

# EXAMINING THE ADEQUACY AND ENFORCEMENT OF OUR NATION'S IMMIGRATION LAWS

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

\_\_\_\_\_  
FEBRUARY 3, 2015  
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## **EXAMINING THE ADEQUACY AND ENFORCEMENT OF OUR NATION'S IMMIGRATION LAWS**

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**TUESDAY, FEBRUARY 3, 2015**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The Committee met, pursuant to call, at 11:06 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Smith, Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Marino, Gowdy, Labrador, Farenthold, Collins, DeSantis, Buck, Ratcliffe, Bishop, Conyers, Nadler, Jackson Lee, Cohen, Johnson, Deutch, Bass, Richmond, DelBene, Jeffries, and Cicilline.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian and General Counsel; Dimple Shah, Counsel; George Fishman, Counsel; Kelsey Deterding, Clerk; (Minority) Perry Apfelbaum, Minority Staff Director & Chief Counsel; and Tom Jawetz, Counsel.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order.

And, without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to this morning's hearing on examining the adequacy and enforcement of our Nation's immigration laws. And I will begin by recognizing myself for an opening statement.

When President Obama announced unilateral changes to our immigration laws with a wave of his pen and cell phone on November 20, 2014, he indicated that he would allow millions of unlawful and criminal aliens to evade immigration enforcement. He did this with the issuance of new so-called priorities for the apprehension, detention, and removal of aliens.

Under the Obama administration's new enforcement priorities, broad categories of unlawful and criminal aliens will be immune from the law. This means that these removable aliens will be able to remain in the United States without the consequence of deportation.

To make matters worse, even the most dangerous criminals and national security threats can cease being a priority for removal if there are undefined, compelling, and exceptional factors.

On the same date, President Obama effectively announced the end of Secure Communities. Despite the fact that the President claims he took action to prioritize immigration enforcement against criminal aliens, he is scrapping a tool that identifies criminal aliens booked in jails across the United States so that Federal law enforcement officials can prioritize their removal.

Secure Communities, created in 2008, is a simple and highly successful program to identify criminal aliens once arrested and jailed. It protects Americans from those who are a danger to their communities.

As the Department of Homeland Security has said on numerous occasions, Secure Communities simply uses an already existing Federal information-sharing partnership between ICE and the Federal Bureau of Investigation that helps to identify criminal aliens so that ICE can take enforcement action.

As of August 2014, the Administration indicated that over 375,000 aliens and 121,000 level-one convicted criminal aliens, who the Obama administration deems the worst of the worst, were removed as result of Secure Communities.

Based on the Obama administration's new policies announced on November 20, 2014, we have learned that the average daily population of aliens in detention facilities has declined to approximately 27,000 beds. This has occurred despite the statutory mandate in current law that ICE maintain a 34,000 ADP in detention facilities.

Many factors have contributed to this decline, including the collapse of issuance and compliance with ICE detainers because of ICE's own detainer policy issued on December 21, 2014, ICE's failure to defend its detainer authority, ICE's immediate implementation of its new enforcement priorities on November 20, 2014, and the demise of the Secure Communities program on this same date.

Detainers are notices issued by ICE and other DHS units that ask local, State, and Federal law enforcement agencies not to release suspected removable aliens held at their facilities in order to give ICE an opportunity to take them into its custody. Detainers, often called immigration holds, are a primary tool that ICE uses to apprehend the suspects it is seeking.

Irresponsible policies have led to a drop in the number of detainers issued by ICE. And given that ICE refuses to defend its detainer authority, many jurisdictions refuse to cooperate with ICE on detainers out of fear of civil liability. The results are distressing. ICE developed a methodology to track the number of detainers not honored by local law enforcement jurisdictions.

From January 1, 2014, to September 30, 2014, over 10,000 detainers were not honored. Through September, the recidivism rate for these aliens was 25 percent in just a 9-month period. There were over 5,400 subsequent arrests and 9,300 criminal charges. The end result of these policies: The number of unlawful or criminal aliens that ICE has removed from the interior of the country has fallen by more than half since 2008.

Given this Administration's failure to enforce our immigration laws, we could line Border Patrol agents shoulder to shoulder at

the southern border and it would not matter. Why? Because once apprehended by the Border Patrol, many of the children, teenagers, and adults arriving at the border simply game our asylum and immigration laws that the Obama administration has severely weakened.

The Administration has done little to deal with this problem other than ensure that these claims be heard years down the road. In the meantime, these aliens can abscond and eventually fail to appear for their hearings. The Wall Street Journal just reported that the Justice Department has a special date reserved for thousands of immigrants awaiting their day in court, the day after Thanksgiving in 2019.

If word got out that bogus credible fear and asylum claims were not being rubber-stamped and that claimants were not rewarded with almost certain release into the U.S. along with work authorization, the vast increase in claims might quickly abate. In the end, it doesn't matter how many aliens are apprehended along the border if apprehension itself becomes a golden ticket into the country.

Successful immigration reform must enable effective interior enforcement. This is an integral piece of the puzzle. We can't just be fixated on securing the border while undoubtedly an issue of paramount concern.

We must focus on interior enforcement or, more precisely, what to do with unlawful immigrants who make it past the border and legal immigrants who violate the terms of their visas and thus become unlawfully present in the United States.

One reason why our immigration system is broken today is because the present and past Administrations have largely ignored the enforcement of our immigration laws. If we want to avoid the mistakes of the past, we cannot allow the President to continue shutting down Federal immigration enforcement efforts unilaterally.

In the coming weeks, this Committee will hold hearings and address legislation that deals with the problem of the Administration's failure to enforce our immigration laws. We will not only provide the Administration with the tools it needs, we will also act to ensure that the President cannot unilaterally shut down immigration enforcement in this country.

Only then will immigrants seeking to enter the U.S. have an incentive to obey our Nation's immigration laws. We must ensure enforcement of our immigration laws so that we can then move on to address other broken aspects of our immigration system, such as high-skilled visa reform and addressing our broken agricultural guest worker program.

It is now my pleasure to recognize the Ranking Member of the Judiciary Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte.

As we convene our first hearing of the 114th Congress, I continue to hope, as I have in past Congresses, that we will be able to work together in this Committee to address important challenges and advance the cause of justice. But as we look to the future, we must first remember where we have been particularly when it comes to the issue of immigration.

In 2013, the Chairman began the very first hearing this Committee held by saying, “This year Congress will engage in a momentous debate on immigration.” Unlike the Senate, which engaged in that momentous debate and passed a bill with strong bipartisan support, the House never had the opportunity to hold that debate.

Bipartisan reform bills in the House and Senate received no action at all. Instead, we just voted again and again to take Deferred Action for Childhood Arrivals, DACA, away from young people to deny due process protections to children fleeing violence and to block other sensible administrative reforms.

Although the first hearings held by this Committee in each of the last two Congresses has dealt with immigration, the titles of the hearings and the witness lists could not be more different. In the last Congress, the hearing was titled “America’s Immigration System: Opportunities for Legal Immigration and Enforcement of Laws Against Illegal Immigration.” We discussed the need for immigration reform, including reforms to our legal immigration system. We even discussed the important question of how we treat the millions of undocumented people who are living in our communities today.

The title of today’s hearing, “Examining the Adequacy and Enforcement of our Nation’s Immigration Laws,” focuses only on the issue of enforcement. And reading the testimonies submitted by our witnesses and the majority’s press releases, it is clear that this hearing will not address opportunities for legal immigration. Instead, this hearing will address only claims that our immigration laws are, against all the evidence to the contrary, somehow not being adequately enforced.

From the endless list of grievances, it is even hard to know what the focus of the hearing will be. Here are just a few of the topics that the majority and its witnesses plan to discuss today: The legal authority for the Administration’s executive actions on immigration, the elimination of the Deferred Action for Childhood Arrivals program, the need to eliminate the credible fear process and tighten asylum laws designed to protect people from persecution and torture, the security of our borders, and the Administration’s decision to set priorities when enforcing immigration laws in the interior. The list goes on, but I think I made the point that I wish to make here.

We also know that this hearing sets the stage for a number of legislative hearings that the Subcommittee on Immigration and Border Security will be holding over the next 8 days—two legislative hearings on four bills that would make our immigration system more dysfunctional and unfair, not less so.

Finally, the irony is not lost on me that the majority will spend the next several hours attacking this Administration for not taking enforcement seriously, but they are now threatening to shut down the Department of Homeland Security for the second time in just 15 months.

Just last week all three former secretaries of Homeland Security, including two appointed by President George W. Bush, urged Congress not to jeopardize the Department’s funding.



They wrote, "Funding for the DHS is used to protect our ports and our borders; to secure our air travel and cargo; to protect the Federal Government and our Nation's information technology and infrastructure from cyber attacks; to fund essential law enforcement activities; to guard against violent extremists; and to ensure the safety of the President and national leaders."

I ask unanimous consent, Mr. Chairman, to enter that letter into the record.

Mr. GOODLATTE. Without objection, it will be made part of the record.

[The information referred to follows:]

The Honorable Mitch McConnell  
 United States Senate Majority Leader  
 317 Russell Senate Office Building  
 Washington, DC 20510


The Honorable Harry Reid  
 United States Senator Minority Leader  
 522 Hart Senate Office Building  
 Washington, DC 20510

As former U.S. Secretaries of Homeland Security, we write to you today to respectfully request that you consider decoupling critical legislation to fund the Department of Homeland Security (DHS) in Fiscal Year (FY) 2015 from a legislative response to President Obama's executive actions on immigration.

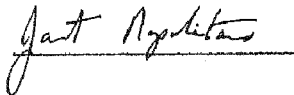
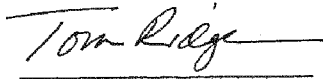
As the recent terrorist attacks in Paris and the cyber-attacks on a major American corporation and on the U.S. Military's Central Command remind us, the threats facing the U.S. are very real. The national security role that DHS plays, and by extension the funding that allows it to carry out its vital national security mission, is critical to ensuring that our nation is safe from harm. Funding for the DHS is used to protect our ports and our borders; to secure our air travel and cargo; to protect the federal government and our nation's information, technology, and infrastructure from cyber-attacks; to fund essential law enforcement activities; to guard against violent extremists; to mobilize response networks after emergencies; and to ensure the safety of the president and national leaders.

