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ENTERING THE TRUMP ICE AGE: CONTEXTUALIZING THE NEW
IMMIGRATION ENFORCEMENT REGIME

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I. INTRODUCTION

A week before the November general election, I'm on a conference call of the policy team of the Immigrant Legal Resource Center. We are planning on how to push to have ILRC staff attorney Angie Junck to be named to Hillary

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Clinton's transition team. Angie will be key to the immigration team, because we need someone to push hard on urging Clinton to not through so-called criminal immigrants under the bus when it comes to comprehensive immigration reform or expansion of prosecutorial discretion. We also are talking about who Clinton might name to be the new Deputy Attorney General to head the DOJ's civil division—the key person who will be leading the charge on pushing for the constitutionality of the President's power to issue the DAPA prosecutorial discretion that Clinton has pledged to stand behind.

A few days before the election, in typical activist academic fashion, I'm assessing how to best strategize my approach and allocate my time, while on a partial sabbatical, to do my writing and to help supervise Immigration Clinic students. My writing projects include a book critical of the Obama administration's handling of the surge of unaccompanied children fleeing Central America since 2014 and an immigration law casebook with Jennifer Chacón and Kevin Johnson. The clinic students are working on asylum cases involving unaccompanied children and women and children who have fled various forms of violence in Central America. At the time, I also am looking forward to the pledge that Hillary Clinton has made that she will shut down the ICE family detention centers and not deport these unaccompanied children.¹

The day before the general election, Monday, November 7, 2016, I'm at a conference at UCLA—The Network for Justice Planning Summit. The convening involves a nation-wide, interdisciplinary research initiative of the American Bar Foundation. This project is devoted to producing innovative scholarship on the Latino population in the United States and locating the sites of intervention that promise to be most impactful in promoting opportunity and mobility through law and policy. The aim is to generate findings that can be utilized by organizations and individuals who work to advance justice for the Latino community. We spend much of the day planning progressive work with the Latino community partnering with academia and community based organizations over the next few years of the Clinton administration.

Less than 48 hours later, Donald Trump has been elected President of the United States. I get a late morning call from Afra Afsharipour, a former colleague at UC Davis who lives in San Francisco. She reports that when she dropped off her children at Alvarado Elementary School that morning, immigrant parents arrived scared and in tears. They were concerned that they would be deported. They weren't sure if they should bring their kids to school anymore. They aren't sure if it's safe to leave their homes.

¹ David Nakamura, *Clinton's stance on immigration is a major break from Obama*, WASH. POST, Mar. 10, 2016.

That call marks the start of the Trump age of Immigration and Customs Enforcement—the Trump ICE age—for me.² As we witness the unfolding of President Trump’s ICE enforcement, embodied by Executive Orders, unleashed ICE agents, Border Wall construction proposals, and the president’s funding wish list, fear is spreading throughout immigrant communities. Allies and immigrants groups are watching and reporting every perceived ICE action, perhaps contributing to a state of hysteria through social media and listservs.

During the early stages of the Trump ICE age, we seem to be witnessing and experiencing an unparalleled era of immigration enforcement. But is it unparalleled? Didn’t we label Barack Obama the “Deporter-in-Chief?”³ Wasn’t it George Bush who used the authority of the Patriot Act to round up nonimmigrants from Muslim and Arab countries and didn’t his ICE commonly engage in armed raids a factories and other worksites?⁴ Aren’t there strong parallels that can be drawn between Trump enforcement plans and actions and those of other eras? What about the fear and hysteria that seems to really be happening in immigrant communities? Is the fear unparalleled? Why is there so much fear? Is the fear justified? Why do things seem different, in spite of rigorous immigration enforcement that has occurred even in recent years?

This article begins with a comparison of what the Trump administration has done in terms of immigration enforcement with the enforcement efforts of other administrations. For example, I compare (1) the attempted Muslim travel bans with post-9/11 efforts by George W. Bush and Iranian student roundups by Jimmy Carter, (2) the Border Wall proposal with the Fence Act of 2006 and Operation Gatekeeper in 1994, (3) restarting Secure Communities (fingerprint sharing program) with Obama’s enforcement program of the same name, (4) expanding INA § 287(g) agreements with Bush efforts under the same statute, (5) the threat of raids by an ICE deportation army with Bush gun-toting raids, (6) extreme vetting of immigrants and refugees with what already existed under Bush and Obama, (7) threatening to cut off federal funds to sanctuary cities with the prosecution of sanctuary workers in the 1980s, (8) prioritizing “criminal” immigrants with Obama’s similar prioritization, and (9) expedited removal in the interior with Bush and Obama expedited removals along the border. Then I turn to the fear and hysteria in immigrant communities that has spread throughout the country. I ask why that fear has occurred and whether the fear has a reasonable basis. I close with a personal reflection on the parallels

² Since that first call, I have received dozens of requests for immigration and know your rights presentations from countless individuals and organizations in response to Trump’s immigration enforcement threats. They include calls from individuals at K-12 schools, junior colleges, colleges, churches, health care clinics, apartment complexes, libraries, community based organizations, restaurants, and other businesses.

³ Amanda Sakuma, *Obama Leaves Behind a Mixed Legacy on Immigration*, NBC NEWS, Jan. 15, 2017.

⁴ See generally, Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform*, 44 USF L.REV. 307 (2009).

I have seen and experienced since I began practicing immigration law as a legal services attorney in 1975 and contemplate why enforcement and the resulting fear are different today.

II. COMPARING TRUMP POLICIES WITH PAST ENFORCEMENT

Some pundits credit his successful bid for the White House, at least in part, to his tough stance on immigration enforcement. His venomous attack on some Mexican immigrants, his pledge to build a “great, great wall” along the southern border, and his call for a “total and complete shutdown of Muslims entering the United States” were among his most publicized campaign pledges.⁵ Combined with actual immigration enforcement actions that have occurred after Mr. Trump took office, his pre-election rhetoric undoubtedly has contributed to the fear that has flooded across the country in immigrant communities.⁶ Truth is, when Trump administration actions and proposals are juxtaposed with those of other eras, many similarities surface—and in some cases are more harsh than what Mr. Trump has offered.

A. *The Muslim Ban*

On January 27, 2017, President Trump issued Executive Order 13,769, “Protecting the Nation from Foreign Terrorist Entry into the United States” (EO-1).⁷ The stated purpose was to “protect the American people from terrorist attacks by foreign nationals admitted to the United States.”⁸ Two courses of action were attempted. The first was, under 8 U.S.C. § 1182(f), to suspend for 90 days “the immigrant and nonimmigrant entry . . . of aliens” from Iraq, Libya, Sudan, Somalia, Syria, and Yemen as “detrimental to the interests of the United States.”⁹ The second ordered the 120 day suspension of the Refugee Admissions Program for 120 days and imposed an indefinite ban on Syria refugees; no more than 50,000 refugees were to be admitted in 2017, and a preference would be given to refugee claims based on “religious-based persecution, provided that the religion of the individual is a minority religion” in the country.¹⁰ Within

⁵ TIME, Trump’s election speech <http://time.com/3923128/donald-trump-announcement-speech/>. From Trump’s presidential announcement speech. Also, Jenna Johnson, Trump calls for ‘total and complete shutdown of Muslims entering the United States’, Washington Post, Dec 7 2015 https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.8beb99a424e1

⁶ See notes --, *infra*, and accompanying text.

⁷ White House, Office of the Press Secretary, Jan 27 2017. Exec. Order No. 13,769 of Jan. 27, 2017, Protecting the Nation From Foreign Terrorist Entry Into the United States, 82 Fed. Reg. 8,977 (Feb. 1, 2017), *available at* <https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states>. <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

⁸ *Id.* § 1.

⁹ *Id.* § 2. *Id.* § 3(c)

¹⁰ *Id.* § 5(d). *Id.* § 5(b).

hours, several federal courts enjoined EO-1 on a range of grounds, including due process, equal protection, and the Establishment Clause.¹¹

Before the restraining orders on EO-1 were issued, the damage had been done. January 27 was a Friday, and that weekend, chaos ensued at a variety of airports across the country.¹² Volunteer attorneys staked out arrival areas at international terminals in New York, Chicago, Newark, Washington Dulles, Los Angeles, and San Francisco.¹³ They quizzed relatives and friends awaiting the arrival of individuals from the seven countries.¹⁴ Access to CBP agents by attorneys on behalf of anticipated arriving passengers was limited and hampered.¹⁵ According to one list provided by the government, 746 folks were detained or processed under the executive order in the “turbulent 27 hours after a judge partially blocked enforcement” of the order.¹⁶

Given his bad luck with the courts on EO-1, Trump went to version 2.0. So on March 6, 2017, Trump issued a revised Executive Order (EO-2) and revoked EO-1.¹⁷ EO-2 reinstates the 90-day ban on travel for six of the original seven countries, removing Iraq from the list.¹⁸ The ban was narrowed to respond to “judicial concerns” by applying only to individuals outside the United States who did not have valid visas, expressly exempting lawful permanent residents

¹¹ See, e.g., *State of Washington v. Trump*, No. C17-0141JLR (W.D. Wash. Feb. 3, 2017); *Mohammed v. United States*, No. CV 17-00786 AB (PLAx), 2017 WL 438750 (C.D. Cal. Jan. 31, 2017); *Doe v. Trump*, No.: C17-126, 2017 WL 388532 (W.D. Wash. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017).

¹² Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES, Jan. 28 2017, https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html?_r=0.

¹³ Gene Johnson, *What Will the New Trump Travel Ban Look Like?*, U.S. NEWS, Feb. 28, 2017, <https://www.usnews.com/news/politics/articles/2017-02-28/airports-legal-volunteers-prepare-for-new-trump-travel-ban>; The World Staff, *Volunteer lawyers come forward to assist travelers detained under Trump travel ban*, PRI, Jan. 30, 2017, <https://www.pri.org/stories/2017-01-30/volunteer-lawyers-come-forward-assist-travelers-detained-under-trump-travel-ban>; Ted Phillips, *JFK airport volunteer attorneys continue to help travel ban cases*, NEWSDAY, Feb. 5, 2017, <http://www.newsday.com/news/new-york/jfk-airport-volunteer-attorneys-continue-to-help-travel-ban-cases-1.13066591>.

¹⁴ See Victoria Macchi, *Preparing for New Travel Ban, Layers Step Up to Help Immigrants*, VOA NEWS, Mar. 4, 2017, <https://www.voanews.com/a/immigrant-lawyers-prepare-for-travel-ban/3749414.html>.

¹⁵ Edward Helmore & Alan Yuhas, *Border agents defy courts on Trump travel ban, congressmen and lawyers say*, THE GUARDIAN, Jan. 30, 2017, <https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban>.

¹⁶ Larry Neumeister, *746 people subjected to travel ban Jan. 28-29*, ASSOCIATED PRESS, Feb. 24, 2017. The supervising attorney of the University of San Francisco immigration law clinic, Jacqueline Brown Scott, and our law students, assisted with a half dozen cases at San Francisco International Airport, over a five day period.

¹⁷ White House, Office of the Press Secretary, Mar. 6, 2017. Exec. Order of Mar. 6, 2017, <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

¹⁸ Ariane de Vogue et al., *US President Donald Trump signs new travel ban, exempts Iraq*, CNN, Mar. 7, 2017, <http://www.cnn.com/2017/03/06/politics/trump-travel-ban-iraq/index.html>.

and refugees already admitted to the United States.¹⁹ The refugee suspension for 120 days continued, but the minority religion preferences in refugee applications and the complete ban on Syrian refugees were removed.²⁰ This time around, one federal court--the Eastern District of Virginia--refused to enjoin the new ban. Judge Anthony J. Trenga, a George W. Bush appointee, was the first federal judge to uphold the Trump travel ban.²¹ Interestingly, the same Eastern District of Virginia struck down EO-1, but the EO-1 case enjoining portions of EO-1 was before a different judge, Leonie Milhomme Brinkema, a Bill Clinton appointee.)²² This time, Judge Trenga understood that 1965 immigration laws prohibited nationality discrimination in the issuance of visas, however, he construed EO-2 as relying on the authority to deny entry even after the issuance of a visa.²³ Also, because EO-2 is “facially neutral,” Judge Trenga rejected plaintiffs’ arguments that the ban violated the Establishment Clause because it disfavors the religion of Islam.²⁴ He focused on what he regards as EO-2’s secular purpose of protecting U.S. citizens from terrorist attacks and rejected plaintiffs’ references to the stream of anti-Muslim statements made by Donald Trump and his close advisors before and after the election.²⁵ Instead, Judge Trenga relied on Supreme Court doctrine related to Congressional plenary power over immigration, and the Executive’s authority to deny visas given the government’s facially legitimate and non-discriminatory stated purposes, citing *Kleindienst v. Mandel*, 408 U.S. 753 (1972).²⁶

¹⁹ EO2, at § 1(b)(i).

²⁰ *Id.* § 1(b)(iv); See generally Order, *supra* note 17.

²¹ <http://www.cnn.com/2017/03/24/politics/virginia-federal-judge-revised-travel-ban/index.html>.

(But Virginia-based US District Judge Anthony Trenga was not persuaded that Trump's past statements automatically mean the revised executive order is unlawful, especially given the changes it made from the first version. "This court is no longer faced with a facially discriminatory order coupled with contemporaneous statements suggesting discriminatory intent," Trenga explained. "And while the President and his advisers have continued to make statements following the issuance of EO-1 (the first executive order) that have characterized or anticipated the nature of EO-2 (the revised ban) the court cannot conclude for the purposes of the motion that these statements, together with the President's past statements, have effectively disqualified him from exercising his lawful presidential authority.") *Sarsour v. Trump*, 2017 WL 1113305, (E.D. Va. Mar. 24, 2017).

²² *Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017) (granting temporary restraining order forbidding federal government agencies from removing, pursuant to EO 13769, individuals from Dulles International Airport in Virginia and ordering respondents to “permit lawyers access to all legal permanent residents being detained at Dulles International Airport.”)

²³ https://www.washingtonpost.com/local/public-safety/virginia-judge-gives-okay-to-new-trump-travel-ban/2017/03/24/a304be4c-0e60-11e7-ab07-07d9f521f6b5_story.html?utm_term=.838dbc6088fc

²⁴ https://www.washingtonpost.com/local/public-safety/virginia-judge-gives-okay-to-new-trump-travel-ban/2017/03/24/a304be4c-0e60-11e7-ab07-07d9f521f6b5_story.html?utm_term=.838dbc6088fc

²⁵ *Sarsour v. Trump*, 2017 WL 1113305, (E.D. Va. Mar. 24, 2017).

²⁶ *Sarsour v. Trump*, 2017 WL 1113305, (E.D. Va. Mar. 24, 2017).

However, the U.S. Court of Appeals for the Fourth Circuit has a conflict on its hands over EO-2. Several days before Judge Trenga’s decision in Virginia, on March 15, 2017, U.S. District Judge Theodore D. Chuang, of the District of Maryland, enjoined a major portion of the Trump order.²⁷ In the Maryland District Court case, Judge Chuang, a Barack Obama appointee, sees things quite differently. He cited statement after statement by Trump and his advisors that revealed great animus toward Muslims.²⁸ Those statements were “highly relevant” to the intent behind EO-2, especially when Stephen Miller, the Senior Policy Advisor to the President, described EO-2 changes as “mostly minor technical differences,” and stated that the “basic policies are still going to be in effect.”²⁹ White House Press Secretary Sean Spicer stated that the “principles of [EO-2] remain the same.”³⁰ To Judge Chuang, “the fact that EO-2 is facially neutral in terms of religion is not dispositive.” The core outcome of a blanket ban on entry of nationals from the designated countries remains. Judge Chuang notes: “When President Trump discussed his planned Muslim ban, he described not the preference for religious minorities, but the plan to ban the entry of nationals from certain dangerous countries as a means to carry out the Muslim ban. These statements thus continue to explain the religious purpose behind the travel ban....”³¹

Judge Chuang was not impressed by the government’s attempt to adorn EO-2 with more national security window dressing. The question is not simply “whether the Government has identified a secular purpose for the travel ban.”³² If the secular purpose is “secondary to the religious purpose, the Establishment Clause would be violated.”³³ There was no interagency consultation process. To Chuang, the “fact that the White House took the highly irregular step of first introducing the travel ban without receiving the input and judgment of the relevant national security agencies strongly suggests that the religious purpose was primary, and the national security purpose, even if legitimate, is a secondary *post hoc* rationale.”³⁴ On the *Mandel* issue, the deference due to the Executive on matters of an officer’s decision to deny a visa is not appropriate here. That approach “does not apply to the promulgation of sweeping immigration policy at the highest levels of government.”³⁵

²⁷ 2017 WL 1315538

²⁸ 2017 WL 1315538

²⁹ 2017 WL 1315538

³⁰ 2017 WL 1315538

³¹ 2017 WL 1315538

³² 2017 WL 1315538

³³ 2017 WL 1315538

³⁴ 2017 WL 1315538

³⁵ In my view, Judge Chuang has it right, as does U.S. District Judge Derrick K. Watson of the Hawaii District, who enjoined EO-2 as well (noting that the populations of the six banned countries were over 90 percent Muslim and rejecting the government’s argument that one can demonstrate animus toward any group of people only by targeting all of them). While they have focused on the Establishment Clause violation, I think more can be said about Trump’s reliance on 8 U.S.C. § 1182(f) as statutory authority for the ban. That provision provides:

Trump's attempted travel bans on Muslims could draw immediate historical comparisons with Chinese and other Asian exclusion laws.³⁶ However, perhaps the most obvious comparisons are with post-9/11 targeting of Muslims and Arabs and the round up of Iranian students during the Jimmy Carter Administration.

1. Post 9/11

On September 11, 2001, the nation suffered one of its most severe tragedies in modern history. Two passenger airplanes were commandeered by terrorists that plowed into the twin towers of Manhattan's World Trade Center, causing their total destruction.³⁷ A third hijacked plane crashed into the Pentagon.³⁸ In all, almost 3,000 lives were lost that fateful day.³⁹

Quick and early suspicion of the attackers focused on Muslim and Arab terrorists.⁴⁰ Although the swift Islamophobic impulse to blame Muslims was completely erroneous a few years earlier when the Mira Federal Building in Oklahoma City was bombed,⁴¹ subsequent evidence demonstrated that this time the culprits were trained by the Muslim-extremist Osama Bin Laden.⁴² The stage was set for the country's "War on Terrorism" that consumes us to this day.

In truth, one of President George W. Bush's first public actions suggested that he actually would work hard to not foment anti-Muslim sentiment in his search for justice and to find those behind the attacks. Six days after the

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

How can the President actually assert that he has found "that the entry of" all nationals from the six countries "would be detrimental to the interests" of the country? He cannot. This provision should be reserved for an actual "class of aliens," such as a terrorist group or entity that would be coming to do us harm. He does not have the factual basis to support his ban. He cannot even come close to providing that factual basis for the assertion that entry of any random person from the six countries would be detrimental to the United States.

³⁶ See generally, BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY* (1993).

³⁷ N.R. Kleinfield, *U.S. Attacked, Hijacked Jets Destroy Twin Towers and Hit Pentagon in Day of Terror*, NY TIMES, SEPT. 12, 2011.

³⁸ *Id.*

³⁹ Joanna Walters, *9/11 health crisis: death toll from illness nears number killed on day of attacks*, THE GUARDIAN, Sept. 11, 2016.

⁴⁰ Jake Tapper, *Setback for Arab-Americans*, SALON.COM, Sept. 17, 2001, <http://www.salon.com/2001/09/17/muslims/>

⁴¹ Melinda Henneberger, *TERROR IN OKLAHOMA: BIAS ATTACKS; Muslims Continue to Feel Apprehensive*, NY TIMES Apr. 24, 1995.

⁴² Brian Ross, *While America Slept: The True Story of 9/11*, ABC NEWS, Aug 11, 2011, <http://abcnews.go.com/Blotter/ten-years-ago-today-countdown-911/story?id=14191671>

attack, Bush visited a Washington mosque,⁴³ where he referred to Arab and Muslim Americans as “patriots” underserving of intimidation and harassment.⁴⁴ He boldly proclaimed, “The face of terror is not the true faith of Islam.”⁴⁵ In the televised visit, he reminded the nation that American Muslims are “friends” and “tax-paying citizens.”⁴⁶

Unfortunately, it did not take long for that feel good, multicultural sentiment to be overcome by one that fomented hate.⁴⁷ In its investigation of the attacks, the Bush Administration detained more than 1200 individuals, mostly of Arab and Muslim descent.⁴⁸

In February 2002, the INS announced that it would soon begin apprehending and interrogating thousands of undocumented Middle Eastern immigrants who apparently ignored deportation orders, seeking ways to prosecute anyone who had ties to terrorism. The results of these interviews would be compiled in a new computer database to facilitate future monitoring of these individuals.⁴⁹

Soon the strategy evolved into the National Security-Entry-Exist Registration System (NSEERS) targeting males from 25 Arab or Muslim majority countries, plus North Korea, that was maintained through the end of the Obama Administration.⁵⁰ NSEERS netted not one terrorist conviction.⁵¹

Perhaps the best known piece of legislation that resulted from 9/11 attacks is the USA PATRIOT Act. Without much opposition, the act included a range of provisions authorizing the detention and exclusion of noncitizens based on speech or support of certain suspicious groups.⁵² President Bush used the

⁴³ Samuel G. Freedman, *Six Days After 9/11, Another Anniversary Worth Honoring*, NY TIMES, Sept. 7, 2012.

