress/house-bill/4303/>.

¹³⁴ S. 744, 113th Cong., Sec. 3715 (establishing “secure alternatives programs that incorporate case management services,” with “nongovernmental community based organizations”); United States Conference of Catholic Bishops and Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System* (Washington, DC: May 2015), <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf>, p. 28; Human Rights First, *How to Manage the Increase*, June 2014, note 124.

¹³⁵ ICE requested \$122 million for alternatives to detention in fiscal year 2016—an increase of \$28 million over the President's budget for FY 2015, to increase the daily population in ATD from 27,219 participants at the end of FY 2014 to 53,000 participants. U.S. DHS, “U.S. Immigration and Customs Enforcement Salaries and Expenses,” 45, 64-67, February 2015, http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification_15_0325.pdf.

¹³⁶ LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22; Council on Foreign Relations, *Independent Task Force Report No. 63*, pp. 106-107.

¹³⁷ USSCB HJC Testimony, note 112, p. 13-15.

¹³⁸ Joseph R. Biden Jr., “Joe Biden: A Plan for Central America,” *N. Y. Times*, Jan. 29, 2015, <http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html>; The White House, Office of the Vice President, “FACT SHEET: Promoting Prosperity, Security and Good Governance in Central America,” Jan. 29, 2015, <http://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame>. Some have criticized the White House aid request as overly focused on security. Alexander Main, “Will Biden's Billion Dollar Plan Help Central America?” *North American Congress on Latin America*, Feb. 27, 2015, <https://nacla.org/news/2015/02/27/will-biden%27s-billion-dollar-plan-help-central-america>.

ATTACHMENT E



UNDERSTANDING THE CENTRAL AMERICAN REFUGEE CRISIS

Why They Are Fleeing and How U.S. Policies are Failing to Deter Them

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ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the American Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

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INTRODUCTION AND SUMMARY

In the spring and summer of 2014, tens of thousands of women and unaccompanied children from Central America journeyed to the United States seeking asylum. The increase of asylum-seekers, primarily from Honduras, El Salvador, and Guatemala—the countries making up the “Northern Triangle” region—was characterized by President Obama as a “humanitarian crisis.” The situation garnered widespread congressional and media attention, much of it speculating about the cause of the increase and suggesting U.S. responses.

Faced with the increase of Central Americans presenting themselves at the United States’ southwest border seeking asylum, President Obama and the Department of Homeland Security (DHS), specifically, implemented an “aggressive deterrence strategy.”¹ A media campaign was launched in Central America highlighting the risks involved with migration and the consequences of unauthorized immigration. DHS also dramatically increased the detention of women and children awaiting their asylum hearings, rather than releasing them on bond. Finally, the U.S. government publicly supported increased immigration enforcement measures central to the Mexican government’s Southern Border Program that was launched in July of 2014.² Together, these policies functioned to “send a message” to Central Americans that the trip to the United States was not worth the risk, and they would be better off staying put.

Yet the underlying assumption that greater knowledge of migration dangers would effectively deter Central Americans from trying to cross the U.S. border remains largely untested. This report aims to investigate this assumption and answer two related questions: What motivates Central Americans to consider migration? And what did Central Americans know about the risks involved in migrating to the United States in August 2014?

An analysis of data from a survey of Northern Triangle residents conducted in the spring of 2014 by Vanderbilt University’s Latin American Public Opinion Project (LAPOP)³ reveals that respondents were more likely to have intentions to migrate if they had been victims of one or more crimes in the previous year. In a separate LAPOP survey of residents of selected municipalities across Honduras, carried out in late

July and early August of 2014, we find that a substantial majority of respondents were also well aware of the dangers involved in migration to the United States, including the increased chances of deportation. This widespread awareness among Hondurans of the U.S. immigration climate in the summer of 2014, however, did not have any significant effect on whether or not they intended to migrate.⁴

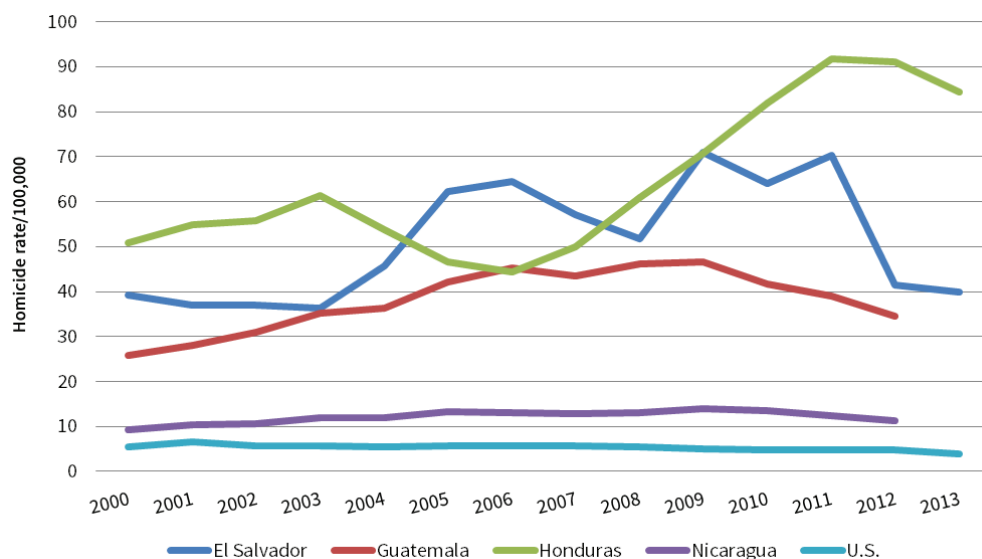
In sum, though the U.S. media campaigns may have convinced—or reminded—Hondurans, and perhaps their Salvadoran and Guatemalan counterparts, that migration to the United States is dangerous and unlikely to be successful, this knowledge did not seem to play a role in the decision calculus of those considering migration. Rather, we have strong evidence from the surveys in Honduras and El Salvador in particular that one’s direct experience with crime emerges as a critical predictor of one’s migration intentions.

What these findings suggest is that crime victims are unlikely to be deterred by the Administration’s efforts. Further, we may infer from this analysis of migration intentions that those individuals who do decide to migrate and successfully arrive at the U.S. border are far more likely to fit the profile of refugees than that of economic migrants. Upon arrival, however, they are still subject to the “send a message” policies and practices that are designed to deter others rather than identify and ensure the protection of those fleeing war-like levels of violence.

THE NORTHERN TRIANGLE REALITY AND U.S. RESPONSE

The Northern Triangle region of Central America includes the small, but strikingly violent countries of El Salvador, Honduras, and Guatemala (Figure 1).⁵ Honduras has been recognized as the murder capital of the world for many years, with its homicide rate peaking in 2011 at 91.6 murders per 100,000 people.⁶ In 2014, that rate dropped to 66, but remains one of the highest for a non-war zone country.⁷ By 2012-13, the rates for Guatemala and El Salvador had dropped as well, but only in Guatemala did this trend of reduced violence continue into 2014-15. Though our United Nations homicide data end in 2013, more recent data from 2015 indicates that homicide rates in Guatemala have remained steady, but have more than doubled in El Salvador. After the late 2013 breakdown of a truce between the country's two most powerful gangs (MS-13 and Barrio 18), homicide rates increased dramatically, reaching an all-time high of 104 murders per 100,000 people in 2015.⁸ Not surprisingly, research on the causes of migration from this region increasingly finds these high levels of crime and violence as a primary push factor in Central American migration.⁹

Figure 1. Homicide Rates for Selected North and Central American Countries, 2000-2013



Source: United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2013*

DHS itself identified crime and violence, particularly in El Salvador and Honduras, as important factors in the flow of unaccompanied minors leaving these countries for the United States in 2014, concluding that “Salvadoran and Honduran children . . . come from extremely violent regions where they probably perceive the risk of traveling alone to the United States preferable to remaining at home.”¹⁰

Despite this acknowledgement, the common thread in DHS’ response to the thousands of women and children arriving at the United States’ southwest border in 2014 was to employ a multi-prong deterrence strategy consisting of (a) launching a multimedia public awareness campaign; (b) increasing U.S. assistance to help Mexico secure its southern border region; (c) decreasing the chances of gaining asylum by expediting the removal process; and (d) carrying out raids in January 2016 in search of individuals deemed to have exhausted their asylum claims. These actions were meant to heighten the challenges associated with coming to the United States and ensure that Central Americans knew about them.