Moreover, we appreciate that Congress possesses the authority to authorize and appropriate funds expended by the federal government. We do not question your desire to have a larger debate about the nation's immigration laws. However, we cannot emphasize enough that the DHS's responsibilities are much broader than its responsibility to oversee the federal immigration agencies and to protect our borders. And funding for the entire agency should not be put in jeopardy by the debate about immigration. The President has said very publicly that he will "oppose any legislative effort to undermine the executive actions that he" has taken on immigration. Therefore, by tethering a bill to fund DHS in FY 2015 to a legislative response to the President's executive actions on immigration, the likelihood of a Department of Homeland Security shutdown increases.

It is imperative that we ensure that DHS is ready, willing, and able to protect the American people. To that end, we urge you not to risk funding for the operations that protect every American and to pass a clean DHS funding bill.



Sincerely,

Mr. CONYERS. Thank you.

I hope we can get serious about legislating real solutions for our businesses, families, and national security.

I thank our witnesses for being present and joining us today.

And I yield back the balance of my time.

Mr. GOODLATTE. The Chair thanks the gentleman.

And it is now my pleasure to recognize the Chairman of the Immigration Subcommittee of the House Judiciary Committee, the gentleman from South Carolina, Mr. Gowdy, for his opening statement.

Mr. GOWDY. Thank you, Mr. Chairman.

The consensus, Mr. Chairman, in this country is our current immigration system is broken, unworkable, and, frankly, not in the best interest of our fellow citizens. It is also the consensus that the current system is not being enforced, which undercuts the very foundation of this Republic, which is respect for and adherence to the rule of law.

Previous attempts at immigration reform proved to be insufficient because, if they had been sufficient, we wouldn't be having another hearing or another national conversation about immigration reform. Decisions by Administrations, frankly, from both parties, to selectively enforce our immigration laws have had a negative effect on our system. In addition, both parties, through the selective enforcement of laws, have undercut the most fundamental of American virtues.

Simply put, while most Americans realize the current system does not work, they are also skeptical that Congress will actually do what it is supposed to do or that this or future Administrations will actually enforce what reforms do pass, and this cynicism is well earned.

An oft-repeated statistic bears mentioning again, Mr. Chairman: About 40 percent of those who are in the country unlawfully originally entered through lawful means. So while real and verifiable border security is critical, immigration reform cannot and will not be done without real, verifiable, and robust border security.

A sovereign country should never apologize for having a secure border any more than this Congress or this Capitol apologizes for having metal detectors at every single entranceway.

But just as border security is a condition precedent, so, too, is enforcement of our internal immigration laws if we are going to have a system that works and has any credibility in the eyes of both the American public and those who wish to legally emigrate here.

This Administration, Mr. Chairman, has in the past claimed to have removed record numbers of unlawful or otherwise removable aliens from the United States, but ICE's own report indicates just last year more than two-thirds of all removals claimed by ICE involved aliens apprehended by the Border Patrol along the border or intercepted by inspectors at ports of entry.

At the same time, under the guise of prosecutorial discretion, the Administration has handcuffed Federal immigration officers by—and I want you to note the irony, Mr. Chairman—telling law enforcement officers not to enforce the law. Therefore, a sustainable immigration solution needs to have mechanisms to ensure that the

President, whether the one we have today or the one we have 10 years from now, cannot simply turn off the switch on enforcement.

State and local law enforcement have a role in every single facet of law enforcement. So why can't we give them a role in immigration enforcement? We trust State and local law enforcement officers to enforce every category of the law from murder, to child sex cases, to narcotics trafficking, to child pornography.

Mr. Chairman, they even have primary responsibility to patrol and enforce something as inherently interstate as the interstate highway system. But, yet, we can't seem to muster the confidence in them to give them a role in enforcing our immigration laws. So we trust them with murder cases. We just can't muster the courage to trust them with immigration cases.

So I want to know why we can't grant States and localities the specific congressional authorization envisioned by the Supreme Court that allows them to play a supporting role in the enforcement of our immigration laws.

There are 5,000 ICE agents that have the responsibility for enforcing our Nation's immigration laws, but there are 730,000 State and local law enforcement officers. And let's remember that those State and local law enforcement officers are subject to exactly the same constitutional restrictions as Federal law enforcement officers.

So, in conclusion, Mr. Chairman, if we want a long-term sustainable solution, we have to address interior enforcement. Selective enforcement of the law is destructive to our system. Ignoring laws simply because we wish they weren't laws is destructive to the system. And the result has been a pervasive sense that our law, frankly, just doesn't matter anymore.

So the American people rightfully expect and deserve the laws we pass to actually be enforced. It would be a good idea if the Congress had the same expectation.

With that, I would yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentlewoman from Texas, Ms. Jackson Lee, for her opening statement on behalf of the Subcommittee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Thank you for the yielding.

I have always held the proposition that, in the Judiciary Committee, we are tied to the facts. And I think it is important as we begin this oversight again that we make note of the fact that President Obama's administration has in the last years, in 1 year, detained a record 429,247 people.

He has, in essence, removed 1,570,510 in one term, almost as many as President Bush did in two terms. The facts is what is going to make this hearing, again, over and over again, a relevant hearing.

I think it is important also to note that ICE, in 1 year, detained and removed 216,000 of those individuals to be deported who had been convicted of crimes in the United States, an all-time high.

So I hope that our hearing this morning casts the wide lot of telling the truth. The purpose of this hearing appears, again, to criticize President Obama's administration that they failed to enforce the law in the interior and at the border.

I have noted my good friend mentioning the idea of State law enforcement officers and, constitutionally, what is yielded to the Nation is yielded to the Nation. Collaboration is always good, and we have done that over the years.

But, as you know, we are nearly a year and 8 months removed from having passed out of the Judiciary Committee several immigration bills, none of which have seen the light of day on the House floor. The bills were agriculture, border security, employment, and workplace compliance. But, since then, nothing, Mr. Chairman, no Rules Committee hearings, no floor action.

In addition, the Senate acted by passing a bipartisan immigration bill, S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act," as a comprehensive immigration reform that included provisions on border security, interior enforcement, employment eligibility, verification, and work site enforcement, legalization of unauthorized aliens, immigrant visas, not immigrant visas and humanitarian admissions, a bill that has never seen any activity on the floor.

I have a bill, as I heard the Chairman mention about the delay in immigration resolution of their cases, H.R. 77, that I would hope this Committee would take up that calls for the appointment of 70 additional immigration judges. That, I think, would answer some of the concerns that have been raised to process these cases.

Our Judiciary Committee colleagues on this side of the aisle understand how important it is for the United States to have in place an effective strategy that secures the Nation's borders and commands broad bipartisan support from both parties. So it is timely that we are talking about border security immigration reform.

Unfortunately, neither bill that the Judiciary Committee plans to take up, nor H.R. 99, the border security bill that voted party-line votes—the Republicans voted for it in Homeland Security—is the best legislative vehicle.

If House Republicans are serious—or were serious about immigration reform, they would bring to the floor H.R. 15, a bipartisan comprehensive immigration bill introduced in the last Congress.

And if our friends in the majority were serious about border security, they would bring to the floor for a vote the highly praised and critically acclaimed bill that was favorably and unanimously reported last session out of the Homeland Security Committee, H.R. 1417.

Having recently visited the border in California—and there were several other visits that I have taken, from Arizona, to New Mexico, to my own State and many other States—asking questions about the issues of border security, we found that, when we work together collaboratively, we can solve our problems. Casting accusations are not the solution.

The President's executive actions that we are probably going to scrutinize again had to do with enforcement with the idea of prioritizing because of limited enforcement resources. Obviously, the shutting down of the Department of Homeland Security will not help that situation.

House Republicans are focused on ending DACA and blocking these executive actions with the ultimate goal of deporting

DREAMers and ripping parents away from their U.S. citizen and lawful permanent-resident children.

The President's executive actions are meant to focus our efforts on deporting felons, not families. Proposals championed by Judiciary Republicans, like the SAFE Act, are meant to turn families into felons.

We have educators in the audience, and I know they understand the importance of educating all children. We are simply trying to have a regular orderly system that these children can be statused so they can be educated and contributing to American society.

At the same time, House Republicans are refusing to fund this Department. And I wonder what the 9/11 committee that brought together this bipartisanship over an enormous tragedy of 9/11 and created the Homeland Security Department as the front lines of securing this Nation—what would they think of us shutting them down?

So, Mr. Chairman, let me conclude by saying that the Border Security Results Act of 2013 provided the Department of Homeland Security with a road map that contributes to some of the answers that will be responding to the questions that have been raised by my colleagues. It asks for a national plan, a situational awareness, metrics and results, independent verification.

This is the approach that we should take, a collaborative effort to ensure that we work together on behalf of the American people, not in contrast, H.R. 399, that undermines the very structure of leadership of the Homeland Security department and, in actuality, has been criticized by Border Patrol agents. This is not the way to go.

I hope this hearing today will be constructive, not carrying a message of attack without information, because, in actuality, we will not be able to provide for a rational, real response to immigration or a rational, real response to border security without the collaboration and the input of people concerned about the American people and not making political points.

With that, I yield back my time.

Mr. GOODLATTE. I would like to ask unanimous consent to add to the record a Wall Street Journal article entitled "U.S. Delays Thousands of Immigration Hearings by Nearly 5 Years," and an Associated Press article entitled, "US: immigrant families fail to report to agents."

[The information referred to follows:]



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<http://www.wsj.com/articles/justice-department-delays-some-immigration-hearings-by-5-years-1422481407>

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### POLITICS AND POLICY

# U.S. Delays Thousands of Immigration Hearings by Nearly 5 Years

Thousands of Immigrants Awaiting Hearings Get Delay Notices in New Sign of Backlogs

By DEVLIN BARRETT

Updated Jan. 28, 2015 11:18 a.m. ET

WASHINGTON—The Justice Department has a special date reserved for thousands of immigrants awaiting their day in court: the day after Thanksgiving in 2019.

Officials have begun sending out notices that thousands of immigrants awaiting hearings will have their cases pushed back nearly five years, a fresh sign of the pervasive backlogs and delays in the U.S. immigration court system. The delay makes room for higher-priority cases caused last summer by a surge in unaccompanied minors and families crossing the border with Mexico.

The Justice Department started notifying employees in the immigration court system last week that nonpriority cases were being bumped off the court docket and would get a Nov. 29, 2019, court date, which happens to be Black Friday. The far-off date, especially one when courts typically operate on a bare-bones staff, suggests officials view it as a bureaucratic placeholder.