⁴⁴ David E. Sanger, *A Nation Challenged: The President; Bin Laden Is Wanted in Attacks, ‘Dead or Alive,’ President Says*, NY TIMES, Sept. 18, 2001.

⁴⁵ *Id.*

⁴⁶ Freedman, *supra* note 43.

⁴⁷ Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, NY TIMES, Sept. 17, 2016 (a record 481 documented hate crimes against Muslims were committed in 2001).

⁴⁸ Office of Inspector General, U.S. Dept. of Justice, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks 1-14* (April 2003), <https://oig.justice.gov/special/0306/full.pdf>

⁴⁹ BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY 267* (2004).

⁵⁰ Kevin Liptak and Shachar Peled, *Obama administration ending program once used to track mostly Arab and Muslim men*, CNN, Dec. 22, 2016.

⁵¹ *Id.*

⁵² Claudia, *What Does the PATRIOT Act Allow the Government to Do?*, THE ULTRA VIOLET, Oct. 20, 2013, <http://www.theultraviolet.com/wordpress/2013/10/what-does-the-patriot-act-allow-the-government-to-do-2/>; American Civil Liberties Union, *Surveillance Under the PATRIOT Act*, <https://www.aclu.org/infographic/surveillance-under-patriot-act>; Department of Justice, *The USA PATRIOT Act: Preserving Life and Liberty*, <https://www.justice.gov/archive/ll/highlights.htm>

Patriot Act to close down Muslim charities with little notice or opportunity for the organizations to object.⁵³

2. Iranian Student Roundup of 1979

President Trump's targeting of nationals of particular countries also is reminiscent of the Jimmy Carter Administration's roundup of Iranian students in the United States in 1979. President Carter and the nation were shocked by the takeover of the U.S. embassy in Tehran by a band of militant students in November 1979.⁵⁴ The militants supported the Iranian Revolution and were acting in opposition to the United States because of its support for the Shah of Iran, whose regime had been toppled in January 1979.⁵⁵ Dozens of U.S. citizen embassy workers were held hostage in a crisis that lasted more than a year.⁵⁶ President Carter had allowed the Shah into the United States for cancer treatment, and the Iranian militants demanded the return of the Shah.⁵⁷ Some observers opine that the embassy takeover and the ensuing attention that President Carter paid to the crisis cost him re-election to a second term.⁵⁸

The Carter Administration implemented a range of strategies in an attempt to resolve the hostage crisis.⁵⁹ Billions of dollars in Iranian assets in the United States were frozen.⁶⁰ Diplomatic ties were cut off with Iran.⁶¹ A rescue attempt by an elite paramilitary group failed.⁶² Mediation with the aid of Algeria was implemented.⁶³

In terms of parallels with Trump executive actions, however, within days of the embassy takeover, President Carter also asked his Attorney General Benjamin Civiletti to identify all Iranian students in the United States who were not in compliance with their visas.⁶⁴ Iranian students were the largest group of

⁵³ Neil MacFarquhar, *As Muslim Group Goes on Trial, Other Charities Watch Warily*, NY TIMES, July 17, 2007; Eli Lake, *U.S. Stopped Blacklisting Domestic Terror Charities Under Obama*, BLOOMBERG, May 12, 2016, <https://www.bloomberg.com/view/articles/2016-05-12/u-s-stopped-blacklisting-domestic-terror-charities-under-obama>

⁵⁴ Stephen Kinzer, *Thirty-five years after Iranian hostage crisis, aftershocks remain*, BOSTON GLOBE, Nov. 4, 2014.

⁵⁵ Raymond H. Anderson, *Ayatollah Ruhollah Khomeini, 89, Relentless Founder of Iran's Islamic Republic*, NY TIMES, June 5, 1989.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Harold Jackson, *How Jimmy Carter squandered his electoral assets*, THE GUARDIAN, Nov. 5, 1980; Martin Meenagh, *Why Did Jimmy Carter Fail to Gain Re-Election in 1980*, MARTIN MEENAGH BLOG, June 26, 2014, <http://martinmeenagh.blogspot.com/2014/06/why-did-jimmy-carter-fail-to-gain-re.html>

⁵⁹ *Iran Hostage Crisis Fast Facts*, CNN, Oct. 29, 2016, <http://www.cnn.com/2013/09/15/world/meast/iran-hostage-crisis-fast-facts/index.html>

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Joseph D. Whitaker, Art Harris and Phil McCombs, *U.S. Appeals Court Approves Iranian Student Deportation* WASH. POST, Dec. 28, 1979.

foreign students in the United States at the time, and many of them had spoken out in opposition to the Shah's regime.⁶⁵ By the end of the year, more than 54,000 students had reported to local offices of the Immigration and Naturalization Service (INS), and thousands were found to be deportable. The basis for deportation often was simply for "small technical violations, such as changing from one college to another and failing to register this fact."⁶⁶

In the process, the Carter Administration also ended a humanitarian program that had been extended to Iranian students in the United States prior to the embassy takeover. In the spring of 1979, the INS commissioner announced that no enforcement actions should be taken against Iranians in the country who "indicate an unwillingness to return to Iran because of the instability of the conditions."⁶⁷ But days after the hostage crisis began, the deferred departure order was rescinded, and previously-protected students fell within the general order to report to INS.⁶⁸

B. Trump's Extreme Vetting

Many immigration experts were left a little puzzled when President Trump's January 27 travel ban also called for "extreme vetting" of immigrants.⁶⁹ The "screening process is already rigorous [and] multi-layered."⁷⁰ In April 2017, Trump officials explained that extreme vetting might now include forcing visitors "to provide cellphone contacts and social-media passwords and answer questions about their ideology."⁷¹ However, consider what was already in place for refugee and visa processing:

An individual from Iraq who wants to visit the U.S. as a tourist, for example, first fills out an online application for a visa. Before the interview, information in the application is run against U.S. terrorism watch lists and databases. Any derogatory information would be flagged for a specially-trained State Department consular officer in a U.S. embassy or consulate in or near that person's home country who conducts the interview. For high-risk countries, the Department of Homeland Security (DHS) is involved . . .

During the interview, the officer tries to determine whether the person poses a terrorist or criminal threat, and also whether the person is a

⁶⁵ Andrea Nasrine Shahmohammadi, *Masked resistance: The Iranian student movement in the United States, 1977-1979*, University of Maryland, Baltimore County, 2008, 160; 1457199, dissertation abstract, <http://pqdtopen.proquest.com/doc/304415205.html?FMT=ABS>

⁶⁶ Whitaker, et al, *supra* note 64.

⁶⁷ *Yassini v. Crosland*, 618 F.2d 1356, 1358-59 (9th Cir. 1980).

⁶⁸ *Id.*

⁶⁹ *Id.*; Rebecca Shabad, *Inside the U.S. vetting system Trump wants to replace*, CBS NEWS, Feb. 27, 2017.

⁷⁰ *Id.*

⁷¹ Laura Meckler, *Trump Administration Considers Far-Reaching Steps for 'Extreme Vetting'*, WALL STREET JOURNAL, Apr. 4, 2017.

potential illegal immigrant. The visa applicant needs to show proof that a return ticket has been purchased, a defined place to stay in the U.S. and ties to his or her home country. Applicants are asked basic biographic questions, but also queried about their demeanor.

[According to Stephen W. Yale-Loehr, an immigration law professor at Cornell University's law school:] "We have a terrorist watch database. We have known immigration violators database. We have a criminal background check database that they have to go through. They don't just take the visa applicant's word. . . They do go through all of these computer databases to verify for themselves that it's appropriate to issue the visa to a particular individual."

If and when the person is approved for a visa, photos and fingerprints are taken. Before departing for the U.S., all air passengers coming into the U.S. are subject to information analysis by officials on the ground overseas and at the National Targeting Center in Virginia.

Once the traveler arrives at a U.S. airport, an officer with Customs and Border Protection (CBP) will have access to all of the information collected through the targeting center, will ask the person for his or her fingerprints again to match with the original set, and will ask questions again about the trip to the U.S.

Seth Stodder, a former senior DHS official on border and immigration issues in the administrations of both Presidents Obama and George W. Bush, said both presidents used "the correct approach" to stop terrorists from entering the U.S. . . . "The system that we have constructed since 9/11 to identify potential threats coming into the country -- is it foolproof? No. . . .You're never going to have a foolproof system. You're only going to have a foolproof system if we decide to become North Korea and shut our borders."

The U.S. has built an international regime, Stodder explained, so that officials can detect people who pose a risk before they board a U.S.-bound flight overseas. CBP [Customs and Border Patrol], for example, runs the Immigration Advisory Program, which posts personnel at various airports where they assist airline and security employees with reviewing traveler information for U.S.-bound flights. It also operates Preclearance, a program in which more than 600 U.S. law enforcement officers are stationed at 15 airports in six countries. In 2015, those officers stopped more than 22,000 high-risk travelers and determined that 10,648 of the 16 million air travelers hoping to enter the U.S. were inadmissible. . .

The process to vet refugees, meanwhile, is the toughest for anyone coming into the country.

“They’re the most carefully screened people that we allow into our borders,” said Benjamin Webb, who just left DHS after serving as executive director of [CBP’s] office of planning, analysis and requirements. “That’s a very stringent process.”

Refugees must first apply for refugee status and resettlement with the U.N. High Commission on Refugees, which collects initial documentation and biographic information, which is then transferred to a State Department-funded Resettlement Support Center. Afterwards, the center conducts an in-depth interview with the applicant, enters the documentation into a State Department system, and then cross-references and verifies data, and sends the information needed for a background check to other U.S. agencies.

. . .
From there, five entities -- the National Counterterrorism Center, FBI, DHS, Defense Department and the State Department -- screen the applicant using data from the centers. The screening process includes checks for security threats such as connections to bad actors and any past criminal or immigration violations.

Syrian refugees receive even more scrutiny with an additional enhanced review. The results from the screening process are then returned to DHS and State and trained DHS officers review them, conduct an in-person interview in the host country and collect biometric data. . . . Before the refugee arrives in the U.S., CBP and TSA conduct additional screening.

“I don’t know what extreme vetting’s supposed to be. I mean, are you going to waterboard them or something?” said Webb. “They have to follow a strict protocol. They’re monitored for two years. That would be the least efficient way for a terrorist to get into the United States.”

. . .
Toward the end of the Obama administration, the U.S. also began asking refugee applicants for their social media handles as part of the screening process. While some think sifting through that information could be another tool to vet people, others suggest it could be a waste of time and difficult to decipher.

“I think it would be very difficult to find anyone who would be willing to disclose a bad social media account to the U.S. Therefore, it’s unlikely that they would help sort of collect much information on the bad guys,” said Betsy Cooper, who served as attorney adviser to the deputy general counsel at DHS and a policy counselor in the office of policy.

. . .
“There’s a balancing act that the United States has to have in terms of making sure that we do have adequate screening,” said Yale-Loehr, “But

at not such high a cost that either nobody comes to the United States or it's too astronomically expensive to go through all of the vetting possible."⁷²

Not surprisingly, the reaction of many U.S. government employees who had been involved in this vetting process to the Trump "extreme vetting" proposal was upsetting. In their view, extreme vetting was always in place, and their work had not been valued or recognized.⁷³

C. Expanding Expedited Removals

In his border enforcement memo of February 20, 2017, then-DHS Secretary John Kelly expands the use of expedited removal under INA § 235(b)(1)(A)(iii)(I) to anyone caught anywhere in the country who has resided here for less than two years.⁷⁴ This action is part of a long-standing enforcement trend of trying to deport undocumented immigrants more efficiently—in my view a euphemism for providing fewer rights for immigrants. Administration after administration has sought ways to remove deportable aliens as soon as possible.

"Expedited removal" is the term the government uses to describe the swift deportation of undocumented immigrants without an appearance before an immigration judge—and, as pro-immigrant advocates point out, without due process protections.⁷⁵ During the Obama administration, the use of expedited removal was limited to undocumented immigrants apprehended within 100 miles of the border who had been in the United States for less than two weeks.⁷⁶ But under the Kelly memo, expedited removal can now be applied nationwide to those who cannot produce documentation that they have been in the country continuously for at least two years.⁷⁷ In 2014, the most recent year for which relevant statistics are available, 176,752 people were given expedited removal orders.⁷⁸

For some time, many advocates have been concerned about how the impulse to close off full hearing rights affects asylum seekers in particular. A 2013 study by the ACLU found that some asylum seekers were quickly deported because Customs and Border Protection (CBP) agents failed to

⁷² Rebecca Shabad, *supra* note 69.

⁷³ *This American Life*, May 13, 2017, episode.

⁷⁴ https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf

⁷⁵ Amr. Immigration Council, *A Primer on Expedited Removal*, February 3, 2017, <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>.

⁷⁶ *Id.*

⁷⁷ From Laura Smith, *Donald Trump Can Deport People Without Even Giving Them a Hearing*, MOTHER JONES, Feb. 27, 2017.

⁷⁸ *Id.*

adequately screen them in so-called credible-fear interviews, which immigrants must pass before getting a full hearing before an immigration judge.⁷⁹

The proposed use of the expedited removal power far into the interior of the country essentially is an expansion of the authority that immigration authorities have at the border. An early example of border expansion is the establishment and validation of fixed border patrol checkpoints far away from the border that began appearing in the 1970s.⁸⁰ Although DHS does not release information on the exact number of fixed checkpoints (some pop up and disappear on short notice), number of interior checkpoints today likely exceeds 100.⁸¹

In condoning fixed checkpoints, in 1976, the Supreme Court carved out a major exception to the Fourth Amendment's protection against search and seizure to accommodate the Border Patrol. The case, *United States v. Martinez-Fuerte*, involved the legality of a fixed checkpoint located on Interstate 5 near San Clemente, California.⁸² The checkpoint is sixty-six road miles north of the Mexican border.⁸³ “The ‘point’ agent, standing between the two lanes of traffic, visually screens all northbound vehicles, which the checkpoint brings to a virtual, if not a complete, halt.”⁸⁴ In a small number of cases, the “point” agent will direct cars to a secondary inspection area for further inquiry.⁸⁵ In the three situations that were challenged in *Martinez-Fuerte*, the Government conceded that none of the three stops was based on articulable suspicion.⁸⁶ The defendants argued that the routine stopping of vehicles at a checkpoint was invalid because such stops should be prohibited in the absence of reasonable suspicion.⁸⁷ However, the Court recognized that maintenance of a traffic-checking program in the interior is necessary because “the flow of illegal aliens cannot be controlled effectively at the border,” holding:

A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens.⁸⁸

Fixed checkpoints, even miles and miles away from the border, now were constitutional, even in the absence of articulable facts. The Court cited the

⁷⁹ *Id.*

⁸⁰ See generally, bord <http://www.migrationpolicy.org/article/horseback-high-tech-us-border-enforcement>

⁸¹ Amy Lieberman, *Arizona's Checkpoint Rebellion*, SLATE, July 24, 2014, http://www.slate.com/articles/news_and_politics/politics/2014/07/arizona_immigration_checkpoint_criticism_border_patrol_harasses_people_and.html

⁸² 428 U.S. 543 (1976).

⁸³ *Id.* at 546.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 547

⁸⁷ *Id.* at 550

⁸⁸ *Id.* at 556-57

importance of supporting the Border Patrol's efforts in enforcing immigration laws.⁸⁹

The Supreme Court majority was not concerned with racial overtones even though the Border Patrol was basing secondary inspections on those who looked Mexican.⁹⁰ A dissenting opinion by Justice William Brennan warned: "Every American citizen of Mexican ancestry and every Mexican alien lawfully in this country must know after today's decision that he travels the fixed checkpoint highways at [his] risk."⁹¹

The tendency to expand the use of expedited removal was, however, outdone by the Reagan administration in its effort to stem the flow of Haitian refugees to our shores. At the time, poverty and infant mortality rates in Haiti ranked the highest in the Western Hemisphere, and the flow of refugees to the United States continued, in spite of procedures implemented attempting to thwart asylum applicants.⁹² But rather than recognize the crisis and the assistance that the refugees needed, the United States sought new strategies for denying asylum. The government's new brainstorm was that if the Haitians could be turned away on the high seas before they reached U.S. shores, they could not then seek asylum.⁹³

On September 29, 1981, President Ronald Reagan authorized the interdiction of vessels containing undocumented aliens from Haiti on the high seas.⁹⁴ The president based this action on the argument that undocumented aliens posed a "serious national problem detrimental to the interests of the United States," and that international cooperation to intercept vessels trafficking in such migrants was a necessary and proper means of ensuring the effective enforcement of U.S. immigration laws.⁹⁵ By executive order, the Coast Guard was directed "to return the vessel and its passengers to the country from which it came, when there is reason to believe that an offense is being committed against the United States immigration laws."⁹⁶ The Coast Guard's interdiction was only allowed outside the territorial waters of the United States.⁹⁷

In *Haitian Refugee Center v. Gracey*, a federal court upheld the actions of the president, holding that the president has inherent authority to act to

⁸⁹ Id. at 562.

⁹⁰ Id. at 563.

⁹¹ Id. at 573 (Brennan, J. dissenting).

⁹² See notes--, *infra*, and accompanying text.

⁹³ See NY TIMES, Reagan Orders Alien Stopped on the High Seas (September 29, 1981) <http://www.nytimes.com/1981/09/30/us/reagan-orders-aliens-stopped-on-the-high-sea.html>.

⁹⁴ 46 Fed.Reg. 48109 (pub. Oct. 1, 1981), reprinted in 8 U.S.C.A. sec. 1182 (supp. note).

⁹⁵ *Haitian Refugee Center v. Gracey*, 600 F. Supp. 1396 (D.D.C. 1985); 46 Fed. Reg. 48107 (pub. Oct. 1, 1981), reprinted in 8 U.S.C.A. sec. 1182 (supp. note).

⁹⁶ *Id.*; 46 Fed. Reg. 48109, 48110 (published October 1, 1981), reprinted in 8 U.S.C.A. sec. 1182 (supp. note).

⁹⁷ *Id.*

protect the United States from harmful undocumented immigration.⁹⁸ Since the program was carried out pursuant to an agreement with Haiti, this was further indication that the action came within matters of foreign relations that should not be disturbed by the court.⁹⁹ The court ruled that the action did not violate the United States's obligations under the Refugee Act of 1980 or the country's obligations under the United Nations Protocol Relating to the Status of Refugees.¹⁰⁰

D. Criminal Immigrants: Obama's priorities

In April, a reporter called me somewhat incredulous about this story. How could this person be deported? Is this a new thing under Trump?

He is a Christian and a former soldier who fought for America and supported Donald Trump. But Nahidh Shaou is also an Iraqi immigrant who was jailed for 35 years in 1983 for injuring a cop during an armed robbery. Now after completing his sentence he is facing deportation to Iraq in one of the most complicated such cases since Trump became President. Shaou, 55, fears that if he will be tracked down and beheaded by ISIS because they are persecuting Christians in Iraq. He does not even speak Arabic and argues that his serving in the military including patrolling the demilitarized zone in Korea should allow him to stay here with his family.

Shaou's case is particularly striking because of his religion and the President's promises to protect Christians and to favor them over Muslim refugees. The father-of-one had thought he was going to be finally freed from prison last September after serving 33 years for shooting the cop in an incident he says was caused by PTSD. Instead Shaou was transferred into the custody of Immigration and Customs Enforcement. He was told he would be put on the [a] charter flight . . . carrying deported Iraqis back to Baghdad.

. . . .
Shaou's niece Tiara Shaya, [said]: "My uncle joined the military at 17 because he felt that he had a duty to serve his country because he did move here from Iraq and felt that it was his way of giving back." During his 33 years in jail he was a model inmate and earned several degrees - and supported Trump in his run for the presidency. "He's absolutely a patriot. America is the only country he knows." Tina Ramirez, president of Hardwired, a group which campaigns for religious freedom, added: "As we all know too well, our veterans do not receive enough support for PTSD, and this man committed a crime in the 80s when even less support was

⁹⁸ 600 F. Supp. 1396 (D.D.C. 1985).

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 1405-06.

available. He's served his time honorably and should be granted a second chance for serving our country."¹⁰¹

I assured the reporter, this type of deportation—the removal of longtime lawful permanent residents with strong equities and ties to the United States—happens every day. As for deportations to Iraq, it wasn't until recently, that the United States persuaded Iraq to agree to start accepting deportees—especially aggravated felons.¹⁰² From time to time, ICE officials during the Obama administration would exercise discretion and place aggravated felons under orders of supervision.¹⁰³ But Obama officials definitely deported longtime LPRs with aggravated felony convictions—even those who likely were rehabilitated, remorseful, and in the eyes of many were deserving of a second chance.¹⁰⁴

The enforcement memos of Trump's first DHS Secretary Kelly and his predecessor Jeh Johnson emphasize criminal immigrants.¹⁰⁵ In his November 2014 enforcement memo, Obama's DHS Secretary Jeh Johnson spoke of convictions for gang-related activities, felonies under state or federal laws, aggravated felonies under the INA, "significant" misdemeanors, or more than two misdemeanors.¹⁰⁶ However, the Trump enforcement executive order sweeps up more than those convicted of crimes to include any undocumented immigrant who simply has been charged with any criminal offense, and those who have committed acts that "constitute a chargeable criminal offense."¹⁰⁷ That means anyone the authorities believe has broken any type of law—regardless of whether that person has been charged with a crime—is in trouble.¹⁰⁸

¹⁰¹ Daniel Bates, *Iraqi immigrant who fought for America but was jailed for 35 years in 1983 for injuring a cop during an armed robbery now faces deportation and beheading by ISIS in Iraq - even though he is a CHRISTIAN*, DAILY MAIL, Apr. 17, 2017.