In July 2014, the Customs and Border Protection (CBP) agency within DHS launched the “Dangers Awareness” campaign in the form of billboards, radio, and television advertisements throughout the Northern Triangle countries in order to convince those considering migration that such a trip was not worth the risk.¹¹ In 2015, these efforts continued under the new name of the “Know the Facts” campaign.¹² The idea was to spread the word among potential migrants that the dangers of such a trip were high and the chances of success were low.

In addition, the United States supported Mexico’s “Southern Border Program” to fortify its southern border. The Southern Border Program is a package of operations implemented by the Mexican government to strengthen security and control human mobility in Mexico’s southern border. According to the Washington Office on Latin America, “Between July 2014 and June 2015, the Mexican government’s apprehensions of Central American migrants increased by 71 percent over the same period in the previous year, before the launch of the Southern Border Program.”¹³

DHS also significantly increased the detention of women and children apprehended at the border who passed the initial stage in the asylum process, referred to as the “credible fear interview,” and were awaiting a full asylum hearing.¹⁴ In the words of DHS Secretary Jeh Johnson, these actions were designed to send a message “to those who are . . .

contemplating coming here illegally [that] we will send you back. . . People in Central America should see and will see that if they make this journey and spend several thousand dollars to do that, we will send them back and they will have wasted their money.”¹⁵ Yet, as U.S. District Court Judge James Boasberg noted in his February 2015 ruling regarding DHS detention policy, “Defendants [DHS] have presented little empirical evidence . . . that their detention policy even achieves its only desired effect—i.e., that it actually deters potential immigrants from Central America.”¹⁶

Finally, in January 2016, DHS deployed a series of raids that targeted Central American families in an effort to accelerate their deportation. According to a statement by Secretary Johnson, “the focus of this weekend’s operations were adults and their children who (i) were apprehended after May 1, 2014 crossing the southern border illegally, (ii) have been issued final orders of removal by an immigration court, and (iii) have exhausted appropriate legal remedies, and have no outstanding appeal or claim for asylum or other humanitarian relief under our laws.”¹⁷

The guiding, but largely untested, assumption on which these strategies have been based is that Central Americans considering migration are misinformed about the risks and low probability of success such a journey entails—and when made aware of these facts, they will opt to stay home.

The critical question in assessing the underlying assumption of the U.S. deterrence campaign, then, is whether those individuals who knew the facts and dangers about migrating to the U.S. were less likely to consider migration as a viable strategy than those who were not as aware of those factors. Secondly, if awareness of the increased risk does not help explain who migrates from Central America, what does?

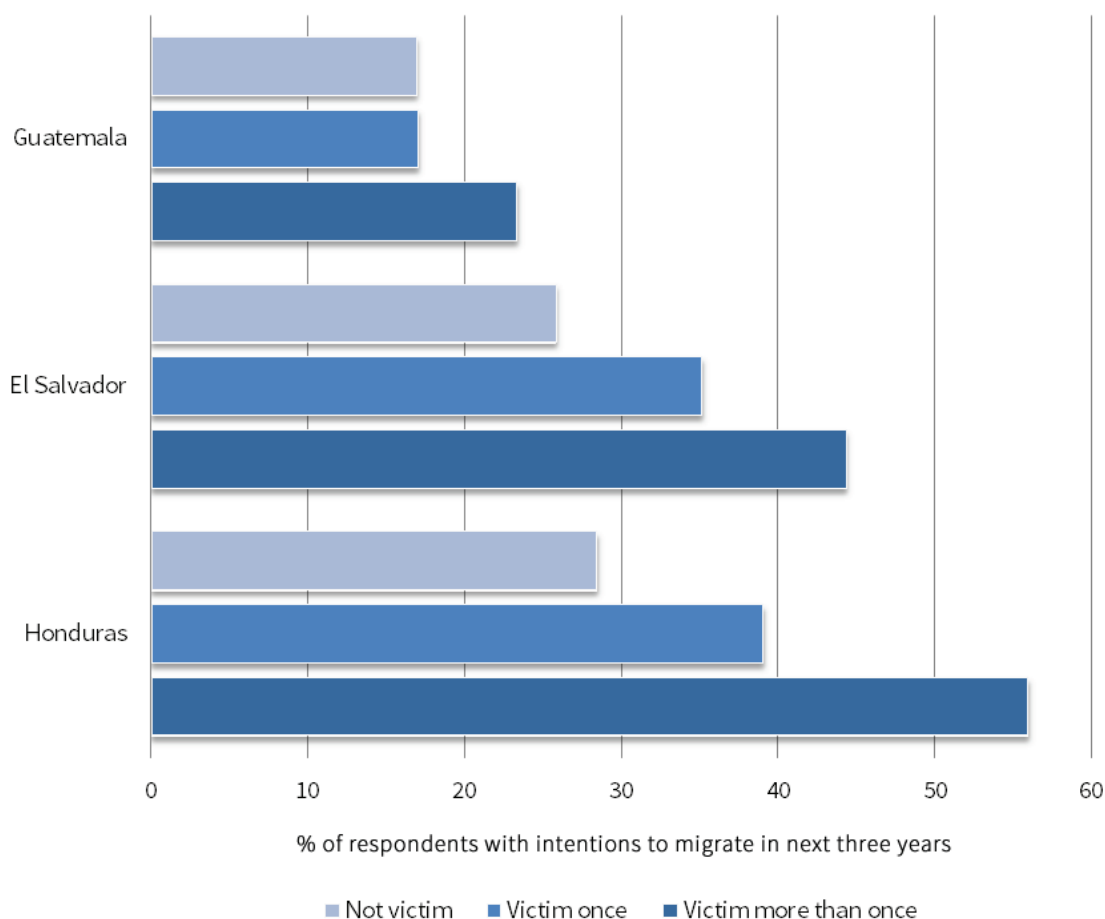
THE IMPACT OF CRIME ON MIGRATION INTENTIONS

In the spring of 2014, Vanderbilt University's Latin American and Public Opinion Project (LAPOP) conducted a series of nationally representative surveys across the Northern Triangle countries that included questions about participants' intentions to migrate, as well as whether they had been victimized by crime in the previous twelve months. While having an intention to migrate does not necessarily mean someone actually migrated, it does identify Central American residents who viewed migration as a viable option—precisely the people the U.S. government was targeting with the messaging campaign.¹⁸

The LAPOP data suggest that those individuals who have been victimized by crime are considerably more likely to consider migration as a viable option than their non-victim counterparts. As we see in Figure 2, in Honduras, 28 percent of non-victims reported having intentions to migrate, while close to 56 percent of respondents that had been victimized more than once by crime in the previous twelve months intended to migrate. In El Salvador, only 25 percent of non-victims had plans to migrate compared to 44 percent of those victimized multiple times expressing intentions to migrate. Only in Guatemala did non-victims and victims of a single crime report migration intentions at a similar rate.