<http://www.wsj.com/articles/justice-department-delays-some-immigration-hearings-by-5-years-1422481407> 2/2/2015

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 MORE
 

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- Boehner Plans Legal Action on Obama Immigration Moves (<http://www.wsj.com/articles/boehner-plans-legal-action-on-obama-immigration-moves-1422383170>) (Jan. 27)
- House Republicans Delay Vote on Immigration Bill (<http://www.wsj.com/articles/house-republicans-delay-vote-on-border-bill-1422312838>) (Jan. 26)

It wasn't immediately clear exactly how many people would be given this new court date. But the number of people affected will easily be in the thousands, and could reach tens of thousands, according to people familiar with the decision.

Those bumped back in the system are nonpriority cases, which means most are living freely and not being held in detention. Most also don't have a pressing issue requiring immediate attention from an immigration judge.

Greg Chen, director of advocacy for the American Immigration Lawyers Association, a nonpartisan organization, said a delay of more than four years isn't that surprising, given the overloaded nature of the court docket that existed before the events of last summer.

"This backlog has existed for years, and Congress just doesn't make it a priority," Mr. Chen said.

There are about 230 immigration judges in the country, handling more than 375,000 cases. The average time to resolve a case is nearly 600 days.

Immigration courts are unusual in that they are directly overseen by the Justice Department—meaning that, unlike federal or state courts, immigration judges are supervised and take instructions from administrative bosses.

Lauren Alder Reid, a spokeswoman for the Executive Office for Immigration Review at the Justice Department, said the rescheduling of cases was the clear outcome of the Obama administration's decision last summer to give priority to cases of unaccompanied minors, families and other urgent cases.

Officials predicted the decision would cause significant delays for nonpriority cases, she said.

"This is exactly what we said was going to happen," she said.



Several people who work in the immigration court system said there is some hope and expectation that the court dates will be moved earlier once judges resolve many of the priority cases.

On Wednesday, questions about the Obama administration's immigration policies dominated the confirmation hearing of attorney-general nominee Loretta Lynch. But Republican lawmakers largely focused on the president's decision to grant a reprieve to millions of undocumented immigrants facing deportation.

Write to Devlin Barrett at [devlin.barrett@wsj.com](mailto:devlin.barrett@wsj.com)

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## US: Immigrant families fail to report to agents

By ALICIA A. CALDWELL

Sep. 25, 2014 7:11 PM EDT

WASHINGTON (AP) — Tens of thousands of young families caught crossing the border illegally earlier this year subsequently failed to meet with federal immigration agents, as they were instructed, the Homeland Security Department has acknowledged privately.

An official with U.S. Immigration and Customs Enforcement revealed that about 70 percent of immigrant families the Obama administration had released into the U.S. never showed up weeks later for follow up appointments.

The ICE official made the disclosure in a confidential meeting at its Washington headquarters with immigration advocates participating in a federal working group on detention and enforcement policies. The Associated Press obtained an audio recording of Wednesday's meeting and separately interviewed participants.

On the recording obtained by the AP, the government did not specify the total number of families released into the U.S. since October. Since only a few hundred families have already been returned to their home countries and limited U.S. detention facilities can house only about 1,200 family members, the 70 percent figure suggests the government released roughly 41,000 members of immigrant families who subsequently failed to appear at federal immigration offices.

The official, who was not identified by name on the recording obtained by the AP, also said final deportation had been ordered for at least 860 people traveling in families caught at the border since May but only 14 people had reported as ordered.

The Homeland Security Department did not dispute the authenticity of the recording.

In a statement emailed Thursday afternoon, ICE spokeswoman Gillian Christensen said the no-show rate "represents an approximate snapshot of individuals encountered beginning in May" who didn't reported to ICE. Christiansen added that some of those people may still be reporting to immigration court hearings and a "significant" number of deportation cases are still pending before judges.

The AP reported in June that the administration would not say publicly how many immigrant families from Central America caught crossing into the U.S. it had released in recent months or how many of those subsequently reported back to the government after 15 days as directed. The AP noted that senior U.S. officials directly familiar with the issue, including at the Homeland Security Department and White House, had dodged the answer on at least seven occasions over two weeks, alternately saying that they did not know the figure or didn't have it immediately at hand.

The Homeland Security Department's public affairs office during the same period did not answer roughly a dozen requests for the figures.

More than 66,000 immigrants traveling as families, mostly mothers and young children, have been apprehended at the border since the start of the budget year in October. Nearly 60,000 of those immigrants are from Honduras, El Salvador and Guatemala and cannot be immediately repatriated, so the government has been releasing them into the U.S. and telling them to report within 15 days to the nearest Immigration and Customs Enforcement offices.

At the meeting, the ICE official acknowledged the no-show figures while explaining the administration's decision in June to open a temporary detention center for families in Artesia, New Mexico. A second immigration jail in Texas was later converted for families and can house about 530 people. A third such detention center will open in Texas later this year. Before the new facility in Artesia, the government had room for fewer than 100 people at its only family detention center in Pennsylvania.

Immigration advocates have complained that the new detention centers were punishing immigrants who ultimately may win lawful asylum claims to remain in the U.S. In the meeting, they also questioned whether immigration officials had clearly and properly instructed immigrants to meet with federal agents within 15 days.

The ICE official said it was necessary to detain families to ensure they didn't vanish into the U.S. He encouraged advocacy groups to help find ways to ensure that immigrants reported to federal agents as ordered so the government could begin processing their cases, including any requests to remain in the U.S. legally.

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Ms. JACKSON LEE. Mr. Chairman.

Mr. GOODLATTE. What purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. Mr. Chairman, I ask unanimous consent to enter the following statements into the record from the following organizations: Women's Refugee Commission, Asian Americans Advancing Justice, American Immigration Lawyers Association, and the Lutheran Immigration and Refugee Service. I ask unanimous consent.

Mr. GOODLATTE. Without objection, they will be made a part of the record.

[The information referred to follows:]



**Statement of the Women's Refugee Commission**

**Submitted to the United States House of Representatives Judiciary Committee**

**Hearing on "Examining the Adequacy and Enforcement of Our Nation's Immigration Laws"**

**February 3, 2015**

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The Women's Refugee Commission (WRC) appreciates the opportunity to submit the following statement for the record. Our organization works to protect the basic rights of women, children, families and other vulnerable migrants seeking protection in the United States and to ensure that they are not detained unless absolutely necessary. To this end, the Women's Refugee Commission conducts research and advocates for legislation and policy that protects the safety, well being, and dignity of migrant women, families, and children. Specifically, our Migrant Rights and Justice program advocates for legislation and policy that protects the rights of families impacted by immigration enforcement, ensures unaccompanied children's safety and well-being and guarantees that child welfare practices respect parental rights. We also promote the use of alternatives to detention in place of detention and advocate for a reduction in the use of immigration detention.

**Immigration Enforcement in the United States – an Overview**

We believe that the right to family unity, as well as meaningful access to protection and due process, form the underlying principles upon which our country's immigration and laws and policies should be built. Our immigration enforcement practices should ensure that no families are unnecessarily separated, so that caretakers, including those of U.S. citizen or lawful permanent resident children are not torn apart from their dependents. Similarly, immigration detention and custody decisions should always favor the least restrictive form of custody, rather than over-relying on costly and inhumane detention facilities. All immigration enforcement practices and laws should account for individuals who may qualify for relief, and ensure access to that protection and relief.

Immigration enforcement in practice illustrates a different reality. As appropriations for immigration border and interior immigration enforcement efforts have increased in recent years, immigration enforcement has grown at an unprecedented pace, and without the oversight and accountability necessary to such a rapidly growing system. The number of individuals who are ultimately deported at the conclusion of immigration proceedings has skyrocketed in the past decade. Since 2009, nearly 400,000 people have been deported from

the U.S. each year, compared with just 189,000 in 2001. In early 2014, the number of individuals removed from the United States thus far under the Obama Administration hit 2 million.<sup>1</sup> Despite progress in some areas, immigration enforcement continues to surge while U.S. immigration policies, practices, and laws continue to undermine our commitment to a fair system that should protect the vulnerable.

### **Family Unity**

The right to family unity is a key principle of any immigration reform effort. Our 2010 report *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* was the first report to highlight the problem of parents losing their rights to their children because of immigration enforcement, detention and removal.<sup>2</sup> Through our research we have interviewed dozens of detained or deported parents who found themselves separated from their children – often U.S. citizens or lawful permanent residents – without any ability to make arrangements for their care, participate in their family custody hearings, or reunite with them either prior to or after their deportation. As of 2013, over 5,000 children were in the U.S. child welfare system as a result of a detained or deported parent.<sup>3</sup> Recent Department of Homeland Security (DHS) data reveals that 72,410 parents of U.S. citizen children were removed in 2013.<sup>4</sup> This data only reflects those parents who reported having U.S. citizen children and therefore fails to account for those individuals who did not voluntarily report parental status out of fear. Using deportation data, researchers estimate that 152,000 U.S. citizen children experience the deportation of a parent each year.<sup>5</sup> Not only does immigration enforcement that separates families come at enormous expense to the U.S. taxpayer who supports state child welfare systems, but the often permanent separation of parent and child creates irreversible trauma for a family.

### *DAPA and DACA*

Over the last two years, the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) had gradually begun to take steps to address the many systemic flaws that resulted in hardship or, in many instances, complete loss of parental rights for parents separated from their children due to immigration enforcement.<sup>6</sup> DHS's November 20, 2014 memorandum on Deferred Action for Parental Accountability (DAPA) has the potential to extend deferred action to parents of U.S. citizens or Lawful

<sup>1</sup> Caplan-Brieker, Nora, The New Republic, "Who's the Real Deporter-in-Chief, Bush or Obama?", April 17, 2014. ICE Press Release. (December 18, 2013) FY2013: ICE announces year-end removal numbers. Retrieved from <https://www.ice.gov/news/releases/1312/131219washingtondc.htm>. Print edition. (2014, February 8). The Great Expulsion: Barack Obama has presided over one of the largest peacetime outflows of people in America's history. *The Economist*. Retrieved from <http://www.economist.com/news/briefing/21595892-barack-obama-has-presided-over-one-largest-peacetime-outflows-people-america>.

<sup>2</sup> Women's Refugee Commission. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*. December 2010.

<sup>3</sup> Butera, Emily. "ICE's Parental Rights Directive: Helping Families Caught Between the Immigration and Child Welfare Systems." *Women's Refugee Commission*. August 26, 2013. <http://womensrefugeecommission.org/blog/1713-new-ice-directive-helps-families-caught-between-the-immigration-and-child-welfare-systems>

<sup>4</sup> Foley, E. "Deportation Separated Thousands of U.S. Citizen Children from Parents in 2013." *Huffington Post*, June 25, 2014. Available at: [http://www.huffingtonpost.com/2014/06/25/parents-deportation\\_n\\_5531552.html?utm\\_hp\\_ref=tw](http://www.huffingtonpost.com/2014/06/25/parents-deportation_n_5531552.html?utm_hp_ref=tw)

<sup>5</sup> Cervantes & Gonzales (October 2013).