¹⁰² Abigail Hauslohner, *A charter flight left the U.S. carrying 8 Iraqis. A community wonders who will be next.*, The Washington Post, April 28, 2017.

¹⁰³ Ala Amoachi, *A Glimmer of Hope for Immigrants on an Order of Supervision*, Oct. 29, 2011, <https://amjlaw.com/2011/10/29/a-glimmer-of-hope-for-immigrants-on-an-order-of-supervision/>

¹⁰⁴ See generally, Bill Ong Hing, *Re-examining the Zero-Tolerance Approach to Deporting Aggravated Felons: Restoring Discretionary Waivers and Developing New Tools*, 8 HARV. L. & POL. REV. 141 (2014).

¹⁰⁵ See, Camila Dmonoske, *What's New In Those DHS Memos On Immigration Enforcement?*, NPR, Feb. 22, 2017. <http://www.npr.org/sections/thetwo-way/2017/02/22/516649344/whats-new-in-those-dhs-memos-on-immigration-enforcement>.

¹⁰⁶ Secretary Jeh Charles Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Department of Homeland Security Memorandum, Nov. 20, 2014.

¹⁰⁷ January 25, 2017, Trump's Interior Enforcement memo.

¹⁰⁸ Jennifer Medina, *Trump's Immigration Order Expands the Definition of 'Criminal,'* NY TIMES, Jan. 26, 2017.

Although the Obama criminal immigration priorities presumably focused on those with convictions, Obama's ICE often swept up non-criminal immigrants along the way. Consider Obama's Criminal Alien Removal Initiative (CARI).¹⁰⁹

Under the CARI program, ICE officials presumably would target for arrest noncitizens who had been convicted of crimes that rendered them deportable.¹¹⁰ However, when the target was approached at home or at work, other individuals in the vicinity would be questioned about their immigration status.¹¹¹ Many of those individuals also got detained or arrested. A sharp increase in those types of "collateral" arrests related to criminal enforcement were reported across the United States under the Obama Administration.¹¹² And CARI's collateral impact made life unpleasant for anyone noncitizen who was at the wrong place at the wrong time.

Under CARI, ICE squads -- sometimes accompanied by local police -- raided apartment complexes, grocery stores, laundromats, Bible study groups, parks, and anywhere else Latinos might gather. The officers made stop-and-frisk type arrests based on racial profiling and the indiscriminate mobile fingerprinting. The raids made daily routines such as going to buy groceries or bringing the car to get repaired a terrifying task that could lead to deportation.¹¹³

So far, the criminal enforcement efforts under the Trump Administration—and its collateral consequences—strongly simulate that of the Obama Administration.¹¹⁴

Whether criminal immigrants are or were the priority for Trump or Obama, the crazy thing is that crime rates, even among undocumented immigrants, is not any worse (and some data show better) than that of the general population.¹¹⁵ For well over a century, immigrants have faced hostility in the

¹⁰⁹ Bill Ong Hing, *Civil Rights Abuse: Evil Nature of Obama Deportation Machine in New Orleans*, IMMIGRATIONPROF BLOG (Aug. 7, 2014), <http://www.lawprofessors.typepad.com/immigration/2014/08/civil-rights-abuse-evil-nature-of-obama-deportation-machine-in-new-orleans.html>

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Bill Ong Hing, *Civil Rights Abuse: Evil Nature of Obama Deportation Machine in New Orleans*, IMMIGRATIONPROF BLOG (Aug. 7, 2014), <http://www.lawprofessors.typepad.com/immigration/2014/08/civil-rights-abuse-evil-nature-of-obama-deportation-machine-in-new-orleans.html>

¹¹³ *Id.*

¹¹⁴ Camila Domonoske, *75 Percent Of Immigration Raid Arrests Were For Criminal Convictions, DHS Says*, NPR, Feb. 13, 2017 (“[L]ast week’s ICE arrests included ‘collateral damage,’ or people who were picked up despite not being targeted in the operations — because, for example, they were in the same place as a person who *was* targeted, and did not have documentation.”)

¹¹⁵ Richard Perez-Pena, *Contrary to Trump’s Claims, Immigrants Are Less Likely to Commit Crimes*, N.Y. TIMES (Jan. 26, 2017), https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html?_r=0; Rafael Bernal, *Reports find that immigrants commit less crimes*

United States going back to Italians, Irish and Chinese.¹¹⁶ Social science research dating back nearly as long consistently has found there is no link between immigrants and criminality.¹¹⁷ Although the research is limited, apparently undocumented immigrants do not commit crimes at rates that are any different from those of the general population.¹¹⁸

During the presidential primaries, candidate Trump often talked about the alleged murder of Kate Steinle in San Francisco by undocumented immigrant Juan Francisco Lopez-Sanchez.¹¹⁹ Trump's focus on criminal immigrants, and for that matter, President Obama's similar focus, sends an ominous message about the link between immigration and crime. However, time and again, studies demonstrate that immigrants are less crime prone than natives or have no effect on crime rates.¹²⁰ Relatedly, macro level analysis show that "increased immigration does not increase crime and sometimes even causes crime rates to fall."¹²¹ It also is important to keep in mind that immigrants convicted of crimes serve their sentences before being deported with few exceptions.¹²²

E. Raids and Mass Deportation

The public has anticipated large-scale immigration enforcement and ICE raids by the Trump administration.¹²³ Among his campaign promises, candidate Trump pledged to deport "millions and millions of undocumented immigrants."¹²⁴ Early in his administration, his advisors pledged "more vigorous immigration enforcement activities," and the arrests of hundreds of immigrants in the first week of February 2017 "marked the first large-scale raid under the Trump

than US-based citizens, THE HILL (March 19, 2017 8:00 a.m.) <http://thehill.com/latino/324607-reports-find-that-immigrants-commit-less-crime-than-us-born-citizens>.

¹¹⁶ Brian Resnick, *Racist Anti-Immigrant Cartoons From the Turn of the 20th Century*, THE ATLANTIC (Nov. 21, 2011) <https://www.theatlantic.com/national/archive/2011/11/racist-anti-immigrant-cartoons-from-the-turn-of-the-20th-century/383248/>.

¹¹⁷ Adelman, Reid, Markel, Weiss, & Jaret, *Urban crime rates and the changing face of immigration: Evidence across four decades*, JOURNAL OF ETHNICITY IN CRIMINAL JUSTICE (Nov. 21, 2016) <http://dx.doi.org/10.1080/15377938.2016.1261057>.

¹¹⁸ John Burnett, *Spotlight on Migrant Crimes Drums Up Support For Trump's Immigration Dragnet*, NPR (April 3, 2017, 4:55 PM) <http://www.npr.org/2017/04/03/522424593/immigration-dragnet-gains-support-after-migrants-are-arrested-for-crimes>.

¹¹⁹ See, e.g., Allison Weeks, *Donald Trump says he would pass law after Kate Steinle*, KRON, Aug. 31, 2016, <http://kron4.com/2016/08/31/donald-trump-says-he-will-pass-law-after-bay-area-native/>

¹²⁰ Alex Nowrasteh, *Immigration and Crime – What the Research Says*, CATO INSTITUTE, July 14, 2015, <https://www.cato.org/blog/immigration-crime-what-research-says>

¹²¹ *Id.*

¹²² *Id.*

¹²³ Ray Sanchez, *After ICE arrests, fear spreads among undocumented immigrants*, CNN (Feb. 12, 2017 7:10 AM) <http://www.cnn.com/2017/02/11/politics/immigration-roundups-community-fear/index.html>.

¹²⁴ Amy B. Wang, *Donald Trump plans to immediately deport 2 million to 3 million undocumented immigrants*, WASH. POST, Nov. 14, 2016.

administration – and a crackdown was, by all indications, just the start of much more to come.”¹²⁵

If Trump’s ICE engages in regular, mass ICE raids, such operations will not be the first.¹²⁶

1. The Bush Raids

President George W. Bush’s ICE age began when DHS was established in 2003.¹²⁷ The new DHS took over the old INS from the Department of Justice.¹²⁸ Repackaged, interior enforcement functions were channeled into the Immigration and Customs Enforcement agency.¹²⁹ Border enforcement remains in the hands of the Border Patrol.¹³⁰

Immigration raids, including worksite operations, have been part of immigration enforcement for decades.¹³¹ However, the courts had placed constraints on INS and Border Patrol agent activities during raids. For example, in *INS v. Delgado*, 466 U.S. 210 (1994), although the U.S. Supreme Court did not find the particular worksite operation in question unconstitutional, the Court held that INS agents cannot seize an entire worksite, must allow workers to remain silent, and leave if agents have no reasonable suspicion that the workers are unauthorized to be in the United States.¹³² In *Illinois Migrant Council v. Pilliod*, 548 F.2d 715 (7th Cir. 1977), a federal court of appeals upheld a trial court opinion in Chicago that INS agents could not stop and question individuals simply because of Latin appearance.¹³³ And, in *International Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547 (9th Cir. 1986), another federal court of appeals required INS warrants to be very specific in naming suspected undocumented workers.¹³⁴

In spite of these restrictions, the Bush Administration engaged in aggressive, gun-wielding immigration raids that often resulted in large numbers

¹²⁵ Seung Min Kim and Ted Hesson, *Trump just getting started with immigration raids*, POLITICO, Feb. 13, 2017.

¹²⁶ Amy Choznick, *Raids of Illegal Immigrants Bring Harsh Memories, and Strong Fears*, N.Y. TIMES (Jan. 2, 2017) <https://www.nytimes.com/2017/01/02/us/illegal-immigrants-raids-deportation.html>.

¹²⁷ Our History, U.S. CITIZEN AND IMMIGRATION SERVICES, <https://www.uscis.gov/about-us/our-history>.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ David Bacon, *Fire and ICE: The Return of Workplace Immigration Raids*, PROSPECT (April 27, 2017) <http://prospect.org/article/fire-and-ice-return-workplace-immigration-raids>.

¹³² *INS v. Delgado*, 466 U.S. 210, 218 (1984).

¹³³ *Illinois Migrant Council v. Pilliod*, 548 F.2d 715 (7th Cir. 1977).

¹³⁴ *International Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547 (9th Cir. 1986).

of arrests.¹³⁵ For example, on the morning of December 12, 2006, six Swift & Company meatpacking plants in Colorado, Texas, Nebraska, Utah, Iowa, and Minnesota were raided by hundreds of ICE agents in riot gear.¹³⁶ In all, 13,000 workers were detained.¹³⁷ A midnight ICE raid in Stillmore, Georgia earlier that Fall resulted in the arrest and deportation of 125 workers, causing family members to flee into hiding in nearby woods.¹³⁸ A 2008 raid in Postville, Iowa, that included helicopters circling above, resulted in the arrest of 389 immigrants, many held at a cattle exhibit hall.¹³⁹ Children were absent from school the next day, “because their parents were arrested or in hiding.”¹⁴⁰

Time will tell whether we will witness these types of raids under the Trump Administration.

2. The Palmer Raids

The history of mass raids in the United States must include the Palmer Raids during the height of the Red Scare and fear of anarchists. In 1919, millions of workers went on strike as part of organizing efforts in industries such as steel work, meatpacking, and coal mining.¹⁴¹ Immigrants dominated much of these workforces, and the threat of deportation was viewed as a method of combating union organizing.¹⁴² Immigration enforcement supporters gained new strength following the mailing of bombs to prominent Americans, including the Attorney General A. Mitchell Palmer.¹⁴³ Palmer responded by establishing a special DOJ division devoted to exposing “aliens” and “Communists,” and vowing to roundup “radicals.”¹⁴⁴ He began with eighteen violent raids on November 7, 1919, focused on union meeting rooms, with many of the arrestees being sent to the Ellis Island immigration center.¹⁴⁵

The major raids took place on January 2, 1920, in fifty-six cities that resulted in the arrests of 3,000 individuals. No warrants were issued, the detentions were arbitrary, and the detentions that followed included severe questioning.¹⁴⁶

¹³⁵ Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform*, 44 *USF L. REV.* 307 (2009).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Spencer, S. Hsu, *Immigration Raid Jars a Small Town*, *WASH. POST*, May 18, 2008.

¹⁴⁰ *Id.*

¹⁴¹ BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 130 (2012).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* See also *Attorney General A. Mitchell Palmer on Charges Made Against the Dept. of Justice by Louis F. Post and Others*, 66th Cong., 2d sess., 156-57 (1920) (statement of Attorney General A. Mitchell Palmer regarding action by the Radical Division in the Naugatuck valley in Connecticut).

¹⁴⁶ *Defining America*, at 130.

Eventually, a federal court criticized the basis and methods that were used for deportation during the Palmer Raids.¹⁴⁷ However, the damage had been done to many of the noncitizens. Officials at Ellis Island had already deported 249 individuals, that include noted activists Emma Goldman and Alexander Berkman.¹⁴⁸

3. Mexican “Repatriation” in the 1930s

Donald Trump’s anti-Mexican immigrant rhetoric throughout his campaign and his continued call to build a wall along the U.S.-Mexico border is a stark reminder of the forced repatriation of about a million individuals of Mexican descent across the southern border in the 1930s.¹⁴⁹

Scapegoating and the Depression set the stage for what happened.¹⁵⁰ There was no federal law mandating what happened, simply the targeting of Mexicans in part because they were the most recent immigrant group.¹⁵¹ In a familiar tone, deportations were announced to “provide jobs for Americans,” and big industries like U.S. Steel, Ford Motor Company, and Southern Pacific Railroad told their Mexican workers that they might be better off in Mexico because of the crisis.¹⁵² Local officials also hoped to save welfare dollars by cutting off Mexican families.¹⁵³ So thee officials even encouraged those of Mexican descent to leave by offering free train tickets.¹⁵⁴

As Professor Kevin Johnson has written:

The forced “repatriation” of an estimated one million persons of Mexican ancestry from the United States included the removal of hundreds of thousands of people from California, Michigan, Colorado, Texas, Illinois, Ohio, and New York during the Great Depression. From today’s vantage point, the conduct of federal, state, and local officials in the campaign clearly violated the legal rights of the persons repatriated, as well as persons of Mexican ancestry stopped, interrogated, and detained but not removed from the country. The repatriation campaign also terrorized and traumatized the greater Mexican-American community.

...

¹⁴⁷ See *Colyer v. Skeffington*, 265 F. 17, 43-44 (Ma. 1920).

¹⁴⁸ *Defining America*, at 130.

¹⁴⁹ FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* (1995).

¹⁵⁰ Terry Gross, *America's Forgotten History Of Mexican-American 'Repatriation'*, FRESH AIR NPR, Sept. 10, 2015.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

To assist in the round-up, police conducted raids of public places, including the church La Placita on Olvera Street in downtown Los Angeles, where persons of Mexican ancestry were known to frequent. Olvera Street was not a tourist spot in the 1930s like it is today; then it was simply a meeting place for working class Mexicans near a church serving the Mexican immigrant and Mexican-American community. The people rounded up were often herded onto trains and buses or driven by social workers to the border. This was true for citizens by birth and those who had lawfully naturalized to become citizens.¹⁵⁵

The repatriation program is a sad reminder of anti-Mexican rhetoric and the targeting of Mexicans for removal.

4. Operation Wetback

Operation Wetback is another infamous chapter in the deportation of Mexicans from the United States. This time it was 1954 and President Dwight D. Eisenhower's turn, and an estimated 1.1 million undocumented Mexican migrants were removed.¹⁵⁶ The deportations were directly related to the formal establishment of the Bracero program, a bilateral agreement with Mexico, that presumably would help U.S. growers maintain a stable, lawful workforce for their harvests.¹⁵⁷ However, to make the program work, undocumented farm workers had to be expelled, especially after the Attorney General Herbert Brownell visited the border in 1953 and thought that the border was too open.¹⁵⁸

Operation Wetback was implemented by command teams of Border Patrol agents, buses, planes, and temporary processing stations implemented with the purpose of locating and deporting Mexicans who had illegally entered the United States.¹⁵⁹ With little due process, teams focused on quick processing, and airplanes were for some removals into the interior of Mexico were even used.¹⁶⁰ Although about 1.1 million arrests were made in the first year of Operation Wetback, many other undocumented immigrants fled to Mexico to avoid apprehension—about half a million from Texas alone.¹⁶¹

III. TRUMP'S BORDER WALL

President Trump's signature campaign promise on immigration was the border wall. In his candidacy announcement speech in June 2015, Trump first proposed the idea of building a wall along the southern border, adding that, due

¹⁵⁵ Kevin R. Johnson, *The Forgotten "Repatriation" of Persons of Mexican Ancestry and Lessons for the "War on Terror,"* 26 PACE L. REV. 1 (2005).

¹⁵⁶ Louis Hyman and Natasha Iskander, *What the Mass Deportation of Immigrants Might Look Like*, SLATE, Nov. 16, 2016.

¹⁵⁷ BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 130 (2012).

¹⁵⁸ *Id.*

¹⁵⁹ MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 155 (2004).

¹⁶⁰ *Id.* at 156.

¹⁶¹ *Id.* at 156-57.

to his real estate experience, he was uniquely qualified for the job.¹⁶² "I will build a great wall -- and nobody builds walls better than me, believe me --and I'll build them very inexpensively. I will build a great, great wall on our southern border, and I will make Mexico pay for that wall. Mark my words."¹⁶³

Everything about Trump's "build a border wall" rhetoric and efforts is offensive. From the premise, i.e., "Mexico is not our friend," and calling some Mexican immigrants "rapists and criminals" to the request for proposals for the wall construction: "The north side of wall (i.e. U.S. facing side) shall be aesthetically pleasing in color, anti-climb texture, etc., to be consistent with general surrounding environment," reads the request for proposals.¹⁶⁴

A. *The Fence Act*

As offensive as Trump's wall proposal may be, we have seen equivalent grandstanding before in the form of the Fence Act of 2006, and in terms of venomous effect, it may take a backseat to Operation Gatekeeper. On October 26, 2006, President George W. Bush signed the Secure Fence Act of 2006 (Pub. L. 109-367) into law stating, "This bill will help protect the American people. This bill will make our borders more secure. It is an important step toward immigration reform."¹⁶⁵

The bill was introduced on Sep. 13, 2006 by Peter T. King (R-NY).¹⁶⁶ In the House of Representatives, the Fence Act passed 283-138 on September 14, 2006.¹⁶⁷ On September 29, 2006 - the Fence Act passed in the Senate 80-19.¹⁶⁸ Both Barack Obama and Hillary Clinton, then-senators, voted for the Fence Act.¹⁶⁹

Although more than 600 miles of fencing and vehicle barriers along the border from California to Texas was constructed by April 2009, Congress has never provided more than the initial \$1.2 billion to complete fence.¹⁷⁰ A follow-up proposal in 2008 (H.R. 5124) that would add 700 miles of two-layered fencing died in committee.¹⁷¹ A proposal by Senator Jim DeMint (R-SC) to finish

¹⁶² CBS NEWS, 30 OF DONALD TRUMP'S WILDEST QUOTES, <http://www.cbsnews.com/pictures/wild-donald-trump-quotes/14/> (last visited June 18, 2017).

¹⁶³ Dan Gundersman, *President-elect Donald Trump's 'big, beautiful wall' may end up just being a modest, double-layered fence*, N.Y. DAILY NEWS, Nov. 10, 2016.

¹⁶⁴ Ron Nixon, *Trump Seeks Proposals for 'Physically Imposing' Wall With Mexico*, NY TIMES, Mar. 18, 2017.

¹⁶⁵ see Secure Fence Act of 2006, H.R. Res. 6061, 109th Cong. (2006).

