

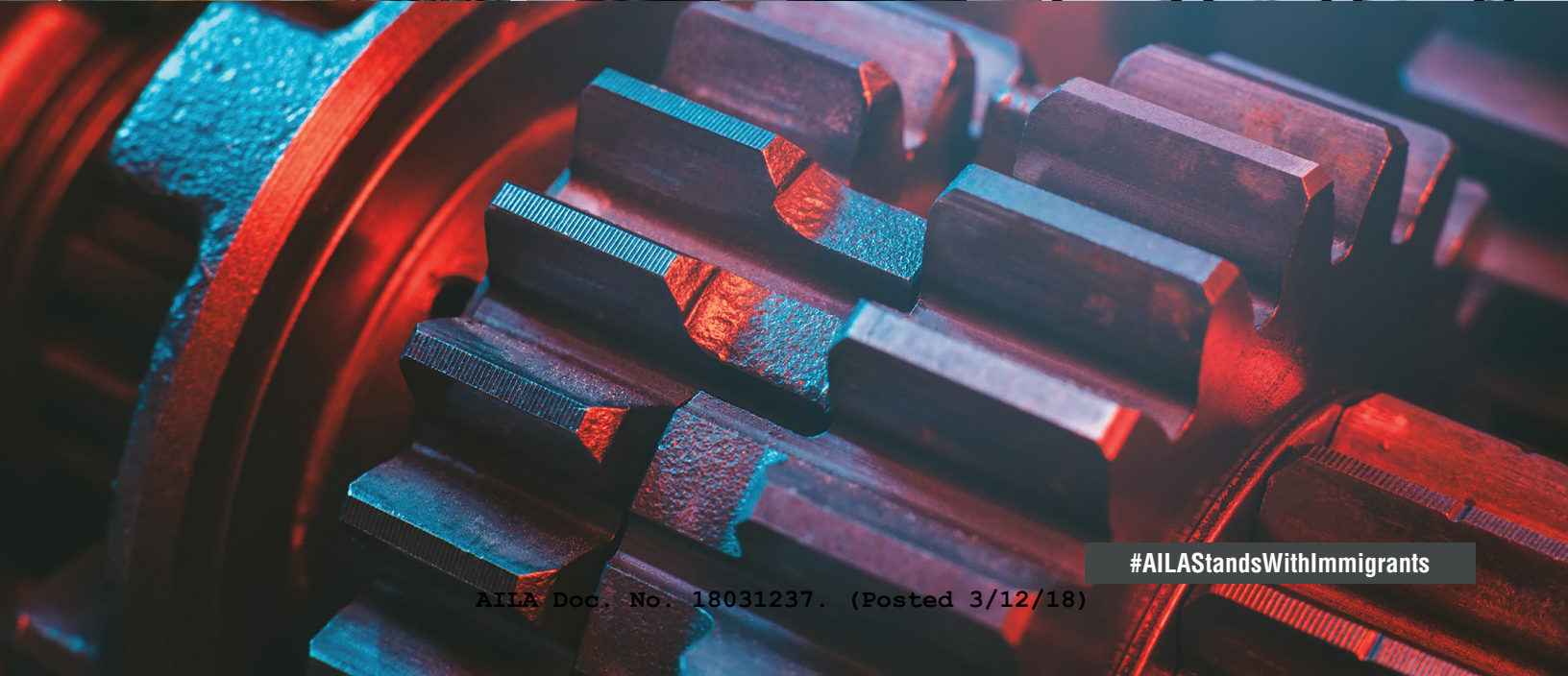


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COGS IN THE DEPORTATION MACHINE:

How Policy Changes by the Trump Administration
Have Touched Every Major Area of Enforcement



#AILAStandsWithImmigrants

Cogs in the Deportation Machine: How Policy Changes by the Trump Administration Have Touched Every Major Area of Enforcement

Since taking office, President Trump and his administration have implemented a series of policy reforms that touch every aspect of the enforcement and removal process. These policies have expanded the very definition of who is subject to enforcement and encouraged indiscriminate enforcement against anyone who is undocumented. On the ground, the administration has increased the use of aggressive enforcement tactics that are causing fear and intimidation in communities. The administration has also restricted the exercise of prosecutorial discretion that may be warranted in compelling cases and altered procedures in immigration court that will severely undermine due process and the integrity of the courts. Taken together, these reforms constitute a system-wide escalation of the federal government's authority and capacity to apprehend, detain, and deport far more noncitizens, often at the expense of fundamental principles of due process and fairness.

At the administration's disposal are massive amounts of resources already dedicated to immigration enforcement. The current budgets for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) are nearly \$20 billion—an all-time high that surpasses funding for all other federal law enforcement combined. With paltry attention paid to whether American taxpayer money is being spent wisely or effectively, the administration is now asking Congress for huge increases to enforcement funding for detention beds, ICE and Border Patrol agents, and for the border wall. As “Cogs in the Machine” demonstrates, the machinery of enforcement is not being used to pursue threats to national security or public safety but to deport as many people as possible.

Notably, the implementation of these policies has been done largely out of public view. These policies were generally not enacted through legislation or promulgated through regulation, which would have provided opportunities for public input and offered a semblance of transparency. Instead, most were executed by memoranda, orders, or other internal guidance, only some of which were announced publicly. Others were shielded from public scrutiny and have been revealed only through Freedom of Information Act requests or investigative reporting by the media.

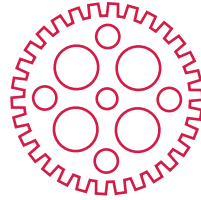
“Cogs in the Deportation Machine” surveys a wide range of these new enforcement policies and practices, and examines five major areas:

- A. The elimination of existing forms of protection from deportation**
- B. The expansion of indiscriminate enforcement**
- C. The escalation of aggressive enforcement tactics**
- D. The blanket prosecution of cases in immigration courts**
- E. The enactment of policies that threaten the independence and integrity of immigration courts**



THE THREAT OF DEPORTATION IS REAL FOR THOSE WHOSE PROTECTION HAS ENDED ... THE TRUMP ADMINISTRATION HAS EXPANDED THE UNIVERSE OF INDIVIDUALS SUBJECT TO ENFORCEMENT ... PEOPLE ARE MORE RETICENT TO REPORT CRIMES OR ACT AS WITNESSES ... THE ADMINISTRATION IS UNDERMINING AVAILABLE RELIEF AVENUES ... POLICIES THAT WILL UNDERMINE THE INDEPENDENCE OF IMMIGRATION JUDGES AND WEAKEN DUE PROCESS ...

A. Eliminating Existing Forms of Protection from Deportation



Since taking office, President Trump has terminated the Deferred Action for Childhood Arrivals (DACA) program and ended Temporary Protected Status (TPS) for the nationals of several countries. The end of these humanitarian initiatives revokes employment authorization and legal protection for almost 938,000 people—nearly all of whom have lived in the country for years and have family, jobs, or other substantial ties to their communities. TPS holders and DACA recipients are among the noncitizens with the longest periods of residency in the United States and the strongest ties to the country. Both groups are thoroughly vetted by the government on a regular basis and contribute significantly to the economy.¹

In its first year, the administration has dramatically increased the undocumented population by shrinking the number of people who are protected from deportation. The threat of deportation is real for those whose protection has ended, especially when one takes into account that the Trump administration has also expanded enforcement to cover a far broader population of people (see discussion below).²

Table A. Growth of Immigrant Population No Longer Protected from Deportation	
<i>Humanitarian Program</i>	<i>Population</i>
DACA Rescission	689,800
TPS Terminations	248,000
Additional Immigrants Subject to Deportation	937,800

Source: USCIS 2018; CMS 2017

1. Rescission of Deferred Action for Childhood Arrivals

In June of 2012, the Obama administration announced DACA, a prosecutorial discretion initiative for undocumented youth, commonly known as “Dreamers.”³ People who arrived in the United States before the age of 16 and satisfied other eligibility requirements were allowed to apply for a two-year renewable grant of deferred action, which included employment authorization and protection from deportation.⁴ Approximately 800,000 undocumented youth have received DACA,⁵ and many have renewed their status regularly.⁶

On September 5, 2017, the Trump administration announced it was rescinding the initiative and that it would no longer accept DACA applications.⁷ It did, however, permit DACA recipients whose deferred action expired before March 5, 2018, to apply for renewal one final time.⁸ U.S. Citizenship and Immigration Services (USCIS) estimated that approximately 690,000 individuals

A.1. Dreams Denied: Mr. Martinez

The Trump Administration’s decision to rescind DACA means that Mr. Martinez – a terminally ill, 26-year-old DACA beneficiary from Mexico – will not only lose DACA protections, but will have to make an impossible choice. He can travel to Mexico to say goodbye to his parents, forfeiting the ability to return to the U.S. for proper palliative care, more treatment to prolong his life, and the chance to be with his U.S. Citizen wife during the last months of his life, or he can remain here and die without the opportunity to say goodbye to his parents. Martinez entered the U.S. (EWI) at the age of seven and has remained here ever since. In January 2007, he was diagnosed with acute lymphoblastic leukemia, a cancer that affects white blood cells. He was given a bone marrow transplant in July 2007 as treatment. However, he suffered complications following the bone marrow transplant and developed severe graft-versus-host disease. His condition is terminal and he has no chance of recovery. His doctor has predicted he may not survive 2018.

Martinez has not seen his mother in approximately five years and his father in a decade. Before he was able to apply for advance parole to visit his parents, the Trump Administration announced the termination of the DACA initiative, and along with it, the immediate end to advance parole for DACA beneficiaries. Without the possibility of DACA advance parole, his attorneys filed a request for humanitarian parole-in-place for Martinez, which might have allowed him to visit his parents before he dies. On March 8, 2018, Martinez and his family -including his U.S. citizen wife – learned that USCIS denied this request.

—*AILA Attorney, Detroit, Michigan*

A. 1. Dreamers Targeted: Osman, Jesus, and Jessica

While a temporary court order has allowed some Dreamers to renew their DACA applications for the time being, the threat of deportation looms for immigrant youth. Some DACA recipients have already been targeted for enforcement, including:

- Osman Aroche Enriquez, a Dreamer from Pennsylvania whose DACA expired after the USPS failed to deliver his renewal application on time. Osman was pulled over for an expired vehicle

held DACA at the time of the rescission.⁹ While a January 9, 2018 court order has temporarily allowed DACA recipients to continue applying for deferred action,¹⁰ without it, about 22,000 Dreamers would have lost deferred action by March 5, 2018.¹¹ Importantly, the Trump administration's rescission prevents young people who are now or will be eligible but have never applied, from filing new DACA applications. Approximately 1.2 million people are in this category, and the court injunctions do not require the administration to accept new DACA applications.¹² Ultimately, the Trump administration's rescission of DACA will increase the number of people who are undocumented by 690,000.