This relationship between crime victimization and migration intentions in Honduras and El Salvador remains strong even after controlling for an assortment of other factors. Again, only in Guatemala did crime victimization not emerge as a significant predictor of migration intentions—a finding that is perhaps not surprising given the steady decline in violence over the past several years in that country.¹⁹

Figure 2. Crime and Migration Intentions
Crime Victimization and Emigration Intentions (2014)



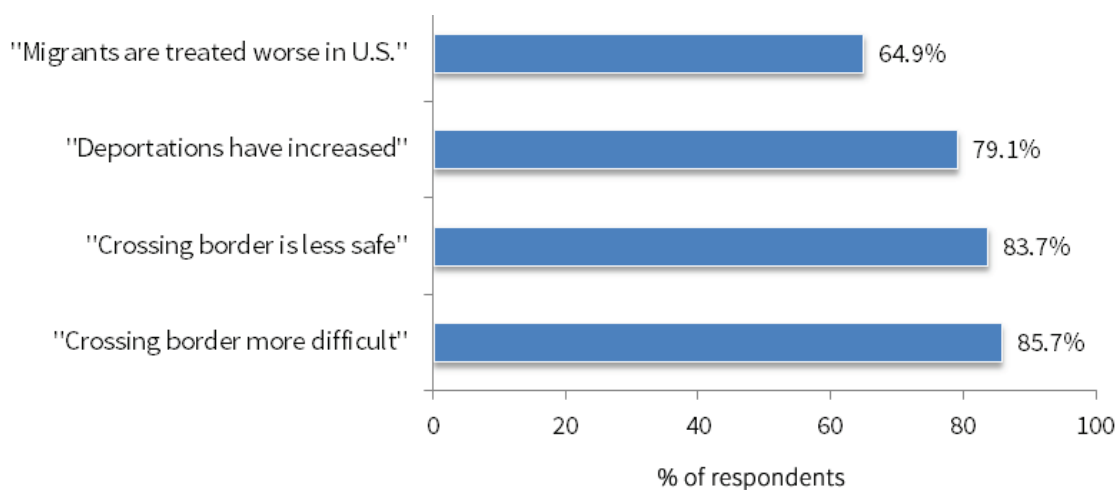
Source: LAPOP, *AmericasBarometer 2014*.

AWARENESS OF MIGRATION DANGERS IN HONDURAS

Clearly, Central Americans were considering their options in 2014 and, for Salvadorans and Hondurans at least, crime victimization influenced this decision calculus. But what did they know about the journey to the United States? A subsequent LAPOP survey of more than 3,000 Honduran residents provides a glimpse at their knowledge of the U.S. immigration climate in late summer of 2014.²⁰ Though not nationally representative, the survey included residents across twelve Honduran municipalities with homicide rates ranging from 8.6 to over 200 per 100,000—allowing us to explore the determinants of migration intentions across different levels of crime and violence.²¹

Respondents were asked about their views of the U.S. immigration context at the time of the interview (July-August 2014) compared to what it had been in 2013. From Figure 3 it is clear that by the summer of 2014, Hondurans were well aware of the dangers involved in migration to the United States and the increased chances of deportation. Nearly 86 percent said that they thought crossing the border was more difficult in 2014 than it had been twelve months earlier, 83 percent viewed the trip as less safe than in 2013, and almost 80 percent reported that deportations had increased compared to the previous year.

Figure 3. Honduran Views of Immigration to U.S., 2014
“Compared to 12 months ago . . .”



The survey was administered in the midst of the “Dangers Awareness Campaign,” suggesting that either this U.S.-funded media campaign worked as intended, or that most Hondurans already knew that migration to the United States was dangerous and had a low probability of success. In either case, it is clear that in Honduras, if not throughout Central America, residents were acutely aware of the risks associated with migration to the U.S.

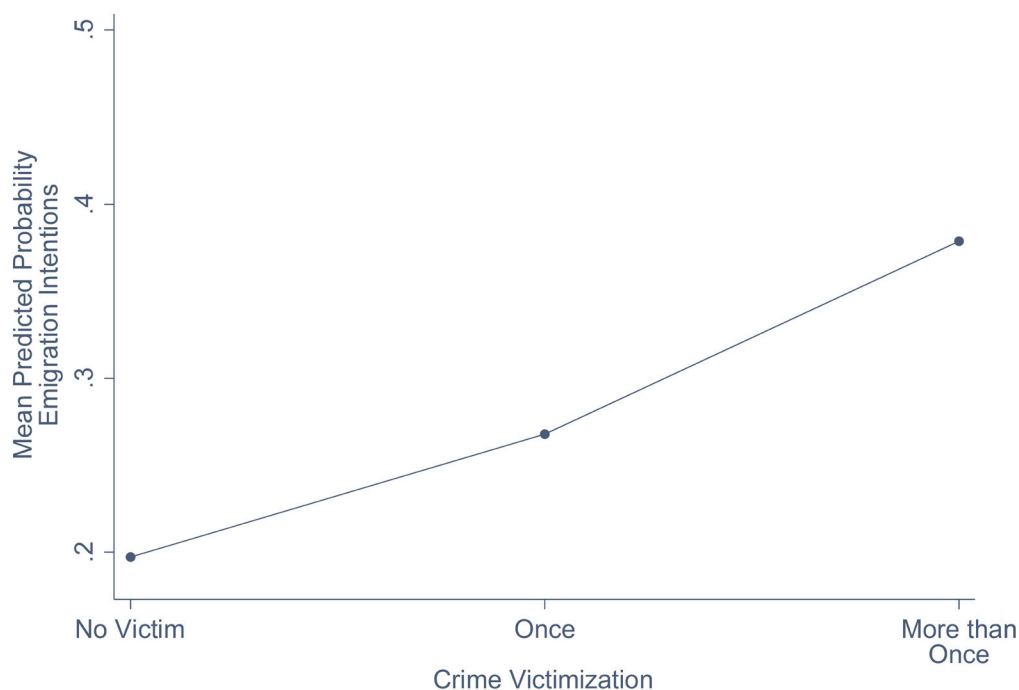
THE ROLE OF DANGER AWARENESS IN MIGRATION INTENTIONS

Though the messaging campaigns appear to have succeeded in convincing—or reminding—Hondurans, and perhaps their Salvadoran and Guatemalan counterparts, that migration to the United States is dangerous and unlikely to succeed, this knowledge did not deter them from making plans to migrate. Further analysis of Honduran LAPOP survey respondents shows that knowledge of the risks of migration—deportation, border conditions, and treatment in the United States—played no significant role in who had plans to migrate and who did not have such plans.²² Based on the results of a multivariate regression analysis (a statistical technique that takes into account the effects of multiple factors on an individual’s intention to migrate), whether a survey respondent viewed migration to the United States as more dangerous, less dangerous, or about the same as it was in 2013 had no impact on whether or not that person reported intentions to migrate. Similarly, all else being equal, individuals who thought deportations had increased in 2014 were just as likely to report intentions to migrate as those individuals who thought deportations had decreased since 2013.

If awareness of the dangers involved in migration to the United States does not help explain who migrates and why, what does? Once again, the analysis of Honduran respondents reveals that among the most powerful indicators of migration intentions is crime victimization. The analysis offers concrete, systematic evidence of the relative weight crime victimization plays in the migration decision after controlling for the level of danger awareness and other factors such as income, age, gender, and whether or not the respondent reported receiving remittances (Figure 4).

The likelihood of a respondent reporting intentions to migrate nearly doubles for those who reported that they had been a victim of crime more than once in the previous 12 months, compared to those respondents who were not victimized by crime in that timeframe. The fact that such an effect emerges even after taking into account well-established predictors of migration intentions speaks to the important role that crime victimization plays in the migration decision of Hondurans. As noted above, these findings parallel those found in our analysis of migration intentions in El Salvador as well.

Figure 4. Crime Victimization and Migration Intentions in Honduras



CONCLUSION

What do these findings suggest in terms of the effectiveness of the U.S. deterrence efforts and awareness campaign carried out over the past year and a half? First, it seems that the campaign successfully sent the message to residents of the primary sending countries in Central America that the United States will “send you back.” It is also clear that the trip north is perceived as being far more dangerous than it was in previous years, at least for Honduran survey respondents. After 18 months of concerted efforts by the United States and Mexican governments to dissuade Central Americans from making the trip, it is a safe assumption that most considering such a journey in the future are well aware of the dangers and low chances of success.

Yet Central American men, women, and children continue to make the trip. Between October 2015 and January 2016, CBP apprehensions of families and unaccompanied children in the southwest border increased more than 100 percent compared to the same period in the previous year.²³ Why do these individuals continue trying to make the trip when seemingly fully aware of the dangers involved? The findings reported here suggest that no matter what the future might hold in terms of the dangers of migration, it is preferable to a present-day life of crime and violence. The unprecedented levels of crime and violence that have overwhelmed the Northern Triangle countries in recent years have produced a refugee situation for those directly in the line of fire, making no amount of danger or chance of deportation sufficient to dissuade those victims from leaving.