¹⁶⁶ H.R. 6061 (109th): Secure Fence Act of 2006, GOVTRACK, <https://www.govtrack.us/congress/votes/109-2006/s262> (last visited June 18, 2017).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Jerome R. Corsi, Law to Build U.S. Border Wall Already Passed, Word Net Daily, Nov. 15, 2016, <http://www.wnd.com/2016/11/1-main-reason-u-s-border-wall-hasnt-been-built/>

¹⁷¹ *Id.*

the fence suffered a similar fate.¹⁷² The failure to complete the fence can largely be attributed to the high estimated cost of \$4.1 billion—an amount higher than the Border Patrol's annual budget of \$3.55 billion.¹⁷³

B. *Operation Gatekeeper*

In my view, Trump's Wall and the Fence Act pale in comparison to the death trap of Operation Gatekeeper, instated by President Clinton's regime that continues to this day. This militarization of the U.S.-Mexico border region has been the centerpiece of the immigration enforcement policies of past three decades. Reliance on border policing spiked in the mid-1990s with a series of military-style operations along the U.S.-Mexico border that ultimately resulted in a much bigger and better funded presence along that border.¹⁷⁴

Operation Gatekeeper was implemented by the Clinton Administration's in 1994 as a method of stopping the flow of undocumented migration across the southern border.¹⁷⁵ The idea seemed simple enough—if the parts of the border that are most easy to cross are cut off, then folks will stop coming.¹⁷⁶ Thus, the policy of “control through deterrence” was implemented by first building a fence along the fourteen-mile stretch from the Pacific Ocean eastward.¹⁷⁷ Eventually, other parts of the border that were the most easily traversed were fenced off or monitored more heavily with electronic equipment and Border Patrol units.¹⁷⁸

Unfortunately, the strategy failed. Driven by violence, social circumstances, and economic pressures, migrants continued to come.¹⁷⁹ But now that the easy paths had been cut off, the migrants were pushed to navigate treacherous terrain in their travels north.¹⁸⁰ They faced the searing heat of the Sonoran desert of southern Arizona in the summer and the freezing cold of the rugged Tecate Mountains in the winter.¹⁸¹ Not surprisingly given the conditions, hundreds of these poor migrants began to die each year trying to reach the United States as Operation Gatekeeper unfolded.¹⁸² In the first seven months of 2017, 232 migrants died crossing the border from Mexico—a 17

¹⁷² *Id.*

¹⁷³ Tyler Russo, *Problems With the U.S. – Mexico Border*, PREZI.COM, Nov. 5, 2014, <https://prezi.com/uxj3iwj0spwc/problems-with-the-us-mexico-border/>

¹⁷⁴ *Id.*

¹⁷⁵ Bill Ong Hing, *The Dark Side of Operation Gatekeeper*, 7 U.C. DAVIS J. OF INT'L L. & POL'Y 121, 126-27 (2001).

¹⁷⁶ *Id.* at 128.

¹⁷⁷ *Id.* at 124, 129.

¹⁷⁸ *Id.* at 129-130.

¹⁷⁹ *Id.* at 146-51; Amanda Holpuch, *Migrant deaths at US-Mexico border increase 17% this year, UN figures show*, THE GUARDIAN, Aug. 5, 2017.

¹⁸⁰ Bill Ong Hing, *The Dark Side of Operation Gatekeeper*, *supra* note --, at 158, 165.

¹⁸¹ *Id.* at 130, 135-37.

¹⁸² *Id.* at 135-37.

percent increase over the same period in 2016.¹⁸³ This number is significant, because unauthorized border crossings actually is decreasing.¹⁸⁴

IV. 287(G) AGREEMENT EXPANSION

Trump's interior enforcement executive order and first DHS Secretary Kelly's enforcement memo emphasize the intent to rely heavily on increasing "287(g)" agreements with local law enforcement officials.¹⁸⁵ These agreements essentially deputize local law enforcement officers to double as federal immigration agents.¹⁸⁶ Once trained, local officers are authorized to interview, arrest, and detain any person who may be in violation of immigration laws depending on the terms of the agreement.¹⁸⁷ Within six months of taking office President Obama's DHS also expanded 287(g) agreements.¹⁸⁸ Although the Obama administration eventually reduced the number of such agreements to less than 40, at one time, total 287(g) agreements exceeded 70 under the Obama and Bush eras.¹⁸⁹ By July 31, 2017, the Trump administration had increased the number of agreements to 60, including 18 new agreements in Texas alone.¹⁹⁰

The terms of these agreements, authorized under INA § 287(g), 8 U.S.C. § 1357(g), can vary. Deputized officers can be authorized to engage in a large range of federal immigration enforcement functions, such as interviewing individuals to determine immigration status, accessing DHS databases, issuing ICE detainers to hold individuals for ICE, bringing charges to initiate deportation proceedings, and making recommendations on detention and bond amounts.¹⁹¹ In essence, the state or local officer becomes a federal employee.¹⁹²

¹⁸³ Amanda Holpuch, *supra* note 179.

¹⁸⁴ *Id.*

¹⁸⁵ Amanda Sakuma, *Donald Trump's Plan to Outsource Immigration Enforcement to Local Cops*, THE ATLANTIC, Feb. 18, 2017. <https://www.theatlantic.com/politics/archive/2017/02/trump-immigration-enforcement/517071/>.

¹⁸⁶ *Trump Asks Congress for \$3 Billion in Supplemental Funding for FY 2017*, CRIMMIGRATION (Mar 16, 2017, 4:25 PM), <http://crimmigration.com/2017/03/16/trump-asks-congress-for-3-billion-in-supplemental-funding-for-fy-2017/>.

¹⁸⁷ Amanda Sakuma, *Donald Trump's Plan to Outsource Immigration Enforcement to Local Cops*, THE ATLANTIC (Feb.

¹⁸⁸ Amy Goodman, *Obama Admin Expands Law Enforcement Program 287(g), Criticized for Targeting Immigrants and Increasing Racial Profiling*, DEMOCRACY NOW, July 29, 2009, https://www.democracynow.org/2009/7/29/obama_admin_expands_law_enforcement_program

¹⁸⁹ Need source from author – could not be found.

¹⁹⁰ Dianne Solis and Ray Leszcynski, *18 Texas sheriffs sign up to join forces with federal immigration officers*, DALLAS MORNING NEWS, July 31, 2017.

¹⁹¹ The 287(g) Program: An Overview, AMERICAN IMMIGRATION COUNCIL, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_287g_program_an_overview_0.pdf.

¹⁹² 8 U.S.C. § 1357(g)(7).

Unfortunately, local enforcement under 287(g) agreements has resulted in a dark side of abuse—most notably racial profiling. Perhaps the most infamous example is the 287(g) adventures with Sheriff Joe Arpaio of Maricopa County, Arizona, who touted himself as “America’s toughest sheriff.”¹⁹³ A 2011 Department of Justice investigation found that his deputies menaced Latino neighborhoods and the Latino drivers were much more likely to be stopped than other drivers.¹⁹⁴ In May 2013, a federal judge agreed that Arpaio’s law-enforcement practices illegally targeted Latinos.¹⁹⁵ Then in July 2017, Arpaio was convicted of criminal contempt of court for disregarding an order to stop detaining suspected undocumented immigrants, a misdemeanor punishable by up to six months in jail.¹⁹⁶

Similarly, in 2011, the American Civil Liberties Union discovered that 287(g) agreements in two Georgia counties led to a “pattern of police inventing pretexts to stop and search immigrants.”¹⁹⁷ While in Alamance County, Carolina, 2012 Justice Department investigation found that sheriff’s deputies focused on Latino neighborhoods to set up checkpoints.¹⁹⁸

For that and other reasons, the Obama Administration severely reduced the number of 287(g) agreements.¹⁹⁹ There was serious concern over the proper training of local officers and the lack of oversight to prevent racial profiling.²⁰⁰ Furthermore, immigrant communities tended to “fear and mistrust [local] authorities when they realized that local police could act as immigration agents.”²⁰¹

V. DISCOURAGING ASYLUM APPLICANTS THROUGH CREDIBLE FEAR REVISIONS

Without a great deal of fanfare, the Trump administration quietly made it more difficult for incoming asylum seekers to pass the “credible fear” screening standard that enables would-be applicants to seek asylum in the United States.²⁰² As the surge in unaccompanied alien children began in early 2014, USCIS, whose asylum office handles asylum cases, revised its lesson plan to officers on how to determine whether asylum applicants who make it to the

¹⁹³ Joe Sterling, *Joe Arpaio, Once America's toughest sheriff, to go on trial*, CNN, June 26, 2017.

¹⁹⁴ Mat Coleman and Sarah Horton, *Driving While Latino*, HUFFINGTON POST, Sept. 30, 2016.

¹⁹⁵ Megan Cassidy, *Justice Dept. to charge Arpaio with contempt of court*, USA TODAY, Oct. 11, 2016.

¹⁹⁶ Matt Zaptosky, *Former Arizona sheriff Joe Arpaio convicted of criminal contempt*, WASH. POST, July 31, 2017.

¹⁹⁷ Mat Coleman and Sarah Horton, *supra* note 194.

¹⁹⁸ *Id.*

¹⁹⁹ American Immigration Council, *supra* note 191.

²⁰⁰ Toby Talbot, *The Obama administration is starting to shut down a program that deputized local police officers to act as immigration agents*, USA TODAY, Feb. 17, 2012.

²⁰¹ *Id.*

²⁰² Tal Kopan, *Trump admin quietly made asylum more difficult in the US*, CNN, Mar. 8, 2017.

border meet the credible fear screening standard.²⁰³ Those credible fear standards were criticized as being misleadingly and inappropriate.²⁰⁴ They language and tone instructed asylum officers to impose a burden on applicants that surpassed the well-founded fear standard established by the Supreme Court in *INS v. Cardoza-Fonseca*,²⁰⁵ when in fact the actual standard should be more deferential than the well-founded fear standard. In spite of that critique, in 2016, nearly 80% of credible fear cases nationwide were granted, so that more than 73,000 fleeing persecution were allowed to apply for asylum.²⁰⁶

That figure is expected to drop under the Trump administration's revisions to the credible fear lesson plan. For example, the new guidance removes a passage from the previous version that said if an asylum officer has reasonable doubt about a person's credibility, they should likely find credible fear and allow an immigration judge to hear the question at a full hearing.²⁰⁷ In another change, a passage has been altered on individuals' "demeanor, candor, and responsiveness" as a factor in their credibility.²⁰⁸ Both the 2017 and 2014 versions note that migrants' demeanor is often affected by cultural factors, including being detained in a foreign land and perhaps not speaking the language, as well as by trauma sustained at home or on the journey to the United States.²⁰⁹ But the new version removes guidance that said these factors should not be "significant factors" in determining someone's credibility -- essentially allowing asylum officers to consider signs of stress as a reason to doubt someone's credibility.²¹⁰

A. Discouraging Haitians

Sadly, discouraging legitimate asylum seekers is not new to the United States. One of the most glaring examples involves thousands of Haitians who were fleeing the social, economic, and violent repression of the "Baby Doc" Duvalier regime of the 1970s and 1980s.²¹¹ They faced an accelerated

²⁰³ <http://cmsny.org/wp-content/uploads/credible-fear-of-persecution-and-torture.pdf>; Catholic Legal Immigration Network, *USCIS Amends Credible Fear Lesson Plans*, at <https://cliniclegal.org/resources/uscis-amends-credible-fear-lesson-plans>

²⁰⁴ Bill Ong Hing, *Ethics, Morality and Disruption of U.S. Immigration Laws*, 73 KANSAS L. REV. 981 (2015).

²⁰⁵ 480 U.S. 421 (1987).

²⁰⁶ Tal Kopan, *supra* note 202.

²⁰⁷ <http://www.cnn.com/2017/03/08/politics/trump-immigration-crackdown-asylum/index.html>

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Tal Kopan, *supra* note 202.

²¹¹ Jim Wyss and Jacqueline Charles, *After death of Jean-Claude 'Baby Doc' Duvalier, calls for justice remain in Haiti*, MIAMI HERALD, Oct. 4, 2014; Jeff Hardy, *Haitian refugees celebrate Duvalier's fall*, UPI, Feb. 7, 1986, <http://www.upi.com/Archives/1986/02/07/Haitian-refugees-celebrate-Duvaliers-fall/2584508136400/>,

processing program dubbed the “Haitian program” that became the subject of federal litigation.²¹²

The Haitian program was the Immigration and Naturalization Service’s response to the massive influx of Haitian asylum seekers in south Florida in the late 1970s. By the summer of 1978, six to seven thousand Haitian cases were pending in Miami.²¹³ Operating under the assumption that the asylum seekers were “economic” migrants rather than political refugees, officials decided to implement an accelerated program that would discourage a further influx.²¹⁴

The features of the Haitian program constituted stark violations of due process.²¹⁵ Immigration judges were instructed to increase productivity, so at its peak, immigration judges were each holding more than eighteen deportations a day.²¹⁶ Asylum officers were forced to increase their efficiency as well, having to handle forty asylum interviews each day, severely reducing the time that could be spent with each applicant.²¹⁷ Although authorities knew that only about a dozen attorneys were available to represent Haitians, hearings were scheduled with little regard to attorneys’ availability; an attorney might have “three hearings at the same hour in different locations.”²¹⁸ More than 4,000 Haitians were processed under the program, and none received asylum.²¹⁹

Ultimately, the federal courts ended the Haitian program, concluding, “the government created conditions which negated the possibility that a Haitian’s asylum hearing would be meaningful in either its timing or nature. Under such circumstances, the right to petition for political asylum was effectively denied.”²²⁰

B. *Discouraging Guatemalans and El Salvadorans*

Thousands of El Salvadorans and Guatemalans fled to the United States in the late 1970s and 1980s due to the repression and violence caused by civil war. Although thousands applied for asylum, only about 2 percent of their applications were granted due to discriminatory treatment.²²¹ That discrimination is highlighted in two federal court cases.

²¹² Haitian Refugee Center v. Smith, 676 F.2d 1023, 1029 (5th Cir. 1982).

²¹³ *Id.*

²¹⁴ *Id.* at 1030.

²¹⁵ *Id.* at 1041.

²¹⁶ *Id.* at 1031.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 1032.

²²⁰ *Id.* at 1039-40.

²²¹ Sarah Gammage, El Salvador: Despite End to Civil War, Emigration Continues, MPI Migration Information Source, July 26, 2007, <http://www.migrationpolicy.org/article/el-salvador-despite-end-civil-war-emigration-continues>. According to some, the asylum approval rate for El Salvadorans was “fewer than 3%,” and “1% or less” for Guatemalans. See Carolyn Patty Blum,

In *Orantes-Hernandez v. Smith*,²²² a class action case was brought challenging the way El Salvadorans were processed when they were apprehended by INS officers. The federal court recognized that El Salvadorans were fleeing their country due to “pervasive and arbitrary violence” and were eligible to seek asylum and request a deportation hearing.²²³ However, most of those apprehended signed voluntary departure statements forgoing their right to ask for asylum. After an evidentiary hearing, the court concluded “that the widespread acceptance of voluntary departure is due in large part to the coercive effect of the practices and procedures employed by the INS and the unfamiliarity of most Salvadorans with their rights under the immigration laws.”²²⁴ Government agents essentially used coercion and intimidation to get those apprehended to sign the voluntary departure forms.²²⁵ Given the abuse, the court ordered authorities affirmatively to notify all apprehended El Salvadorans of their right to apply for asylum and to provide them with a list of free legal services providers.²²⁶

American Baptist Churches, et al v. Thornburgh,²²⁷ another class action, was an unusual case brought by more than eighty religious and refugee rights programs.²²⁸ In spite of the government’s motion to dismiss, the court allowed the case to proceed on the issue of discriminatory treatment of the asylum seekers, citing the low approval rates for applicants from El Salvador and Guatemala.²²⁹ During the discovery phase of the case, the government announced the establishment of a new asylum officer corps that would begin handling affirmative asylum applications beginning in April 1991.²³⁰ Furthermore, in new legislation that was passed by Congress in 1990, a new category of protection—Temporary Protected Status—was created that eventually proved beneficial to many asylum seekers.²³¹

The parties in the *American Baptist Churches* case thereafter reached a settlement, providing that all Guatemalans and El Salvadorans who had been denied asylum, withholding or extended voluntary departure would have the right to a new asylum application before an asylum officer.²³² They would be

The Settlement of American Baptist Churches v. Thornburgh: Landmark Victory for Central American Asylum-Seekers, 3 INT’L J. REFUGEE L. 347 (1991), available at: <http://scholarship.law.berkeley.edu/facpubs/1967>

²²² 541 F.Supp. 351 (C.D. Cal 1982).

²²³ *Id.* at 358-59.

²²⁴ *Id.* at 359.

²²⁵ *Id.* at 359, 372-73.

²²⁶ *Id.* at 386.

²²⁷ 760 F.Supp. 796 (N.D. Cal 1991).

²²⁸ Carolyn Patty Blum, *The Settlement of American Baptist Churches v. Thornburgh: Landmark Victory for Central American Asylum-Seekers*, 3 INT’L J. REFUGEE L. 347 (1991), available at: <http://scholarship.law.berkeley.edu/facpubs/1967>

²²⁹ *Id.* at

²³⁰ *Id.* at

²³¹ *Id.*

²³² 760 F.Supp. at 799.

provided with a list of free legal services providers.²³³ There would be limitations on whether class members could be detained, and employment authorization should be afforded to the class members.²³⁴

VI. SANCTUARY CITIES FUNDING AND SHAMING THREATS

Throughout his campaign, candidate Trump promised that he would block federal funding for sanctuary cities: "Block funding for sanctuary cities. We block the funding. No more funds. . . . Cities that refuse to cooperate with federal authorities will not receive taxpayer dollars."²³⁵ Then within the first week of his administration, President Trump's January 25, 2017, executive order announced that the Attorney General would "ensure that . . . sanctuary jurisdictions [would not be] eligible to receive Federal grants."²³⁶ On top of that, Trump's administration announced that it would "shame sanctuary cities" in a weekly report by listing localities that do not cooperate with immigration detainer requests.²³⁷

Like Trump's Muslim bans, the sanctuary funding threat and the shaming strategy have run into legal and/or technical problems. Seattle, San Francisco, Santa Clara County (California), and Richmond (California) all filed lawsuits challenging the funding threat.²³⁸ After hearing arguments on the matter, a federal judge in San Francisco imposed a nationwide injunction on the threat to withhold federal funding.²³⁹ And it turned out that even the shaming reports were halted after local police agencies complained the reports were "filled with errors." For example, the first report, issued March 20, confused three different Franklin counties in Iowa, New York and Pennsylvania.²⁴⁰ It incorrectly blamed Williamson and Bastrop counties in Texas for refusing ICE detainers even though the suspects in question had been transferred to other jurisdictions.²⁴¹ And it falsely accused Chester County, Pennsylvania, and Richmond County, North

²³³ *Id.* at 803.

²³⁴ *Id.* at 804-805.

²³⁵ Tom LoBianco, 'Sanctuary cities' gird for Trump White House, CNN, Nov. 15, 2016.

²³⁶ David Post, *The 'sanctuary cities' executive order: Putting the bully back into 'bully pulpit,'* WASH. POST, May 11, 2017.

²³⁷ Olivia Beavers, *Trump administration seeks to shame sanctuary cities*, THE HILL, Mar. 20, 2017.

²³⁸ <http://time.com/4740823/donald-trump-sanctuary-city-california-san-francisco-santa-clara/>; <http://www.npr.org/sections/thetwo-way/2017/03/30/522030259/seattle-sues-trump-administration-over-sanctuary-city-threat>;

<http://sanfrancisco.cbslocal.com/2017/03/22/richmond-sues-president-trump-over-sanctuary-city-funding-block/>

²³⁹ David Post, *supra* note 236; Maria Sacchetti, *Trump blasts federal court ruling that blocks his 'sanctuary city' order*, WASH. POST, Apr. 26, 2017.

²⁴⁰ Alan Gomez, *Errors prompt Trump to halt reports shaming 'sanctuary cities,'* USA TODAY, Apr. 10, 2017.

²⁴¹ *Id.*

Carolina, of not complying with detainer requests even though neither county had custody of the suspects in question.²⁴²

Of course, one thing that the Trump ICE machine could probably do without legal consequence is to expend more time and effort on enforcement in self-declared sanctuary jurisdictions. For example, ICE apparently deliberately targeted Austin, Texas after talks between the agency's officials and local authorities went awry.²⁴³ Austin is typically described as a sanctuary city for its welcoming stance on immigration.²⁴⁴ Officials reported at least 50 people were arrested there in February.²⁴⁵ Twenty-eight of them had no criminal record whatsoever.²⁴⁶ Texas-based federal magistrate, Judge Andrew Austin, recalled how ICE officials had told him to "expect a big operation" and that it was "a result of the [Travis County] sheriff's new policy."²⁴⁷

Trump's efforts to shame and defund sanctuary jurisdictions are unique. But the idea of sanctuary has not been popular with other enforcement-minded administrations. In the 1980s, when the sanctuary movement over Central American refugees of that era was in full swing, individual supporters of the sanctuary movement were targeted.²⁴⁸ In many respects, the sanctuary cities phenomenon grew out of the sanctuary movement led by many religious leaders.²⁴⁹ And some of those leaders were targeted by the Reagan administration.²⁵⁰

A. *Criminal Prosecution of Sanctuary Workers*

I had been practicing immigration law for about a decade and by then running a law school immigration clinic when I first heard of Jack Elder and Stacey Lynn Merkt. Back in 1982, Catholic Bishop John Joseph Fitzpatrick opened Casa Oscar Romero in San Benito, Texas, as a shelter for increasing numbers of Central Americans crossing the Rio Grande into Texas.²⁵¹ Jack Elder became the director of the Casa Romero, named in honor of the assassinated

²⁴² Alan Gomez, *Errors prompt Trump to halt reports shaming 'sanctuary cities,'* USA TODAY, Apr. 10, 2017.