2. Termination of Temporary Protected Status Designations

For two decades, Presidents have employed TPS to protect certain classes of undocumented individuals from deportation. If the U.S. Department of Homeland Security (DHS) determines a foreign country is experiencing armed conflict, natural disaster, or other extraordinary circumstances that would make the return of that country's nationals dangerous or impractical, the Secretary can designate that country for TPS.¹³ TPS provides employment authorization and protection from deportation for the nationals from these designated countries who reside in the United States.¹⁴ Periodically, DHS must review and extend or terminate a country's designation, with extensions usually lasting an additional 18 months.¹⁵ Since the creation of TPS, both Republican and Democratic administrations have designated and extended TPS for various countries, in some cases for several decades.¹⁶

At the beginning of the Trump administration, ten countries had TPS designations, with countries such as El Salvador and Honduras repeatedly re-designated.¹⁷ Under the new administration, DHS significantly narrowed TPS protections by designating countries for shorter periods, failing to re-designate countries in a timely manner, or simply terminating designations. The Trump administration terminated the TPS designations for El Salvador,¹⁸ Haiti,¹⁹ Nicaragua,²⁰ and Sudan.²¹ The terminations of these TPS designations will render approximately 248,000 people undocumented.²² Over the next two years, the Secretary will also review designations for all other TPS countries, including Honduras,²³ Nepal,²⁴ Somalia,²⁵ South Sudan,²⁶ Syria,²⁷ and Yemen.²⁸

Table B. Termination of TPS Designations

	<i>Population</i>	<i>Termination Date</i>
El Salvador	195,000	Sept. 9, 2019
Haiti	50,000	July 22, 2019
Nicaragua	2,550	Jan. 5, 2019
Sudan	450	Nov. 2, 2018
Additional Immigrants Subject to Deportation	248,000	

Source: USCIS 2018; CMS 2017

registration and then transferred to ICE custody on December 11, 2017. He wasn't released for another three days.^a

- 23-year old DACA recipient Jesus Alonso Arreola, who was apprehended by CBP on February 12, 2017. He was surrounded by Border Patrol agents when he went to pick up a rideshare fare in San Diego. CBP accused him of smuggling the two people he picked up, who were undocumented, even though Mr. Arreola had never met them. Mr. Arreola – who is helping to support his parents, sister, and pregnant girlfriend – was never charged with any crimes in connection with the incident. But ICE still issued a Notice to Appear, automatically terminating his DACA, which also meant he lost his job.^b
- Jessica Colotl, a Dreamer from Georgia who – despite receiving DACA twice – had her latest renewal denied by the Trump administration, who also claimed she was a priority for deportation. Ms. Colotl came here when she was only 11 years old, and graduated from high school with honors. She is employed as a paralegal, and regularly volunteers for several charitable organizations. A federal court ordered her DACA be kept in place for the time being.^c

^a Tim Stuhldreher, *Attorney, immigration advocates push for release of Lancaster man detained by ICE after Post Office mixup*, Lancaster Online, December 14, 2017, http://lancasteronline.com/news/local/attorney-immigration-advocates-push-for-release-of-lancaster-man-detained/article_103c7046-c141-11e7-80c7-1ff252fc013a.html; Dara Lind, *The Postal Service kept him from renewing his DACA. He ended up in immigration detention.*, Vox, December 13, 2017, <https://www.vox.com/2017/12/13/16772630/daca-expire-ice-arrest-deport>.

^b Nicole Rodriguez, *Trump Administration has Illegally Attempted to Deport DACA Recipients, Advocates Say*, Newsweek, Dec. 2, 2017, <http://www.newsweek.com/trump-administration-has-made-illegal-attempts-deport-daca-recipients-724842>.

^c Stephen Dinan, *DHS nixes protections for prominent Dreamer; says she's target for deportation*, The Washington Times, October 25, 2017, <https://www.washingtontimes.com/news/2017/oct/25/dhs-nixes-protections-jessica-colotl-target-deport/>; Shaddi Abusaid, *Federal Judge: Jessica Colotl's DACA status maintained*, The Marietta Daily Journal, October 31, 2017, http://www.mjonline.com/news/federal-judge-jessica-colotl-s-daca-status-maintained/article_8ff04dc-bea0-11e7-a5bb-139382ab8f33.html; Letter from Cedric Richmond, Chair, Congressional Black Caucus, Representative, U.S. House of Representatives, et. al. to John Kelly Secretary of Homeland Security (June 15, 2017), available <https://capac-chu.house.gov/sites/congressionalasianpacificamericancaucus.house.gov/files/documents/TriCaucus-DACA-Letter-061517.pdf>.

B. Indiscriminate Enforcement Policies



In addition to shrinking the number of people who are protected from deportation, the Trump administration has expanded the universe of individuals subject to enforcement. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are now targeting people they can quickly identify and deport, going far beyond those who have criminal convictions or pose a threat to public safety. The administration has all but eliminated discretionary authority that previous administrations used to delay deportations. In addition, it has increased prosecutions of illegal entry and re-entry and expanded the constitutionally-suspect practice of lodging detainees with local law enforcement. Under these expanded enforcement policies, ICE and CBP are pursuing people who are eligible for immigration relief but have not received a decision or have not yet applied, as well as people who have compelling equities that weigh in favor of the exercise of prosecutorial discretion.

1. Enforcement Policies that Prioritize All Undocumented People

Prosecutorial discretion is a long-standing principle exercised by all law enforcement agencies that recognizes the authority of an official or agency to decide whether and to what degree to enforce the law in a particular case.²⁹ Historically, prosecutorial discretion has been used to take into account compelling circumstances in an individual's case, such as whether someone has family who are U.S. citizens or strong ties to the community, or has contributed significantly to the community through military service or in other ways. By exercising prosecutorial discretion, law enforcement is more able to focus its resources on its enforcement priorities, such as people who pose threats to public safety or national security.

Immigration enforcement agencies under both Republican and Democratic administrations have issued policies on prosecutorial discretion.³⁰ A 1999 letter signed by 28 Republican and Democratic members of Congress called on the federal government to issue a prosecutorial discretion policy in immigration enforcement.³¹ The Board of Immigration Appeals (BIA) and federal courts have likewise recognized the agency's prosecutorial discretion authority.³² These policies acknowledge the limited enforcement resources available, and the reality that if all removable people encountered are a priority, then no one is truly a "priority."

During his first month in office, President Trump and his administration established new enforcement policies calling for enforcement against all removable individuals.³³ The new priorities include not only people who have committed acts that constitute a chargeable criminal offense but also anyone with an outstanding order of removal.³⁴ They also specifically state that that DHS will enforce the law against anyone who is removable.³⁵ A February 21, 2017, ICE memorandum states that officers must "take enforcement action against all removable aliens encountered in the course of their duties."³⁶ A September 6, 2017, memorandum reminds CBP officers that anyone they encounter and believe to "have entered illegally or [be] out of status" must be processed accordingly.³⁷ Trump administration officials have consistently stated that everyone who is in violation of immigration laws is subject to removal.³⁸

A. 2. TPS Recipients at Risk: Joanna

TPS holders are among the noncitizens with the strongest ties to the U.S. They have built their lives in the United States over the course of years, sometimes decades, and are long-established parts of their communities. That includes Joanna*, a 31-year-old mother from Haiti who was originally placed in removal proceedings when she was found ineligible to be a derivative on her father's Haitian Refugee Immigration Fairness Act (HRIFA), a law enacted in 1998 that provided relief to certain Haitian nationals. Her father and four of her siblings are United States citizens, her mother has a green card. In 2010, following the earthquake in Haiti and the designation of that country for Temporary Protected Status (TPS), Joanna's removal proceedings were administratively closed to allow her to apply for TPS, which she received in 2011. With the recent announcement that TPS will expire as of July 22, 2019, Joanna will soon find herself out of status, most likely with her removal proceedings re-calendared and no real relief available to her despite all her ties to the United States. She has two children, a newborn and a four-year-old. Her husband, Nico*, a 34-year-old citizen of El Salvador with TPS runs his own construction company but is facing a similarly dire situation with the recent announcement of the termination of TPS for nationals of El Salvador.

—*AILA Attorney, New York, New York*

**Name changed to protect privacy.*

B. The Face of Indiscriminate Enforcement: Katja and Ernst

In Denver, CO, Katja* and Ernst* have learned firsthand what indiscriminate enforcement can mean. After their asylum cases were denied, they were checking in with ICE regularly for 17 years on their orders of supervision, which was first granted in 2001 under the Bush administration. Meanwhile, they had been able to work lawfully with work authorization cards granted by the Department of Homeland Security. Neither has any criminal record. Both have utilized their employment authorization to forge careers caring for the elderly. Ernst works caring for elderly veterans through a state program. They have two U.S. citizen children, including a ten-year-old autistic son who is nonverbal and needs an extraordinary amount of care

Data from fiscal year (FY) 2017 demonstrates that ICE is pursuing enforcement against more people who have no criminal background. In FY 2017, ICE apprehended almost 38,000 individuals who had no criminal convictions—more than double the number of non-criminals from the previous year. That represents a striking increase of 146 percent.³⁹ The number of arrests of non-criminals represents 26 percent of all 143,470 noncitizens ICE apprehended in FY 2017.⁴⁰ By contrast, the number of people apprehended who had criminal convictions increased only 12 percent.⁴¹ Moreover, of those with criminal histories, many were convicted only of minor crimes such as immigration-related crimes, traffic offenses, and other misdemeanors.⁴²

Table C. Immigration Arrests by Trump Administration

	<i>FY 2016</i>	<i>FY 2017</i>	<i>% Increase</i>
Arrests - Raids	30,348	40,066	32%
Arrests - Other	79,756	103,404	30%
Total	110,104	143,470	
People with Criminal Convictions	94,751	105,736	12%
People with No Criminal Convictions	15,353	37,734	146%
Total	110,104	143,470	

Source: ICE 2017

The Trump administration also increased the use of enforcement operations, often referred to as raids (defined as “at-large arrest[s] conducted in the community, as opposed to in a custodial setting”), which often lead to the apprehension of a large number of people who were not initially targeted.⁴³ ICE and CBP agents have been given wide latitude to apprehend bystanders encountered during enforcement actions, and ICE Director Tom Homan even threatened to make more collateral arrests in cities that did not agree to collaborate with ICE.⁴⁴ In FY 2017, the number of apprehensions stemming from immigration raids increased by 32 percent in comparison to FY 2016, with the number of apprehensions from these kinds of enforcement actions exceeding 40,000.⁴⁵

2. Elimination of Longstanding Stays of Removal and Orders of Supervision

The Trump administration is now targeting people for enforcement who previously had explicit permission from DHS to remain in the country, often due to compelling humanitarian equities. Federal regulations authorize ICE to grant a discretionary “stay of removal” delaying an individual’s deportation.⁴⁶ ICE can also place people on orders of supervision (OSUP), which require them to regularly check-in with ICE.⁴⁷ Individuals with stays of removal or orders of supervision are allowed to remain in the country—sometimes indefinitely—and are often granted work authorization.⁴⁸ In granting stays of removal or orders of supervision, ICE typically considered whether the person had particularly compelling humanitarian equities, such as being the primary caregiver for a disabled individual, having U.S. citizen family dependents, suffering from severe health problems, or having long-term residency and community ties.

from his parents, special educators, school psychologist, and therapists. Their older son is now an adult and filed petitions for his parents to get their green cards. Those petitions were approved and Katja and Ernst are now looking to reopen their old cases to be able to take the next steps in their green cards application process. In February, Katja was arrested by ICE on her way to work despite her next scheduled ICE check-in being set for April. She is currently in ICE detention. Ernst is fearful that he could also be arrested at any time. They have applied for a stay of Katja’s removal, but are terrified that it could be rejected and that she could be shipped off to a country she fled in fear nearly three decades ago. If they are forced to uproot their lives, their child faces a dire future as the medical and therapeutic care in their home country is far from adequate.
—*AILA Attorney, Denver, Colorado*