ENDNOTES

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19. For the results of our multivariate analysis of migration intentions for each of these countries, see Hiskey, et al., "Leaving the Devil You Know: Violence, Migration, and the U.S. We Will Send You Back" Campaign," (presentation, American Political Science Association Annual Meeting, San Francisco, CA, 2015)

20. Four of the questions in the survey were specifically designed to measure respondents' perceptions of the U.S. immigration experience relative to the previous year. These items were worded as follows:
1. "Taking into account what you have heard about undocumented migration, do you think crossing the U.S. border is easier, more difficult, or the same as it was 12 months ago?"
 2. "Taking into account what you have heard about undocumented migration, do you think crossing the U.S. border is safer, less safe, or the same as it was 12 months ago?"
 3. "Now, keeping in mind what you have heard about Central American migrants in the United States, do you think [they] are being treated better, the same, or worse than 12 months ago?"
 4. "Do you think that deportations in the United States have increased, stayed the same, or decreased in comparison to 12 months ago?"
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Department	Municipality	Household Crime Victimization (%)	Homicide Rate/100,000	Number of Respondents
Lempira	Mapulaca	9.9	21.3	252
Copan	San Nicolás	15.5	260.2	252
Santa Barbara	Macuelizo	19.4	77.4	252
Choluteca	San Marcos de Colón	10.7	31.9	252
Yoro	Victoria	6.8	45.3	252
Intibucá	Santa Lucía	4.4	125.6	252
Intibucá	San Francisco de Opalaca	3.2	73.5	252
Comayagua	Taulabé	21.8	28.4	252
Copán	Corquin	8.7	38.0	252
Lempira	Gracias	12.7	92.2	252
Ocatepeque	San Marcos	13.1	72.6	252
La Paz	La Paz	26.6	8.6	252
Avg./Total		12.7	72.9	3024

22. A multivariate analysis was used to determine what role, if any, awareness of the dangers of migration has in someone's decision to migrate. The approach also controlled for other factors known to be important in the migration decision, such as one's age and gender, household income, education levels, and whether or not an individual has strong ties with a migrant family member (measured by whether or not she receives remittances from her relative). All of these factors have emerged in past research as significant predictors of migration intentions. This allowed for identification of the relative weight that each factor has in the migration decision.
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ATTACHMENT F



NO CHILDHOOD HERE

WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES

By Elizabeth Kennedy

NO CHILDHOOD HERE: WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES

ABOUT THE AUTHOR

Elizabeth Kennedy is a Fulbright Fellow currently working with returned child and youth migrants from Mexico and the United States in El Salvador. Her work and research focuses on the experiences and needs of child, youth, and forced migrants. She has over a decade's experience in youth programming and organizing and co-founded and directs an internship program for undergraduates to mentor detained child migrants. She received her MSc in Refugee and Forced Migration Studies from Oxford University in 2011, and since beginning her doctoral program at San Diego State University and the University of California, Santa Barbara in 2011, has published in academic and popular press. She has also provided expert testimony in Central American asylum seekers' cases in Canada, Sweden, the United Kingdom, and the United States.

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INTRODUCTION AND SUMMARY

Over a decade before President Barack Obama described the influx of unaccompanied child migrants to the United States as an “urgent humanitarian situation requiring a unified and coordinated Federal response,”¹ child and refugee advocates warned that children who shared experiences of years-long family separation, widespread violence in home countries, and higher rates of neglect and abuse were fleeing from South of our border in alarming numbers.² Then as now, over 95 percent were from Mexico and the Central American nations of El Salvador, Guatemala, and Honduras. When these children were apprehended in the U.S., the Trafficking and Victim’s Protection Reauthorization Act (TVPRA)³ required agents to ask limited and straightforward abuse questions. If the child was determined to be without a parent or legal guardian, s/he had to be transferred to Office of Refugee Resettlement (ORR) care within 72 hours.⁴

Yet, even though 8,000 to 40,000 unaccompanied child migrants were apprehended annually between 2003 and 2011, only 4,800 to 8,300 entered ORR’s care each year. A 2011 report by the Appleseed Foundation documented that most Mexican child migrants did not receive TVPRA screening and thus could not transition to ORR care.⁵ Instead, per

When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list crime, gang threats, or violence as a reason for their emigration.

an agreement between the Mexican and U.S. governments that Obama would like emulated among Central American countries, Mexican children were quickly deported.⁶ Nonetheless, those from indigenous areas or areas with high levels of drug

nations.⁹ This year, as many as 60,000 could arrive,¹⁰ and while numbers from Mexico have declined, numbers from the Northern Triangle continue rising.

What drives these children to flee their homes? What causes their parents to put them and their life’s savings in the hands of smugglers?¹¹ What happens if they fail to reach the U.S.? Since October 2013, with funding from a Fulbright Fellowship, I have lived in El Salvador and worked toward answering these questions through my research into the causes of child migration and the effects of child deportation (see appendix).

Based on the evidence I collected and analyzed to date, violence, extreme poverty, and family reunification play important roles in pushing kids to leave their country of origin. In particular, crime, gang threats, or violence appear to be the strongest determinants for children’s decision to emigrate. When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list one of those factors as a reason for their emigration. In some areas of El Salvador, however, extreme poverty is the most common reason why children decide to leave. This is particularly true for adolescent males, who hope to work half the day and study the other half in order to remit money to their families and help them move forward in life. In addition, one in three children cites family reunification as a primary reason for leaving home. Interestingly, over 90 percent of the children I interviewed have a family member in the US, with just over 50 percent having one or both parents there.¹² Most referenced fear of crime and violence as the underlying motive for their decision to reunify with family now rather than two years in the past or two years in the future. Seemingly, the children and their families had decided they must leave and chose to go to where they had family, rather than chose to leave because they had family elsewhere. Essentially, if their family had been in Belize, Costa Rica, or another country, they would be going there instead.

ORGANIZED CRIME, GANGS AND VIOLENCE ARE DRIVING CHILDREN FROM THEIR HOMES

When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list crime, gang threats, or violence as a reason for their emigration. Whereas males most feared assault or death for not joining gangs or interacting with corrupt government officials, females most feared rape or disappearance at the hands of the same groups. While over half of Salvadoran children list more than one reason for migrating, nearly 100 list only this fear.

Of the 322 minors I interviewed, 145 have at least one gang in their neighborhood, and about half of these live in a contested gang territory. They report hearing gunshots nightly and are often afraid to walk even two or three blocks from their home since they fear crossing an always changing boundary. Those who did not note a gang presence often followed their response with “Gracias a Dios [Thank God]” or “todavía [yet]” and frequently indicated that they expect one to arrive soon. When sharing these concerns, they often mentioned either strangers arriving to where they live or criminal groups coming to their neighborhoods on an irregular basis in order

Of the 322 minors I interviewed, 145 have at least one gang in their neighborhood, and about half of these live in a contested gang territory.

to scout its potential. Three families told of their neighborhoods being taken over in exactly this manner over the past year. Another 130 said they attend a school with a nearby gang presence. This usually means that the gang either congregates in a park across the street or waits on the streets to and from the school at start and end times. One hundred attend a school with gangs inside, with marijuana or other drugs often present and school directors or teachers occasionally helping gangs recruit students. One hundred and nine have been pressured to join the gang, 22 of whom were assaulted after refusing. Seventy have quit school. While most minimize their time on the streets, saying they go only to and from school, work, or church, more than 30 said they have made themselves prisoners in their own homes; some do not even go to church. One described himself as

“paralyzed with fear,” as he began crying. Another’s mom told me that he had a psychological breakdown when she tried to get him to leave the home. She had to take him to the emergency room to calm him, and the doctor recommended that she get him out of the country as soon as possible. Four families told how their children now find numerous tasks to do around the house to excuse themselves from family outings. Another told me: “people are always dying. I never feel safe.” Then, a girl stated that she felt “trapped.” She is afraid to enter other neighborhoods, and her father explained that even if the gangs do not harm her, the police or military in their neighborhood could because they “shoot [their firearms] freely, and sometimes innocent people are killed in the crossfire.”