²⁴³ Chris Riotta, *ICE Raids Target Austin, Texas*, YAHOO NEWS, Mar. 29, 2017, <https://www.yahoo.com/news/ice-raids-target-austin-texas-163840314.html>

²⁴⁴ *Id.*

²⁴⁵ Chris Riotta, *ICE Raids Target Austin, Texas*, YAHOO NEWS, Mar. 29, 2017, <https://www.yahoo.com/news/ice-raids-target-austin-texas-163840314.html>

²⁴⁶ <http://www.statesman.com/news/austin-for-non-criminals-arrested-ice-raids/R8suKsN9kUljnpz10S2DII/>

²⁴⁷ Sam Knight, *Pattern of Deportation As Retaliation Emerging in Trump Era*, DISTRICT SENTINEL, Mar. 21, 2017, <https://www.districtsentinel.com/pattern-deportation-retaliation-emerging-trump-era/>

²⁴⁸ <http://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era>

²⁴⁹ <http://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era>

²⁵⁰ <http://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era>

²⁵¹ *Chronology of Sanctuary Movement members Stacey Lynn Merkt and Jack Elder*, UPI, Mar. 27, 1985, <http://www.upi.com/Archives/1985/03/27/Chronology-of-Sanctuary-Movement-members-Stacey-Lynn-Merkt-and-Jack-Elder/9771480747600/>

Roman Catholic Archbishop of El Salvador.²⁵² Stacey Lynn Merkt was a volunteer there.²⁵³ They often knowingly drove migrants to bus stops where the migrants would continue their migration.²⁵⁴ This chronology provides some context for what led to their actual criminal convictions.

Feb. 17, 1984, near remote Guerra, Texas, Border Patrolmen stopped and arrested Catholic Nun Dianne Muhlenkamp of the Poor Hand Maids of Jesus Christ, Fort Wayne, Ind.; Stacey Lynn Merkt, affiliated with the Bijou House Religious Community in Colorado Springs, Colo., and Dallas Times Herald reporter Jack Fischer on alien transportation charges. An undocumented man, woman and baby from El Salvador were inside the car, owned by the Diocese of Brownsville.

March 12, 1984, Jack Elder . . . allegedly was spotted by Border Patrolmen dropping three Salvadoran men off at a bus station 5 miles from the shelter.

April 13, Federal agents entered church-owned property at Casa Oscar Romero and arrested Elder on three felony charges punishable by up to 15 years in prison. . . .

May 4, 1984, Merkt was convicted of the felony offense, but the government declined to prosecute the newspaper reporter and the nun agreed to deferred adjudication. The two adult Salvadorans testified they fled El Salvador after seeing the murders of associates and believing themselves threatened.

June 27, 1984, U.S. District Judge Filemon Vela of Brownsville sentenced Merkt to 90 days in jail, suspended the sentence and placed her on two years probation.

Dec. 12, 1984, Elder and Merkt were indicted a second time by a federal grand jury in Brownsville on charges they conspired and transported two Salvadoran adults and three children from Brownsville to a bus station in McAllen during November.

. . .

Feb. 21, 1985, Elder was convicted of conspiracy and illegal transportation; Merkt was convicted of conspiracy but acquitted on illegal transportation.²⁵⁵

²⁵² Id.

²⁵³ Id.

²⁵⁴ Id.

²⁵⁵ *Chronology of Sanctuary Movement members Stacey Lynn Merkt and Jack Elder*, UPI, Mar. 27, 1985, <http://www.upi.com/Archives/1985/03/27/Chronology-of-Sanctuary-Movement-members-Stacey-Lynn-Merkt-and-Jack-Elder/9771480747600/>

Both Elder and Merkt spent time in jail. Initially, Elder was offered two years probation, on the condition that he would move out of Casa Romero, no longer aid Central American refugees, and stop discussing publicly the refugees' problems.²⁵⁶ Elder refused those conditions, and was sentenced to a year in prison.²⁵⁷ Merkt was sentenced to 179 days in prison and put on similar restrictions.²⁵⁸ Elder could have been fined \$28,000 and sentenced to 30 years in prison; Merkt faced a potential fine up to \$10,000 and a 5-year prison sentence.²⁵⁹

The experiences of Elder and Merkt were only two examples of Reagan administration's attack on sanctuary workers. On January 14, 1985, more than 60 arrests were made in a crackdown on church groups.²⁶⁰ Indictments were based in part on evidence gathered by four undercover agents who, wearing concealed tape recorders, attended church meetings in Tucson, Arizona.²⁶¹ While the workers argued that they were helping to provide sanctuary to refugees fleeing persecution and death squads in El Salvador and Guatemala, the Reagan administration contended that most asylum applicants from Central America were fleeing poverty, not persecution.²⁶² Sixteen individuals were named in a 71-count indictment that included: Rev. John M. Fife of the Tucson Southside United Presbyterian Church, the first clergymen in the United States to declare his church a sanctuary for refugees from Central America; James A. Corbett, a retired rancher in Tucson, and Philip M. Conger, director of the Tucson Ecumenical Council Task Force on Central American Activity; Antonio Clark, a Catholic priest at the Sacred Heart Church in Nogales, Ariz.; Ramon Dagoberto Quinones, a Catholic priest and Mexican citizen from Nogales, Sonora, Mexico; Darlene Nicgorski of Phoenix, a member of the School Sisters of St. Francis in Milwaukee; Ana Priester and Mary Waddell of Phoenix, members of the Sisters of Charity of the Blessed Virgin Mary, and Mary Kay Espinosa of Nogales, Ariz., secretary of the Association of Educational Reform of Sacred Heart Church.²⁶³

VII. REINSTITUTING SECURE COMMUNITIES PROGRAM

President Trump's interior executive order of January 25, 2017 revives the controversial "Secure Communities" program that first expanded and then ended during the Obama administration. The program requires local authorities

²⁵⁶ Storer Rowley, *2 Sentenced In Sanctuary Case*, CHICAGO TRIB., Mar. 28, 1985.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ Storer Rowley, *2 Sentenced In Sanctuary Case*, CHICAGO TRIB., Mar. 28, 1985.

²⁶⁰ Stuart Taylor, *16 Indicted by U.S. in Bid to End Church Smuggling of Latin Aliens*, NY TIMES, Jan. 15, 1985.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Stuart Taylor, *16 Indicted by U.S. in Bid to End Church Smuggling of Latin Aliens*, NY TIMES, Jan. 15, 1985.

to share fingerprints and other arrest data to help track down removable immigrants.²⁶⁴

The Secure Communities program works very simply. When someone is arrested by a local law enforcement official and fingerprinted, those officials send the fingerprints to the FBI in case the person is a fugitive or an ex-convict.²⁶⁵ Under Secure Communities, the FBI then shares the fingerprints with ICE, and ICE runs its own check, and that can lead to the deportation of individuals who have no convictions.²⁶⁶

[T]he vast majority of individuals removed [during the Obama administration] as a result of Secure Communities referrals were noncriminal or low-level offenders. And DHS took the strict position on Secure Communities that it could access all fingerprints submitted to the FBI by local law enforcement officials even without the permission of state and local officials. In fact, Secure Communities casts a wide net and scoops up the fingerprints of everyone not born in the United States, whether or not they pose a criminal risk. For example, an abused woman in San Francisco worked up the courage to call police, but she was arrested as well because the police saw a “red mark” on the alleged abuser’s cheek. The charges against her were dropped, but her fingerprints were already forwarded to ICE under the Secure Communities program, and she faced deportation. This case was an exact replica of one that occurred in Maryland.²⁶⁷

Thus, the Secure Communities program represents a super-sized immigration enforcement effort by roping in state and local law enforcement without their consent.²⁶⁸ As Professor Jennifer Chacón pointed out during the Obama administration’s operation of the program:

From a federal perspective, the advantage of Secure Communities is that it expands federal enforcement capacity by processing information about local arrest without bestowing the increased enforcement powers on sub-federal agents required by the 287(g) program. At least in theory, if not in practice, discriminatory power concerning enforcement is shifted back to the federal government. The first appropriations for the program were authorized in December 2007 [during the Bush administration]. Currently, the program is operating in more than 3,000 jurisdictions across the

²⁶⁴ Tal Kopan and Catherine E. Shoichet, *Key points in Trump’s immigration executive orders*, CNN, Jan. 26, 2017.

²⁶⁵ Elise Foley, *Obama Faces Growing Rebellion Against The Secure Communities Deportation Program*, HUFFINGTON POST, Apr. 24, 2014.

²⁶⁶ *Id.*

²⁶⁷ Bill Ong Hing, *Ethics, Morality and Disruption of U.S. Immigration Laws*, 63 U. KAN. L. REV. 981, 990-91 (2015).

²⁶⁸ Jennifer M. Chacón, *The Transformation of Immigration Federalism*, 21 WM. & MARY BILL RTS. J. 577, 603 (2012).

country, including all jurisdictions along the United States-Mexico border.²⁶⁹

After being reactivated by President Trump, the ICE website boasts that through the second quarter of fiscal year 2017, “more than 10,290 convicted criminal aliens have been removed as a result of Secure Communities.”²⁷⁰ The site is silent with respect to how many noncriminal aliens have been removed under the revival of Secure Communities.

VIII. REPORTS OF WIDESPREAD FEAR

Since the election of Donald Trump, reports of widespread fear in immigrant communities have been common. On February 12, 2017, CNN headlined: “Fear Spreads Among Undocumented Immigrants” and reported: Across the United States, some unauthorized immigrants are keeping their children home from school. Others have suspended after-school visits to the public library. They have given up coffee shop trips and weekend restaurant dinners with family. Some don't answer knocks on their doors. They're taping bedsheets over windows and staying off social media. Nervous parents and their children constantly exchange text messages and phone calls. From New York to Los Angeles, a series of immigration arrests this week have unleashed waves of fear and uncertainty across immigrant communities.²⁷¹

A few days later, The Guardian warned: “Psychological warfare': immigrants in America held hostage by fear of raids” and wrote:

[An] 11-page [draft enforcement] memo has compounded fears among immigrant communities that Trump's campaign promise of a hardline clampdown on immigration, dismissed by some at the time as little more than heated rhetoric, is about to be realized.

“It's almost like it's psychological warfare that's being waged against people of color to create a constant feeling of fear and uncertainty,” said Juanita Molina, the executive director of Border Action Network, a human rights organization in Tucson, Arizona.

. . . “I've had border patrol ask me for my documents just going for a jog by my house. I'd go to get a gallon of milk at the store and have officers stop me and say ‘Well, what are you doing?’”, she said. . . . “We don't have just basic freedom of movement.”²⁷²

²⁶⁹ *Id.*

²⁷⁰ U.S. Immigration and Customs Enforcement, *Secure Communities*, <https://www.ice.gov/secure-communities>

²⁷¹ Roy Sanchez, *After ICE arrests, fear spreads among undocumented immigrants*, CNN, Feb. 12, 2017.

²⁷² Julia Carrie Wong, *‘Psychological warfare’: immigrants in America held hostage by fear of raids*, THE GUARDIAN, Feb. 18, 2017.

Then the New York Times chimed in: “Immigrants Hide, Fearing Capture on ‘Any Corner’”

No going to church, no going to the store. No doctor’s appointments for some, no school for others. No driving, period — not when a broken taillight could deliver the driver to Immigration and Customs Enforcement. It is happening on Staten Island, where fewer day laborers haunt street corners in search of work; in West Phoenix’s Isaac School District, where 13 Latino students have dropped out in the past two weeks; and in the horse country of northern New Jersey, where one of the many undocumented grooms who muck out the stables is thinking of moving back to Honduras. If deportation has always been a threat on paper for the 11 million people living in the country illegally, it rarely imperiled those who did not commit serious crimes. But with the Trump administration intent on curbing illegal immigration — two memos outlining the federal government’s plans to accelerate deportations were released Tuesday, another step toward making good on one of President Trump’s signature campaign pledges — that threat, for many people, has now begun to distort every movement.²⁷³

Six months into the Trump presidency, the Center for American Progress reported: “Trump’s Immigration Policies Are Harming American Children.”

On top of an increased threat of deportation, immigrants and their children are also becoming targets of heightened racism and discrimination. Teachers have reported cases of children adopting Trump’s rhetoric to bully their peers in school, telling Latino children that they will be deported and saying they should go back to where they came from.

For the nearly 6 million U.S.-citizen children living with at least one unauthorized family member, life in Trump’s America is frightening. Since the election, adults across the country have reported spikes in fear and distress among young children from immigrant families. Now more than ever, citizen children are worried that they could be separated from their parents or forced to leave their communities.²⁷⁴

As the reports disclose, fear is manifested in a variety of disturbing ways. According to one attorney in New York, “There are people that I work with who essentially want to go dark. . . . They don’t want to be public in any way

²⁷³ Vivian Yee, *Immigrants Hide, Fearing Capture on ‘Any Corner,’* NY TIMES, Feb. 22, 2017.

²⁷⁴ Leila Schochet, *Trump’s Immigration Policies Are Harming American Children*, Center for American Progress, July 31, 2017, <https://www.americanprogress.org/issues/early-childhood/reports/2017/07/31/436377/trumps-immigration-policies-harming-american-children/>

whatsoever. They spend less time on the street. They go to work and go straight back home. They don't go on Facebook. They put curfews on themselves."²⁷⁵ One family no longer goes to the local park where they used to play baseball in the evenings; young men avoid a soccer field where pickup games were once common.²⁷⁶ One woman, Meli, who arrived in Los Angeles from El Salvador more than 12 years ago, lives “in a state of self-imposed house arrest, refusing to drive, fearing to leave her home, wondering how she will take her younger son, who is autistic, to doctor’s appointments.²⁷⁷ [She says,] ‘I don’t want to go to the store, to church — they are looking everywhere, and they know where to find us. . . . They could be waiting for us anywhere. Any corner, any block.’”²⁷⁸ From North Carolina, Maryland, New York, and California demonstrate that immigrants are forgoing medical care and not picking up medication out of fear of immigration enforcement.²⁷⁹ According to Mary Clark, the executive director of Esperanza Immigrant Legal Services in Philadelphia: “There’s a real fear that their kids will get put into the foster care system. . . . People are asking us because they don’t know where to turn.”²⁸⁰ Stories abound of immigrants who qualify and already participate in social support programs—such as to feed themselves and their families or to provide health insurance for their qualified children—withdrawing from the programs out of fear of deportation or of hurting their chances of citizenship.²⁸¹ Groups that help low-income families get food assistance are alarmed by a recent drop in the number of immigrants seeking help.²⁸² Some families are even canceling their food stamps and other government benefits, for fear that receiving them will affect their immigration status or lead to deportation.²⁸³ Many of the concerns appear to be unfounded but have been fueled by the Trump administration's tough stance on immigration. Officials at Manna Food Center in Montgomery County, Maryland, report that about 20 percent of the 561 families they have helped apply for food stamps, or SNAP benefits, in the past few months have asked that their cases be closed.²⁸⁴ Even in San Francisco, an outspoken sanctuary city, fewer eligible residents are using food stamps because of fears about immigration crackdowns under the Trump administration.²⁸⁵ Police departments across the country report a decrease in crime reporting in predominantly Latino neighborhoods, which some officials believe are related to the fear of immigration enforcement; the Houston police chief reports a 13 percent decrease in violent crime reporting by Latinos during the first three months of

²⁷⁵ Ray Sanchez, *supra* note 283 (quoting Cesar Vargas).

²⁷⁶ Vivian Yee, *supra* note 294.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Jan Hoffman, Sick and Afraid, Some Immigrants Forgo Medical Care, NY TIMES, June 26, 2017.

²⁸⁰ Vivian Yee, *supra* note 294.

²⁸¹ (see [The Washington Post, 2017](#); [The Nation, 2017](#); [HealthLine, 2017](#)).

²⁸² Pam Fessler, Deportation Fears Prompt Immigrants To Cancel Food Stamps, NPR, Mar. 28, 2017.

²⁸³ *Id.*

²⁸⁴ NPR: Deportation Fears Prompt Immigrants To Cancel Food Stamps

²⁸⁵ Tara Duggan, *Immigrants' fear cited in declining food stamp use in SF*, SF CHRON., May 17, 2017.

2017.²⁸⁶ Teachers in the Austin area say parents who once drove their children to school are now sending them on the bus instead, to avoid running into immigration authorities.²⁸⁷

One minister in Columbus, Georgia, has a similar observation. The Rev. Ivelisse Quiñones, director of Hispanic ministries at St. Luke United Methodist Church, said the angst is evident at church on Sunday mornings. “Yes, people are very concerned,” said the associate pastor at St. Luke and lead pastor of the Hispanic ministry, which has about 50 congregants.²⁸⁸ “We are transporting many of our members because they’re afraid of driving. ... And every Sunday, I make sure I’m abreast of the news that happens during the week. Before I start preaching, I give them 15 minutes of training, teaching and counseling, because there are a lot of worries here.”²⁸⁹

Graciela, a 51-year-old mother of four, made a plan to leave her two teenagers, ages 13 and 14, with her 24-year-old daughter, if she’s forced to return to Mexico after living in Phoenix since 2004.²⁹⁰ “I want them to be able to finish their studies, but she won’t be able to handle them for very long,” says Graciela.²⁹¹ “She has two kids of her own, and it’s a lot to ask her. I’ve got to be prepared to take them back with me.”²⁹² Graciela is also devastated by the idea of leaving her older children behind. “I can’t imagine not seeing my grandkids grow up,” she says.²⁹³ “Since Trump became president, I’m so depressed. I’m eating out of control, and I wake up in the middle of the night and can’t go back to sleep. I have bags under my eyes. It’s really starting to wear on me.”²⁹⁴

In the auditorium of the Benjamin Franklin Health Science Academy in Brooklyn, a parent coordinator, Christian Rodriguez, noted: “I have children crying in the classroom, crying in my office. . . . When I ask them, ‘Why are you crying?’ They have expressed to me that they don’t want their moms to be apprehended and taken away from them.”²⁹⁵ The effect on some high students is tragic in a different way, as noted in this email request:

Dear Professor Hing,

²⁸⁶ Lindsey Bever, *Hispanics ‘are going further into the shadows’ amid chilling immigration debate, police say*, WASH. POST, May 12, 2017.

²⁸⁷ Elise Foley, Roque Planas, *Immigration Officers Test Boundaries Of Rules Discouraging Arrests At Schools, Churches*, HUFFINGTON POST, Mar. 22, 2017.

²⁸⁸ Id.

²⁸⁹ Alva James-Johnson, *Columbus undocumented immigrants fear raids, deportations*, LEDGER-ENQUIRER, Mar. 12, 2017.

²⁹⁰ Sarah Elizabeth Richards, *How Fear of Deportation Puts Stress on Families*, THE ATLANTIC, Mar. 22, 2017.

²⁹¹ Id.

²⁹² Id.

²⁹³ Id.

²⁹⁴ Id.

²⁹⁵ Ana Kamenetz, *‘I Have Children Crying In The Classroom’*, NPR, Mar. 9, 2017.

We are wondering if one of you (or the USF students) could do a KYR [know-your-rights] talk in Spanish at [] School in the [. . . neighborhood] on 4/25 at 6pm.

The teachers and principal there are worried because the high school students and families have expressed a lot of anxiety. In addition many of the undocumented students are now feeling discouraged and don't want to keep studying hard or apply for college. We are having a talk for the students on 4/19 at 10:30am with a DACAmented lawyer to give some encouragement and perspective.

But we need to do a KYR on how to defend and prepare families for the parents on 4/25 at 6pm. . . .

Let me know either way.

Thank you so much

Lorena²⁹⁶

Tragically, even domestic abuse victims are afraid to come forward. Undocumented immigrants suffering from domestic violence are worried they will get deported if they seek help dealing with their abuse.²⁹⁷ The concern spiked following executive actions by the Trump administration.²⁹⁸ Staff at clinics and domestic violence shelters in cities with high populations of undocumented immigrants said they have seen a large drop in the number of women coming in for services... “Even people who work with these issues are saying they have not seen this level of fear,” said Sandra Henriquez, executive director of the California Coalition Against Sexual Assault.²⁹⁹ The Travis County, Texas, district attorney’s office had to grapple with how to move forward in at least one felony domestic violence case in which a victim stopped cooperating with investigators out of fear that ICE will deport her.³⁰⁰ “Our office has worked for a long time over many years to try to build up our credibility with the immigrant community,” said Mack Martinez, chief of the domestic violence division at the Travis County attorney’s office.³⁰¹ “When someone is arrested in the courthouse, it makes it very difficult for these people to trust that they will be safe if they make an outcry of abuse.”³⁰²

²⁹⁶ Email to Bill Hing from Lorena Melgarejo (SF Archdiocese Office) April 15, 2017.

²⁹⁷ BuzzFeed News: Trump Deportation Vow Is Scaring Domestic Abuse Victims From Coming Forward

²⁹⁸ Id.

²⁹⁹ Id.

³⁰⁰ Philip Jankowski, *Travis DA: Witness’ Deportation Fears Stall Domestic Violence Case*, MY STATESMAN (Mar. 8, 2017) <http://www.mystatesman.com/news/crime--law/travis-witness-deportation-fears-stall-domestic-violence-case/rmFepwrRIWKYJFUjAUz50N/>.

³⁰¹ Id.