B. 1. The Face of Indiscriminate Enforcement: John

ICE’s overly-broad enforcement “priorities” mean that officers use their limited resources to arrest people like John*, a nurse who entered the US legally with a student visa in 2001. He became active in a Christian church in New York State and met and married his wife Sarah* there in 2007. John had applied for asylum based on multiple attacks he suffered as a Christian in Indonesia, including one incident during which he was stabbed twice. His application was ultimately denied by an immigration judge who found that it was untimely and lacked sufficient corroboration. John and Sarah are parents to a young United States Citizen, George*, who was diagnosed with developmental delay and autism at age 2. George received early intervention services and has required special education services throughout his schooling. John was apprehended and detained by ICE in the summer of 2017, during a particularly troubling time for his family because his wife recently suffered a stroke and was only released from rehab in late March of 2017. Though Sarah and the rest of the family all have legal status, and John is not only a valuable, long-term member of his community who has no criminal history, but also a vital member of his family who very much need his presence, he was detained. After being detained for weeks, John felt unable to continue and accepted deportation, despite the I-130 petition his step-son filed on his behalf.
—*AILA Attorney, New York, New York*

AILA members regularly report that the Trump administration is refusing to renew OSUP grants and stays of removal, even in cases where the person has been in the country decades and reporting to ICE for years.⁴⁹ Reporting requirements also appear to be growing more burdensome in cases where the OSUP remains in place, with ICE requiring check-ins weekly, for example. ICE is also detaining people at scheduled check-ins—without giving them any warning or the opportunity to develop travel plans or family arrangements—and deporting them quickly thereafter.⁵⁰

3. Increased Criminal Prosecutions for Illegal Entry and Re-entry

The Trump administration has also increased the number of prosecutions for immigration-related crimes, specifically for illegal entry and re-entry into the country, pursuant to 8 U.S.C. §1325 and §1326. As part of his executive order on interior enforcement, President Trump directed the U.S. Department of Justice (DOJ) and DHS to “implement a program that ensures adequate resources are devoted to the prosecution of criminal immigration offenses.”⁵¹ Subsequently, Attorney General Jeff Sessions issued a memorandum directing federal prosecutors to prioritize prosecution of noncitizens for non-serious immigration offenses⁵² and provided increased training for prosecutors in these cases.⁵³ From the beginning of the fiscal year through July of 2017, immigration offenses constituted over half of all federal convictions, far surpassing prosecutions for drug-smuggling and weapons-related offenses and other violent crimes.⁵⁴ This increased emphasis on illegal entry and re-entry prosecutions has increased the incarceration rates of noncitizens in federal prison.⁵⁵ American taxpayers are paying for the detention of far more people for immigration status-related crimes.

While the administration claims that it is targeting “criminal aliens” and people who pose national security and public safety threats,⁵⁶ in fact, the individuals prosecuted for illegal entry and re-entry are often fleeing from persecution and danger in their home countries.⁵⁷ The Trump administration dismisses international obligations by referring these asylum seekers for prosecution even after they’ve clearly stated a fear of return, and families are regularly separated at the border to begin the criminal proceedings against the parents.⁵⁸ Moreover, prosecutions for illegal entry and re-entry frequently take place in large group hearings where the cases are heard and sentenced in a matter of minutes, giving rise to significant concerns of due process violations.⁵⁹

4. Expanded Use of Detainers

As part of its effort to employ state and local resources to enforce federal immigration law, the Trump administration has reinstated the practice of lodging immigration detainers. Detainers are voluntary requests issued by federal immigration authorities to state and local law enforcement to detain people after the time when they would normally be released. ICE issues such detainer requests hoping the locality will detain a person in its custody beyond the release date, affording ICE additional time to physically take custody and detain the immigrant. The Trump administration has increased the number of detainers issued by ICE by 65 percent from 86,026 in FY 2016 to 142,356 in FY 2017.⁶⁰

As the number of detainers continues to increase under this administration, many legal challenges against detainers have been successful with several courts across

B. 2. The Face of Indiscriminate Enforcement: Erik, Guadalupe, and Ravi

Orders of supervision and stays of removal are often granted in cases where there are particularly compelling equities, including:

- Erik* from Honduras, who has been in the U.S. for over 13 years and had four U.S. citizen children – ages 1 to 12. He worked in the construction industry. Erik lost his appeal to the Board of Immigration Appeals (BIA) while representing himself in 2014, and had been regularly checking in with ICE since then. Despite being an active member of his church and regularly paying taxes, he was abruptly taken into custody at a check in with ICE in July 2017 and detained. His new attorney filed a stay of removal, which ICE denied. The attorney did not receive notice of the stay denial until weeks after it was denied, when he received a copy from the Guatemalan Consulate. It appears ICE never sent a copy to the attorney. Erik was removed on August 9, 2017. —*AILA Attorney, Charlotte, South Carolina*
- Guadalupe García de Rayos, a mother of two U.S. citizen children who came to the U.S. when she was a teenager and has been here for close to two decades. She reported to ICE with no issue since 2008 before being taken into custody at a check-in in February 2017. She was detained and deported to Mexico the next day.^d
- Ravi Ragbir, a 56-year old Trinidad national who, after regularly renewing his stay of removal for seven years, was taken into custody by ICE on January 11, 2018. He has been in U.S. for 27 years, and became a permanent resident in 1994, but was ordered removed following a conviction for wire fraud and conspiracy. After his release, he checked in regularly with ICE and became a prominent immigrant rights leader and executive director of the New Sanctuary Coalition of New York City. A federal

^d Liz Robbins, *Once Routine, Immigration Check-Ins Are Now High Stakes*, N.Y Times, April 11, 2017, <https://www.nytimes.com/2017/04/11/nyregion/ice-immigration-check-in-deportation.html>; Steve Almsy, Emanuella Grinberg and Ray Sanchez, *I did it for love, says mother deported in Arizona immigration case*, CNN, February 10, 2017, <https://www.cnn.com/2017/02/09/us/arizona-guadalupe-garcia-de-rayos-protests/index.html>.

the nation ruling against their use on statutory and constitutional grounds.⁶¹ Through litigation, courts have established that detainers are merely requests and compliance cannot be mandated. Courts have also ruled that localities may be found liable for unlawfully holding noncitizens based solely on detainer requests.⁶² Federal courts have also found that detention based on a detainer is a warrantless arrest which requires probable cause, and that detainers themselves do not provide that probable cause.⁶³ ICE's detainer practice also routinely violates federal immigration law; courts have found detainers themselves exceed ICE's inherent statutory authority to make warrantless arrests under 8 USC §1357(a) (2), and continuing detention based solely on the reasonable belief that an "alien [is] subject to removal" is not constitutionally sufficient.⁶⁴ Independent of any federal or constitutional infirmities in ICE's detainer practice, Massachusetts' highest court, in a unanimous decision, found detainers do not provide local law enforcement with the state authority they need to undertake a detainer arrest; instead law enforcement must identify a collateral, criminal ground and probable cause for an arrest.⁶⁵ Finally, a multitude of courts have held that police must have probable cause that a crime has been committed—and not only probable cause of a noncitizen's deportability—to detain a noncitizen, even when ICE issues a detainer.⁶⁶

C. Aggressive Enforcement Tactics



The Trump administration has expanded the geographic locations of where ICE conducts enforcement actions to include apprehensions at or near sensitive locations, and increased apprehensions at courthouses. ICE has also targeted vulnerable populations for enforcement, including people who are victims of crime and adults who step forward to sponsor and take care of unaccompanied children fleeing persecution.

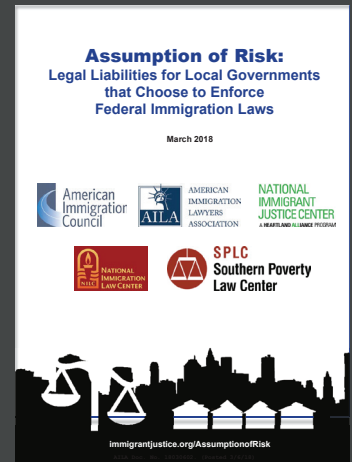
1. Enforcement at Sensitive Locations

As early as 1993, ICE and legacy Immigration and Naturalization Service published guidance discouraging or prohibiting conducting enforcement actions at certain "sensitive locations," such as schools, places of worship, health care facilities, churches, and religious ceremonies.⁶⁷ The stated purpose of such policies is to build the public's confidence and ensure safe enforcement of immigration laws.⁶⁸ The guidelines also recognize the unique vulnerabilities of noncitizens in certain locations.

While the Trump administration has stated that these longstanding policies remain in effect, in practice, ICE and CBP officers are conducting enforcement actions at or near sensitive locations.⁶⁹ ICE policy explicitly states that it will disregard the policies when deemed appropriate.⁷⁰ While ICE has historically not treated courthouses as sensitive locations, this administration is increasing enforcement actions at courthouses.⁷¹ In January of 2018, ICE issued updated guidance specifically permitting enforcement actions at courthouses and stating that ICE "does not prohibit civil immigration enforcement actions inside courthouses."⁷² In February 2018, ICE apprehended a man whose DACA status had briefly lapsed as he left the traffic court division of a courthouse.⁷³

court judge ordered ICE to release him on January 29, 2018.^e

Civil Rights Report Describes Legal Liabilities for Local Police that Detain Immigrants for ICE



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C. 1. Apprehended Seeking Medical Attention: Rosa

Immigration enforcement at sensitive locations hurts some of the most vulnerable among us. In October of 2017, immigration agents arrested 10-year old Rosa Maria Herndon during transport from a hospital to her parent's home after undergoing surgery for her cerebral palsy.^f In that same month, ICE arrested two immigrants as they left a church shelter in Virginia, having

^e Derek Hawkins, *Federal judge blasts ICE for 'cruel' tactics, frees immigrant rights activist Ravi Ragbi*, Washington Post, Jan. 30, 2018, <https://www.washingtonpost.com/news/morning-mix/wp/2018/01/29/federal-judge-blasts-ice-for-cruel-tactics-frees-immigrant-rights-activist-ravi-ragbi/>; Timothy Bella, *Ravi Ragbir Doesn't Want to Be a Symbol*, NYMag.com, January 29, 2018, <http://nymag.com/daily/intelligencer/2018/01/ravi-ragbir-doesnt-want-to-be-a-symbol.html>.

^f Maria Sacchetti, "U.S. frees 10-year-old undocumented immigrant with cerebral palsy," *Washington Post*, Nov. 3, 2017, https://www.washingtonpost.com/local/immigration/us-frees-10-year-old-undocumented-immigrant-with-cerebral-palsy/2017/11/03/283fd53a-c0e8-11e7-97d9-bda-b5a0ab381_story.html?utm_term=.a41183b80697.

In February 2017, ICE apprehended 33-year old Irvin González, a transgender woman seeking a protective order at a courthouse in Texas.⁷⁴

The negative consequences of arresting noncitizens at courthouses and violating these sensitive location policies are far-reaching for immigrants and U.S. citizens alike. People are more reticent to report crimes or act as witnesses, particularly when it involves a visit to a courthouse.⁷⁵ A recent survey of immigration advocates and legal services providers stated that “[i]mmigrant victims are expressing heightened fears and concerns about immigration enforcement, with 78 percent of advocates and attorneys reporting that victims are describing fear of contacting the police; 75 percent reporting that victims are afraid of going to court; and 43 percent reporting that immigrant victims are choosing not to move forward with criminal charges or obtaining protective orders.”⁷⁶ Some reports have even indicated that noncitizens are less likely to seek medical care.⁷⁷

2. Targeting Vulnerable Populations

DHS also started targeting vulnerable populations for apprehension and deportation, including undocumented individuals who serve as sponsors for unaccompanied children. When children fleeing their home countries without a parent are apprehended by CBP or ICE, they are initially transferred to the U.S. Department of Health and Human Services’ Office of Refugee Resettlement (ORR).⁷⁸ ORR houses and cares for the child until it can identify a sponsor—often a parent, relative, or close family friend—to take custody of the child while his or her immigration case moves forward.⁷⁹ These sponsors serve as guardians for the children and are responsible for feeding, housing, and caring for the child, as well as for ensuring the child’s presence at immigration court proceedings.⁸⁰

The Trump administration systemically targeted the undocumented sponsors of these unaccompanied children for questioning and placement in removal proceedings, also stating it would refer them for criminal prosecution.⁸¹ AILA members began reporting such incidents in August 2017, and, in a single nationwide operation, ICE apprehended over 400 undocumented sponsors.⁸² Apprehensions of sponsors can lead to the lengthy and unnecessary detention of both the sponsors and the unaccompanied children while they await their immigration proceedings in custody. Targeting sponsors is inhumane, sending more children into detention, which a DHS advisory committee concluded was “never in the best interest of children.”⁸³ This policy is also costly because of the resources required to detain the sponsors and children and because it will deter undocumented individuals from coming forward to sponsor unaccompanied children. In the case of mixed-status families, these operations risk removing undocumented guardians from their U.S. citizen children, leading to the placement of these children into the nation’s child welfare system.