To date, I have randomly selected at least one child’s story from each department (similar to states in the U.S.) and searched local news reports to see whether what they said could be verified.¹³ In all 14 cases, news articles supported the high crime rates they described and included names of friends and family members they mentioned as victims. For example, one girl said that her father and cousin had been killed five years apart and that three murders had taken place in her neighborhood in the past year. All three elements of her story had been reported in both La Prensa Grafica and El Diario de Hoy. Another father told me that eight murders, two of which involved children, took place in his neighborhood and the one next to it. Again, press supported his accounts.

While I believed that gang violence was primarily an urban problem before arriving to El Salvador, I have found that this violence is widespread, with children from rural and urban areas of 11 of 14 of El Salvador’s departments most likely to list this as the primary cause of their emigration. In Cuscatlán and Usulután, over 85 percent flee for this reason, and in the following departments more than 50 percent flee for this reason: La Libertad (53.8%), La Paz (64.7%), La Unión (67.6%), Morazán (52.6%), San Miguel (67.6%), San Salvador (65.9%), San Vicente (61.1%), Santa Ana (58.8%), and Sonsonate (67.7%).

IN RURAL AREAS, EXTREME POVERTY MOTIVATES SOME TO SEEK WORK

The exception to this trend occurs in three of the most rural and impoverished departments in El Salvador—Ahuachapán, Cabañas, and Chalatenango. While children from these areas cite violence as their reason for leaving over 30 percent of the time, more actually cite the desire for an improved life. Over 40 percent of the children, predominantly adolescent males,

hope to work half the day and study the other half in order to remit money to their families and help them move forward in life. This desire for a better life is hardly surprising, given that many of these children began working in the fields at age 12 or younger and live in large families, often surviving on less than USD \$150 a month.

ONLY 1 IN 3 CHILDREN CITES FAMILY REUNIFICATION AS A PRIMARY REASON FOR LEAVING HOME

Over 90 percent of the children I interviewed have a family member in the U.S., with just over 50 percent having one or both parents there. Despite these high numbers, only 35 percent list reunification as a reason for their emigration, although girls and younger children are more likely to list this reason.¹⁴ Whenever children note a family member in the U.S., we ask them why they wish to see this person now instead of a few years ago or several years in the future. The responses to these questions more often than not referenced fear of crime and violence as the underlying motive. The children and their families had decided they must leave and chose to go where they had family, rather than chose to leave because they had family elsewhere. Essentially, they would be going to another country like Belize or Costa Rica if their family was there instead of in the U.S.

Parents and guardians typically express great distress about weighing the risks of an incredibly dangerous journey to the U.S. versus an incredibly dangerous childhood and adolescence in El Salvador. Over and over again, I have heard that “there is no childhood here,” and that “it is a crime to be young in El Salvador today.” One father said he never wanted to be away from his son, but after a string of murders in their town, he worried all the time. He felt he was being selfish to keep him here longer, especially since his mother in the U.S. has been asking for him for nearly a decade. Two single mothers shared that gangs were forcibly using their homes as passageways to escape from one neighborhood to another and to stash drugs. They believed they were targeted because no adult males lived with them, and they feared that they and their teenage sons would

be arrested as gang members if they reported the events, because each knew a community member who had been. Grandparents feel they are too old to fend off gang threats for their grandchildren. One grandmother stopped working in order to be better able to protect her granddaughter at home, but she felt that the gang knew they could enter her home by force to take her granddaughter at any moment. An aunt worried that keeping her nephew put her own children at risk. In all these cases, the family decided that long-term safety in the U.S. was worth the short-term—and high—risk of migrating.

The adolescents themselves referenced a decreasing risk in migrating related to their bigger and stronger bodies and an increase in danger of staying upon reaching the age of 13. They indicated that since they were more emotionally and physically mature, the risks associated with the dangerous journey to the U.S. were less than they once were, even though they had fairly accurate understanding of what could happen to them. At the same time, they indicated that while some gangs will recruit younger children, most do not recruit intensively until adolescence. Several said they had hoped to never turn 13, and a few mothers indicated that this birthday was celebrated with great sadness. Adolescents thus felt that their risk of staying increased as they aged and would continue to be high until they entered their late twenties. They often said there was nothing here for them and frequently referenced news stories on homicides, in which most victims are in their teens and twenties. They believed that the U.S. would offer them both more opportunities and safety to take advantage of them.

LEAVING THEIR COUNTRY IS OFTEN A LAST RESORT

Importantly, the U.S. is not always the first option. Many move within El Salvador, and there are whole neighborhoods that have been abandoned.¹⁵ According to the Central American University's Institute of Public Opinion (IUDOP) 2012 Survey,¹⁶ approximately 130,000 Salvadorans were forced to relocate within the country in 2012. One-third had moved

Notably, these children are not just arriving to the U.S. in search of protection. UNHCR documented an increase of 432 percent in asylum requests in the neighboring countries of Belize, Costa Rica, Nicaragua, Panama, and Mexico.

previously, because often, the same threats to life resurface. For example, one adolescent male who had been beat three times for not joining the gang in his neighborhood has already moved three times, and each time, the same gang has found him. Another adolescent male fleeing his neighborhood's gang had even greater problems with the rival gang when he arrived to his new neighborhood, because they assumed he was already a rival member. An adolescent girl who witnessed her mom's, brother's and boyfriend's murders by gang members has lived in six different parts of El Salvador—and even Guatemala—and

each time, the same gang tracked her down.

Likewise, police who have asked me about my study have shared several related pieces of information. First, they are often required to move every two years because of concerns that gangs will target them for corruption or death. Second, several police and military members have sent their children to the U.S. because they feared for their lives, and the media has indeed documented increased attempts by gangs to murder these agents of the state.¹⁷ Third, two policemen who were threatened by gangs explicitly told me that if threatened, your only option is to flee and hope for the best within the country. They both said that if the gang decided to find you, they could, and you then needed to go abroad if you wanted to survive.

Notably, these children are not just arriving to the U.S. in search of protection. UNHCR documented an increase of 432 percent in asylum requests in the neighboring countries of Belize, Costa Rica, Nicaragua, Panama, and Mexico.¹⁸ Despite being one of the poorest countries in Latin America, Nicaragua alone saw an increase in asylum requests of 240 percent between 2012 and 2013.¹⁹

CHILDREN AND THEIR FAMILIES DO NOT TRUST THE SALVADORAN GOVERNMENT TO HELP THEM

Children and their families do not feel the Salvadoran government can protect them. Press reports and government authorities in various agencies say that the two child protection agencies in El Salvador—the National Council for Childhood and Adolescence (CONNA) and the Salvadoran Institute for Childhood and Adolescence (ISNA)—infrequently respond to reported abuse²⁰ or parental homicide²¹. Legislation passed in 2009 makes which agency is responsible for what unclear. Neither is adequately funded nor has programs for children persecuted by gangs or for children wanting out of gangs.

There is also little confidence in the police, military, or other government agencies.²² Only 16 child migrants who said they had experienced insecurity reported it. The police refused to write up a report for eight of those who reported problems; six said nothing

happened after they spoke to authorities, and two of the 16 who made reports said they had received increased threats. One's accused rapist still lives next door.

Fear of authorities is well-founded. Many say gangs have sources of information among police, attorney general offices, and neighborhood residents so that, as several of them told me, "You never know who is who." Three told stories of youth who made complaints and were then detained as suspected, rival gang members by police. Police beat one youth three times because he worked late and was accused of being a gang member since he was on the streets. Thus, because gangs and, at times, police target young people, a number of children and family members have again told me that El Salvador is "no place for children."

THOSE WHO ARE RETURNED FROM THE U.S. FACE ADDITIONAL THREATS OF VIOLENCE

Four families I met were hoping to return to their lives in the United States. All of them had resided with their children there for more than seven years. They elected voluntary departure, and upon arriving to El Salvador, decided to start small businesses. Each of them was extorted for large amounts of money (more than \$3,000 per month) within six months of opening. They believed that besides having their businesses, they also stood out because their homes were nicer, and they dressed differently. Unable to pay, and afraid to report the crime to authorities, they were fleeing. They were so afraid that they did not plan to sleep in their homes that evening after being deported from Mexico on their way to the U.S. and were instead looking for a hostel before embarking again the next day.