³⁰² Austin American-Statesman: District Attorney: Witness’ deportation fears stall domestic violence case

Even lawful permanent residents (LPRs) are afraid. According to a veteran private immigration lawyer, “The problem is that Trump and his policies have sown real fear and panic into the hearts and souls of our clients, whether they are undocumented or documented. . . . We have long-term LPR's who are afraid to leave the US, fearing detention upon their return.”³⁰³ In a twist, the fear engendered by Trump among LPRs has resulted in an uptick in naturalization applications as well.³⁰⁴

The increased level of fear is measurable. A UCLA social science poll in Los Angeles found that 37 percent of respondents said they were afraid that they, a family member or a friend would be deported because of their immigration status.³⁰⁵ Of those, 80 percent said the risks of deportation increased if a friend or family member enrolled in any kind of governmental health, education or housing program.³⁰⁶ Latinos were more likely to express fear of a friend or family member being deported: 56 percent, followed by 31 percent of Asians.³⁰⁷ But many whites expressed concern as well. Nineteen percent of the Anglos were worried, perhaps concerned about a maid, gardener, or office co-worker.³⁰⁸ Fear of deportation was higher among younger Angelinos: 56 percent of respondents between the ages of 18 and 29 said they were concerned.³⁰⁹ And 83 percent of younger Latinos who were worried about deportation were wary of signing up for government programs.³¹⁰

The fear appears pervasive even in the states and localities that have done the most to allay fear through sanctuary or other protective policies. California Dream Act scholarship applications for undocumented college students are down significantly despite repeated assurances from the state that it will do everything within its power to protect the privacy of student information.³¹¹ Reports by Latinos of sexual assault have dropped 25 percent in Los Angeles, the city with the longest standing police policy (special order 40, 1979) prohibiting the reporting of immigrant victims to ICE, and the city whose

³⁰³ Email to Bill Hing, from Paula Solorio, Mar. 30, 2017.

³⁰⁴ Steven Riznyk, Citizenship Applications Are On The Rise, And The Reasons Are Interesting, Waiver-Strategy.com, May 14, 2017. [email announcement May 10]

³⁰⁵ George Foulsham, *Deportation, Loss of Health Care Raise Concerns in L.A. County, According to UCLA Survey*, UCLA NEWSROOM (April 4, 2017) <http://newsroom.ucla.edu/releases/deportation-loss-of-health-care-raise-concerns-in-l-a-county-according-to-ucla-survey>.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Mike McPhate, *California Today: Worries Over Immigration*, NY TIMES, Apr. 5, 2017

³¹¹ Cynthia Moreno, *DREAMers urged to apply for California Dream Act*, VIDA EN EL VALLE, Mar. 6, 2017, <http://www.vidaenelvalle.com/news/state/california/sacramento/article136795893.html>

current police chief and mayor have clearly expressed support and protection for undocumented immigrants since the election.³¹²

Whatever one might say about comparative ICE enforcement efforts from administration to administration or Trump's specific strategies, fear is up in immigrant communities since he assumed the presidency.

A. *Why the Fear?*

As noted in the introduction, fear in the immigrant community started the moment that Donald Trump was elected. His round-them-up-and-deport-them rhetoric was ubiquitous in the media throughout the primary and general elections, along with his build-a-wall-make-Mexico-pay and anti-Syrian refugee corollaries.³¹³ The rhetoric was difficult to ignore—for everyone, including immigrants—because the coverage reached ethnic and social media, as well as mainstream outlets.³¹⁴ As one writer reported from Brownsville, Texas, the “news here on the border with Mexico travels fast. Most of it is, in fact, ‘fake news’ — conjecture and unverifiable gossip exchanged over “el Feisbuk,” which is what people here in the Rio Grande Valley call the social network. Instead of snapshots and emojis, it now disseminates warnings. People are frightened, and frightened people repeat things that frighten them more.”³¹⁵

Stay at home tomorrow. Immigration and Customs Enforcement is conducting raids in the kitchens.
Don't send your kids to school on Wednesday. The border patrol is looking for kids with no papers.
Don't drive down 802 on Fridays anymore.
There's a checkpoint at the grocery store. They arrested 100 people last night at 10.³¹⁶

It turns out that some of the stock images on the “news are from long before the last election, or instances in which warrants are being served after months of investigation.”³¹⁷ But the damage has been done.

If you are a noncitizen or care about the well-being of a noncitizen, then being on edge about ICE enforcement is easy to understand. Reports of apprehensions and removals of individuals—some who had been allowed to stay by the Obama administration—have become common. Consider this range of

³¹² James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says*, LA TIMES, Mar. 21, 2017. See also, Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, 2 UC IRVINE L. REV. 247 (2012)

³¹³ BBC, *Trump's Promises Before and After the Election*, (June 16, 2017) <http://www.bbc.com/news/world-us-canada-37982000>.

³¹⁴ *Id.*

³¹⁵ Domingo Martinez, *How Scared Should People on the Border Be?*, NY TIMES, Mar. 31, 2017.

³¹⁶ *Id.*

³¹⁷ *Id.*

examples, from across the country, of arrests and/or removals that received media attention in the first few months of the Trump administration.

1. **Restaurant owner, husband of U.S. citizen, resident for 17 years deported—Indiana.** Helen Beristain voted for Donald Trump even though she is married to an undocumented immigrant. In November, she thought Trump would deport only people with criminal records - - people he called "bad hombres" - - and that he would leave families intact. "I don't think ICE is out there to detain anyone and break families, no," Beristain told CNN affiliate WSBT in March, shortly after her husband, Roberto Beristain was detained by ICE. On Wednesday, Beristain was proven wrong as ICE split her family across two countries. Roberto Beristain, 44, was deported back to Mexico despite having no criminal record, family attorney Adam Ansari said. Beristain, was the owner of the popular Granger restaurant Eddie's Steak Shed.³¹⁸
2. **Grandfather with no criminal record—California.** Nineteen-year-old Estefany Ortiz says Immigration and Customs Enforcement agents came to her house in Pasadena, California, last month looking for someone who did not live there. They arrested her father, Carlos Ortiz, instead. He was in the country illegally, but had no criminal record. "Why did we open the door," Estefany said. "Nobody is going to want to open the door. Everyone is scared." Mr. Ortiz also is a grandfather.³¹⁹
3. **26-year-old with no criminal record—North Carolina.** Edwin Guillen has lived in Durham for four years, and works as a painter. The 26-year-old has no criminal record. His attorney, Becky Moriello, questions why he was detained by immigration officers in the first place. "The fact that he is brown or the fact that he does not speak English does not mean that he is necessarily an immigrant," Moriello said... Thursday, Moriello, argued in court filings that Guillen was a victim of being in the wrong place at the wrong time - since he was not initially accused of any crime, nor does he have a past criminal record. When they approached the home, ICE says two people ran and one of them was Guillen.³²⁰
4. **U.S. resident for 17 years and father of three U.S. citizens—New York.** Mr. Perez is a dairy farm employee and an advocate for migrant workers...Born in Mexico, he has lived in Livingston County, New York, for 17 years and has four children, three of whom are US citizens. Mr Perez had a deportation case against him that was administratively closed in September 2016. He had no criminal record, and possessed a social security number, and a work permit. When ICE officials asked him

³¹⁸ Joseph Dits, *Granger restaurant owner Roberto Beristain deported*, SOUTH BEND TRIBUNE, Apr. 6, 2017.

³¹⁹ *Activists Call For Release Of Grandfather Detained By ICE*, CBS LOS ANGELES, Mar. 16, 2017, <http://losangeles.cbslocal.com/2017/03/16/activists-call-for-release-of-grandfather-detained-by-ice/>

³²⁰ *ICE agents arrest man in Durham*, ABC11.COM, Mar. 30, 2017, <http://abc11.com/news/ice-agents-arrest-man-in-durham/1826686/>

to come into a local office for a routine check-in this year, he was subsequently detained.³²¹

5. **Parents of two citizens, one battling cancer-Arkansas.** Amanda and Juan Aristondos most recent stay of removal request was denied after the executive order was put into place, leaving the family eligible for deportation. With one of their daughters battling cancer, leaving her to fight alone is not an option the parents want to consider. "When I hugged them this morning I felt I would hug them again," Amanda Aristondos said. The mother of two fled Guatemala with her husband back in 2008. They filed an asylum request that was denied, so for the past nine years they've been filing stay of removals to remain legal.³²²
6. **Married to citizen, resident for 25 years-New Mexico.** The woman, Emma Membreno-Sorto, who is about 59 years old, has only one traffic ticket in New Mexico and no criminal history. Her attorney, Roderick DeAguero, said he doesn't believe she uses any public assistance programs. "She's not a drain on the American public," he said, referencing the common argument from anti-immigration activists who worry about immigrants using tax-funded programs. "We need to support our government in many ways, but I think we could do this better. There has to be a better way." Membreno-Sorto, speaking in Spanish, said Tuesday that she arrived from Honduras in the 1990s, applied for political asylum but never received notice of a court date and went about her life, moving from Atlanta to Colorado to New Mexico.³²³
7. **Married to citizen father of two—Iowa.** Marielda Moreno, 32, is a U.S. citizen living in Des Moines but the father of her children is undocumented. He was picked up by immigration officials on March 2, 2017. "He said that it's very hard to be locked up in there and more difficult when he can hear his daughters crying and when they're asking when he can come home," Moreno said. Moreno...admits that she worries about her family's future in her new home under a new administration that has taken a harder approach to illegal immigration. "I want to believe that something good will come of this. I don't want to believe that things will get worse," Moreno said. "I want to believe that we are going to be OK and that we won't have to go back to a country that my children don't know."³²⁴
8. **Mother of 18-year-old with cerebral palsy and epilepsy deported-Utah.** An undocumented Draper mother being deported to Colombia missed her flight to South America on Thursday, providing a brief "glimmer of hope" that she would receive legal permission to stay in the United States, her friends said. Her attorneys rushed to the airport.

³²¹ BBC: Jose Coyote Perez – father of 4, New York resident for 17 years, no criminal record

³²² KFSM 5 News (Fort Smith, AR): Amanda and Juan Aristondos – will leave daughter battling cancer behind to fight alone if deported

³²³ Albuquerque Journal: Emma Membreno-Sorto – married to an American, been in U.S. for 25 years, no criminal record

³²⁴ Des Moines Register: Andres Tadeo Alvarez – father taken on his way to work, no criminal record

They overnighted legal paperwork to federal immigration officers. Sen. Orrin Hatch's office tried to snag her more time. The Colombian Consulate in San Francisco also flexed its muscle. It wasn't enough. Her lawyers ran out of time to revive years-old proceedings that would allow her to stay and care for her 18-year-old son with cerebral palsy and epilepsy, as well as her 86-year-old mother. "There is a glimmer of hope she might stay," said Sharlee Mullins Glenn, a friend of the woman and leader of the recently formed Mormon Women for Ethical Government.³²⁵

9. **10-year resident, father of two U.S. citizens-Pennsylvania.** He was in a car, on his way to work at a Harrisburg pizzeria Thursday when he was apprehended by ICE agents, she (his wife) said. He was one of four undocumented immigrants that were apprehended during the same stop. She said her husband, who now sits in immigration detention in York County Prison, is the sole breadwinner for a family that includes two daughters, ages 8 and a year-and-a-half. Like her husband, the woman, who is from Jalisco, Mexico, is undocumented. She has been in the U.S. nine years; her husband 10. He's worked all those 10 years, most recently in a pizza shop. She said neither has ever committed a crime. Fearing she could also be detained, she asked that her name not be used.³²⁶
10. **50-year-old mother of six ordered deported-Illinois.** Her (Francisca Lino's) check-in Tuesday couldn't have been more excruciating. It marked the first time the 50-year-old mother of six, who lives outside Chicago, had to report to ICE since Donald Trump became President. At the federal building in Chicago, about an hour passed before Lino re-emerged through the glass doors. She clapped her hands together, then quickened her step and ran, arms outstretched in joy. "Thank God!" she yelled. "Thanks to all of you!!" ... "They gave me a year until I have to come back," Lino told CNN. "So we're going to try to fight for my visa." Relief reigned for five minutes. Then Lino's lawyer came back. "They called," Bergin said, "and they said the officer we talked to was filling in, and the main officer in charge of her case wants to talk to her about it, he's got some information on her case. I don't know what that means." ..The family disappeared back into the building. Less than a half-hour later, Lino was back. "There were changes," she said. Immigration officers told Lino to return July 11, suitcases packed and plane ticket in hand. In other words, her deportation date is set.³²⁷
11. **Small business owner, father of two U.S. citizens—Maryland.** Segundo Paucar was a pillar of Highlandtown's tight-knit, Ecuadorian-American community: a 31-year-old married father of two who employed eight people in a small business that rehabbed about 50

³²⁵ Annie Knox, *Draper mother deported despite last-minute push*, KSL.COM, Apr. 6, 2017, <https://www.ksl.com/?sid=43773540&nid=148>

³²⁶ Penn Live: Father of two daughters, sole breadwinner,

³²⁷ CNN: Francisca Lino – Mother of 6, first released, called back 30 minutes later and deported, no violent criminal record

properties in the city each year. The next day, he was gone, picked up by federal agents on charges related to his allegedly entering the country illegally when he was 15. His sudden disappearance from his family and community ... has sent shock waves through East Baltimore. ...the whole family is worried particularly the children. "They've been asking ' Where is dad? When is dad going to come back?' We've been trying to help them. There's a fear and mistrust about what is happening."³²⁸

12. **Father of 2-year-old citizen facing deportation after stopped for vehicle violation—Texas.** State troopers pulled over Jesus Vazquez for having dark window tint on his vehicle in the Montana Vista area, where he had been raised since he was brought illegally from Mexico to the U.S. as a child...Family and friends say they consider Vasquez a good man, hard worker and a devoted father of a 4-year-old girl, a U.S. citizen. They said he planned to save up money to marry his girlfriend, also a U.S. citizen.³²⁹
13. **Married to U.S. citizen with two children—West Virginia.** Two employees at El Mariachi in Beaver were detained by ICE last week, according to El Mariachi owner Jose Rizo. Rizo said one of the men has been in the United States for 20 years. At least one of the workers is married to an American woman and is the sole provider for his wife and two children, according to workers' statements. American Civil Liberties Union-West Virginia attorneys reported Monday that the number of ICE raids of Hispanic-owned businesses in the state have increased dramatically over the past three weeks. "Until recently, I'd never heard of raids on any work place here in West Virginia," said Jaime Crofts, ACLU attorney. "Over the last three to four weeks, I have heard of several raids being conducted at Mexican restaurants in the state."... "A raid is only legal if ICE already has some sort of evidence that people who are here are undocumented, and they know who those people are," she said.³³⁰
14. **Father-to-be LPR with no violent criminal record—New York.** Joel Guerrero, a 37-year-old green card holder from the Dominican Republic, has been going in for a routine check-in with the ICE agency in New York City every six months for the past seven years. But when Guerrero went in for a check-in on Tuesday morning with his wife Jessica, who is six months pregnant, he was detained and arrested. The reason that ICE detained him? He missed a court date on January 6, 2011 and has a misdemeanor charge for marijuana possession from a decade ago. Guerrero says the charge stemmed from having a marijuana plant when he lived in North Carolina... "How can you possibly do this to a family and tear a family apart?" she said. "The officer literally ripped me from my

³²⁸ Luke Broadwater, et al, *Arrests of immigrants in Baltimore leave many fearful*, BALTIMORE SUN, Mar. 8, 2017.

³²⁹ Lorena Figueroa, *US citizen's dad stopped by DPS faces deportation*, EL PASO TIMES, Mar. 6, 2017.

³³⁰ The Register-Herald: Two men in Beaver, West Virginia – Arrested at the restaurant where they worked

husband's arms as I was saying goodbye to him." An ICE spokesperson was unable to comment on Guerrero's case at the time of publication.³³¹

- 15. Father of three citizens with no violent criminal record—Arizona.** Juan Carlos Fomperosa Garcia, a 44-year-old construction worker from Mexico who lives in Arizona, went in for a routine check-in at the ICE office in Phoenix on Thursday morning...At a press conference held on Thursday, Fomperosa Garcia's daughter explained through tears that he had gone into the agency's office to check in, thinking he would be home by dinner to celebrate his son's birthday that night. But the single father of three kids was never left the building.³³²
- 16. Father of two citizens with no violent criminal record—Texas.** The call came in about 2:30 yesterday afternoon, and Jose Escobar asked his wife, Rose, if she was sitting down. "I'm in El Salvador," he said. Rose was shocked. Just last week, ICE had taken Escobar, an undocumented immigrant, into custody at one of his regular annual check-ins. He never saw a judge....He is the father of two American children and the husband to a naturalized U.S. citizen. He worked 7 to 7 Monday through Friday as a supervisor at a company that repaints and repairs apartment units when tenants move out. He was the dad who drove all the neighborhood kids to school in the morning.³³³
- 17. Father of two citizens with no violent criminal record—Ohio.** Immigration enforcement agents in Cleveland pulled Leonardo Valbuena aside that Monday morning in late January. They told him he would be jailed then deported — maybe tomorrow, maybe next week. "I almost lose my balance," he said in his video testimony in admittedly poor English. "I say, 'Sir, I have my children in school. My daughter. My son. And my wife, she doesn't drive'...Valbuena left with his family Tuesday minutes after U.S. Immigration and Customs Enforcement (ICE) removed a tracking monitor from his ankle at the Delta Airlines luggage counter in Cleveland.³³⁴
- 18. Grandmother of military vet—California.** The grandmother of a Mira Mesa military veteran's family was sent back to Mexico on Friday, more than two weeks after she was picked up by immigration agents outside her house in unmarked SUVs on Valentine's Day. Clarissa Arredondo, 43, is an unauthorized immigrant, as is her daughter, Adriana Aparicio. Aparicio's husband is a Navy veteran working as a contractor in Afghanistan. The couple has two daughters, 2 and 3, and Arredondo helped take care of them...Aparicio, 27, said officials told her family that her mom was an enforcement priority. "They consider my mom as a

³³¹ Think Progress: Joel Guerrero – Father to be, no violent criminal record

³³² Think Progress: Juan Carlos Fomperosa Garcia – Single father of 3, detained on his son's birthday, no violent criminal record

³³³ Houston Press: Jose Escobar – Father of two, drove neighborhood kids to school, no violent criminal record

³³⁴ Akron Beacon Journal: Leonardo Valbuena – Father of two, forced to self-deport, no violent criminal record

criminal for lying on paperwork to get welfare,” Aparicio said, adding that officials said that happened more than a decade ago.³³⁵

- 19. Father of 5 American citizens, lived in the United States for 16 years, no criminal record—Oregon.** It (the arrest) happened so quickly, Roman Zaragoza-Sanches left his Honda on the shoulder of Highway 26, with the lights on. Rosalina didn’t have the keys and doesn’t know how to drive. In shock, she asked a neighbor to help her hire a tow truck to retrieve it. “They are reporting in the news that they are going to get only people who are criminals, but it is not the truth because my husband is not that person,” Rosalina said. “And they took him.”³³⁶
- 20. Mother of two, with no violent criminal record—Arizona.** Guadalupe García de Rayos – entered the U.S. at age 14, mother of two U.S. Citizens, no violent criminal record. Guadalupe García de Rayos, a 36-year-old mother of two US citizens, was a non-violent felon who had for years complied with Immigration and Customs Enforcement (Ice) orders after being convicted of using a fake social security number to work. But on Wednesday, when she went for her usual check-in, Ice agents took her into custody instead, separating her from her husband and children, who were waiting outside. Jacqueline García de Rayos, 14, described having to pack her mother’s luggage so she could send it to Mexico. “I don’t think it’s fair that she was taken away from us,” Jacqueline said. “Her only crime was to work here so she could support us. “She is a very kind person,” Jacqueline said. “She treats everyone like family. She hasn’t done anything to harm anyone.”³³⁷
- 21. Father of a U.S. citizen, lived in the United States for 12 years, no criminal record.** In September 2014, Gilberto Velasquez, a 38-year-old house painter from El Salvador, received life-changing news: The U.S. government had decided to shelve its deportation action against him. The move was part of a policy change initiated by then-President Barack Obama in 2011 to pull back from deporting immigrants who had formed deep ties in the United States and whom the government considered no threat to public safety. Instead, the administration would prioritize illegal immigrants who had committed serious crimes. But in May, things changed again for the painter, who has lived in the United States illegally since 2005 and has a U.S.-born child. He received news that the government wanted to put his deportation case back on the court calendar, citing another shift in priorities, this time by President Donald Trump. The Trump administration has moved to reopen the cases of hundreds of illegal immigrants who, like Velasquez, had been given a reprieve from deportation, according to government data and court documents reviewed by Reuters and interviews with

³³⁵ San Diego Union Tribune: Clarissa Arredondo – Grandmother, ‘backbone’ of veteran’s family, no violent criminal record

³³⁶ Oregon Public Broadcasting: Roman Zaragoza-Sanchez – Father of 5 American citizens, lived in the United States for 16 years, no criminal record

³³⁷ The Guardian: Guadalupe García de Rayos – entered the U.S. at age 14, mother of two U.S. Citizens, no violent criminal record

immigration lawyers. It represents one of the first concrete examples of the crackdown promised by Trump and is likely to stir fears among tens of thousands of illegal immigrants who thought they were safe from deportation. Between March 1 and May 31, prosecutors moved to reopen 1,329 cases, according to a Reuters' analysis of data from the Executive Office of Immigration Review, or EOIR.³³⁸

22. Deportation of DACA recipient—California. The deportation of an actual DACA recipient with no criminal problems was a particular surprise. Federal agents ignored President Trump's pledge to protect from deportation undocumented immigrants brought to the United States as children by sending a young man back to his native Mexico...

After spending an evening with his girlfriend in Calexico, Calif., on Feb. 17, Juan Manuel Montes, 23, who has lived in the U.S. since age 9, grabbed a bite and was waiting for a ride when a U.S. Customs and Border Protection officer approached and started asking questions.

Montes was twice granted deportation protections under the Deferred Action for Childhood Arrivals (DACA) program created by President Barack Obama and left intact by President Trump.