3. Targeting People Who Are Eligible for Relief

ICE has also targeted noncitizens who are eligible for some form of immigration relief, including victims of crime. Under current immigration law, an individual is eligible for U nonimmigrant status (colloquially known as a “U visa”) if she or he has suffered from substantial physical or mental abuse as a result of being a victim of a specified crime. The visa was created to “strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes

spent the night to avoid hypothermia.⁸ ICE has also targeted schools, arresting a father as he dropped off his son at school in Virginia^h and two immigrants as they dropped off their children at a school in New Jersey.ⁱ

C. 2. Child Sponsor Detained: Jorge

When ICE targets sponsors of unaccompanied children, it is targeting people like Jorge*, a police officer who initially fled El Salvador with his wife in 2005 after he was threatened by gang members because of his law enforcement role. Jorge provided his address to immigration officials at the border and he and his wife were released, yet Jorge never received a hearing notice. Trying to do the right thing, he attempted to present himself at an immigration office and spoke with an attorney. Despite never receiving the information necessary to attend any hearing on his case, an in absentia removal order was issued because he never received notice about when and where to appear. Jorge became a sponsor to his nephew, an unaccompanied minor child, in 2014, again providing the federal government with his address and information. In June 2017, ICE came to Jorge’s house and arrested him although he has no criminal history. Jorge’s motion to reopen his case was denied but he is currently pursuing an appeal because he fears he will be killed if forced to return to El Salvador. He has been detained for almost 8 months in Colorado.

—*Immigration Justice Campaign*,
Aurora, Colorado

⁸ Maya Rhodan and Elizabeth Dias, *Immigration Agents Arrested Men Outside a Church. But Officials Say It Was Just a Coincidence*, Time, Feb. 17, 2017, <http://time.com/4674729/immigrations-church-sensitive-policy-concerns/>.

^h Arelis R. Hernández, Wesley Lowery and Abigail Hauslohner, *Federal immigration raids net many without criminal records, sowing fear*, Washington Post, Feb. 16, 2017, https://www.washingtonpost.com/national/federal-immigration-raids-net-many-without-criminal-records-sowing-fear/2017/02/16/a37c5e76-f486-11e6-a9b0-ecce7ce475fc_story.html.

ⁱ Christene Duffy, *2 dads nabbed by ICE as they drop off kids at NJ school; 3rd takes shelter in church*, Pix 11 News, Jan. 25, 2018, <http://pix11.com/2018/01/25/2-dads-nabbed-by-ice-as-they-drop-off-kids-at-nj-school-3rd-takes-shelter-in-church/>.

... while offering protections to victims of such crimes without the immediate risk of being removed from the country.”⁸⁴ To qualify for the visa, applicants must submit a sworn statement from an authorized official—often a law enforcement officer—that they have cooperated with law enforcement in their investigation or prosecution of that crime. U visa applications often take years to be processed due to backlogs in processing and a cap on the number of U visas available per year.⁸⁵

In October of 2017, ICE informed AILA that it will take enforcement action against immigrants with final orders of removal and pending U visa applications if USCIS does not, within *five days*, issue a determination that the application will likely be approved.⁸⁶ Previously, ICE would generally wait until a prima facie determination was issued by USCIS to approve or deny the stay of removal, which often took longer than five days given USCIS’ workload. ICE also indicated that it would remove immigrants who are victims of crime and eligible for U visas, but who have not yet had an opportunity to file an application.⁸⁷ This policy is likely to deter immigrant victims of crime from reporting the crime and cooperating with law enforcement.⁸⁸

4. Broadly Employing Gang Allegations

The Trump administration is identifying individuals as gang members based on overly broad and vague criteria. ICE has declared that “a person can be identified as a gang member if they meet two or more criteria, including having gang tattoos, frequenting an area notorious for gangs and wearing gang apparel.”⁸⁹ ICE is exercising its authority to label an individual as a gang member unilaterally, and its use of overbroad gang criteria allows it to detain noncitizens and deny them immigration benefits based only on unsubstantiated allegations of gang affiliation.⁹⁰ In many cases, these individuals do not have convictions or even arrests. The consequences of being wrongfully labeled as a gang member are severe. An immigration judge is more likely to require detention for someone who is labeled as a gang member, and an immigration officer is less likely to grant discretionary relief or protection to someone considered a gang member.⁹¹

D. Blanket Prosecution Policies



The Trump administration has curtailed several procedures previously used by ICE and CBP to temporarily suspend lower priority cases scheduled for court. Past administrations have used these mechanisms when an individual is eligible for relief or has compelling equities. By requiring courts to review these low priority cases, the administration will increase the number of cases on the court docket at a time when immigration court backlogs are already at an all-time high.⁹²

1. Increasing the Number of Cases on the Docket

Administrative closure is one of several mechanisms that DHS and the Executive Office for Immigration Review (EOIR) uses to increase efficiency, reduce case backlogs, and shift resources towards cases that serve the national interest in the immigration court system. Administrative closure removes a case from the BIA

C. 3. Eligible for Relief: Noe

In October of 2017, ICE arrested and deported Noe Lopez-Mulato, who was eligible for U nonimmigrant status because he testified against a man who pulled out a gun and fired shots at a soccer match. Noe Lopez-Mulato’s brother, Jose Lopez-Mulato, was shot trying to help subdue the offender. The prosecutor’s office stated that both men were “most helpful” during the investigation, and the police officer who worked on the case said the two men were “were hardworking brothers — working six days a week, paying their houses” and that they “wouldn’t hurt a fly.” ICE later arrested and placed Jose Lopez-Mulato into removal proceedings, even though he had an application for U nonimmigrant status pending.^j



^j Tresa Baldas, ‘We have to take your dad’: Man deported by ICE after helping Detroit cops, Detroit Free Press, Oct. 30, 2017, <https://www.freep.com/story/news/2017/10/30/ice-arrests-deports-undocumented-mexican-immigrant-who-helped-cops/804430001/>.

or immigration judge docket and may indefinitely suspend its adjudication.⁹³ Motions to terminate, another tool available to DHS, allow respondents to request that their cases be dismissed altogether. Finally, motions to reopen allow respondents to reopen a case, often to apply for additional forms of relief.⁹⁴ While an immigration judge makes the ultimate decision regarding these procedural mechanisms, ICE's recommendation to oppose or agree to these motions factor into a judge's decision.

Prior to January 2017, ICE attorneys often agreed to administratively close cases that were not considered enforcement priorities under guidance in effect at the time and would also consider motions to terminate or reopen a case in compelling situations.⁹⁵ Under the Obama administration, immigration judges administratively closed a large number of cases: 4,088 cases in FY 2015 and 5,239 cases in FY 2016 (up from 3,828 in FY 2014).⁹⁶

The Trump administration, however, directed DHS to oppose these types of motions, including motions to administratively close cases with compelling equities.⁹⁷ While the ICE Office of Principal Legal Advisor (OPLA) has confirmed that ICE attorneys still have discretion in individual cases, they have also stated that, "[i]n general, OPLA's role is to litigate cases that have been placed into the stream of litigation by an NTA issuing office as long as the NTA is legally sufficient."⁹⁸

Additionally, ICE is requesting previously administratively closed cases be reopened and recalendared, resuming the deportation of people who were already found to warrant prosecutorial discretion.⁹⁹ ICE has informed AILA that it will file motions to recalendar in cases where there was an arrest or conviction after the administrative closure.¹⁰⁰ While ICE has stated that it will not recalendar cases with arrests or convictions from *before* administrative closure, AILA received reports from members of this practice in some jurisdictions.¹⁰¹ The decreased use of administrative closure and recalendaring of previously closed cases has contributed to the substantial growth of the immigration court backlog by over 117,000 cases since the Trump administration came into office.¹⁰²

2. Undermining Available Relief Avenues

The Trump administration has made it almost impossible for individuals in removal proceedings who are eligible for relief to use the provisional unlawful presence waiver program. Under immigration law, close family members being sponsored for lawful permanent residence through the family-based immigration system are sometimes required to return to their home country to complete the process.¹⁰³ People who lived in the United States without legal status may be barred from re-entering the country under what are known as the three- or ten-year bars.¹⁰⁴ To return to the United States and complete their family visa process, these people would have to apply for and receive a waiver of the bars.¹⁰⁵ In 2013, DHS established the provisional unlawful presence waiver, which allows beneficiaries to apply for and receive the waiver *before* they leave the country, reducing the amount of time they have to spend separated from their families.¹⁰⁶ Under the previous administration, ICE agreed to administratively close proceedings in these cases so that the family member could apply for the waiver.¹⁰⁷

In 2017, ICE reversed course, however, stating that it will no longer agree to motions to administratively close to allow someone to apply for a provisional

D.2. Facing Lengthy Separation from Family: Annie and Tom

Two Guatemalan siblings ("Annie" and "Tom") in proceedings in the Detroit Immigration Court illuminate just how scary – and inefficient – ICE's policies on provisional waivers can be. Annie and Tom are both DACA recipients and are married to spouses through whom they can seek LPR status. Annie is 27 years old and married to a naturalized USC and together they have multiple USC children; her husband was originally granted asylum from Guatemala. Annie is the beneficiary of an approved I-130. Tom is married to an LPR who also was originally granted asylum from Guatemala. Tom is 24 years old and the beneficiary of a pending, prima facie approvable I-130. Both Annie and Tom's parents have been granted asylum from Guatemala. DHS has objected to administrative closure, and the immigration judge followed suit. Annie and Tom's attorneys continue to seek administrative closure of their cases so that they may apply for I-601A provisional waivers and consular process to obtain LPR status. If their cases are not administratively closed, both Annie and Tom would need to remain in their home country for 6-8 months to have their case processed. Due to the circumstances in Guatemala that form the basis for their family members having been granted asylum, that would be impossible. These young families' lives are in turmoil and they and their children are living in fear despite Annie and Tom being eligible for a path towards obtaining LPR status.

—*AILA Attorney, Oakland, California*

waiver.¹⁰⁸ Instead, ICE has stated it will only permit individuals to agree to voluntary departure and consular process abroad.¹⁰⁹ People in this situation will still be eligible to apply for a waiver of the three- and ten-year bars, but will likely have to wait outside of the country to obtain the waiver. This policy decision will result in longer periods of separation for families and make the process less efficient for the Department of State and USCIS.

E. Immigration Court Policies that Undermine Due Process



The Trump administration has implemented policies that will undermine the independence of immigration judges and weaken due process in the immigration court system. Immigration courts play a key role in affording noncitizens an opportunity to present claims for relief and stay in the United States. The changes adopted by DOJ since last year—including steps to impose numerical quotas on immigration judges and attempts to curtail procedural safeguards—threaten the integrity of immigration courts.