<sup>6</sup> *id.*

Permanent Residents who meet certain requirements. As a result, the action could protect millions of families from the devastating and often permanent separation that the Women's Refugee Commission has documented. The administration also announced that it would expand the eligibility for the Deferred Action for Childhood Arrivals (DACA), which will allow more individuals who entered the United States at a young age to have temporary protection from deportation. While neither of these actions replace the need for a permanent legislative solution, they are a crucial step to preventing unnecessary family trauma and separation.

#### **Immigration Enforcement at the Border**

U.S. Customs and Border Protection (CBP) officials, whether the Office of Border Patrol (OBP) or Office of Field Operations (OFO) officials are often the first immigration enforcement officials an immigrant arriving to the United States encounters. The Women's Refugee Commission has conducted several trips to OBP and OFO facilities in recent years to document challenges and concerns about conditions and oversight, particularly given that many individuals in CBP custody are young children, families, asylum seekers, or other vulnerable populations. Our 2012 report, *Forced from Home: the Lost Boys and Girls of Central America* documented the need for appropriate border custody conditions and lack of monitoring and oversight of existing facilities. Given the recent increases in children and families crossing into the United States and often seeking protection, it is especially critical that the government take key steps to ensure appropriate conditions of short-term custody and access to protection mechanisms.

##### *The need for enforceable standards*

CBP has no public, legally enforceable standards for detention conditions in the more than 700 hold facilities that it operates at ports of entry and along the U.S. border. CBP facilities are short-term hold areas for anyone apprehended, including families or unaccompanied children, while border officials determine whether the individuals have authorization to enter, to process an initial expression of a fear of return, or while awaiting transfer to another facility, such as custody with Immigration and Customs Enforcement (ICE) or the Office of Refugee Resettlement (ORR).<sup>7</sup>

Numerous complaints have been filed about the conditions in CBP short-term holding facilities, including allegations of inadequate food, inappropriate hygiene and bathroom facilities, and constantly cold conditions without access to warm clothing or blankets. CBP facilities are not meant to hold individuals for longer than 72 hours, and the facilities are inappropriate for children regardless of the length of stay. However, due to delays in transport or the absence of a further custody determination, children, families, and others have often been kept in CBP custody for periods of time far exceeding 72 hours, including up to two weeks.

In an effort to address the lack of enforceable standards, legislation was introduced in the House and Senate in the 113<sup>th</sup> Congress that would have required CBP to promulgate regulations to ensure humane conditions for immigrant detention in CBP facilities and we urge Congress to pass these bills. However, the Department

<sup>7</sup> <http://womensrefugeecommission.org/resources/document/1035-step-by-step-guide-on-apprehension-and-detention-of-juveniles-in-the-united-states>

of Homeland Security could also address proactively the CBP short-term custody conditions by promulgating its own public and enforceable detention standards. In addition, as one key aspect of oversight, we urge CBP to adopt meaningful complaint and redress mechanisms to respond to individuals' complaints about custody mistreatment or other concerns in a thorough and timely manner.

*The need for appropriate screening mechanisms at the border and access to protection*

The number of individuals crossing the border and expressing a fear of return to their home country has grown in recent years, and is part of a regional increase in protection requests through North and Central America. Individuals may have legal claims that make them eligible for asylum, or could qualify for relief based on being survivors of torture, human trafficking or abuse and neglect in their home countries. While certain children traveling alone are transferred to the custody of the Department of Health and Human Services for additional screening, adults apprehended at or near the U.S. borders are subject to an immigration law provision under which the government may remove noncitizens without according a hearing before an immigration or other judge. In order to protect those fleeing persecution in their home countries from summary deportation, these "expedited removal" laws contain a provision to screen individuals for a potential fear of return which, if identified, then subjects an individual to "mandatory detention" while the government assesses whether they have a "credible fear" of return. The "credible fear" standard was intended to be an initial screening threshold, and passing a credible fear interview does not constitute a grant of asylum, which must still be sought before an immigration court. An individual who is found to have a positive finding of credible fear may be released from immigration detention on parole or bond and after an individualized custody determination.<sup>8</sup>

In 2005, the U.S. Committee on International Religious Freedom (USCIRF) published an extensive study of the credible fear process, and identified significant gaps in the initial screening process conducted by border officials. Numerous studies have since found the same flaws and gaps, both with adults and with children crossing the border alone.<sup>9</sup> The Women's Refugee Commission urges that CBP increase training and oversight of its officers who conduct initial screenings, and enact additional safeguards to ensure that individuals with vulnerabilities or who may have a claim for relief or protection in the United States are identified and able to access that protection.

**Immigration Detention and the Continued Detention of Immigrant Families**

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<sup>8</sup> For further discussion, see Women's Refugee Commission and Lutheran Immigration and Refugee Service. *Locking Up Family Values, Again*. October 2014. <http://womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again>

<sup>9</sup> See American Civil Liberties Union. *American Exile: Rapid Deportations that Bypass the Courtroom*. December 2014. [https://www.aclu.org/sites/default/files/assets/120214-expeditedremoval\\_0.pdf](https://www.aclu.org/sites/default/files/assets/120214-expeditedremoval_0.pdf)



The number of individuals held in immigration detention centers awaiting removal hearings in immigration court grew by 54 percent between 2004 and 2010.<sup>10</sup> Congress requires ICE to maintain and fill 34,000 detention beds in a network of 250 facilities across the country, costing taxpayers over \$2 billion per year.<sup>11</sup> This bed “quota” precludes immigration officials from making meaningful individualized assessments that determine whether someone poses a threat to the public or a flight risk. As a result, hundreds of thousands of immigrants are detained each year in a costly system, when instead the government could turn to release on recognizance, bond, or far less costly additional supervision measures if determined necessary.

Immigration detention is not punitive incarceration; its purpose is to ensure compliance with court hearings and any potential final orders. Yet the vast majority of immigration detention facilities are either jails or jail-like facilities. WRC research has for years documented reports of sexual assault, insufficient medical care, lack of access to telephones, frequent and disruptive transfers, limited access to legal services, severely limited recreation and visitation, and restricted access to family courts that has led to the permanent loss of parental rights. Telephone access in immigration detention is plagued by broken equipment, confusing and complicated instructions, steep service rates, and limited hours of operation. The use of remote facilities and the overuse of transfers severely curtail detainees’ access to legal services and family, and impede their ability to challenge their detention and deportation. Most ICE facilities have open showers and toilets with no shower curtains, doors or partitions. Many ICE facilities provide at most one hour of recreation, sometimes in an enclosed area with no exposure to natural light. Lack of exposure to natural light and air for extended periods of time can also lead to medical issues, skin conditions, and mental health issues.

Medical care is a critical concern in immigration detention. The denial of adequate medical care to immigration detainees is well documented.<sup>12</sup> Reports are based on hundreds of interviews with detainees, direct observations, and conversations with jail and immigration officials over the past decade. Deficiencies include difficulty accessing medical records; delayed or denied care; shortage of qualified staff; unsanitary facilities; improper care of mentally ill patients; inadequate care of physically disabled patients; denial of and inattention to administration of prescription medication; lack of translation; abusive behavior by some clinic staff; and threats of transfer in retaliation for complaints.

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<sup>10</sup> Phillips, S.D. (2013) Introduction: Children in harm’s way. In Phillips, S.D., Cervantes W., Lincroft, Y., Dettlaff, A.J., & Bruce, L. (eds.). *Children in Harm’s Way: Criminal Justice, Immigration Enforcement, and Child Welfare* (pp. 3-10). Washington, D.C.: Jointly published by The Sentencing Project and First Focus.

<sup>11</sup> National Public Radio, “Little-Known Immigration Mandate Keeps Detention Beds Full,” November, 19, 2013,

<sup>12</sup> Women’s Refugee Commission, Politicized Neglect: A Report from Etowah County Detention Center, March 2012, available at: [http://www.womensrefugeecommission.org/resources/doc\\_download/809-politicized-neglect-a-report-from-etowah-county-detention-center](http://www.womensrefugeecommission.org/resources/doc_download/809-politicized-neglect-a-report-from-etowah-county-detention-center); Women’s Refugee Commission, Migrant Women and Children at Risk: In Custody in Arizona, October 2010. Available at: [http://www.womensrefugeecommission.org/resources/doc\\_download/656-migrant-women-and-children-at-risk-in-custody-in-arizona](http://www.womensrefugeecommission.org/resources/doc_download/656-migrant-women-and-children-at-risk-in-custody-in-arizona); Women’s Refugee Commission and Lutheran Immigration and Refugee Service, Locking Up Family Values: The Detention of Immigration Families, February 2007, available at: [http://www.womensrefugeecommission.org/resources/doc\\_download/150-locking-up-family-values-the-detention-of-immigrant-families](http://www.womensrefugeecommission.org/resources/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families); letter to ICE regarding our visit to Willacy, Women’s Refugee Commission and Dr. Susan MacNamara, April 6, 2010, Available on file from the WRC; Human Rights Watch, Detained and Ignored.

Sexual assaults in custody are another major concern. While immigration detention authorities have for decades insisted that sexual assaults are not common and are adequately addressed, evidence continues to indicate otherwise.<sup>13</sup> On Aug. 4, 2011, a guard pleaded guilty to forcing a female immigration detainee at the Willacy detention center in Texas into a guard bathroom and having intercourse with her. Although the detainee immediately complained, internal e-mails show that officials did not put the guard on leave until eight months later.<sup>14</sup> The American Civil Liberties Union filed a class action lawsuit against ICE alleging that one of its contract guards sexually assaulted at least nine female detainees during transportation from the Hutto Detention Center in Texas.<sup>15</sup> More recently in late 2014, the Mexican American Legal Defense and Education Fund filed a suit and submitted a complaint to DHS alleging that at least three officers at the Karnes Family Detention had removed female detainees from their cells to engage in sexual acts, had engaged in fondling and other incidents of sexual assault. As at other family detention facilities, many of the women held at Karnes are fleeing violence that includes sexual assault and gender-based violence.<sup>16</sup>

Although in 2011 ICE issued new Performance Based National Detention Standards to address of these concerns, four years later ICE still has not implemented the PBNDS 2011 in all of its facilities, leaving several operating under the older 2008 PBNDS or 2000 National Detention Standards. Similarly, while in early 2014, DHS announced that it had finalized new Prison Rape Elimination Act (PREA) standards for DHS facilities, the agency still has not fully implemented the standards nationwide. Full implementation of PREA standards must include regular, independent audits of DHS facilities, comprehensive training for facility and agency officials, and ensuring that local officials are held accountable in ensuring that cases of assault are properly investigated and victims have access to justice.