Montes had left his wallet in a friend's car, so he couldn't produce his ID or proof of his DACA status and was told by agents he couldn't retrieve them. Within three hours, he was back in Mexico, becoming the first undocumented immigrant with active DACA status deported by the Trump administration's stepped-up deportation policy.

"Some people told me that they were going to deport me; others said nothing would happen," Montes told USA TODAY in his aunt and uncle's home in western Mexico where he's been staying. "I thought that if I kept my nose clean nothing would happen." He asked that the exact location of their home be withheld.

Since taking office, Trump has followed through on his campaign pledge to crack down on illegal immigration by signing executive orders to step up enforcement against the estimated 11 million undocumented immigrants living in the U.S. The new policy calls for expanding the criteria for detaining and deporting undocumented immigrants and hiring thousands of new agents.

Yet Trump declined to revoke the DACA protections Obama had granted to more than 750,000 undocumented immigrants, repeatedly saying he had a soft spot for these young people who are leading productive lives and have few, if any, ties to the countries of their birth.

³³⁸ Mica Rosenberg and Reade Levinson, *Exclusive: Trump targets illegal immigrants who were given reprieves from deportation by Obama*, REUTERS, June 9, 2017.

"They shouldn't be very worried," he told ABC News in January. "I do have a big heart."³³⁹

23. Sensitive locations violated. A 2011 agency memo instructs ICE agents not to conduct enforcement activities at “sensitive locations” like churches and schools, but it’s not clear whether ICE is following that memo under Trump. So far, it remains ICE policy to direct agents to avoid conducting enforcement activities at schools, hospitals, places of worship and public ceremonies or demonstrations.³⁴⁰ But in May, a U.S. immigration agent reportedly was turned away from an elementary school in Maspeth, Queens, New York, where he was reportedly looking for a fourth-grader.³⁴¹ In February, a group of Latino men were apprehended and some of them arrested by ICE agents as they were leaving a church shelter in Alexandria, Virginia; the men left the hypothermia shelter at Rising Hope Mission Church at about 6:45 a.m.³⁴² In late January, ICE agents looking for an undocumented immigrant in San Francisco’s Mission District went to the man’s home, but not before first stopping at a building housing a preschool next door purportedly by mistake.³⁴³ In June, Border Patrol agents raided the desert camp of the humanitarian organization No More Deaths and arrested four migrants. The camp provides medical aid to migrants crossing the desert, and the organization had a separate 2013 agreement that its operations would not be interfered with by border officials.³⁴⁴ While courthouses are not on the sensitive locations list, in March, the Chief Justice of the California Supreme Court wrote to Trump administration officials to stop immigration agents from “stalking” California’s courthouses to make arrests. Judges and lawyers in Southern California have complained of seeing immigration agents posted near courts.³⁴⁵ However, DHS officials have refused to back down and warn that ICE agents may arrest crime victims and witnesses at courthouses: “Just because they’re a victim in a certain case does not mean there’s not something in their background that could cause them to be a removable alien. . . Just because they’re a

³³⁹ Alan Gomez and David Agren, *First protected DREAMer is deported under Trump*, USA TODAY, Apr. 18, 2017.

³⁴⁰ Jason McGahan, *L.A. Health Clinic Protects Immigrants Against Illness — and Deportation*, LA WEEKLY, Mar. 15, 2017.

³⁴¹ Alex Eriksen, *ICE Agent Tried to Apprehend a 4th-Grader but Was Turned Away by the School*, YAHOO NEWS, May 14, 2017, <https://www.yahoo.com/beauty/ice-agent-tried-apprehend-4th-grader-turned-away-school-224058706.html>

³⁴² Julie Carey, *ICE Agents Arrest Men Leaving Fairfax County Church Shelter*, NBC WASHINGTON, Feb. 15, 2017.

³⁴³ Joe Fitzgerald Rodriguez, *ICE agents appear at family center in SF’s Mission District*, SF EXAMINER, Jan. 26, 2017.

³⁴⁴ Paul Ingram, *Border Patrol raids No More Deaths camp, arrest migrants seeking medical care*, TUCSON SENTINEL, June 15, 2017.

³⁴⁵ Maura Dolan, *California to Trump: Keep ICE out of our courthouses*, LA TIMES, Mar. 16, 2017.

witness doesn't mean they might not pose a security threat for other reasons."³⁴⁶

24. Collateral arrests of two men at the wrong place at the wrong time. Antonio Valenzuela, 34, and Jose Salgado, 42, both undocumented immigrants with U.S.-born children, were leaving for work at about 6 a.m. when they were trailed by ICE agents and stopped. Both men have lived in the United States for more than a decade. ICE agents arrived at the Rainbow Apartments on Harris Road in Hayward allegedly looking to detain an undocumented immigrant who lives at the complex. Instead, they arrested these two neighbors. The men's arrests highlight the Trump administration's increasingly stringent deportation policies, which have vastly expanded the number of people at risk of deportation across the United States. Critics say deporting men like Valenzuela and Salgado — who have stable jobs, American children and no known criminal records — might actually do more harm to this country in the long run.³⁴⁷

President Trump's antics and belligerence toward immigrants encourages and emboldens vigilantes to step forward, exacerbating the fear. For example, given Congress's hesitance to fund the border wall construction, two U.S. military veterans stepped forward to create the American First Foundation to raise money for "Great Southern Wall."³⁴⁸ Excerpts from their press release were clear:

Citizens Unite to Raise Funds & Build That Wall!

Founded by Military Vets, America First Foundation Raises Money to Supplement Wall Construction, Protect Government Programs from Budget Cuts

New York, NY; March, 22, 2017 – If the 2016 Election taught us anything, it's that Voters are concerned about illegal immigration from our southern border. The reality, however is that any effort to further crack down on illegal immigration – and build a Great Southern Wall – will cost money that the Trump Administration will have to draw from existing national security programs.

A recent proposal issued by the Office of Management and Budget illustrated that funds for increased border security and wall construction would be at the expense of the Federal Emergency Management Agency, The United States Coast Guard and the Department of Homeland Security. Simply put, construction of the Great Southern Wall would "rob Peter to pay Paul" unless concerned patriotic citizens step in to help.

³⁴⁶ Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses at courthouses*, WASH. POST, Apr 4, 2017 (quoting DHS spokesman David Lapan).

³⁴⁷ Tatiana Sanchez, *ICE shows up to apartment complex looking for undocumented Hayward man, arrests two others instead*, THE MERCURY NEWS, July 29, 2017.

³⁴⁸ Thomas Phippen, *Group Wants to Crowd-Source Money For Trump's Border Wall*, DAILY CALLER (Mar. 22, 2017), <http://dailycaller.com/2017/03/22/this-group-wants-to-crowd-source-money-for-trumps-border-wall/>.

And to the rescue, a group of patriotic Americans have banded together to address the urgent need for increased border security while seeking to save FEMA, the Coast Guard and DHS from deep budget cuts. The America First Foundation (AFF) was created to raise money from ordinary Americans to build a Great Southern Wall as a symbol of American strength and unity.

“This is a golden opportunity for concerned citizens to vote with their wallets and cast a second ballot for border security,” said Steven Vulich, co-founder of AFF. “By raising private funds for a public wall, we can accelerate construction and hold our leaders accountable for their promise to secure our borders.”

AFF was founded by Vulich, US Army Veteran and Wounded Warrior who served a tour in the Iraq War (OIF) and John McCormack, a Veteran of the United States Air Force. The idea for AFF came about once it became apparent that Mexico has no intention to pay for the Great Southern Wall as the President had promised.

“We’re realists,” added Vulich. “President Trump and Mexican President Enrique Peña Nieto are going to bicker and grandstand over this matter. It’s up to regular citizens like us to take the first step and carry this idea into implementation.”

AFF will seek to support the construction of a Great Southern Wall through a public-private partnership. The use of public-private partnerships (otherwise known as P3’s) to defray the cost of government projects is steadily gaining popularity as government agencies seek new sources of funding in light of budget constraints. . . .

. . .

Contributors to AFF will be kept apprised of the campaign’s progress. In addition, AFF supporters gain emotional equity on the broader campaign to build the wall and place their country first once again.³⁴⁹

About America First Foundation

The America First Foundation is a 501(c)(3) nonprofit organization dedicated toward unifying all citizens under the belief that America’s interests must be placed first in order for it to effectively lead. The organization seeks to raise funds to bolster American efforts toward immigration enforcement, disaster recovery and other areas where government efforts fall short of acceptable standards. . . .

³⁴⁹ *Id.*

Trump supporters also were emboldened to disrupt meetings designed to provide immigration information and know your rights lessons to immigrants.

A group of protesters, some sporting “Make America Great Again” hats and other clothing in support of President Donald Trump, interrupted a “Know Your Rights” information forum for undocumented immigrants hosted by Congresswoman Grace Napolitano, D-El Monte. . .

The event, held at the city’s Grace T. Black Auditorium, was meant to provide residents with information about legal protections and resources for immigrants, as well as about the naturalization process.

. . . One of the protesters wearing a MAGA hat and a Trump flag as a cape had his cell phone knocked out of his hand, then was pushed by another man. Quintero and police separated the two. A pair of officers then escorted the protester from the building.

. . . The congresswoman said the event, which included representatives from Coalition for Humane Immigrant Rights of Los Angeles and Catholic Charities Los Angeles, still provided all the information the hosts intended to, despite the interruptions and early end.

. . . “Someone said they had called (Immigration and Customs Enforcement),” Napolitano said. “They were trying to intimidate our residents.”

One of those people who said he called ICE and U.S. Attorney General Jeff Sessions to report the event was Torrance resident Arthur Schaper, the protester who was later pushed.

“It was offensive,” Schaper said . . . “(Napolitano) took an oath to uphold Constitution, and now she’s sponsoring a town hall that teaches illegal aliens about rights they don’t have.”

Schaper, president of the Beach Cities Republicans and member of pro-immigration-enforcement group We the People Rising. . .³⁵⁰

Then there are the scam arrests, preying on immigrant fears. This email was sent out by an immigrant rights attorney in Oakland, California:

Hello all,

I met a man last week at a clinic in Livermore who received threatening phone calls from people claiming to be from U.S. immigration. The callers told him he needed to pay them several thousand dollars in order to avoid deportation.³⁵¹

This is not an isolated incident. USCIS has put out information for reporting these types of scams.³⁵²

³⁵⁰ Christopher Yee, Illegal immigration protesters interrupt ‘Know Your Rights’ forum in El Monte, SAN GABRIEL VALLEY TRIB., Apr. 16, 2017.

³⁵¹ Email to SFILDC from Alisa Whitfield, Mar. 23, 2017.

³⁵² <https://www.uscis.gov/news/alerts/avoid-payment-scams-uscis-does-not-accept-fees-phone-or-email>

Disturbingly, although ICE is known to lie about who they are when conducting enforcement operations, officials apparently are not always truthful with local law enforcement departments either. In Santa Cruz, California, police were misled by ICE into helping make immigration arrests during a raid on suspected gang members.³⁵³ The local police chief said that federal officials “lied” about a joint operation involving a raid of an El Salvador-based gang.³⁵⁴ The police were told that the operation would not include immigration-related arrests.³⁵⁵ But in fact, immigration arrests were made.³⁵⁶

As a result of the Trump threats and reports of arrests, know your rights presentations for immigrant groups put on by immigrant rights organizations have become very common.³⁵⁷ Although the presentations principally are focused on how undocumented immigrants can exercise their right to remain silent when confronted with an ICE agent, family emergency plans have become part of many curriculums.³⁵⁸ The trainings now include getting documents ready in case a parent is deported.³⁵⁹

Brothers Miguel, 14, and Angel, 15, know exactly what to do if they come home from school one day and their mom isn't there. "I would immediately just grab the binder and just call my family here," Angel says. He's talking about a black, three-ring binder they keep in a closet. Their mother, whose name is not used because of her fear of being deported, put it together a few months ago. Her six children are all U.S. citizens, but she came here illegally from Mexico 18 years ago. And while she prays every day that she won't be picked up and deported, Angel says she's prepared them all for the worst.³⁶⁰

Similarly,

When Natividad Gonzalez packs her daughters' homework and lunches for school each morning, she slips a freshly charged cell phone into her eldest child's bag. The 11-year-old knows the plan: If she and her younger sister,

³⁵³ David Marks, *Santa Cruz Police: ICE Lied to Us About Immigration Arrests*, KQED NEWS (Feb. 24, 2017), <https://ww2.kqed.org/news/2017/02/24/santa-cruz-police-ice-lied-to-us-about-immigration-arrests/>.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ Michael Todd, *Santa Cruz police: Homeland Security misled city with 'gang' raids that were immigration related*, MERCURY NEWS, Feb. 23, 2017. Police say they were misled by the Department of Homeland Security into helping make immigration arrests during a raid on suspected gang members. Because of that experience, the Santa Cruz department will no longer work with the federal agency because they cannot be trusted. *Id.*

³⁵⁷ See generally CATHOLIC LEGAL IMMIGRATION NETWORK INC., *Know Your Rights: A Guide to Your Rights When Interacting with Law Enforcement*, <https://cliniclegal.org/resources/know-your-rights-law-enforcement>.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ Jennifer Guerra, *Fearing Deportation, Families Plan For The Worst*, NPR, Mar. 13, 2017.

age 8, walk home from the bus to find an empty house, she's supposed to call Gonzalez's friend who will come get them. Her daughter also knows the combination to the family safe, inside which is an ATM card and a quickly drafted power-of-attorney letter granting custody to the family friend in case Natividad and her husband are arrested and sent back to Mexico. "These are things that an 11-year-old shouldn't have to be thinking about," says Gonzalez, age 32, who came to Clanton, Alabama with her husband nearly 13 years ago, and is still undocumented.³⁶¹

So given the loud and constant noise of Trump's enforcement plans and efforts that began even before his election, the resulting widespread fear is not surprising. As the examples demonstrate, much of the enforcement is real. He has taken off the gloves in attacking immigrants and does so in a very public way that receives much attention. But even the efforts that have been curtailed, such as the Muslim bans and sanctuary funding threats, have created confusion and chaos that can contribute to the fear. One could argue that Trump and his people are intentionally reckless with how they rolled out the enforcement efforts—to create an even scarier scene.

In a sense, immigrants and their allies also may be contributing to the hysteria. They have built up a great network of community based organizations, activists, experts, and service providers that each little thing by Trump or ICE gets noticed, called out, and responded to right away.³⁶² That means Trump is less likely to get away with something (for long), but of course that also plays into the fear in the community as each incident is misunderstood as perhaps carrying more import than it should.

In the end, Trump's unwillingness to clarify that he is not trying to be anti-Muslim or anti-Mexican in any meaningful way speaks the loudest. Maybe it is obvious hypocrisy of the whole thing that makes it stand out. Since it is so clear he is essentially faking or incompetently feeling his way around, yet holds so much power, it makes a mockery of the institution many immigrant rights groups were just getting to think after eight years might be trustworthy.

B. Is the Fear Justified Objectively?

During the presidential campaign, candidate Trump promised a "deportation force" to round up the more than 11 million immigrants in the country illegally.³⁶³ Logistically and resource-wise, the realistic deportation of 11 million immigrants is hard to imagine. Even Republican leaders in Congress have

³⁶¹ Sarah Elizabeth Richards, *How Fear of Deportation Puts Stress on Families*, THE ATLANTIC, Mar. 22, 2017.

³⁶² See generally *Community-Based Organizations*, U.S. CITIZEN AND IMMIGRATION SERVICES, <https://www.uscis.gov/avoid-scams/community-organizations/community-based-organizations>.

³⁶³ Tom LoBianco, Donald Trump promises 'deportation force' to remove 11 million, CNN, Nov. 12, 2015.

made clear that the prospect of massive deportations is not high.³⁶⁴ So one might reasonably conclude that the chances are small that a typical undocumented person who avoids criminal problems will get deported.

Yet, an objective basis for greater fear among immigrants is undeniable. As noted, individuals previously not likely to be deported under the Obama administration—like Juan Manuel Montes, Guadalupe Garcia de Rayos, and Roberto Beristain—have been removed.³⁶⁵ These are not necessarily random acts by rogue ICE agents, but rather enforcement decisions made under the interior enforcement framework that has been installed.³⁶⁶

The Obama administration created a list of detailed enforcement priorities with strict hierarchy, and removable immigrants who did not fall within the narrow priorities had a chance of being protected from any enforcement.³⁶⁷ For example, under enforcement memos issued in 2011 and 2014, the top priority were individuals who posed threats to national security, border security, and public safety (e.g., terrorists, gang members, and persons apprehended at the border attempted to enter unlawfully).³⁶⁸ The second priority included those who committed misdemeanors and immigration violators (including convictions for domestic violence, gun use, or DUIs), as well as those who entered unlawfully recently, i.e., after January 1, 2014. The final priority group included persons with a final order of removal after January 1, 2014.³⁶⁹ The memos also laid out factors that should be considered in exercising prosecutorial discretion to deprioritize or not take action against otherwise removable persons, including family or community ties and length of time in the country.³⁷⁰

Most undocumented immigrants were not considered enforcement priorities under the Obama enforcement memos. Researchers estimated that under Obama's 2011 enforcement memo, about 27 percent of the undocumented population were priorities for enforcement, while only 13 percent were prioritized under the 2014 memo.³⁷¹ The effect of the prioritization on the demographics of those deported was clear:

The 2014 priorities had a significant impact on both the number and criminal make up of ICE removals from the interior of the country. . . . In

³⁶⁴ Paulina Firozi, Ryan on Trump's mass deportation plan: 'It's not happening,' THE HILL, Jan. 13, 2017.

³⁶⁵ See notes 330-358, *supra*.

³⁶⁶ *Id.*

³⁶⁷ Bill Ong Hing, *The Failure of Prosecutorial Discretion and the Deportation of Oscar Martinez*, 15 SCHOLAR: ST. MARY'S L. REV. & SOC. JUST. 437 (2013).

³⁶⁸ Morton and Johnson memos.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ Marc R. Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement*, MIGRATION POLICY INSTITUTE, July 2015, <http://www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement>

FY2016, 98 percent of all interior removals met one of the priorities . . . , and 92 percent (or about 60,000 out of 65,000 total interior removals) were convicted of a crime. Strict adherence to the priorities by ICE agents and the use of prosecutorial discretion significantly reduced overall interior removals, from 224,000 in FY2011 to 65,000 in FY2016 . . . ³⁷²

President Trump’s interior enforcement order and the subsequent DHS memo by then-Secretary Kelly rescind all previous policy related to the priorities for removal (except for DACA and the DAPA orders).³⁷³ The new priorities target a much broader set of unauthorized persons for removal and empowers individual enforcement officers with broad discretionary authority to apprehend and detain any immigrant believed to be in violation of immigration law and start removal proceedings for any immigrant who is subject to removal under any provision of the Immigration and Nationality Act (INA)—this essentially includes any and all unauthorized immigrants in the country.³⁷⁴

The executive order calls on DHS to prioritize individuals for removal based on criminal, security, and fraud grounds that make foreign nationals inadmissible or deportable under the INA.³⁷⁵ The order also references persons described in INA §§ 235(b) and (c), which addresses the inspection and removal of all persons in the country who have not been lawfully admitted or paroled, to be subject to expedited removal—deportation without the right to a deportation hearing.³⁷⁶ In addition, the EO specifically targets unauthorized immigrants who:

- a) have been convicted of any criminal offense
- b) have been charged with any criminal offense
- c) have committed acts that constitute a chargeable criminal offense
- d) have willfully committed fraud in any official matter before a government agency
- e) have abused public benefits programs
- f) have final orders of removal
- g) are otherwise considered a public safety or national security risk by an immigration officer.³⁷⁷

Unlike the priorities put in place in 2014, there is no inherent hierarchy in the list of priorities listed in Trump’s order—all are listed as equally important for

³⁷² Lazaro Zamora, *Comparing rump and Obama’s Deportation Priorities*, BIPARTISAN POLICY CENTER, Feb. 27, 2017, <https://bipartisanpolicy.org/blog/comparing-trump-and-obamas-deportation-priorities/>

³⁷³ See *DHS Released a Memo Implementing President Trump’s Executive Order on Interior Enforcement*, AILA (Feb. 20, 2017), <http://www.aila.org/infonet/leaked-dhs-memo-implementing-president-trump>.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

removal.³⁷⁸ Additionally, “criminal offenses” is not defined (felonies vs misdemeanors, etc.), and could include minor misdemeanors like traffic offenses or crimes related to immigration status like illegal entry or reentry, that were specifically deprioritized by the Obama policy.³⁷⁹ The order also moves away from a focus on convictions to people “charged” or believed to have “committed acts that constitute a chargeable” offense—broad categories that presume guilt not proven in court.³⁸⁰ Combined with the re-broadening of 287(g) agreements that would deputize state and local law enforcement as immigration agents, these changes raise concerns that some jurisdictions will make individuals priorities for deportation by first arresting and charging them with a crime, regardless of the merits of the case.

As Lazaro Zamora of the Bipartisan Policy Center warns:

The memos also give much wider latitude to ICE agents with little guidance or oversight. Although the 2014 Obama policy also allowed ICE agents to target individuals they considered risks, it required a supervisory review by a Field Office Director. Secondly, while the use of prosecutorial discretion in the Obama policy focused on when removable persons could get a reprieve, prosecutorial discretion in the context of Trump’s policy is strictly framed as a disclaimer that the listed priorities do not constrain ICE agents’ ability to otherwise apprehend, detain, or remove any unauthorized immigrant. Lastly, the category for immigrants with a previous removal order does not list a date cut off, which will mean that long-time unauthorized residents will be prioritized regardless of when they received their removal order.