1. Undermining Judicial Independence

Historically, immigration judges were exempt from performance evaluations altogether because of concerns that supervisors' evaluations would improperly influence judges' decisions and potentially affect the outcome of cases.¹¹⁰ In 2009, after assurances were made to preserve judicial independence, EOIR established a system to evaluate the performance of individual immigration judges. Importantly, a central component of the new system was a provision that prevented DOJ from evaluating immigration judges based on numerical case completion quotas.¹¹¹

In 2017, at the direction of the new administration, EOIR reopened the Collective Bargaining Agreement with the National Association of Immigration Judges (NAIJ). During this process, EOIR eliminated the provision preventing the use of numeric quotas, and it now plans to add quotas to the judge's performance evaluations.¹¹² These measures will essentially tie the number of cases judges complete to their performance evaluation, putting more pressure on judges to rule under tight deadlines.¹¹³

NAIJ publicly opposed the numerical quotas, arguing that it would represent the "death knell for judicial independence" and undermine adjudications where life or death often hinge on a correct decision.¹¹⁴ This new policy will pressure judges to deny continuances to respondents who are attempting diligently to find legal counsel but have not been successful. Judges will also be more likely to move forward in cases where the individual has not had adequate time to prepare.¹¹⁵ Importantly, previous efforts to establish judicial quotas were quickly abandoned in light of serious concerns that quotas would improperly influence decisions and negatively affect the outcome of a case.¹¹⁶ Mandatory quotas will erode judicial independence; lower the quality of adjudications and compromise due process; and facilitate more deportations—not fair decisions.¹¹⁷



**THE TRUMP
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IMMIGRATION
COURT SYSTEM**

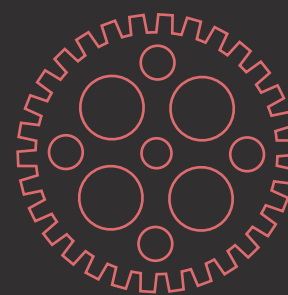
DOJ has taken other steps to undermine the independence of the courts and strip judges of their ability to exercise discretion in certain circumstances. In a December 5, 2017 memorandum, the attorney general called on immigration judges and their staff to expedite cases.¹¹⁸ The memorandum also called on judges to prioritize the identification of “any and all suspected instances of fraud,” without specifying how strong the evidence of fraud should be.¹¹⁹ The attorney general stated that he “anticipate[s] clarifying certain legal matters in the near future that will remove recurring impediments to judicial economy and the timely administration of justice,” which in all likelihood means DOJ will publish additional regulations and guidance that will continue to chip away at the availability of justice in immigration courts.¹²⁰ On January 17, 2018, James McHenry, Director of EOIR, implemented some of the principles outlined by the attorney general by issuing a memorandum to all EOIR staff outlining new performance measures for immigration courts.¹²¹ The outlined measures include case priorities, case benchmarks, and performance metrics that will be tracked by EOIR.

2. Restricting Procedural Safeguards and Threatening Access to Counsel

In July 2017, EOIR released a memorandum, which pressures immigration judges to deny multiple continuances, including continuances to find an attorney or for an attorney to prepare for a case.¹²² The guidance emphasized that there is not “right to a continuance” and that judges should give weight to “administrative efficiency” when deciding whether to issue a continuance. In particular, the memorandum claims that respondents may use continuances as a “dilatatory” practice in an “abusive” manner.¹²³

In immigration court, legal representation is of paramount importance to the success of a respondent’s case, with represented individuals being significantly more likely to be released from detention, identify and apply for immigration relief, and successfully obtain that relief.¹²⁴ Continuances represent a critical docketing management tool for immigration judges and are a necessary means to ensure that due process is afforded in removal proceedings. The number one reason a continuance is requested by a respondent is to find counsel.¹²⁵ Other reasons include allowing respondents to prepare their case, secure evidence, and maximize the chance of eventually winning relief. Continuances are particularly important to recent arrivals, vulnerable populations (such as children), and non-English speakers—all of whom have significant difficulties navigating an incredibly complex immigration system.

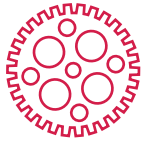
The guidance also encourages immigration judges to refer for disciplinary proceedings lawyers who take on “more cases than he or she can” handle.¹²⁶ This portion of the memo may discourage reputable attorneys and organizations from taking on additional clients—clients who need representation and may be unable to secure other counsel—for fear of being unfairly referred for disciplinary proceedings. It may also discourage attorneys from asking for multiple continuances in cases that have legitimate and persuasive reasons for needing additional continuances, such as if an attorney discovers previously unavailable evidence or is waiting on information from a foreign government.



EOIR RELEASED A MEMORANDUM, WHICH PRESSURES IMMIGRATION JUDGES TO DENY MULTIPLE CONTINUANCES, INCLUDING CONTINUANCES TO FIND AN ATTORNEY OR FOR AN ATTORNEY TO PREPARE FOR A CASE



Conclusion



This report presents what is now an undeniable truth: The Trump administration has created an incredibly powerful machine that has every cog and gear churning relentlessly to detain and deport the maximum number of people from this country. No longer is enforcement being exercised in a smart, sensible way that distinguishes between people who are contributing members of our communities from those who pose actual threats to public safety. It is a shame and an injustice that Dreamers, families with children, and people who have jobs and own businesses and are contributing to this country now must look constantly over their shoulders out of fear that they could be picked up any day. These people should not be targeted for enforcement.

The President's fiscal year 2019 budget calls for huge increases to the DHS budget that would fund 52,000 immigration detention beds, 2,000 additional ICE personnel and 750 additional border patrol agents, and \$1.6 billion for the border wall.¹²⁷ These funds would enable the administration to implement the policies described in this report and additional policies promised in the President's 2017 Executive Orders. Congress and the American public should reject these increases as excessive and unnecessary. Instead we need a sensible immigration enforcement plan that is based on clearly articulated goals and priorities and that is accountable to the public--elements that are lacking in the administration's current plan. Finally, America's immigration system cannot advance the nation's prosperity unless it safeguards the principles of due process, the bedrock of our legal system.

2019 PRESIDENT'S
BUDGET WOULD FUND

52,000
IMMIGRATION DETENTION BEDS

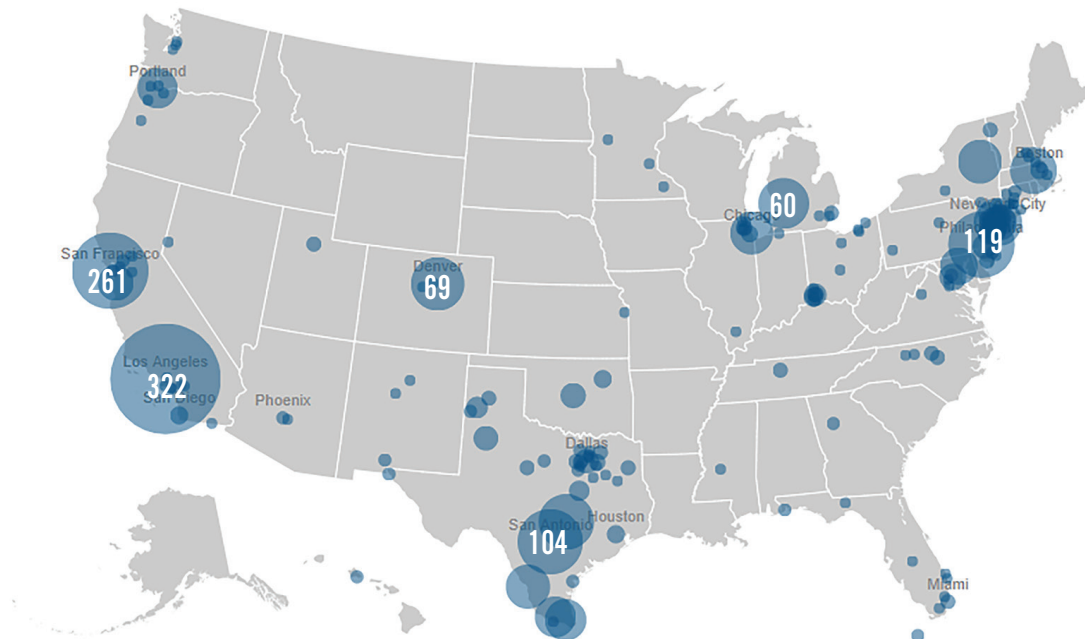
2,000
ADDITIONAL ICE PERSONNEL

750
ADDITIONAL BORDER
PATROL AGENTS

\$1.6 BILLION
FOR THE BORDER WALL

See AILA's map illustrating the types of enforcement actions ICE has undertaken nationwide since January 2017.

www.aila.org/enforcementmap



TOTAL ENFORCEMENT
ACTIONS REPORTED: **1,834**

**As Of March 8, 2018*

*San Francisco, CA area: 261**
*Los Angeles, CA area: 322**

*Philadelphia, PA area: 119**
*San Antonio, TX: 104**

*Grand Rapids, MI: 60**
*Denver, CO area: 69**

Endnotes

¹ Over a decade, ending DACA will cost the nation approximately \$460.3 billion in lost GDP; \$39.3 billion in lost Social Security and Medicare contributions; and \$6.3 billion in employer turnover and compliance costs. Nicole Prchal Svajlenka, Tom Jawetz, and Angie Bautista-Chavez, *A New Threat to DACA Could Cost States Billions of Dollars*, Center for American Progress, July 21, 2017, <https://www.americanprogress.org/issues/immigration/news/2017/07/21/436419/new-threat-daca-cost-states-billions-dollars/>; Jose Magaña-Salgado, *Draining the Trust Funds: Ending DACA and the Consequences to Social Security and Medicare*, Immigrant Legal Resource Center, Oct. 2017, available at <https://www.ilrc.org/report-daca-economic-cost>; David Bier, *Ending DACA Will Impose Billions in Employer Compliance Costs*, Cato Institute, Sept. 1, 2017, <https://www.cato.org/blog/ending-daca-will-impose-billions-employer-compliance-costs>. Over a decade, ending TPS for El Salvador, Honduras, and Haiti will cost the nation approximately \$164 billion in lost GDP; \$6.9 billion in lost Social Security and Medicare contributions; and \$967 million in employer turnover and compliance costs. Nicole Prchal Svajlenka, Angie Bautista-Chavez, and Laura Muñoz Lopez, *TPS Holders Are Integral Members of the U.S. Economy and Society*, Center for American Progress, Oct. 20, 2017, <https://www.americanprogress.org/issues/immigration/news/2017/10/20/440400/tps-holders-are-integral-members-of-the-u-s-economy-and-society/>; Amanda Baran, Jose Magaña-Salgado, and Tom K. Wong, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders: The Cost to Taxpayers, GDP, and Businesses of Ending TPS*, Immigrant Legal Resource Center, April 2017, available at <https://www.ilrc.org/report-tps-economic-cost>.

² See Part B. 1; *Enhancing Public Safety in the Interior of the United States*, Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017), available at <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states> [hereinafter “Interior Enforcement EO”]; Memorandum from John F. Kelly, Secretary, U.S. Department of Homeland Security on Enforcement of the Immigration Laws to Serve the National Interest to Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection, et al. (Feb. 20, 2017), available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

³ See Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et al. (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁴ *Id.*

⁵ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012–2017, (Sept. 30, 2017), available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performedata_fy2017_qtr4.pdf (Noting that USCIS approved 798,980 “Total Cumulative Initial” requests.).

⁶ Faye Hipsman, Bárbara Gómez-Aguíñaga, and Randy Capps, *DACA at Four: Participation in the Deferred Action Program and Impacts on Recipients*, Migration Policy Institute, Aug. 2016, available at <https://www.migrationpolicy.org/research/daca-four-participation-deferred-action-program-and-impacts-recipients> [hereinafter “MPI DACA Statistics”] (“What is clear, however, is that the vast majority of those who received an initial two-year DACA grant have applied for renewal.”).