I also met two men in their early twenties who were fleeing with their adolescent sisters. In both cases, the brothers had received numerous threats in El Salvador and had fled to the U.S. in the previous year. Upon reaching the U.S., they tried to seek asylum. One was told inside the detention center where he was kept that since he was not “black or Muslim,” he could not do

The most common cause of UAC’s exodus from Central America has been and continues to be increasing gang and cartel violence that disproportionately affects them as young people.

so. They both stated they were returned against their will and without every talking to a lawyer. Within days of their return, the gangs began forcibly recruiting their sisters to be “girlfriends²³”. Where both lived, girls who refused such advances had been kidnapped and never heard from again or found murdered, which I cross referenced with a Twitter site called Angel Desapercido.²⁴ With their families, they decided to accompany their sisters to the U.S., but neither had much hope for their or their sister’s prospects of obtaining protection.

Within this context, many children report that their parents who had planned to return to El Salvador after paying for their education now fear doing so because of high violence and these kinds of stories. At least once a month, local news report the homicide of a recent deportee from the U.S.,²⁵ and several of the Salvadoran families I have met here indicated that

they were extorted because of the remittances they receive from relatives in the U.S.

My study is taking place in El Salvador, but I visited Guatemala and Honduras in October 2013 and know over 100 UAC from each country. The initial findings presented in this piece are common in the other two nations, as is reported in aforementioned publications by KIND, UNHCR, UCCSB, and the WRC. Primarily, while family reunification, poverty, and lack of opportunities are common considerations in UAC’s decision to emigrate, the most common cause of UAC’s exodus from Central America has been and continues to be increasing gang and cartel violence that disproportionately affects them as young people.

As a result, U.S. and regional response must realize that the majority of these children have significant protection needs. Thus, they should continue to receive access to the services and due process guaranteed them in the Flores Settlement Agreement and TVPRA, should have access to free legal counsel, and should await their immigration hearings with family. Whether they remain in the U.S. or return to their home countries, they must have access to services that assist them in transitioning successfully, which would ideally offer them career and educational development and health services alongside mechanisms for better participating in transnational families. Most broadly, in home countries, emphasis must shift from militaristic solutions to those that invest in economic and social development. In doing so, the influence of gangs would likely decrease as they have alternative opportunities, and fewer children will emigrate.

As a final note, I am in contact with 20 UAC who arrived to the U.S. from 2011 to 2013. They now live in different parts of the country, Guatemala, Honduras, and Mexico and have various legal statuses. Their experiences migrating to the U.S. and transitioning from that journey have deeply affected them and me. Even those who are happy in the U.S. greatly miss their home countries. If they could return and live in them safely, most would. At the same time, they are incredibly motivated and talented youth, and whichever nation gets them should make a minimal front-end investment to maximize the return we get from them.

APPENDIX: METHODOLOGY

My subjects have been local, regional, and national government officials; the press; and children and their families, who have told horror stories of violence and despair.²⁶ I have met hundreds of people fleeing areas where their neighbors, family, or friends have been extorted, threatened, or killed. Many were on their way to the U.S. for the first time, but a few hoped to return to their life in the U.S. since their decision to voluntarily depart in the past year put them and their families in danger within months.

To reach the U.S., Central Americans must traverse Mexico, and an increasing number are being detained and deported there before reaching the U.S. border.²⁷ Children apprehended below Mexico City are deported by bus to San Salvador twice per week; children detained above Mexico City are deported by commercial plane to the international airport in San Luis Talpa on an as-needed basis. When I began interviewing children deported by bus in January, between five and 15 came two days per week, but between 60 and 80 now arrive each of these two days.²⁸ Through June, I have completed nearly 500 interviews with these children and their waiting family members, over half of whom intended to attempt migrating again. Indeed, in paying the smuggler, each received three chances for that price that was sometimes equivalent to 20 years' salary. For this piece, I analyzed the 322 interviews I completed between January 27 and May 1, 2014. Within that group of children, 106 (33%) were females, and 216 (67%) were males. Nearly 80 percent (78.5) were between the ages of 13 and 17.²⁹ The largest numbers come from the departments of San Salvador (41), Santa Ana (34), San Miguel (34), and La Unión (34). The top four destinations in the United States were: New York (39), Los Angeles (38), Houston (38), and Virginia (31).³⁰

Through May, I went to the migrant return center on both days that children were deported. There, family members await their children for hours, and I arrived early to talk with them before the bus came. Often, I had the chance to interview the family prior to the bus's arrival and the child after completing her migration interview. In April, I recruited and trained a Salvadoran assistant due to an increase in arrivals. During these first five months, our goal was to complete interviews with at least half of child migrants if together and with at least one quarter if alone. Starting this June, my assistant goes one day per week, and I go the other day. Our goal now is to interview a statistically representative sample based upon sex, age, and origin, and I have begun follow-up interviews by phone.

Interviews have a mixture of closed and open questions and usually take 10 to 30 minutes to complete.³¹ We begin by collecting basic demographic information like age, gender and with whom the child lives (including age and relationship of each person in the home). We then ask where they live and what living there is like, with follow up questions about gang, police and military presence, religious involvement, land ownership, and remittances. Before transitioning to where the child's mother and father are (which is always sensitive since

some have a father who was not active), in what each parent or guardian works, and where and with whom they wanted to live in the U.S., we ask if they ever lived anywhere else. If so, we want to know where and why they moved. Then, we ask if they were actively studying, what grade they last completed, how they performed academically, what type of school they attended, and if not studying, why they quit when they did. We ask a similar set of questions about if they are actively working. After that, we explicitly ask them why they wanted to leave the country, and depending on the reason(s) they give, a series of follow up questions specific to that reason. For example, if they say they fear for their life, we ask them why; whether they, their family or friends have been threatened, and if so, when the threats began and with what frequency they have occurred; how many murders or other crimes have occurred where they live; names of anyone they know who has been killed; and whether or not they reported these crimes. Finally, we ask with whom they traveled (smuggler, family, friends, other, or alone), whether they will try to reach the U.S. again, and what they hope to do in the U.S. if they arrive. At the end, we share with them possible legal options to travel to or stay in the U.S., if any exist, and answer their questions. All are given my contact information and encouraged to follow up with me if they would like. Over 30 have done so.

The interviews have four major limitations. First, we cannot complete interviews with children alone,³² so our questions about abuse, mistreatment, or negligence likely yield underestimates. Just 3.1 percent report migrating for this reason to us, but upward of 20 percent from El Salvador reported migrating for this reason to KIND³³ and UNHCR³⁴ in 2013. Second, because we conduct interviews at the migrant return centers, finding privacy can be difficult, and some child migrants and their families are afraid to talk openly. On more than 10 occasions, they have followed up with me by email after leaving the center to share a much more detailed history. Third, the later the busses arrive, the fewer interviews we can complete since migrants and their families are in a hurry to leave before dark. The return center is in a very bad neighborhood (Colonia Quiñonez): it was named one of 10 municipalities in El Salvador where taxis normally will not go in March³⁵, and in April, two people were murdered on the only street that can be used to exit.³⁶ Finally, some speculate that migrants may tell their stories strategically since I am from the U.S. While this may occasionally occur, I have nearly a decade's experience conducting qualitative interviews with children in the Spanish language (and more experience performing youth work with the same population). I am adept at noticing such things and note when I suspect withholding information. Importantly, when my assistant and I conducted interviews with the same children on her first two days, we received similar responses. Then, my field interviews are consistent with what other groups like KIND³⁷, UNHCR, the United States Conference of Catholic Bishops³⁸, and the Women's Refugee Commission³⁹ have reported in the last two years—rampant violence has made it unsafe to be a child in Central America.

ENDNOTES

¹ The White House Office of the Press Secretary, “Presidential Memorandum -- Response to the Influx of Unaccompanied Alien Children Across the Southwest Border,” (2014), available at: <http://www.white-house.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>.