The impact of this bottom-up system of prioritization is still unclear, but it will likely mean that who is in line for removal will be determined only by whom ICE can practically and easily apprehend (“low hanging fruit”) and the discretion of individual ICE officers. It is also likely that adherence to less strict priorities will lead to an increase in the number of deportations in the years ahead, especially if the number of enforcement officers increased, as was called for by other provisions in the order. The implementation memo left room for agencies to determine whether further guidance is necessary to prioritize enforcement activities, but for now, the language of both the order and memo are an explicit warning that all unauthorized immigrants are at risk of deportation at any time.³⁸¹

³⁷⁸ See 2014 Executive Actions on Immigration, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/immigrationaction>.

³⁷⁹ See *DHS Released a Memo Implementing President Trump’s Executive Order on Interior Enforcement*, AILA (Feb. 20, 2017), <http://www.aila.org/infonet/leaked-dhs-memo-implementing-president-trump>.

³⁸⁰ *Id.*

³⁸¹ Zamora, *supra* note 395.

Data released by ICE on May 17, 2017, showed a marked increase in interior enforcement during Trump's first 100 days over the same period in 2016.³⁸²

In the 100 days since President Donald J. Trump signed Executive Orders (EOs) regarding immigration enforcement priorities, U.S. Immigration and Customs Enforcement (ICE) has arrested more than 41,000 individuals who are either known or suspected of being in the country illegally. This reflects an increase of 37.6 percent over the same period in 2016.

Between Jan. 22 and April 29, 2017, ICE Enforcement and Removal Operations (ERO) deportation officers administratively arrested 41,318 individuals on civil immigration charges. Between Jan. 24 and April 30, 2016, ERO arrested 30,028.³⁸³

In that time period, ICE's immigration enforcement activity resulted in more than 400 arrests per day.³⁸⁴ However, at the height of Obama ICE enforcement, ICE interior enforcement was even more. In October 2012 about 700 arrests per day were made; the figure declined to about 300 per day after the Jeh Johnson memo on enforcement priorities went into effect in late 2014.³⁸⁵ A further baseline to quantify increased enforcement under Trump is available from the Transactional Records Access Clearinghouse. The Clearinghouse reports that in 2016, the Obama week from the interior. Importantly, "only a small portion were direct arrests by ICE itself. Most occurred when ICE simply assumed custody of individuals arrested or detained by local, state, and other federal law enforcement agencies."³⁸⁶ Given changes under the Trump administration, anticipating greater removals from the interior is quite plausible; consider jurisdictions afraid of losing federal funds that now vow to cooperate fully with ICE,³⁸⁷ the reinstatement of the Secure Communities fingerprinting-sharing program, the re-expansion of 287(g) agreements between ICE and local officials, and the widespread reports of ICE arrests without local assistance.³⁸⁸

³⁸² Paul Bedard, *ICE Arrests 41,000 Illegals in Trump's First 100 Days, Up 37 Percent*, WASHINGTON EXAMINER (May 17, 2017) <http://www.washingtonexaminer.com/ice-arrests-41000-illegals-in-trumps-first-100-days-up-37-percent/article/2623357>.

³⁸³ U.S. Immigration and Customs Enforcement, ICE ERO immigration arrests climb nearly 40 percent compared to last year, May 17, 2017, <https://content.govdelivery.com/accounts/USDHSICE/bulletins/19b23ab>

³⁸⁴ *Id.*

³⁸⁵ Email to Bill Hing from Lena Graber, May 17, 2017.

³⁸⁶ ICE Immigration Raids: A Primer, Transactional Records Access Clearinghouse, Feb. 13, 2017, <http://trac.syr.edu/immigration/reports/459/>

³⁸⁷ See, e.g., Alan Gomez, *Miami-Dade commission votes to end county's 'sanctuary' status*, USA TODAY, Feb. 17, 2017.

³⁸⁸ See notes --, *supra*.

Furthermore, ICE actually has two components: Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO).³⁸⁹ ERO generally carries out the immigration enforcement responsibilities of ICE, while HSI agents usually focus on human rights violations, human smuggling, trafficking, transnational gangs, counterfeit identity documents, and even child pornography via the internet.³⁹⁰ However, under the Trump administration, HSI is now mandated to make collateral immigration arrests of nontargeted individuals found at the scene of criminal violations.³⁹¹

While difficult to quantify, the election of Donald Trump has “unleashed” ICE officers bent on greater enforcement who may have felt constrained under the Obama administration.³⁹² One veteran ICE agent admitted: “[w]e used to look at things through the totality of the circumstances when it came to a removal order—that’s out the window. . . .”

Like many ICE employees, the agent was a critic of President Barack Obama, whose push to standardize enforcement practice and micromanage agents, particularly during his second term, was a source of frustration at the agency. Yet with Obama gone, and the era of micromanagement over, the agent sees long-standing standards being discarded and basic protocols questioned. “I have officers who are more likely now to push back,” the agent said. “I’d never have someone say, ‘Why do I have to call an interpreter? Why don’t they speak English?’ Now I get it frequently. I get this from people who are younger. That’s one group. And I also get it from people who are ethnocentric: ‘Our way is the right way—I shouldn’t have to speak in your language. This is America.’ ” It all adds up, the agent said, “to contempt that I’ve never seen so rampant towards the aliens.”³⁹³

Clearly, many ICE agents did not like the prosecutorial discretion memos issued by the Obama administration;³⁹⁴ the ICE union unsuccessfully tried to sue the Obama administration over the DACA program, arguing that the deferred action program undermined their duty to enforce the law.³⁹⁵ Even the border patrol union—an organization that had never before endorsed a presidential candidate—threw its support behind candidate Trump during the primaries, stating that he would “embrace the ideas of rank-and-file Border Patrol agents

³⁸⁹ *Who We Are*, U.S. ICE, <https://www.ice.gov/about>.

³⁹⁰ *Id.*

³⁹¹ Hamed Aleaziz, *Police alliance strained by raids*, SAN FRANCISCO CHRON., Apr. 30, 2017.

³⁹² Email to Bill Hing from Mark Silverman, Mar. 30, 2017 (“It’s the ‘Doberman [dog] effect.’ Many ICE Dobermans feel that they are no longer on the leash. There have been very, very few raids, but there have been actions by rogue Doberman ICE agents.”)

³⁹³ Jonathan Blitzer, *A Veteran ICE Agent, Disillusioned with the Trump Era, Speaks Out*, THE NEW YORKER, July 24, 2017.

³⁹⁴ Jason Howerton, *ICE Union Boss Blasts Obama Admin. for Making U.S. Immigration Law ‘Essentially’ Unenforceable*, THE BLAZE, Feb. 5, 2013.

³⁹⁵ Elizabeth Llorente, *Judge Dismisses ICE Agents’ Lawsuit Challenging Obama’s Deferred Action*, FOX NEWS, Aug. 1, 2013.

[representing] a refreshing change that we have not seen before — and may never see again.”³⁹⁶ Thus, the fact that many immigration agents welcome Trump’s enforcement regime provides another objective basis for the fear that immigrants are feeling. For example, consider the phenomenon of “collateral arrests” of non-criminals:

What distinguished last week’s raids from the Obama era were three things: First, ICE agents broke with years of Obama-administration policy by making “collateral arrests” — arresting unauthorized immigrants who happened to be in the place they were raiding, even if they didn’t have a warrant for them. Second, the agency deliberately coordinated a series of nationwide raids, scooping up more people in less time than ICE raids typically do.

...
For the most part, the raids appear to have been targeted efforts to catch individual immigrants that ICE had gotten warrants to arrest. DHS’s statement claimed that “approximately 75%” of the immigrants arrested were “criminal aliens,” implying they had criminal convictions — though many of those convictions were almost certainly for minor crimes (or simply for reentering the country illegally).

...
But it’s also clear that when ICE agents encountered other unauthorized immigrants along with the person they were seeking — or when they didn’t find that person, but found other unauthorized immigrants instead — others were arrested too.

...
To millions of immigrants and their communities, last week’s raids represented a potential threat of the type they hadn’t seen in years: the threat of becoming a “collateral” victim of an ICE raid simply for being in the wrong place at the wrong time.

The immigrants caught up in “collateral arrests” last week aren’t authorized to be in the US, but have never had a criminal record or been deported or ordered deported. In some cases, they happened to be in the same apartment as someone ICE was looking for. In others, ICE had the wrong address but fingerprinted and arrested anyone who was there anyway.

Collateral arrests were known to happen under the Obama administration. But generally, ICE agents were under instructions to arrest people identified in advance, and only those people.

Many rank-and-file ICE agents hated this.

...

³⁹⁶ Joe Davidson, *Border Patrol agents union endorses Trump*, WASH. POST, Mar. 30, 2016.

Now, as then, there's nothing concrete that local leaders and advocates can offer immigrants to ensure they won't be deported. Indeed, they have little ability to dismiss the worst rumors — because under Trump, no one knows what is possible.

. . .
In most cases, ICE agents weren't sweeping through whole neighborhoods or stopping drivers at random — but there wasn't anything stopping them from doing so, and no indication they won't start in future.”³⁹⁷

So there is an objective basis for immigrants who have become fearful under the Trump administration. Although the likelihood of an ICE encounter may still be small, immigration enforcement since the election of Donald Trump is up.³⁹⁸ ICE is following the new enforcement priorities and making collateral arrests along the way. Trump likely has struck a positive chord with eager, enforcement-minded ICE agents as well.

I. CONCLUSION

I was sitting in a very large waiting room of a Redwood City, California, car wash on a Saturday night, back in March. It's 7pm, long after closing time. About 50 car wash workers are gathered in the room, from three car wash businesses in the area. They are there to listen and participate in a “know your rights” presentation that a couple of my students and I are conducting. The students are in my basic law school immigration law class, whom I've trained. Jazmin Preciado is leading the presentation and discussion. This is the third one she's participated in, so I'm confident that she can lead the talk without a problem. As she, and another student, Lorena Caldera, are doing a role play in Spanish, I gaze around the room. There's laughter at some of the antics that Jazmin and Lorena are employing, but the workers are thoroughly attentive to the seriousness of the lesson. Those who are undocumented realize that exercising the right to remain silent in the contexts presented could mean the difference between deportation or being able to remain in the United States with their loved ones. Their questions are insightful. They press us on a variety of circumstances that they imagine might occur—at work, at home, on the street, and at their child's school. After the 3-hour session, we drive back to San Francisco, once again inspired by the lives of everyday workers; here to make a better life for themselves and their families; here to do what they can to continue a peaceful life.

For reasons not that complex, President Trump and his ICE army want to disrupt the lives of these workers and their families. They want to create confusion and chaos even when it may not be legally justified, and that's working. The Trump

³⁹⁷ America's Voice, *Cutting Through Confusion Around the Immigration Raids*, Feb. 14, 2017, <https://yubanet.com/usa/cutting-through-confusion-around-the-immigration-raids/>

³⁹⁸ Maya Rhodan, *Arrests of Undocumented Immigrants Went Up During President Trump's First 100 Days*, TIME (Apr. 28, 2017), <http://time.com/4759713/trump-100-days-arrests-undocumented-immigrants/>.

White House has instilled a get-tough attitude among the ICE officers and makes the whole world think that this is normal and permissible. That makes Trump and his troops so much harsher than the “mainstream” Republican approach to immigration which was just strict, but not purposefully spiteful. Combine that with Tump’s immigration-savvy advisors’ approach of using old dormant immigration law provisions (like expansion of expedited removal), sometimes beyond the constitutionally permitted boundaries, and the nightmare is complete.

Certainly, we can stop the unconstitutional actions like the travel ban and anticipated racial profiling through litigation, but in the meantime, the anti-immigrant message has been sent and becomes the lead story: Trump is banning Muslims; he’s taking bids to build the Wall, random DACA/Dreamers are getting arrested, Guadalupe García de Rayos, a married mother of two U.S. citizen children, gets deported after being placed on a deferred action plan by the Obama administration and living in the United States for more than twenty years, Trump and Attorney General Sessions threaten to defund sanctuary cities. The array of enforcement headlines seem endless. The resulting fear is real.³⁹⁹ And although the travel ban was held up in court, the number of refugee arrivals from Syria, Somalia, and Iraq plummeted.⁴⁰⁰

Truth is we have all lived through the anti-Muslim aspect of the Trump rhetoric in the aftermath of 9/11. In fact, it’s very possible that we remain in the anti-Muslim aftermath of 9/11, and Trump’s ban/rhetoric/anti-Syrian refugee position is a crescendo of that aftermath. The same could be said of his anti-Mexican/undocumented rhetoric. Today is starkly reminiscent of the period through which I lived and practiced—of an anti-Mexican/undocumented era since I starting practicing as a legal aid attorney in the 1970s, and the Proposition 187 era in California in the 1990s.

We have to remember that Trump’s anti-immigrant message struck a populist chord with many voters. Pro-deportation/anti-refugee voters accounted for almost three-quarters of Trump’s support during the presidential primaries. And today, almost half of Republican voters favor deporting all undocumented immigrants and barring Syrian refugees from entering the United States. Yet, I still choose to believe that a majority of Americans can be motivated to at least care—if not demonstrate outrage over the ICE enforcement strategies that are causing fear in the minds of many immigrants.

³⁹⁹ See notes --, *supra*, and accompanying text.

⁴⁰⁰ Human Rights First, *Declines in U.S. Resettlement of Muslim Refugees under the Trump Administration*, June 11, 2017, <http://www.humanrightsfirst.org/sites/default/files/hrffactsheet-declines-in-us-resettlement-muslim-refugees.pdf>

As we contemplate the subjective as well as objective basis for fear in the immigrant community, we need to keep in mind that things are always worse when something is taken away. Obama's prosecutorial discretion policy and public pronouncements provided non-priority immigrants (e.g. those without criminal records) with a sense of relief and stability; that they could come out of the shadows and go about their lives. That has now been taken away, producing a whiplash feeling that is worse than before there was a prosecutorial discretion policy. The fact that there is no viable possibility of a federal fix, such as a legalization plan, on anyone's horizon feeds into a sense of hopelessness and despair, especially when it seemed close or at least a priority to the candidate that most pundits predicted would be in the White House today.

Even amidst the worst periods of 1970s-early 1990s, being undocumented was not a long term, indefinite life circumstance. It was more typically a period of several years. Most people who stayed long enough could find ways to adjust through a variety of means such as registry, suspension of deportation relief, the old section 212(c) relief for aggravated felons, employers, marriage, or other family categories. But changes in immigration law did away with many of these remedies in large part because of the death trap of Operation Gatekeeper and the 10-year unlawful presence bar instituted in 1996. Living in undocumented status has become a longer way of life for more people who are now much more rooted. As such, they have much more to lose than ever before. The rhetoric around the border wall and massively increased border enforcement signal to migrants that if they are caught and deported, they may never be able to return. In that sense, especially for people with family here who need to return, the consequences of deportation appear higher than before.

Trump's boastfulness and the loud anti-Trump rhetoric by pundits (including by immigrant rights groups) has created a false sense that mass deportation is actually now occurring. In fact, Trump's executive orders are only a blueprint for a mass deportation machine. That machine is not built. Congress needs to appropriate the funds to hire all the new CBP and ICE officials. And state and local law enforcement agencies need to sign up to serve as force multipliers under INA § 287(g). But yet, if you read the news or follow listservs and email action alerts, including on *el Feisbuk*, the sense one gets is that raids are occurring at an unprecedented rate across the country.

Trump's shenanigans during his campaign and since he has become president make clear that we are not dealing with someone whom we would call a particularly brilliant strategist who is in total control or who has a long term, mapped-out, ideological vision. However, as much as he and his confidants appear to be bumbling idiots tripping over themselves, the actions they have taken on immigration enforcement have been effective in scaring the hell out of immigrants and many supporters. Beyond enforcement, President Trump's anti-immigrant message was heightened when he embraced a proposal "to slash legal immigration to the United States in half within a decade" by eliminating

family reunification categories.⁴⁰¹ Trump's critics noted that his announcement was further evidence of his desire "to tear apart communities and punish immigrant families that are making valuable contributions to our economy."⁴⁰²

I recently invited a former student, Matt Gonzalez, to have a conversation with my clinic students about a piece he put on his blog only half facetiously supporting the construction of The Wall.⁴⁰³ His points primarily were about how the resulting impact on food prices would stir up immigration reform because need for cheap labor would be realized, social conservatives would be prevented from entering, and that the wall would be protective Mexicans from unfair re-entry criminal laws. My students and I mostly challenged him on grounds such as how he failed to see the enormous effect on migrants fleeing violence.

We also challenged him on the symbolism of the wall. To me, the symbolism is significant. Its message of exclusion is clear. Latinos—primarily Mexicans—are not wanted. But the message of exclusion reaches communities on *both* sides of the border—you're not wanted whatever side of the border you are on. This is a message not simply intended for undocumented immigrants. The wall's message is one of de-legitimizing Latinos and Muslims already in the United States.

This message of de-legitimacy is in essence a message of de-Americanization: Latinos and Muslims are not and cannot be "true Americans." Recall Trump's message about the federal court judge of Mexican descent who was hearing a lawsuit by former students alleging fraud by Trump University. In repeated statements and interviews, such as with CNN and The Wall Street Journal, Trump referred to Indiana-born Judge Gonzalo Curiel variously as "of Mexican heritage" or just "Mexican." The message was always the same, that the judge had what Trump called "a conflict" because of his ethnicity.

Of course, this is not simply Donald Trump's message. And this is a message not simply from the racists who support Trump. This is a message long touted by the Republican Party: some members of whom spew the same racist venom, others who want to keep out folks whom Republicans believe are attracted to the Democratic Party. This long historical attitude of the Republican Party to Latinos in particular is part of the foundation for the case that has been made that Trump is in fact of the Republican Party's own making—its own Frankenstein's monster.

The United States is more diverse than ever. Of course increasing diversity is a trend that has been emblematic of the United States since the founding of the nation. But increased diversity of any significance in the first

⁴⁰¹ Peter Baker, *Trump Supports Plan to Cut Legal Immigration by Half*, NY TIMES, Aug. 2, 2017.

⁴⁰² *Id.* (quoting Tom Perez, chairman of the Democratic National Committee).

⁴⁰³ Matt Gonzalez, *The Wall*, THE MATT GONZALEZ READER, Nov. 7, 2017, <https://themattgonzalezreader.wordpress.com/2016/11/07/border-wall/>

150 years of the country was primarily European in nature, except of course for the millions of Africans who were transported to the nation as slaves. Thus, until Mexicans (in the 1950s) and Asian immigrants (after 1965) began arriving in significant numbers, the phrase “we are a nation of immigrants” and *e pluribus unum* (from many, one) captured the essence of a largely Euro-centric society.

The domination of the Euro-centric culture and race--in no small part the result of immigration policies--has resulted in a Euro-centric sense of who is an American in the minds of many. Many of that mindset have developed a sense of privilege to enforce their view of who is an American in vigilante, racist style. The de-Americanization of Americans of Muslim, Arab, and South Asian descent in the wake of September 11 is a manifestation of this sense of privilege and the perpetual foreigner image that Euro-centric vigilantes maintain of people of color in the United States—definitely blacks and those whom the vigilantes identify with immigrant groups. The privileged perpetrators view themselves as “valid” members of the club of Americans, telling the victims that some aspect of their being--usually their skin color, accent, or garb-- disqualifies them from membership.

Sadly, the de-Americanization process is capable of reinventing itself generation after generation. We have seen this exclusionary process aimed at those of African, Jewish, Asian, Mexican, Haitian, and other descent throughout the nation's history. De-Americanization is not simply xenophobia, because more than fear of foreigners is at work. This is a brand of nativism cloaked in a Euro-centric sense of America that combines hate and racial profiling. This is about “othering” these groups. Whenever we go through a period of de-Americanization like what is currently happening to South Asians, Arabs, Muslim Americans, and Latinos--a whole new generation of Americans sees that exclusion and hate is acceptable; that the definition of who is an American can be narrow; that they too have license to profile. That license is issued when others around them engage in hate and the government chimes in with its own profiling. This is part of the sad process of implicit bias and institutionalized racism that haunts our country.

There are two Americas when it comes to race, ethnic background, and who is an American. One is an all-embracing America on the matter of who is an American. This vision recognizes that the United States is a land that includes immigrants, and that in spite of exclusionary policies aimed at different groups throughout its history, the country is comprised of members of all different shades and ethnic backgrounds. The other America is narrow in its view of who is an American. This second vision is Euro-centric, excluding those of African, Latin, and Asian descent, and as we have seen since 9/11, excluding those of Muslim and Arab background.

The nation's public relations position is that we are a proud nation of immigrants and multiculturalism inclusive of all. Yes, we take steps in the

direction of inclusiveness. But we take steps backwards in that regards as well. We learn and unlearn, and in the process, the bad behavior of vigilante racism is reinforced by the likes of Mr. Trump. In the process, we de-Americanize many communities of color, perpetuating their image as immigrant or partial Americans rather than full Americans, deserving of their place in our communities. Welcome to the Trump ICE age.