⁷ Memorandum from Elaine C. Duke, Acting Secretary, U.S. Department of Homeland Security on Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA) to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services, et al. (Sept. 5, 2017), available at <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

⁸ *Id.*

⁹ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Approximate Active DACA Recipients as of September 4, 2017 by Month Validity Expires and Status of Associated Renewal as of September 7, 2017 (If Submitted) (Sept. 4, 2017), available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_renewal_data.pdf (Noting that approximately 689,800 individuals held DACA as of that date).

¹⁰ In response to the rescission of DACA, multiple parties filed legal challenges to enjoin the rescission. In January of 2018, the District Court in *Regents of Univ. of Cal. v. Dep’t of Homeland Security* enjoined a portion of the rescission and directed USCIS to resume adjudicating requests for renewal. *Regents of Univ. of Cal. v. United States Dep’t of Homeland Sec.*, No. C 17-05211 WHA (N.D. Cal. Jan. 9, 2017), cert. denied, 583 U.S. ___ (2019). As of the date of this report, USCIS resumed accepting requests for renewal of DACA after the Supreme Court rejected the Trump administration’s request to directly appeal the injunction and bypass the Ninth Circuit. U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction (Jan. 13, 2018), available at <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>; Adam Liptak and Michael D. Shear, *Supreme Court Turns Down Trump’s Appeal in ‘Dreamers’ Case*, N. Y. TIMES, Feb. 26, 2018, <https://www.nytimes.com/2018/02/26/us/politics/supreme-court-trump-daca-dreamers.html>. On February 13, 2018, a District Court in New York issued a second preliminary injunction similar in scope. *Batalla Vidal v. Nielsen*, 1:16-cv-04756 (E.D.N.Y.). Consequently, the continued existence of DACA remains in question.

¹¹ Tom Jawetz and Nicole Prchal Svajlenka, *Thousands of DACA Recipients Are Already Losing Their Protection From Deportation*, Center for American Progress, Nov. 9, 2017, <https://www.americanprogress.org/issues/immigration/news/2017/11/09/442502/thousands-daca-recipients-already-losing-protection-deportation/> (“Each day that Congress delays acting on the Dream Act from now until March 5, 2018, approximately 122 people will lose their Deferred Action for Childhood Arrivals (DACA) protection. That is 851 people each week, and more than 7,900 since the announcement. The logic behind this number is straightforward: The 22,000 eligible DACA recipients who did not successfully apply to renew their DACA will, as a result, see their DACA protections expire in the 181 days between September 5, 2017 and March 5, 2018.”); David Bier, *What Will Happen If Trump Kills DACA: A Timeline of Expiration*, Cato Institute, Aug. 16, 2017, <https://www.cato.org/blog/what-will-happen-trump-kills-daca-timeline-expiration>.

¹² MPI DACA Statistics, *supra* note 6. The injunctions in *Regents* and *Batalla Vidal* do not re-open the ability of this population to request DACA.

¹³ 8 USC § 1254a.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Madeline Messick and Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent*, Migration Policy Institute, July 2, 2014, available at <https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>.

¹⁷ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Temporary Protected Status (Feb. 2, 2018), <https://www.uscis.gov/humanitarian/temporary-protected-status> (“Countries Currently Designated for TPS”).

¹⁸ 83 Fed. Reg. 2654 (Jan. 18, 2018), available at <https://www.federalregister.gov/documents/2018/01/18/2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status>.

¹⁹ 83 Fed. Reg. 2648 (Jan. 18, 2018), available at <https://www.federalregister.gov/documents/2018/01/18/2018-00886/termination-of-the-designation-of-haiti-for-temporary-protected-status>.

²⁰ 82 Fed. Reg. 59636 (Dec. 15, 2017), available at <https://www.federalregister.gov/documents/2017/12/15/2017-27141/termination-of-the-designation-of-nicaragua-for-temporary-protected-status>.

²¹ 82 Fed. Reg. 47228 (Oct. 11, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-10-11/pdf/2017-22074.pdf>.

²² Robert Warren and Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, Center for Migration Studies, 2017, available at <http://jmhs.cmsny.org/index.php/jmhs/article/view/99>.

²³ 82 Fed. Reg. 59630 (Dec. 15, 2017), available at <https://www.federalregister.gov/documents/2017/12/15/2017-27140/extension-of-the-designation-of-honduras-for-temporary-protected-status>.

²⁴ 81 Fed. Reg. 74470 (Oct. 26, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-10-26/html/2016-25907.htm>.

²⁵ 82 Fed. Reg. 4905 (Jan. 17, 2017), available at <https://www.federalregister.gov/documents/2017/01/17/2016-31861/extension-of-the-designation-of-somalia-for-temporary-protected-status>.

²⁶ 82 Fed. Reg. 44205 (Sept. 21, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-09-21/html/2017-20174.htm>.

²⁷ Press Release, U.S. Department of Homeland Security, Secretary Of Homeland Security Kirstjen M. Nielsen Announcement On Temporary Protected Status For Syria (Jan. 31, 2018), available at <https://www.dhs.gov/news/2018/01/31/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

²⁸ 82 Fed. Reg. 859 (Jan. 4, 2017), available at <https://www.federalregister.gov/documents/2017/01/04/2016-31003/extension-and-redesignation-of-the-republic-of-yemen-for-temporary-protected-status>.

²⁹ Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 1 to All Field Office Directors, et al. (June 17, 2011), available at <https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

³⁰ Memorandum from Bo Cooper, General Counsel, Immigration and Naturalization Service on INS Exercise of Prosecutorial Discretion to Doris Meissner, Commissioner, Immigration and Naturalization Service (July 11, 2000), available at <http://library.nirwap.org/wp-content/uploads/2015/IMM-Gov-ProsDisc-07.11.00.pdf>; Memorandum from Sam Bernsen, General Counsel, Immigration and Naturalization Service on Legal Opinion Regarding Service Exercise of Prosecutorial Discretion to Leonard Chapman, Commissioner, Immigration and Naturalization Service, (July 15, 1976), available at <https://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf>; Shoba S. Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 CONN. PUB. L. J. 243 (2010); Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens 1 to All Field Office Directors, et al. (June 17, 2011), available at <https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> (listing the various memoranda that form the foundation of prosecutorial discretion).

³¹ Letter from Henry J. Hyde, Representative, U.S. House of Representatives, et al. to Janet Reno, Attorney General, U.S. Department of Justice, et al. (Nov. 4, 1999), available at <https://www.gpo.gov/fdsys/pkg/CHRG-112hbrg73358/pdf/CHRG-112hbrg73358.pdf> (The letter, located on page 11, was read into the congressional record).

³² *Prosecutorial Discretion: How to Advocate for Your Client*, American Immigration Council, March 18, 2015, available at https://americanimmigrationcouncil.org/sites/default/files/practice_advisory_pd_overview_final.pdf; Memorandum from Sam Bernsen, General Counsel, Immigration and Naturalization Service on Legal Opinion Regarding Service Exercise of Prosecutorial Discretion to Leonard Chapman, Commissioner, Immigration and Naturalization Service (July 15, 1976), available at <https://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf>.

³³ Interior Enforcement EO, *supra* note 2.

³⁴ *Id.*

³⁵ *Id.*

³⁶ U.S. Department of Homeland Security, “Implementation Memo for EOs 13768 and 13767” (Feb. 21, 2017), AILA InfoNet Doc. No. 17070730, available at <http://www.aila.org/infonet/ice-memo-on-implementing-the-presidents-border>.

³⁷ U.S. Department of Homeland Security, “CBP Provides Guidance on the Rescission of DACA” (Jan. 15, 2016), AILA InfoNet Doc. No. 17122006, available at www.aila.org/infonet/cbp-guidance-on-the-rescission-of-daca.

³⁸ Elise Foley, *ICE Director To All Undocumented Immigrants: ‘You Need To Be Worried’*, HUFFINGTON POST, June 13, 2017, https://www.huffingtonpost.com/entry/ice-arrests-undocumented_us_594027c0e4b0e84514eebfbe (“If you’re in this country illegally and you committed a crime by entering this country, you should be uncomfortable,” Acting Director Thomas Homan told the House Appropriations Committee’s Homeland Security Subcommittee. “You should look over your shoulder, and you need to be worried.”); Roque Planas, *ICE Chief Will ‘Never Back Down’ From Telling Undocumented Immigrants To Be Afraid*, HUFFINGTON POST, June 13, 2017 https://www.huffingtonpost.com/entry/ice-thomas-homan-immigrants-afraid_us_5a723134e4b09a544b562913 (“I’ll never back down on those words,” Homan said at the Border Security Expo in San Antonio, a conference that connects law enforcement with companies looking to win contracts. “If you violate the laws of this country, if you enter illegally which is a crime it’s not going to be OK anymore.”).

³⁹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Fiscal Year 2017 ICE Enforcement and Removal Operations Report (Dec. 13, 2017), <https://www.ice.gov/removal-statistics/2017> [hereinafter “ICE Removal Statistics FY 2017”]. Of note, FY 2017 includes four months of enforcement statistics under the Obama administration. ICE, however, does provide enforcement statistics specifically for the Trump administration, which compares a similar period under the Trump and Obama administrations. These statistics demonstrate corresponding increases in enforcement, reflected in the FY 2017 and FY 2016 comparisons.

⁴⁰ *Id.*; See also Nick Miroff and Maria Sacchetti, *Trump takes ‘shackles’ off ICE, which is slapping them on immigrants who thought they were safe*, WASHINGTON POST, Feb. 11, 2018, available at https://www.washingtonpost.com/world/national-security/trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48c-b07fea957bd5_story.html.

⁴¹ ICE Removal Statistics FY 2017, *supra* note 39 (“ERO arrested 105,736 criminal aliens in FY2017, resulting in a 12 percent (10,985) increase over FY 2016, as seen in Figure 4.”); See also Nick Miroff and Maria Sacchetti, *Trump takes ‘shackles’ off ICE, which is slapping them on immigrants who thought they were safe*, WASHINGTON POST, Feb. 11, 2018, available at https://www.washingtonpost.com/world/national-security/trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48c-b07fea957bd5_story.html.

⁴² ICE Removal Statistics FY 2017, *supra* note 39 (listing a variety of non-serious offenses, including traffic and immigration offenses).