Given our serious concerns about conditions in detention facilities, WRC remains particularly concerned about families with children being held in immigration detention. Although the Administration is taking steps to shield millions of families from separation through the November 20, 2014 executive action, at the same time it continues to dramatically increase the detention of immigrant families. The Women's Refugee Commission first documented the inappropriate conditions and harmful lasting effects of detention on families in the joint 2007 report *Locking Up Family Values*,<sup>17</sup> finding that family detention at the then T. Don Hutto family detention center in Texas and the Berks Family Residential facility in Pennsylvania resulted in inadequate access to mental and medical health care for parents and children; inappropriate disciplinary measures used against detained families, including threats of family separation; inadequate conditions for child development and conditions that

<sup>13</sup> Human Rights Watch, *Detained and At Risk*, August 2010, available at:

[www.hrw.org/sites/default/files/reports/us0810wcbwcover.pdf](http://www.hrw.org/sites/default/files/reports/us0810wcbwcover.pdf)

<sup>14</sup> <http://www.justice.gov/opa/pr/2011/August/11-crt-1016.html>

<sup>15</sup> Doe v. Neveleff, No. 1:11-cv-907 (E.D. Tex., Oct. 19, 2011); Julia Flip, *Sexual Abuse Continues in Immigration Jails*, Courthouse News service, October 24, 2011, available at: <http://www.courthousenews.com/2011/10/24/40857.htm>; American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <https://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities>

<sup>16</sup> [http://www.maldef.org/assets/pdf/2014-09-30\\_Karnes\\_PREA\\_Letter\\_Complaint.pdf](http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf)

<sup>17</sup> Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values: the Detention of Immigrant Families*, February 2007, <https://womensrefugeecommission.org/resources/document/150-locking-up-family-values-the-detention-of-immigrant-families>

undermined the parent-child relationship; and an inability to access legal information, counsel, and justice from within a family detention facility.

The Obama Administration ended large scale detention of families with children in 2009 with the closure of the Hutto facility. However, since June 2014, after an increase in the arrival of unaccompanied children and children accompanied with one or both parents, the Administration opened two new facilities in Artesia, New Mexico and Karnes City, Texas, and later opened a new facility in Dilley, Texas. While the Artesia facility has since closed, the Administration also plans to expand the Karnes facility. Taken together, these facilities will create well over 3,000 new detention beds for mothers and children. More than half of the children who entered family detention facilities in FY 2014 were age six years or younger, and a high percentage of families are fleeing violence and seeking protection in the United States. Conditions in family detention result in rapid deterioration of children's and family's well being, and Women's Refugee Commission has found many of the same grave concerns with conditions in these new facilities as we uncovered years ago in Hutto.<sup>18</sup> In one example in the October 2014 joint report *Locking Up Family Values, Again*, a detained mother with a seven year old daughter, who had lost over 10 pounds in detention, was threatened to have her daughter forcibly fed through a feeding tube if she could not get her to gain weight. Desperate, the mother ultimately bottle fed her seven year old daughter to try to comply. Unfortunately, similar abuses are not uncommon.

While the Administration's administrative action to shield countless families from further hardship and separation are an important step forward, Women's Refugee Commission is concerned that the detention of immigrant families apprehended at the border will continue to increase, and that these families will not be individually assessed as to whether they pose a risk to public safety or national security. Rather than arbitrarily detaining families, the Administration should release those who demonstrate a credible fear of persecution if returned to their countries of origin and those who pose no flight or security risks. For individuals who need additional measures to support appearance, the Administration should turn to cost-effective alternatives to detention that include community-based support programs in order to support appearance at court and enforcement-related appointments where necessary.

### **Conclusion**

Immigration enforcement efforts should not undermine this country's commitment to family unity, access to justice, and protection from persecution. Despite some progress in recent years, many critical steps remain to address the gaps and flaws in our immigration enforcement efforts. We strongly urge Congress to pursue immigration legislation and appropriations measures that would ensure access to protection and asylum for those fleeing persecution; ensure oversight, training, and reform in CBP and ICE custody; reduce the unnecessary detention of immigrants in costly, remote, and inhumane detention facilities; and ensure access to due process and justice through increasing access to legal information and counsel.

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<sup>18</sup> Women's Refugee Commission and Lutheran Immigration and Refugee Service. *Locking Up Family Values, Again*. October 2014. <http://womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again>



**Written Statement of Mee Moua  
President and Executive Director  
Asian Americans Advancing Justice | AAJC**

**House Subcommittee on Immigration and Border Security**

**Hearing on H.R. \_\_\_\_ “The Legal Workforce Act”**

**February 4, 2015**

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Founded in 1991, Advancing Justice | AAJC is one of the nation's leading experts on civil rights issues of importance to the Asian American and Pacific Islander (AAPI) community including: immigration and immigrants' rights, affirmative action, anti-Asian violence prevention/race relations, census, language access, television diversity and voting rights.

We appreciate this opportunity to submit a statement concerning today's hearing on the Legal Workforce Act. We commend the Subcommittee for holding this important hearing and would like to express our deep concern and opposition to implementation of a mandatory E-Verify program nationwide, especially in the absence of a path to citizenship for individuals without status. Mandating E-verify will have a destructive impact on workers, employers and our economy as a whole.

**Mandatory E-Verify Harms Will Disproportionately Hurt AAPI Workers**

Asian American authorized workers – including citizens and green card holders – already face a higher risk of being flagged as undocumented by E-Verify than U.S.-born workers. Lawful Permanent Residents (LPRs) and other work-authorized noncitizens receive erroneous E-Verify determinations at much higher rates than U.S. citizens.<sup>1</sup> According to the most recent DHS-commissioned study, the tentative nonconfirmation (TNC) error rate for LPRs is 0.9 percent and for other noncitizens who are legally authorized to work (e.g. asylees) is 5.4 percent.<sup>2</sup> This means that an LPR is *four times* more likely to receive an erroneous TNC than a U.S. citizen. For other noncitizens, this discrepancy is even more pronounced, as a noncitizen legally authorized to work in the U.S. is over *twenty-seven times* more likely to

<sup>1</sup> *Evaluation of the Accuracy of E-Verify Findings* (Westat Corporation, July 2012), at p. 24 [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf), pp. X, 23 (hereinafter Westat 2012). Though dated July 2012, this report was not released to the public until July 2013.

<sup>2</sup> *Id.* By comparison, the TNC error rate for U.S. citizens for the same time period is 0.2 percent.

receive a TNC than a U.S. citizen. Because workers who receive a TNC often face negative impacts such as suspension from work or reduced pay, the heightened TNC error rate for LPRs and other work-authorized noncitizens results in discrimination.<sup>3</sup> This is particularly troubling to the more than 8 million foreign born AAPIs who live in the U.S.<sup>4</sup>

If E-Verify is made mandatory, a disproportionate number of AAPIs will be wrongly identified and have their jobs jeopardized. Workers falsely flagged as unauthorized to work under proposals such as the Legal Workforce Act are out of luck. In fact, the Legal Workforce Act bars workers from bringing any claim under virtually any law—including laws explicitly designed to provide labor protections—for loss of their job or violations that occur as a result of an employer's use of the program.<sup>5</sup> No one should lose his or her job due to governmental error. That's the situation thousands of workers would face under this bill, leaving them vulnerable to losing wages – or even their jobs – while they try to correct governmental errors in the E-Verify database.

E-Verify also promotes discrimination against AAPIs. The same DHS-commissioned study found that many employers unlawfully use E-Verify to prescreen employees, unlawfully took adverse employment actions based on tentative non-confirmation notices, and failed to inform employees of their rights.<sup>6</sup> In addition, the U.S. General Accountability Office reports that USCIS is limited in its ability to identify and prevent the misuse of E-Verify, with little or no authority to impose penalties.<sup>7</sup>

Moreover, E-Verify depresses working conditions for all workers. E-Verify builds on the flawed employer sanctions framework and incentivizes employers to pay workers “off the books,” resulting in increased labor abuses. A mandatory system will drive existing vulnerable undocumented immigrant workers – as well as those who will inevitably continue to come into the country to find work to support their families unless the root causes of migration are addressed – further underground and subject to exploitation. Such conditions are ripe for wage theft, indentured servitude, unsafe working conditions, debt-bondage, and other workplace abuses. These workplace abuses encourage a race to the bottom by employers that hurts all workers, disadvantages law-abiding employers, and cripples consumer spending that holds back the whole economy.

Further, as workers move off the books, much-needed revenue is drained from federal and state governments' coffers. The Congressional Budget Office found that the Legal Workforce Act would increase federal budget deficits by \$30 billion and cost the federal government over \$1.2

<sup>3</sup> *Id.* at pp. 205-206, which documents that nearly 40 percent of workers surveyed experienced some form of adverse action by their employer as a result of a TNC.

<sup>4</sup> U.S. Census Bureau, *We the People: Asians in the United States: Census 2000 Special Reports*, 20 available at <http://www.census.gov/prod/2004pubs/censr-17.pdf>.

<sup>5</sup> The only avenue of redress that the bill allows workers who unjustly lose employment because of an E-Verify error is to sue the federal government under the Federal Tort Claims Act (FTCA) for lost wages. However, this is an empty remedy, given the procedural hurdles to bringing an FTCA claim, see 28 U.S.C. § 2675, the FTCA's restrictions on attorney's fees, and the limits of the “discretionary function exception” of the FTCA, see 28 U.S.C. § 2680(a).

<sup>6</sup> See Westat, *supra* note 1.