² See reporter Sonia Nazario’s six-part series about a Honduran unaccompanied child migrant hoping to reunify with his mom and leave a life of instability and crime with the Los Angeles Times here: <http://dlib.nyu.edu/undercover/enriques-journey-sonia-nazario-los-angeles-times>. It became a full-length book, *Enrique’s Journey* (2006).

Also see Administration for Children and Families, “Annual ORR Reports to Congress - 2003,” (2003), available here: http://archive.acf.hhs.gov/programs/orr/data/arc_03.htm, which states: “[m]ost Unaccompanied Alien Children (UAC) in ORR’s care are Central American males between the ages of 15 and 17 who come to the U.S. to join family and work. They are fleeing poor socioeconomic conditions, gang victimization, abuse, neglect, abandonment, or other trauma in their home countries.” Prior to FY 2003, the UAC program did not exist. See also reporter Melissa del Bosque’s stories for The Texas Observer: “Children of the Exodus” (4 November 2010) at <http://www.texasobserver.org/children-of-the-exodus/> and “Central America’s Lost Boys” (30 April 2012) at <http://www.texasobserver.org/central-americas-lost-boys/>.

³ U.S. State Department, “U.S. Laws on Trafficking in Persons,” <http://www.state.gov/j/tip/laws/>

⁴ Prior to 1997, UAC were placed in Immigration and Naturalization Services detention facilities with adults, where a number of abuses occurred. A class action suit was brought, and after nine years of litigation, the Flores Settlement Agreement was negotiated. Under it, UAC must be transferred from adult care within 72 hours to the “least restrictive setting appropriate” in facilities meeting state standards for children in foster care. Paramount to their care is “dignity, respect and special concern for their particular vulnerability as minors,” as is assuring their appearance at immigration courts. Facilities for UAC must, at a minimum, have: safe and sanitary conditions, toilets and sinks, drinking water and food, medical assistance in cases of emergency, adequate temperature control and ventilation, adequate supervision to protect minors from others, contact with family members, and separation from unrelated adults. For those who have special needs, including health, mental or physical conditions requiring special services or treatment by staff, those needs must be met whenever possible, in licensed programs. While only 25 of these shelters existed in 2005, we have over 90 today.

See *Flores v. Meese - Stipulated Settlement Agreement* (1997) at <https://www.aclu.org/immigrants-rights/flores-v-meese-stipulated-settlement-agreement>.

⁵ See Cavendish, Betsy and Cortazar, Maru, “Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors,” Appleseed Foundation (2011), available at: <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

See also Kennedy, Elizabeth, “US immigration bill: silence on the deportation of children,” *openDemocracy* 50.50 (2013), available at: <http://www.opendemocracy.net/5050/elizabeth-kennedy/us-immigration-bill-silence-on-deportation-of-children>. Since 2005, over 150,000 unaccompanied child migrants from Mexico have been deported in contradiction of U.S. law, as laid out in the TVPRA and the 1997 Flores Settlement Agreement.

⁶ Mexican officials assert their ability to provide all services and support that Mexican unaccompanied minors need and thus ask that their youth be repatriated as quickly as possible per these agreements. However, their statements clash with overflowing orphanages in Mexican border towns and accounts of these youth being targeted for both drug and human trafficking (see del Bosque 2010). Then, despite assumptions by Mexican and US officials that these minors have families willing to support them, my conversations with advocates lead us to believe that as many as 20 percent of unaccompanied minors lived on the streets prior to emigrating and will once again find themselves destitute if deported.

See Ryan, Kevin, “Stop the Murders of Street Kids,” *Huffington Post* (2012), available at: http://www.huffingtonpost.com/kevin-m-ryan/honduras-children-violence_b_1574086.html.

⁷ The Homeland Security Act amended the United States Code in 6 USC §279(g)(2) to define UAC as those who: (a) have no lawful immigration status in the US; (b) are under the age of 18; and (c) have no parent or legal guardian either present or available to provide care and physical custody in the U.S.

⁸ The Northern Triangle is composed of the three Central American nations of El Salvador, Guatemala and Honduras who share economic, political and social characteristics. In 1991, Guatemala and El Salvador signed a free trade agreement, which Honduras signed in 1992. While the Northern Triangle originally designated the free trade area the three share, it is now known as the world’s deadliest region because of its high homicide and crime rates. To learn more, you can read ICESI University’s background note here: <http://www.icesi.edu.co/blogs/icecomex/2008/10/17/triangulo-norte-centroamericano/>.

⁹ See Immigration Task Force, “Issue Brief: Child Migration by the Numbers,” Bipartisan Policy Center (2014), available at: <http://bipartisan-policy.org/library/research/child-migration-numbers>.

¹⁰ Prior to this year, neither Customs and Border Patrol (CBP), who apprehends UAC, nor ORR, who houses them, willingly released their numbers. In an unexplained move, CBP officials changed course in 2014 and became much more vocal about the increasing number of child arrivals. They have consistently estimated to the public that from 60,000 to 90,000 children will arrive, but they are not differentiating between accompanied and unaccompanied child migrants or Mexican and non-Mexican children. Differentiation is critical since accompanied and Mexican children rarely enter ORR care, meaning those who have entered ORR care in 2014 are likely markedly lower than the recently released 47,000 number.

¹¹ As was painstakingly portrayed in the film, *Under the Same Moon*

(2008), even young children may decide to migrate without telling their families. It could be days before families know where their children are and how to get them.

¹² 54 percent of KIND's Central American children had one parent living in the U.S. UNICEF found that children in kinship care in Africa were more vulnerable to increased poverty, abuse, neglect, exploitation, and unequal treatment in the household. See Roby, Jini L. "Children in Informal Alternative Care, Discussion Paper," UNICEF Child Protection Section, June 2011. UCCSB additionally found that children with family in the U.S. are vulnerable for two reasons: they are more likely to lack a stabilizing element in the home and can become targets for extortion since gangs are able to acquire lists of who receives remittances.

¹³ Before concluding this investigation, I will do this for each child's story. I am hoping to create a public database of these articles and several interactive maps of the violence.

¹⁴ 46.7 percent of girls list this reason, compared to 30.5 percent of boys. Nearly all children younger than 12 years old list reunification as a motivating factor.

¹⁵ See Valencia Caravantes, Daniel, "La legión de los desplazados [The legion of the Displaced]," *El Faro* (2012), available at http://www.especiales.elfaro.net/es/salanegra_desplazados/.

¹⁶ Central American University's Institute of Public Opinion (IUDOP) 2012 Survey (Spanish), Instituto Universitario de Opinión Pública Universidad Centroamericana "José Simeón Cañas" San Salvador, El Salvador, Diciembre de 2012; available at <http://www.uca.edu.sv/publica/iudop/archivos/informe131.pdf>.

¹⁷ Servir, proteger, y sobrevivir, March 27, 2011 available at: <http://www.elfaro.net/es/201103/fotos/3775/> Castro, Ángela, "Mareros torturan y matan a policía en Soyapango," *Elsalvador.com*, January 26, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8509092 Hernández, Carlos, "Al menos 37 asesinatos se reportan durante el fin de semana," *La Página*, February 16, 2014, available at: <http://www.lapagina.com.sv/nacionales/92873/2014/02/16/Al-menos-28-asesinatos-se-reportan-durante-el-fin-de-semana>

¹⁸ UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014), available at: <http://unhcrwashington.org/children>

¹⁹ Dara Lind, "The Central American migrant crisis isn't just a US problem, in one chart," *Vox*, June 24, 2014, available at: <http://www.vox.com/2014/6/24/5839236/the-central-american-migrant-crisis-isnt-just-a-us-problem-in-one>

²⁰ Flores, Ricardo. "Quien protege a Monica? [Who protects Monica?]" *La Prensa Grafica* 7 July 2013 <http://www.laprensagrafica.com/-quien-protege-a-monica>

²¹ Ramirez, Sigfredo. "El pais de los huérfanos [The country of orphans]." *La Prensa Grafica* 6 April 2014. <http://www.laprensagrafica.com/2014/04/06/el-pais-de-los-huerfanos>

²² Numerous reports have documented widespread impunity in El Salvador, including Amnesty International, Human Rights Watch, the United Nations Office of Drug and Crime, the United States Department of State.