⁴³ *Id.*

- ⁴⁴ Nicholas Kulish, Caitlin Dickerson, and Ron Nixon, *Immigration Agents Discover New Freedom to Deport Under Trump*, N.Y. TIMES, Feb. 25, 2017, <https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.html> (“Bystanders are now being taken in if they are suspected to be undocumented, even if they have committed no crime, known within the agency as ‘collateral’ arrests. While these arrests occurred under the Obama administration, they were officially discouraged, to the frustration of many agents.”); Press Release, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, Statement from ICE Acting Director Tom Homan on California Sanctuary Law (Oct. 6, 2017), available at <https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law> (“ICE will have no choice but to conduct at-large arrests in local neighborhoods and at worksites, which will inevitably result in additional collateral arrests, instead of focusing on arrests at jails and prisons where transfers are safer for ICE officers and the community.”).
- ⁴⁵ ICE Removal Statistics FY 2017, *supra* note 39.
- ⁴⁶ 8 CFR §241.6.
- ⁴⁷ 8 CFR §241.5.
- ⁴⁸ *Id.*
- ⁴⁹ American Immigration Lawyers Association, “AILA/ICE Liaison Meeting Minutes” (Oct. 26, 2017), AILA InfoNet Doc. No. 18011132, available at <http://www.aila.org/infonet/aila-ice-liason-committee-meeting-gas-10-26-17>.
- ⁵⁰ Liz Robbins, *Once Routine, Immigration Check-Ins Are Now High Stakes*, N.Y. TIMES, April 11, 2017, <https://www.nytimes.com/2017/04/11/nyregion/ice-immigration-check-in-deportation.html>.
- ⁵¹ Interior Enforcement EO, *supra* note 2.
- ⁵² Memorandum from Jeff Sessions, Attorney General, Office of the Attorney General, U.S. Department of Justice on Renewed Commitment to Criminal Immigration Enforcement to All Federal Prosecutors (April 11, 2017), available at <https://www.justice.gov/opa/press-release/file/956841/download>.
- ⁵³ 65 U.S. Attorneys’ Bulletin, July (II) 2017, available at <https://www.justice.gov/usao/page/file/986131/download>.
- ⁵⁴ *Federal Criminal Prosecutions Fall Under Trump*, TRAC, Sept. 1, 2017, <http://trac.syr.edu/tracreports/crim/480/> (“Total convictions were classified by prosecutors into more specific types. The single largest number of convictions through July 2017 was for immigration offenses. These offenses accounted for 53.1 percent of all convictions. The second largest number of matters were convictions under the Department of Justice’s programs for prosecuting federal violations of narcotic and drug laws (18.6%).”).
- ⁵⁵ U.S. DEPARTMENT OF HOMELAND SECURITY, Alien Incarceration Report Fiscal Year 2017, Quarter 4 (Dec. 21, 2017), available at https://www.dhs.gov/sites/default/files/publications/Alien_Incarceration_Report_OIS_FY17_Q4_2.pdf.
- ⁵⁶ ICE Removal Statistics FY 2017, *supra* note 39.
- ⁵⁷ Olga Byrne and Natasha Arnpriester, *Punishing Refugees and Migrants: The Trump Administration’s Misuse of Criminal Prosecutions*, Human Rights First, Jan. 2018, available at <https://www.humanrightsfirst.org/resource/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions> (Noting that 48 percent of defense attorneys surveyed by Human Rights First who practice along the southern border said that “more than half of their clients are asylum seekers.”).
- ⁵⁸ *Id.*; American Immigration Council, et al., “The Separation of Family Members Apprehended by or Found Inadmissible While in U.S. Customs and Border Protection (CBP) Custody at the U.S.-Mexico Border” (Dec. 11, 2017), AILA InfoNet Doc. No. 17121132, available at <http://www.aila.org/infonet/civil-human-rights-organizations-file-joint-compla>; Olga Byrne and Natasha Arnpriester, *Punishing Refugees and Migrants: The Trump Administration’s Misuse of Criminal Prosecutions*, Human Rights First, Jan. 2018, available at <https://www.humanrightsfirst.org/resource/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions>.
- ⁵⁹ 8 USC §§1325, 1326; American Immigration Lawyers Association, “AILA’s Take on Operation Streamline” (June 19, 2015), AILA InfoNet Doc. No. 15061930, available at <http://www.aila.org/infonet/aila-take-on-operation-streamline>.
- ⁶⁰ ICE Removal Statistics FY 2017, *supra* note 39.
- ⁶¹ *ICE Detainer Court Cases Update October 2017*, Immigrant Legal Resource Center, Oct. 24, 2017, available at <https://www.ilrc.org/ice-detainer-court-cases-update-october-2017>.
- ⁶² *Galarza v. Szalczzyk*, 745 F.3d 634, 645 (3d Cir. 2014); see also *Santa Clara v. Trump*, No. 3:17-cv-00574 (N.D. Cal. Apr. 25, 2017).
- ⁶³ *Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317 (D.Or. April 11, 2014); *Morales v. Chadbourne*, 996 F.Supp.2d 19 (D.R.I. filed Feb. 12, 2014).
- ⁶⁴ *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452 (N.D. Ill. Sept. 30, 2016); *Orellana v. Nobles County*, No. 0:15-cv-03852 (D. Minn. Jan. 6, 2017).
- ⁶⁵ *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass., 2017) (“The United States acknowledged at oral argument in this case that a detention like this, based strictly on a Federal immigration detainer, constitutes an arrest.”).
- ⁶⁶ *Santoyo v. United States*, No. 5:16-CV-855-OLG, (W.D. Tex. June 5, 2017); *Mercado v. Dallas County*, No. 3:15-cv-3481 (N.D. Tex. Jan. 17, 2017); *City of El Cenizo v. Texas*, No. SA-17-CV-404-OLG (W.D. Tex. Aug. 30, 2017).
- ⁶⁷ Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement on Enforcement Actions at or Focused on Sensitive Locations to Field Office Directors, et al. (Oct. 24, 2011), available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement on Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations to All Field Office Directors, et al. (July 3, 2008), available at <https://www.ikw.com/immigrationdaily/news/2010,1027-memo.pdf>; Memorandum from Marcy M. Forman, Director, Office of Investigations, U.S. Immigration and Customs Enforcement on Enforcement Actions at Schools (Dec. 26, 2007); Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service on Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies HQ 807-P (May 17, 1993) (Immigration agents were directed to “[A]ttempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools, places of worship, funerals and other religious ceremonies.”).
- ⁶⁸ Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement on Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations to All Field Office Directors, et al. (July 3, 2008), available at <https://www.ikw.com/immigrationdaily/news/2010,1027-memo.pdf>.
- ⁶⁹ Letter from Richard Blumenthal, Senator, U.S. Senate, et al. to Elaine Duke, Acting Secretary, U.S. Department of Homeland Security (Oct. 17, 2017), available at https://www.immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2017-10/SenateSensitiveLocationsLetter_2017_10_17.pdf; Letter from Richard Blumenthal, Senator, U.S. Senate, et al. to Elaine Duke, Acting Secretary, U.S. Department of Homeland Security (Nov. 13, 2017), available at <https://www.blumenthal.senate.gov/imo/media/doc/11.13.17%20Follow-Up%20Letter%20to%20DHS%20on%20Sensitive%20Locations.pdf>; Maria Sacchetti, *U.S. frees 10-year-old undocumented immigrant with cerebral palsy*, WASHINGTON POST, Nov. 3, 2017, https://www.washingtonpost.com/local/immigration/us-frees-10-year-old-undocumented-immigrant-with-cerebral-palsy/2017/11/03/283fd53a-c0e8-11e7-97d9-bdab5a0ab381_story.html?hpid=hp-top-table-border%3Aimmigration%3Ahomepage%2Fstory&hpid=hp-top-table-border%3Aimmigration%3Ahomepage%2Fstory; Maya Rhodan and Elizabeth Dias, *Immigration Agents Arrested Men Outside a Church. But Officials Say It Was Just a Coincidence*, TIME, Feb. 17, 2017, <http://time.com/4674729/immigrations-church-sensitive-policy-concerns/>.
- ⁷⁰ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, FAQ on Sensitive Locations and Courthouse Arrests (Jan. 31, 2018), <https://www.ice.gov/ero/enforcement/sensitive-loc>.
- ⁷¹ *Id.*

- ⁷² U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018), available at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.
- ⁷³ Ashlee Rezin, *They treat people like they're animals: Dreamer released after ICE detains him*, CHICAGO SUN TIMES, Feb. 1, 2018, <https://chicago.suntimes.com/news/they-treat-people-like-theyre-animals-dreamer-released-after-ice-detains-him/>.
- ⁷⁴ Jonathan Blitzer, *The Woman Arrested by ICE in a Courthouse Speaks Out*, THE NEW YORKER, Feb. 23, 2017, <https://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>.
- ⁷⁵ *Statement of the National Taskforce to End Sexual and Domestic Violence in Opposition to the Administration's October 2017 Immigration Blueprint*, National Task Force to End Sexual & Domestic Violence, Oct. 10, 2017, available at <http://www.tabirib.org/wp-content/uploads/2017/10/NTF-StatementWH-Immigration-Principles-Oct-10-2017-FINAL.pdf> [hereinafter "National Taskforce Statement"]; Marium Durrani, et al., *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, National Network to End Domestic Violence, et al., June 2017, available at www.tabirib.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf; John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*, NPR, May 25, 2017, <https://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting>; Tom Dart, *Fearing deportation, undocumented immigrants wary of reporting crimes*, THE GUARDIAN, March 23, 2017, <https://www.theguardian.com/us-news/2017/mar/23/undocumented-immigrants-wary-report-crimes-deportation> ("They were undocumented and, as a result of recent developments, they were unwilling to continue with the cases," she told Denver7 local news.').
- ⁷⁶ National Taskforce Statement, *supra* note 75.
- ⁷⁷ Ike Swetlitz, *Immigrants, fearing Trump's deportation policies, avoid doctor visits*, STAT, Feb. 24, 2017, <https://www.statnews.com/2017/02/24/immigrants-doctors-medical-care/>; Mayra Joachin, *Why Protecting Safe Access to Health Facilities for Everyone Should Be a National Priority*, National Immigration Law Center, Apr. 13, 2017, <https://www.nilc.org/news/the-torch/4-13-17/>.
- ⁷⁸ OFFICE OF REFUGEE RESETTLEMENT, ADMINISTRATION FOR CHILDREN & FAMILIES, U.S. HEALTH AND HUMAN SERVICES, Unaccompanied Alien Children Released to Sponsors by State (June 30, 2017), <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>.
- ⁷⁹ *Id.*
- ⁸⁰ *Id.*
- ⁸¹ Press Release, U.S. Department of Homeland Security, Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement (Feb. 21, 2017), available at <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement> ("Accordingly, DHS shall ensure the proper enforcement of our immigration laws against those who—directly or indirectly—facilitate the smuggling or trafficking of alien children into the United States. This includes placing parents or guardian who are removable aliens into removal proceedings, or referring such individuals for criminal prosecution, as appropriate."); Garance Burke, *Feds Will Now Target Relatives Who Smuggled in Children*, ASSOCIATED PRESS, June 30, 2017, <https://www.usnews.com/news/best-states/arizona/articles/2017-06-30/feds-look-to-arrest-relatives-who-smuggled-migrant-children>.
- ⁸² American Immigration Lawyers Association, "Chasing Down the Rumors: Shift in ICE ERO Policy, Pending U Visa Applications" (Nov. 3, 2017), AILA InfoNet Doc. No. 16112144, available at <http://www.aila.org/infonet/chasing-down-rumors>; John Burnett, *ICE Has Arrested More Than 400 In Operation Targeting Parents Who Pay Smugglers*, NPR, Aug. 18, 2017, <https://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>.
- ⁸³ ADVISORY COMMITTEE ON FAMILY RESIDENTIAL CENTER, U.S. DEPARTMENT OF HOMELAND SECURITY, Report of the DHS Advisory Committee on Family Residential Centers 1 (Sept. 30, 2016), available at <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFCRC-16093.pdf>.
- ⁸⁴ U.S. DEPARTMENT OF HOMELAND SECURITY, U and T Visa Law Enforcement Resource Guide (Jan. 4, 2016), available at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.
- ⁸⁵ Sarah Bronstein, *Changes to U Visa processing in Fiscal Year 2017*, CLINIC, 2017, <https://cliniclegal.org/resources/immigration-and-nationality-act-limited-number-u-visas-fiscal-year-2017>.
- ⁸⁶ American Immigration Lawyers Association, "AILA/ICE Liaison Meeting Minutes" (Oct. 26, 2017), AILA InfoNet Doc. No. 18011132, available at <http://www.aila.org/infonet/aila-ice-liaison-committee-meeting-qas-10-26-17>.
- ⁸⁷ *Id.*; American Immigration Lawyers Association, "AILA/ICE Liaison Meeting Minutes" (April 4, 2017), AILA InfoNet Doc. No. 17060602, available at www.aila.org/infonet/ice-liaison-committee-meeting-q-and-a-04-06-17.
- ⁸⁸ Nora Caplan-Bricker, *"I Wish I'd Never Called the Police"*, SLATE, March 19, 2017, www.slate.com/articles/news_and_politics/cover_story/2017/03/u_visas_gave_a_safe_path_to_citizenship_to_victims_of_abuse_under_trump.html; National Taskforce Statement, *supra* note 75; Marium Durrani, et al., *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors*, National Network to End Domestic Violence, et al., June 2017, available at www.tabirib.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf; John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*, NPR, May 25, 2017, <https://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting>.
- ⁸⁹ Julie Edwards Ainsley, *Exclusive: U.S. immigration raids to target teenaged suspected gang members*, REUTERS, July 21, 2017, <https://www.reuters.com/article/us-usa-immigration-raids-exclusive/exclusive-u-s-immigration-raids-to-target-teenaged-suspected-gang-members-idUSKBN1A62K6>.
- ⁹⁰ Immigrant Rights Clinic, *Mislabeled: Allegations of Gang Membership and Their Immigration Consequences*, University of California, Irvine School of Law, April 2016, www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf.
- ⁹¹ *Id.* ("Gang allegations made by law enforcement agents frequently prevent undocumented immigrants from gaining legal status for which they would be otherwise eligible. These allegations, made without any of the hallmarks of due process, also increase the likelihood an undocumented immigrant will be prioritized for deportation or held in immigration detention" and "A detainee who is erroneously alleged to be a gang member may be unnecessarily detained for long periods of time and foreclosed of the opportunity to be released out on bond because of the gang allegations.").
- ⁹² *Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Courts*, TRAC, http://trac.syr.edu/phptools/immigration/court_backlog/ (last accessed Feb. 28, 2018); Zoe Tillman, *The Backlog Of Cases In Immigration Courts Has Hit A Record High This Summer*, BUZZFEED NEWS, Aug. 21, 2017, <https://www.buzzfeed.com/zoetillman/the-backlog-of-cases-in-immigration-courts-has-hit-a-record>.
- ⁹³ *Administrative Closure and Motions to Recalendar*, American Immigration Council, Aug. 29, 2017, available at https://www.americanimmigrationcouncil.org/practice_advisory/administrative-closure-and-motions-recalendar ("Administrative closure is a docket management tool in which a case currently pending in immigration court or at the BIA is removed from the court or BIA's active docket."); Importantly, administrative closure is a "tool that is used to temporarily pause removal proceedings" but is not a form of immigration status. *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017).