<sup>7</sup> Richard M. Stana, U.S. Government Accountability Office, *Testimony: Employment Verification: Federal Agencies Have Improved E-Verify, but Significant Challenges Remain*, 6 available at <http://www.gao.gov/new.items/d11330t.pdf>.

billion to implement.<sup>8</sup> A significant portion of this lost revenue would be the result of the increase in the number of employers who pay workers under the table, outside of the tax system, since, as the CBO noted, under an E-Verify mandate, “[s]ome employers who currently withhold income and payroll taxes from the wages of unauthorized workers . . . would no longer withhold or report such taxes.”<sup>9</sup>

Procedural safeguards and other protections – while important to implement – do not erase E-Verify’s harms. E-Verify proponents claim that the system will be crafted with procedural safeguards to protect American workers, prevent identity theft, and provide due process protections. These assurances are dubious; procedural safeguards do not eliminate the lost productivity and time needed to correct inaccuracies in the system. They will also be difficult to navigate for the nearly one-third of AAPIs who face language barriers.<sup>10</sup>

**E-Verify also increases regulatory burdens on employers, particularly small business owners.**

AAPIs own more than 1.5 million small businesses in the U.S., with receipts of \$507.6 billion.<sup>11</sup> E-Verify will require compliance training and infrastructure for electronic submission and subsequent work verification. These compliance costs will disproportionately affect small businesses. Based on 2010 data, if E-Verify was made mandatory, it would cost 2.7 billion dollars, with America’s small businesses paying 2.6 billion dollars of that cost.<sup>12</sup> Resolving tentative and false non-confirmations expends additional time and resources that small businesses can ill afford to lose. Workers with errors in their records often have to take unpaid time off to resolve the issues with the Social Security Administration (SSA) or the DHS. Members of the American Council on International Personnel reported that corrections at SSA usually take in excess of 90 days, a wait of four (4) or more hours per trip, with frequent trips to SSA to get a record corrected.<sup>13</sup> This decreases the productivity of the workers and employers alike.

**The U.S. cannot afford to divert scarce governmental and financial resources towards funding this deeply flawed program.**

According to the U.S. Congressional Budget Office, implementing a mandatory E-Verify program (without legalizing the current undocumented population) would force employers and

<sup>8</sup> Congressional Budget Office Cost Estimate: H.R. 1772: the Legal Workforce Act (Congressional Budget Office, Dec. 17, 2013), <http://www.cbo.gov/sites/default/files/hr1772.pdf>, at p. 1.

<sup>9</sup> How Changes in Immigration Policy Might Affect the Federal Budget (Congressional Budget Office, Jan. 2015), <https://www.cbo.gov/sites/default/files/cbofiles/attachments/49858-immigration.pdf>, p. 31.

<sup>10</sup> Limited English proficiency ranges from 18% (Japanese Americans) to 51% (Vietnamese Americans) among the different AAPI ethnic groups. See U.S. Census Bureau, 2007-2009 American Community Survey, 3-Year Estimates.

<sup>11</sup> U.S. Census Bureau, Facts for Features: Asian/Pacific American Heritage Month (May 2011), available at [http://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb11-f06.html](http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-f06.html).

<sup>12</sup> Jason Arvello, “Free E-Verify May Cost Small Businesses \$2.6 Billion: Insight,” *Bloomberg*, Jan. 28, 2011.

<sup>13</sup> Tyler Moran, National Immigration Law Center, Written Statement to House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Hearing on: “E-Verify: Preserving Jobs for American Workers” (February 11, 2011), available at <http://www.nilc.org/immsemplymnt/lraempverif/e-verify-testimonynilc-2011-02-10.pdf> (citing American Council on International Personnel, “Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008),” August 11, 2008).

workers to resort to the black market, outside of the tax system. This would decrease federal revenue by more than \$17.3 billion over ten years.<sup>14</sup> In a time of slowed economic growth and limited resources, the federal government cannot afford to expand E-Verify.

Instead of expanding E-Verify – a system that hurts the economy and promotes workplace exploitation – we should establish full labor and workplace rights and protections for all workers regardless of immigration status, repeal employer sanctions, and fix our broken immigration system through broad reform that includes a clear and fair roadmap to citizenship for all 11 million undocumented immigrants. This would result in a large economic benefit—a cumulative \$1.5 trillion in added U.S. gross domestic product over 10 years.<sup>15</sup>

For all of these reasons, we oppose an expansion of the existing E-Verify program.

<sup>14</sup> Peter R. Orszag, Director, Congressional Budget Office, Letter to Rep. John Conyers (April 4, 2008), available at <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088lr.pdf>.

<sup>15</sup> Raul Hinojosa-Ojeda, University of California Los Angeles, Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform (January 2010), 10 available at <http://www.immigrationpolicy.org/sites/default/files/docs/Hinojosa%20-%20Raising%20the%20Floor%20for%20American%20Workers%20010710.pdf>.



**FOR IMMEDIATE RELEASE:**  
Wednesday, February 4, 2015

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**America's Economy Needs Real Solutions, Not the Legal Workforce Act**

**Washington, DC** – Today, as the House Judiciary Committee's Immigration Subcommittee considers the "Legal Workforce Act," the American Immigration Lawyers Association (AILA) recommends that Congress reject this unworkable bill which would do more harm than good to our nation's economy. The Legal Workforce Act would impose new mandates on American companies and their newly hired workers without providing adequate protections for either businesses or workers.

"E-Verify has the potential to be an important tool in the effort to address unauthorized employment, but if done in isolation as the Legal Workforce Act does, it would inflict tremendous harm on American workers, businesses and the economy," said AILA President Leslie Holman. She continued, "We must consider the costs of requiring virtually all employers to use this type of program within just two years of enactment.

"The rush to implement E-Verify across the board is virtually guaranteed to hurt thousands of authorized U.S. workers – people who need good jobs but will be erroneously denied employment authorization by errors in the system. Looking at the 2012 E-Verify error rate, about 150,000 authorized workers could be affected, facing additional bureaucratic hurdles when getting a job if E-Verify were made mandatory.

"The problems with the Legal Workforce Act don't end there. It would be expensive: increasing the federal budget deficit by \$30 billion and costing government and private employers over \$1.2 billion to implement. The bill would also hit small businesses particularly hard, imposing significant burdens on very small firms that may not even have human resource departments but would still have to use the new system, even those with only a single employee.

"This sort of system should only be implemented if Congress first does its job to address the status of unauthorized workers because until that happens, such a bill will greatly disrupt major sectors of our economy such as the agricultural industry. Unfortunately, on its own this measure represents yet another flawed enforcement-only effort. We must get employment verification right, but doing so requires implementing it in a way that works. The last thing the American people need is a new government mandate that ends up hurting authorized workers and the businesses ready to hire them," concluded Holman.



What is E-Verify? E-Verify is an existing federal web-based program through which U.S. business can attempt to verify the work authorization status of new hires. Use of E-Verify is voluntary except where state law requires businesses to use it as well as in certain sectors of government where its use is mandatory.

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*The American Immigration Lawyers Association is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.*



## Lutheran Immigration and Refugee Service

### STATEMENT FOR THE RECORD

On

"H.R. \_\_\_\_, the Legal Workforce Act"

House Judiciary Committee

Subcommittee on Immigration and Border Security

February 4, 2015

By Lutheran Immigration and Refugee Service

Lutheran Immigration and Refugee Service (LIRS)<sup>1</sup> appreciates the opportunity to submit this statement for the record. LIRS is the national organization established by Lutheran churches in the United States to serve uprooted people. Through our extensive work with churches, network partners, refugees and migrants all across the country, LIRS sees the increasingly important role that migrants play in the U.S. economy, starting up new businesses, revitalizing communities, increasing tax revenues, and filling jobs that many Americans are unwilling to perform. The Legal Workforce Act will not accomplish what it promises, put many workers who are legally allowed to work at risk of being fired, and be burdensome to small businesses. Widespread use of E-verify will only be fair and meaningful for our country when it protects the rights of all workers and is accompanied with broader immigration reform.

#### The Legal Workforce Act and E-Verify

The Legal Workforce Act is a broad-reaching bill that would impact millions of individuals in the United States – both U.S. citizens and non-citizens. Within just three years, this would require all

<sup>1</sup> LIRS welcomes refugees and migrants on behalf of the Evangelical Lutheran Church in America, the Lutheran Church—Missouri Synod and the Latvian Evangelical Lutheran Church in America. LIRS is nationally recognized for its leadership advocating with and on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

U.S. businesses to use E-Verify, an internet-based employer verification program, including small businesses with as few as one employee.

E-Verify was created in 1997 and is implemented by the Department of Homeland Security (DHS) in conjunction with the Social Security Administration. Use of E-Verify for new hires is required for federal agencies; and some states have also passed legislation that requires E-Verify for new hires. However, for all other U.S. employers, E-Verify is voluntary. While program participation continues to increase, very few of the approximately 7 million U.S. employers are currently enrolled.

#### **Impact of Mandatory Expansion of E-Verify**

If E-Verify were required for every U.S. business, it would have a tremendous impact on U.S. citizen and non-citizen workers alike. Due to errors in E-Verify, lawful workers were wrongfully fired from their jobs. Although these error rates have decreased since the program first began, the number of erroneous firings would be compounded if all businesses in the United States were required to use E-Verify.

#### **E-Verify is Also Problematic for Refugees and Asylees**

E-Verify expansion would also create obstacles for lawful migrants including those who have been given protection in the United States, such as refugees and migrants granted asylum in the United States (asylees). Federal government data reveals a number of cases of refugees and asylees whose employment was terminated, suspended or was delayed because of problems with E-Verify. For example:<sup>2</sup>

- DHS issued a Somali refugee in Nebraska an employment authorization card that listed an incorrect birth date. When the refugee was hired by an employer who uses E-Verify, the system could not confirm the worker's eligibility. The refugee contested the notice. However, the employer did not provide the refugee with the proper way to resolve the issue. Because the refugee did not know how to contact the correct DHS office and, thus, did not contact DHS in a timely way, the refugee's job was terminated.
- When a Burmese refugee in Texas was hired, his employer incorrectly entered his date of birth. Therefore, when the employer tried to confirm the refugee's work eligibility, the E-Verify system issued a tentative non-confirmation. The employer then incorrectly suspended the employee until they could resolve the issue. To make matters worse, the employer did not provide the refugee with the proper letter and contact information to follow up with DHS.
- In Tennessee, an asylee from Guinea was hired by a trucking company. However, the company incorrectly listed his information and the system indicated that it could not confirm the asylee's work authorization. The employer then did not provide him with information about how to resolve the issue.

<sup>2</sup> <https://www.justice.gov/eoir/about/eoir/telephone-interventions/e-verify.htm>

Although all three of these individuals were ultimately able to regain their jobs, they all faced undue harm, lost wages, and had to take additional steps to fix errors made by the federal government or their employers. These cases underscore the challenges that national expansion of E-Verify would likely create for thousands of U.S. citizens and work authorized non-citizens.

#### **Mandatory Employer Verification Must be Accompanied by Other Reforms**

The United States needs a functional employment verification system to ensure U.S. employers hire legal workers, to identify unscrupulous employers and to protect all workers. However, while the government should continue to improve employer verification programs to reduce their impact on U.S. citizen and legal workers, policymakers must keep in mind that there are more than 11 million undocumented migrants in the country who are important members of our families, communities and congregations and who have important economic ties to the country.