²³ While one gang member will typically request a girl to be his girlfriend, after a certain period of time, she is viewed as property of the entire gang. She essentially becomes a prostitute for the gang.

²⁴ Alerta Angel Desparecido, Twitter, available at: <https://twitter.com/AlertaAngelsv>.

²⁵ *La Prensa Grafica*, "La tragedia de todo un país," June 15, 2014, available at: <http://www.laprensagrafica.com/2014/06/15/la-tragedia-de-todo-un-pais>

La Prensa Grafica, "Asesinan a pandillero deportado de EUA en Tejutla," May 21, 2014, available at: <http://www.laprensagrafica.com/2014/05/21/asesinan-a-pandillero-deportado-de-eua-en-tejutla>

Elsalvador.com, "Matan a una mujer por pleito entre pandilleros," April 29, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8741481.

El Salvador.com, "Matan a pandillero deportado de EE. UU.," January 24, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8503815.

²⁶ Kennedy, Elizabeth, "'No place for children': Central America's Youth Exodus" *InSight Crime* (2014), available at: <http://insightcrime.org/news-analysis/no-place-for-children-central-americas-youth-exodus>.

²⁷ This trend is concerning in historical perspective, because the United States provided funding and training to Mexican migration officials to return more Central Americans to their home countries when people from those nations fled civil war in the 1970s, 1980s, and 1990s.

²⁸ Through May, only four Salvadoran children have been deported by plane from the U.S., as reported through private communication with El Salvador's government. This number is likely to increase substantially if the U.S. decides to expedite immigration proceedings for child migrants. See Gilha, Lori Jane and Amin, Sameen, "El Salvador ambassador: US proposed child-only migrant flights," *Al Jazeera America* (2014), available at: <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/6/25/u-s-proposed-childonly-migrant-flightssayselsalvadorambassador.html>.

For the month of July, I will spend the day at the airport four days a week to conduct interviews with Salvadoran children deported by plane from Mexico and the U.S. I have not done so earlier because the airport is over an hour from the capital city where I reside, and I always received no notice or too little notice to arrive in time to complete interviews.

²⁹ An equal number of girls as boys traveled until age 14, and then sometimes four times as many boys traveled as girls at ages 15, 16, and 17.

³⁰ Outside of California and Texas, children and their families were rarely able to name cities within the states. Thus, while they knew where they wanted to go in the first two states, they were sometimes unaware that Virginia, for example, was not the name of a city.

³¹ Closed questions are those with simply a yes or no answer, and open questions are those that require elaboration and individual response.

³² In 2009, the Salvadoran government passed a new law for child protection: the Integrated Protection Law for Childhood and Adolescence (LEPINA). See Asamblea Legislativa de El Salvador, Centro de Documentación Legislativa, April 16, 2009; available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

It created a new governing body for this purpose, the National Council for Childhood and Adolescence (CONNA) but did not terminate the existence of the previous National Institute for Childhood and Adolescence (ISNA) or make clear what each organization's role would be under the LEPINA. Whereas ISNA used to perform the intake interviews with deported children, no one from either office currently attends return centers. Because migration officials fear they lack expertise to adequately meet children's needs and vulnerabilities, they place the child with her waiting family member as soon as she disembarks from the bus. They believe this is in the best interest of the child. As a result, neither I, the migration officials, nor anyone else completes an interview with the child alone. This is problematic for a number of reasons, not least of which is that the child is not effectively screened for past abuse, mistreatment, or negligence.

³³ In February 2013, Kids in Need of Defense (KIND) released *The Time is Now* (at <http://www.supportkind.org/en/about-us/resources>) which drew upon a random sample of over 100 UAC cases they represented. It began: "[a] child migrating alone signals a much deeper protection issue that has caused them to leave their homes, family, and community." It pointed to the lack of "robust national child protection systems" in the Northern Triangle, which resulted in most of their child clients fleeing gang violence or long-term domestic violence by their caregivers. Children reported that police could not be trusted to protect them, moving within the country or region did not offer protection, having family in the U.S. and receiving remittances make one a target for extortion, and not paying extortion demands could result in serious harm or death.

³⁴ See UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014), available at: <http://unhcrwashington.org/children>.

In March, UNHCR released their results of extensive interviews with 404 detained UAC. Among UAC, they found that no less than 58 percent were forcibly displaced and potentially in need of international protection: 48 percent had personally experienced cartel or gang violence, and 22 percent had survived abuse in the home. UNHCR also reported that since 2009, more and more Central American adults and children have been requesting asylum in the United States and in Belize, Costa Rica, Mexico, Nicaragua, and Panama, where their requests have increased by a combined 432 percent.

³⁵ See "Los 10 principales sitios donde taxistas no van por miedo [The top 10 places where taxis won't go because of fear]" *El Diario de Hoy* (2014), available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47673&idArt=8602296.

³⁶ See "Hallan cadaveres de dos juvenes [Two youths' bodies found]," *El Diario de Hoy* (2014), available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8706438.

³⁷ See also University of California, Hastings Center for Gender and Refugee Studies and Kids in Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, (2014), available at: <http://www.supportkind.org/en/about-us/resources>. In

February 2014, KIND and UC-Hastings teamed to release a report on challenges UAC face while navigating the U.S. system. In calling for legal and policy reforms to ensure basic protections for UAC, it also highlighted that while many UAC seek to reunite with family once in the U.S., their migration is frequently motivated by violence rather than family separation.

³⁸ See United States Conference of Catholic Bishops (USCCB), *Mission to Central America: The Flight of Unaccompanied Children to the United States*, (2013), available at: <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>.

Based upon three weeks in the Northern Triangle, while this report noted the absence of economic and educational opportunities, the strong desire to reunify with family, and a breakdown in the rule of law so significant that all three nations have a "culture of fear and hopelessness." At the macro level, it discussed increasing interaction between Central American gangs and drug cartels, partially evidenced by the U.S. Department of Treasury's decision to designate Mara Salvatrucha 13 as a significant Transnational Criminal Organization in October 2012 (See U.S. Department of Treasury, "Treasury Sanctions Latin American Criminal Organization," Executive Order (E.O.) 13581.). It then commented on regional skepticism around the gang truce and noted that whether or not it actually existed, it did demonstrate the gangs' emerging roles as political actors, capable of sitting at the table with government officials and controlling crime rates.

See Archibald, RC, "Gangs' Truce Buys El Salvador a Tenuous Peace" *New York Times* 27 August 2013 and Farah, Douglas, "What the Kids are Fleeing: Gang Violence Spikes in Central America," *Fusion* (2014), available at: <http://fusion.net/justice/story/guns-drugs-money-anti-socials-form-social-order-807005>.

I have yet to meet any researcher or citizen in El Salvador or Central America that has faith in the truce. They often indicate that even when homicide rates were initially halved, disappearance, extortion, kidnapping, and robbery increased. Then, many large clandestine graves are being found this year and last so that many speculate they were just better at hiding the bodies. Finally, homicide rates now exceed pre-truce levels. In May, 401 people were murdered, which is a daily average of 12 in a nation of only six million people.

³⁹ See Jones, Jessica and Podkul, Jennifer, *Forced From Home: The Lost Boys and Girls of Central America*, Women's Refugee Commission (2012), available at: <http://womensrefugeecommission.org/forced-from-home-press-kit>.

Based upon interviews with 146 detained child migrants from Mexico and the Northern Triangle, The report found that the extent and scale of rising crime, systemic state corruption and entrenched economic inequality were culminating, allowing for growing influence of gangs and cartels, which most listed as their reason for leaving. Specifically, many were threatened by gangs to join or die, saw dead bodies regularly, and lived in constant fear. They were so desperate for safety, that even after enduring horrendous journeys through Mexico that often included abuse, assault, inconsistent access to food or water and witnessing or experiencing death, drowning, kidnapping, maiming or rape, most said they would do it again. The report surmised that until these countries change substantially, the upward trend would become "the new norm," which has proven true in the two years that followed.