⁹⁴ *The Basics of Motions to Reopen EOIR-Issued Removal Orders*, American Immigration Council, Aug. 29, 2017, available at https://www.americanimmigrationcouncil.org/practice_advisory/basics-motions-reopen-eoir-issued-removal-orders.

⁹⁵ Memorandum from Riah Ramlogan, Acting Principal Legal Advisor, U.S. Immigration and Customs Enforcement on Guidance Regarding Cases Pending Before EOIR Impacted by Secretary Johnson's Memorandum entitled Policies for the Apprehension, Detention and Removal of Undocumented immigrants to OPLA Attorneys (April 6, 2015), available at https://www.ice.gov/doclib/foia/prosecutorial-discretion/guidance_eoir_johnson_memo.pdf ("OPLA attorneys should continue to review their cases, at the earliest opportunity, for the potential exercise of prosecutorial discretion, in light of the enforcement priorities. OPLA should generally seek administrative closure or dismissal of cases it determines are not priorities.").

⁹⁶ EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE, FY 2016 Statistics Yearbook C6 (March 2017), available at <https://www.justice.gov/eoir/page/file/fjsb16/download>.

⁹⁷ Manuel Madrid, *Jeff Sessions Is Just Getting Started on Deporting More Immigrants*, THE AMERICAN PROSPECT, Jan. 23, 2018, available at <http://www.prospect.org/article/jeff-sessions-just-getting-started-on-deporting-more-immigrants> ("The Justice Department had already largely done away with allowing prosecutors to join in motions to administratively close a case that didn't fall within its enforcement priorities").

⁹⁸ American Immigration Lawyers Association, "AILA/ICE Liaison Meeting Minutes" (Oct. 26, 2017), AILA InfoNet Doc. No. 17060602, available at www.aila.org/infonet/ice-liaison-committee-meeting-q-and-a-04-06-17.

⁹⁹ *Administrative Closure and Motions to Recalendar*, American Immigration Council, Aug. 29, 2017, available at https://www.americanimmigrationcouncil.org/practice_advisory/administrative-closure-and-motions-recalendar ("Under the Trump Administration, this is no longer the practice; in fact, DHS is moving to recalendar cases that previously were administratively closed.").

¹⁰⁰ American Immigration Lawyers Association, "Chasing Down the Rumors: Shift in ICE ERO Policy, Pending U Visa Applications" (Nov. 3, 2017), AILA InfoNet Doc. No. 16112144, available at <http://www.aila.org/infonet/chasing-down-rumors>.

¹⁰¹ *Id.*

¹⁰² *Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Courts*, TRAC, http://trac.syr.edu/pbptools/immigration/court_backlog/ (last accessed Feb. 28, 2018); Olga Byrne and B. Shaw Drake, *Tilted Justice: Backlogs Grow While Fairness Shrinks in U.S. Immigration Courts*, Human Rights First, Oct. 2017, available at <https://www.humanrightsfirst.org/sites/default/files/btf-tilted-justice-final%5B1%5D.pdf> (Noting that the "backlog continues to expand, reaching 632,261 cases as of August 2017, and has increased by over 82,000 since President Trump took office." Since the Human Rights First report, the backlog has grown to 667,839, increasing the total backlog during this administration by 117,578.); *Immigration Court Backlog Tool*, TRAC, Dec. 2017, http://trac.syr.edu/pbptools/immigration/court_backlog/ (Noting that the immigration court backlog is 667,839 as of December 2017).

¹⁰³ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, USCIS Policy Manual Volume 7 – Adjustment of Status (Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume7-PartB.html> ("The Immigration Act of 1924 required all intending immigrants to obtain an immigrant visa at a U.S. embassy or consulate abroad (commonly known as 'consular processing.' A foreign national physically present in the United States could not become an LPR without leaving the United States to consular process abroad.").

¹⁰⁴ INA §212(a)(9)(B).

¹⁰⁵ "Stateside" Waiver Available to Many More People Seeking Permanent Residence, National Immigration Law Center, Dec. 6, 2016, <https://www.nilc.org/issues/immigration-enforcement/stateside-waiverfacts/>.

¹⁰⁶ 8 CFR §212.7.

¹⁰⁷ Nikki Marquez and Erin Quinn, *I-601A Provisional Waiver Process A Hardship Waiver for Unlawful Presence*, Immigrant Legal Resource Center, Dec. 20, 2016, available at <https://www.ilrc.org/i-601a-provisional-waiver-process-practice-advisory> ("If the applicant is currently in removal proceedings, he or she may still be able to use the I-601A provisional waiver but the proceedings must be administratively closed and must not be re-calendared before the time of filing the waiver application.").

¹⁰⁸ American Immigration Lawyers Association, "Chasing Down the Rumors: Shift in ICE ERO Policy, Pending U Visa Applications" (Nov. 3, 2017), AILA InfoNet Doc. No. 16112144, available at <http://www.aila.org/infonet/chasing-down-rumors>.

¹⁰⁹ *Id.*

¹¹⁰ American Immigration Lawyers Association, "Imposing Numeric Quotas on Judges Threatens the Independence and Integrity of the Courts" (Oct. 13, 2017), AILA InfoNet Doc. No. 17101234, available at <http://www.aila.org/infonet/aila-policy-brief-imposing-numeric-quotas-judges> [hereinafter "AILA Numeric Quotas"].

¹¹¹ See *Threat to Due Process and Judicial Independence Caused by Performance Quotas on Immigration Judges*, National Association of Immigration Judges, Oct. 2017, available at https://www.naij-usa.org/images/uploads/publications/NAIJ_Quotas_in_IJ_Performance_Evaluation_10-1-17.pdf.

¹¹² The White House, "White House Releases Immigration Principles and Policies" (Oct. 8, 2017), AILA InfoNet Doc. No. 17100965, available at <http://www.aila.org/infonet/wh-immigration-principles-and-policies> ("Establish performance metrics for immigration judges."); AILA Numeric Quotas, *supra* note 110.

¹¹³ AILA Numeric Quotas, *supra* note 110; Maria Sacchetti, *Immigration judges say proposed quotas from Justice Dept. threaten independence*, WASHINGTON POST, Oct. 12, 2017, https://www.washingtonpost.com/local/immigration/immigration-judges-say-proposed-quotas-from-justice-dept-threaten-independence/2017/10/12/3ed86992-ae1-11e7-be94-fabb0f1e9ffb_story.html [hereinafter "Sacchetti"].

¹¹⁴ Sacchetti, *supra* note 113; *Threat to Due Process and Judicial Independence Caused by Performance Quotas on Immigration Judges*, National Association of Immigration Judges, Oct. 2017, available at https://www.naij-usa.org/images/uploads/publications/NAIJ_Quotas_in_IJ_Performance_Evaluation_10-1-17.pdf.

¹¹⁵ Sacchetti, *supra* note 113 ("People's lives are at risk in immigration court cases, and to force judges to complete cases under a rapid time frame is going to undermine the ability of those judges to make careful, well thought-out decisions," said Gregory Chen, Director of Government Relations for the American Immigration Lawyers Association, which has 15,000 members.).

¹¹⁶ AILA Numeric Quotas, *supra* note 110.

¹¹⁷ *Id.*

¹¹⁸ Memorandum from Jeff Sessions, Attorney General, Office of the Attorney General, U.S. Department of Justice on Renewing Our Commitment to the Timely and Efficient Adjudication of Immigration Cases to Serve the National Interest to the Executive for Immigration Review (Dec. 5, 2017), available at <https://www.justice.gov/opa/press-release/file/1015996/download>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Memorandum from James McHenry III, Director, Executive Office of Immigration Review, U.S. Department of Justice on Case Priorities and Immigration Court Performance Measures to the Office of the Chief Immigration Judge, et al. (Jan. 17, 2018), available at <http://www.aila.org/infonet/eoir-updates-its-case-priorities-and-immigration>.

¹²² Memorandum from Mary Beth Keller, Chief Immigration Judge, Executive Office for Immigration Review on Operating Policies and Procedures Memorandum 17-01: Continuances to All Immigration Judges, et al. (July 31, 2017), available at <https://www.justice.gov/eoir/file/oppm17-01/download>.

¹²³ *Id.*

¹²⁴ Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court*, American Immigration Council, Sept. 28, 2016, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

¹²⁵ U.S. Gov. Accountability Office, *GAO-17-438, Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges* 125 (2017), available at <https://www.gao.gov/assets/690/685022.pdf>.

¹²⁶ *Id.*

¹²⁷ Breisblatt, Joshua. "Trump's Budget Proposal Would Increase Harsh Immigration Enforcement" *Immigration Impact*, American Immigration Council, February 13, 2018, <http://immigrationimpact.com/2018/02/13/trump-budget-proposal-immigration/>. See also American Immigration Lawyers Association, "The Trump Administration FY2018 Budget: Funding for a Massive Deportation Machine" (June 19, 2017), AILA InfoNet Doc. No. 17060906, available at <http://www.aila.org/infonet/fy2018-budget-funding-for-a-massive-deportation-m>.

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