The success of a mandatory employment verification program will depend on full participation by both U.S. employers and workers. However, this legislation would drive undocumented workers off the books and result in the likely growth of a large underground economy, not to mention force undocumented community members even further into a shadowed existence.

To ensure full participation in a national employer verification system, Congress must fix the broken U.S. immigration system by including a roadmap to earned legal status for undocumented workers, protecting families and workers, and ensuring the humane enforcement of immigration laws. Congress and the Administration must pursue smart policies that protect and create jobs and identify new ways to leverage the contributions of all workers in the United States.

Ms. JACKSON LEE. I thank you.

Mr. GOODLATTE. We welcome our distinguished panel today. If you would all please rise, I will begin by swearing in the witnesses.

Do you and each of you swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you very much. Let the record reflect that all of the witnesses responded in the affirmative.

Sheriff Paul Babeu is the sheriff of Pinal County, Arizona, where he was named America's 2011 Sheriff of the Year, as selected by his colleagues in the National Sheriffs' Association.

Since being elected to his first term in 2008, he has since acted decisively to disrupt cartel activities along the southern border and has emerged as a national leader on border security.

Babeu holds an associate's degree in law enforcement from the Arizona Law Enforcement Academy, a bachelor's degree in history and political science from Massachusetts College of Liberal Arts, and a summa cum laude master of public administration degree from American International College.

Mr. Jan C. Ting currently serves as a professor of law at the Temple University Beasley School of Law, where he teaches immigration law, among other courses.

In 1990, Mr. Ting was appointed by President George H.W. Bush as Assistant Commissioner for the Immigration and Naturalization Service of the U.S. Department of Justice. He served in this capacity until 1993, when he returned to the faculty at Temple University.

He received an undergraduate degree from Oberlin College, an M.A. from the University of Hawaii, and a J.D. from Harvard University School of Law.

Ms. Jessica Vaughan currently serves as the Director of Policy Studies for the Center for Immigration Studies. She has been with the Center since 1992, where her expertise is in immigration policy and operations topics, such as visa programs, immigration benefits, and immigration law enforcement.

In addition, Ms. Vaughan is an instructor for senior law enforcement officer training seminars at Northwestern University's Center for Public Safety in Illinois. Ms. Vaughan has a master's degree from Georgetown University and earned her bachelor's degree in international studies at Washington College in Maryland.

Dr. Marc Rosenblum is the Deputy Director of the Migration Policy Institute's U.S. immigration policy program, where he works on U.S. immigration policy, immigration enforcement, and U.S. regional migration relations. Dr. Rosenblum returned to MPI, where he had been a senior policy analyst, after working as a specialist in immigration policy at the Congressional Research Service.

Dr. Rosenblum earned his B.A. from Columbia University and his Ph.D. from the University of California, San Diego, and is an associate professor of political science at the University of New Orleans.

Your written statements will be entered into the record in their entirety. And I ask that each of you summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light on your table. When the light switches from green to yel-

low, you have 1 minute to conclude your testimony. When the light turns reds, that is it. Your time is up.

**TESTIMONY OF THE HONORABLE PAUL BABEU,  
SHERIFF OF PINAL COUNTY, FLORENCE, ARIZONA**

Mr. GOODLATTE. Sheriff, welcome. We will begin with you.

Sheriff BABEU. Mr. Chairman, Members, thank you for welcoming us today.

Paul Babeu. I serve as sheriff of Pinal County, Arizona. Where we are located, 5,300 square miles, larger than the State of Connecticut, sandwiched in between metro Tucson and metro Phoenix. We have had the unfortunate title of being one of the largest smuggling routes for drugs in humans in the entire Nation.

We experience in Arizona, just in the Tucson sector, one of the nine southwest border patrol sectors, anywhere from 88,000 to 123,000 illegals that have been apprehended, and that is just in recent years. And 17 to 30 percent of those, depending on which leader of the Border Patrol you talk to, have a criminal record already in the United States.

And according to the GAO, 56 percent of the border is not under operational control like the Yuma sector is. And regardless who you speak to—and everybody seems to have their own facts—but this clearly shows that the border is not more secure than ever.

Our county led the largest drug bust in the history of Arizona, \$3 billion against the Sinaloa Cartel. In 1 day, we arrested 76 members of the Sinaloa Cartel, carrying 108 weapons, not just handguns—these are scoped rifles and AK-47s—two of which were traced back to Fast and Furious operation. This is in my county.

Drug cartel scouts. Last year we arrested—we continue to pursue them as we speak—scouts. These are lookouts on mountaintops in my county over a 50-mile swath of area along Interstate 8 and 10, where they have binoculars and they are looking out.

And they occupy these high-terrain features for 30 days at a time, resupplied with food and water, have all electronics, encrypted radios, that we don't even have, and they have solar panels to recharge all this equipment. And every time a drug load comes by, they get paid \$100. And this is over this entire swath of area.

When I tell a story like that, having served a tour in Iraq and commanded soldiers in the Army, it almost appears I am telling a story of some war-torn area. This is on American soil. And that is what is so disruptive, is the fact that here, as the sheriff where our primary job is to answer 9/11 calls, how on Earth did we get here to this place that local law enforcement is leading the effort to fight criminal syndicates from a foreign nation on American soil?

Mass prison break. I want to talk to you about that. February 23, ICE—this is again in my county, where we led this effort to expose what had happened—we had a release of 400-plus criminal illegals. Now, these are the ones that—everybody has their own opinion about the 11-plus million illegals who are here and what we should do.

Everyone, at one point, including the President, had agreed that these 34,000 beds that this Congress has authorized—which, to correct respectfully the Chairman, there is not 27,000 in there. I was

updated last week there is 24,000 currently in beds in these facilities—that we had a mass release 2 years ago of criminals that had everywhere from rape charges, two that were charged with manslaughter, convictions for child molestation, financial felony crimes, aggravated assault against law enforcement, and armed robbery released into my county.

I demanded the information—the names and the criminal history of this information. It has been refused to this date. I, as a sheriff, who swore an oath to protect the people of my county, should have a right to that information.

Five, 10, 14, 16 times, these are the illegals that—don't be scratching your head why they keep coming back. My deputies are arresting them for State crimes. This one had been arrested 16—now it is the 17th time. In law enforcement, we call these clues. Right? This is a clue that there is no enforcement. This is this past year, folks.

Six-page memo from Secretary Johnson, the very night that the President gave a speech. President said 5 years or longer, deferred action. In reality, the truth of this is January of 2014. If you have been here from that date and before, you get deferred action.

Thirty to 50 criminals released every day in my county from ICE facilities, and this was told to me from the director for Arizona for ERO, John Gurley. He is not going to be happy that I shared this information. Two separate phone calls.

These were the people that everybody, including our President, said were the bad actors, that, if anybody, the ones who have committed serious violent felonies or multiple misdemeanors have to be sent back to their country of origin. Then, how is it okay now that we are releasing 30 to 50 of these individuals a day right now?

And I would urge this Committee and this Congress to stand up as a lawmaking body to enforce the laws, just as you expect me and every other law enforcement officer locally to do, and secure the border.

Thank you, Mr. Chairman.

[The prepared statement of Sheriff Babeu follows:]



Sheriff Paul Babeu  
Pinal County, Arizona

February 3, 2015





## Pinal County Sheriff's Office

January 31, 2015

Committee on the Judiciary, "Examining the Adequacy and Enforcement of Our Nation's Immigration Laws"

Pinal County, Arizona is always listed among the fastest growing counties in America. We are between Phoenix and Tucson and in recent years, Pinal County has been the "Number One Pass Through County for Drug and Human Trafficking in all of America," where nearly half of the illegals entering America have entered through Arizona. According to U.S. Border Patrol, in recent years they have apprehended anywhere from 87,915 to 123,285 illegals in the Tucson border sector, which is one of the busiest and deadliest of any of the nine southwest sectors. U.S. Border Patrol has acknowledged this number does not take into account another conservative estimate of double this number of illegals that made it into the United States undetected. Of those illegals that were caught, 17 to 30 percent of them already have a criminal record in the United States.

According to a recent GAO report, 56 percent of the border is NOT under "Operational Control." In my opinion and the opinion of most people, 44 percent is a failing grade. Arizona has four counties that share the border with Mexico. Yuma County is under operational control at this time. The other three border counties (Pima, Santa Cruz and Cochise) are not and drug and human smuggling is funneled into our county - Pinal - by the natural terrain features and major roads and Interstates-10 and -8.

### **\$3 Billion Sinaloa Cartel Drug Bust**

Our Sheriff's Office led a multi-agency investigation, which busted the largest drug smuggling operation in the history of Arizona; valued at nearly \$3 Billion, arresting 76 individuals of the Sinaloa Mexican Drug Cartel and seizing 108 of their firearms - two of which were traced back to the Fast and Furious gun running operation. The size and scope of this operation underscore the magnitude of the fight we are up against when considering foreign drug and human smuggling criminal syndicates. This is not just marijuana, but also cocaine, methamphetamine, heroin, human smuggling and human trafficking.

### **Drug Cartel Scouts**

Last year, we arrested and prosecuted nineteen Mexican Drug Cartel members, who were working as "Scouts" in the hilltops overlooking one of the most active drug and human smuggling corridors in all of America. The scouts were on the hilltops for nearly a month at a time working as "spotters" for the "guides" as they smuggled drug-loads and humans into the United States. The scouts communicated with the guides and members of the Mexican Drug Cartels to let them know when law enforcement were in the area. They communicated by using cell phones and digitally encrypted radios and even had portable solar panels to recharge their electronics.

This elaborate network of scouts covered a swath of nearly 50-miles of my county. The precision of this criminal syndicate is evidenced in their operations and their logistical network that kept them resupplied with food, water and other supplies. As a retired Army Officer, who has served our nation in Iraq and also commanded 700 soldiers in Yuma, I understand the difficulty to sustain military operations. This story about

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cartel scouts occupying mountaintops does not take place in some far away land, like Afghanistan or Iraq. This is 70 miles north of the US/Mexican border – on American soil! How in the world have we arrived at this place, that it has become the job of the local Sheriff to now fight these foreign criminals?

Today, as I'm testifying, we have 28,600 US military on the Demilitarized Zone in Korea; protecting, guarding and defending their border, dating back to a war that started in the 1950's. We help defend and protect against threats for so many other countries around the world. We need to put America and our security first for once. We need to protect, guard and defend our US borders.

Think about this; Mexican Drug Cartel Scouts occupying hilltops, Arizona's largest \$3 Billion drug bust and hundreds of thousands of illegals making their way into the Tucson Border Sector every year. In law enforcement, we call these clues; the border is NOT more secure.

#### **Mass Prison Break**

On Saturday, February 23rd, 2013, Immigration Customs Enforcement employees, who work as Detention Removal Officers, were called into work and 207 illegals were processed and released from the ICE Eloy facility on this date alone. Of the 207, a total of 48 of them had been charged or convicted in the United States with either manslaughter, child molestation, aggravated assault, weapon offenses, forgery, drug offenses and or other serious crimes. There were nearly 400 criminal illegals released in my county alone. ICE initially denied this mass prison break and said I was making it all up. They admitted to a few hundred at first and as public pressure mounted, ICE later admitted they released over 2,000 illegals from detention facilities in California, Arizona, Texas and Georgia and planned to release another 3,000 more.

On March 14th, 2013, former ICE Director John Morton told members of Congress during his testimony that in fact 629 of the released detainees had criminal records here in the United States. Mr. Morton confirmed under testimony that over 30 percent of them have criminal records.

According to a Center for Immigration Studies (March 2014) report, in 2013, ICE agents released 36,007 illegals with criminal convictions, or 25 percent of all criminal illegals, they reported encountering. The criminal illegal releases typically occurred without formal notice to local law enforcement agencies and victims. In 2014, ICE charged only 143,000, or 24 percent, out of the 585,000 potentially deportable illegals they encountered. Most of the illegals came to ICE's attention after incarceration for a local arrest.

Protocol and logic should have required ICE to formally notify me, as the top law enforcement official in the county where this occurred, about this mass release of hundreds of foreign criminals into my county and elsewhere, yet regrettably this never happened. Even as the constitutionally elected Sheriff, I do not have any authority to release inmates or detainees in my jail without judicial action. The silence from ICE in failing to answer if any judge was involved with this release or the change of the terms of their detention has never been answered. Supervised release for any foreign criminal is laughable. What incentive do criminal illegals have to report in to the authorities? What is the worst punishment would they face - deportation?

DHS refuses to provide me (after repeated formal requests and legal demands) with the names, criminal histories, security threat of these criminals. To say the least with Eric Holder's Fast and Furious, we know 2,000+ high-powered guns were given to the drug cartels in Mexico and these 2,200+ serious criminals were released directly into our communities. Our law abiding citizens and families will be victimized by serious crimes for years to come by President Obama's mass prison break.

You and I will **NEVER** be provided this information because we could then link new violent crimes committed against American citizens to these thousands of foreign criminals released onto our streets.

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President Obama, Janet Napolitano and Jeh Johnson would clearly be responsible for these crimes and answerable to victims' appropriate outrage.

#### **5, 10, 14, 16 Times Deported**

If a citizen breaks the law and no law enforcement action is taken, what message does that send to everyone else? This is exactly what's happening with our immigration laws in America. That's why my deputies encounter many criminal illegals, who admit to being deported as many as 16 times. The laws apply to American citizens, but if you're an illegal from a foreign country — it appears the laws do not apply and there are few, if any real consequences. Don't be scratching your heads wondering why Aaron Marquez-Quintero has now returned a 17<sup>th</sup> time...it's because there are no consequences. There's little doubt that he and other repeat offenders have broken other laws and entered our America illegally other times without being caught. President Obama refuses to enforce our immigration laws to protect our citizens but instead is more concerned with providing "prosecutorial discretion" by waving entire laws and circumventing the laws of our land and our lawmaking body of Congress.

#### **Central American Children as refugees**

The very hope of 60,000 unaccompanied juveniles from Central America was realized when they were welcomed with open arms. What message does this send the millions of future illegals in Mexico and Central America? If you make it to the border and say you're fleeing violence — you're home free? Think again, if you believe that the majority of these kids will be returned to their home countries. The 11 million or more illegals currently in the U.S. should be proof enough that this will never happen.

DHS flew in 40-50 of these juvenile asylum seekers from Central America to my county. DHS Secretary Jeh Johnson promised to notify and coordinate with local officials prior to sending these "refugees" to communities across the Southwest. This never happened. This was done in secrecy and we still have no response to our legitimate public safety and public health concerns about the history of juveniles.

The most humanitarian response would be to place these children on planes, return them back to their country of origin and reunite them with their families. If we fail to do this, we invite future waves of refugees. There are over 40 million children under the age of 18 in Mexico, and based on this refugee claim, they would easily qualify for asylum given the cartel violence. Would President Obama turn away these children? Not a chance.

#### **Six page Jeh Johnson Memo**

You may remember President Obama's national TV appearance on his executive action for immigration, where he described deferred action for approximately four to five million who have been in the US for five years or longer. While the public and media's attention was on President Obama's executive action, DHS simultaneously issued orders to ignore America's immigration laws. This directive is the 'smoking gun' showing ICE doesn't plan to arrest or take action on any of the 11 million plus illegals already in the United States, which is far greater than the five million as stated by the President. President Obama makes illegals his priority, rather than securing the border and enforcing the law. Immigration laws will only sometimes be used for the most serious violent felons, while the over 11 million illegals get a free pass. This is not prosecutorial discretion, but instead an intentional and flagrant disregard of the law and we will all suffer the consequences.

The broader implications of gutting of immigration law, not only eliminates consequences for lawbreakers and denies justice to victims, but it also sends the wrong message. This action will be like a flashing neon sign for the millions of future illegals who have yet to come here, telling them that if they make it to the border — they're home free. Arizona Sheriffs (which is evenly represented by democrats and republicans)

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unanimously voted to send a letter to Chairman Bob Goodlatte, Rep. Trey Gowdy and our entire Arizona delegation denouncing the President's executive action and for excluding Congress -- our lawmakers, who are our elected representatives - from participating on this most important immigration issue. We also argue that important homeland security, border security, and public safety concerns must be a component of this discussion. Essentially, we are saying Congress must stand up for itself as the constitutional authority to make laws and stop this unilateral overreach of executive power.

#### **30-50 criminal illegals released every day in Pinal County**

Two weeks ago, high level US Border Patrol leaders met with the National Sheriffs' Association, when one of them said there has been "no change or affect" by President Obama's executive action on immigration or Sec. Johnson's 6 page memo. I immediately challenged this leader and told him of the very real consequences. I informed him that I have received two phone calls from ICE Enforcement and Removal Operations (ERO) in Arizona, who told me that they are releasing 30-50 illegals every day from custody, who were previously slated for deportation. He cited Sec. Johnson's memo, which orders prosecutorial discretion and the halting of court actions for most illegals -- even those in prison and slated for deportation. Congress authorized 34,000 beds for ICE, yet they currently house 24,000. These were always described as the worst actors, who committed serious violent crimes or numerous lesser non-violent crimes. These are the small portion of criminal illegals that even President Obama said needed to be deported. Now, they are brought to the bus stations in Tucson and Phoenix and heading to your neighborhoods.

#### **Proposed Solution**

We can secure the border if we replicate the success of what was accomplished in the Yuma Sector. The Yuma Sector has now attained a 97 percent reduction drug and human smuggling.

There are three key elements to securing the border. First, deploy 6,000-armed soldiers for a period of two years. While armed soldiers are deployed, complete the double barrier fence with the surveillance platforms, lighting, sensors and asphalt roads to support rapid deployment of US Border Patrol. Thirdly, fully enforce the law without any diversion option for illegals. This compromise of "catch and release" has undermined the rule of law, since there are no consequences. Operation Streamline has proven highly effective in the Yuma Sector, since consequences are not waived for violating immigration law.

I have strongly opposed past immigration reform offered by the so-called "Gang of Eight," officially titled the "Border Security, Economic Opportunity, and Immigration Modernization Act of 2013" or the "Schumer-McCain Immigration Bill."

We must secure the border first, prior to any discussion of green cards and a path to citizenship, offered to more than 11 million illegals and their families. This plan gives everything to President Obama upfront, while border security is promised once again on the backend. We are now repeating history, when in 1986 President Reagan gave amnesty to two million illegals. Now, the stakes are far higher, yet it seems that we haven't learned our lesson. The failure to secure the border after the Reagan amnesty got us where we are at today with 11 million or more illegals in our Country...executive deferred action sets this process in motion once again. We are about to see the beginning of the third wave of illegal immigration.

The best plan, to date, to protect America was the Gowdy interior enforcement bill introduced in the last Congress. The bill, if approved, would give law enforcement agencies across the United States clear direction so immigration enforcement can be consistent throughout all communities.

In Pinal County, law enforcement and citizens are forced to live with the results of an unsecured border. Almost daily, Deputies of my office are involved in vehicle pursuits with cartel members smuggling drugs or

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Mr. GOODLATTE. Thank you, Sheriff. And my apologies for not getting your name pronounced correctly.

Sheriff BABEU. That is all right.

Mr. GOODLATTE. But we will improve on that.

Sheriff BABEU. Thank you, sir.

Mr. GOODLATTE. Professor Ting, welcome.

**TESTIMONY OF JAN C. TING, PROFESSOR OF LAW,  
TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW**

Ms. TING. Thank you, Mr. Chairman, and all Members of the Committee.

I have submitted written testimony.

And in part I of that testimony, I discuss the basic question of whether we are going to have a limit on immigration in the United States or, alternatively, whether we are going to have no limit or whether we are going to enforce the limit.

In part II, I discuss various initiatives that amount to abandonment of deterrence in our immigration law enforcement and the consequences thereof.

In part IV of my written testimony, I discuss what I think is the primary reason for having immigration law, which is to protect the jobs and wages of American workers from foreign competition.

But I want to discuss with you part III of my written testimony, which is "Asylum Abuse and Expedited Removal."

When I last testified in this hearing room about a year ago, I suggested that making asylum claims has become commonplace as a path to an immigrant green card for aliens without other alternatives and that false asylum claims have become common and often deceive U.S. asylum adjudicators into granting asylum status.

The perception that false asylum claims often work and at least delay removal of illegal aliens from the United States, sometimes for long periods, adds to the benefit side of the cost-benefit analysis, which is attracting additional illegal immigration into the United States.

Convictions for and exposures of false asylum claims are very difficult and expensive to attain. The difficulties are compounded when the number of asylum applications is increasing. And I have submitted some statistics documenting that.

The concept of "credible fear" was instituted by the former Immigration and Naturalization Service as an informal screening-out device for the large numbers of Haitians interdicted on boats on the high seas headed for the United States after the Haitian coup of 1991. The idea was that people interdicted on boats who could not articulate a credible fear that could qualify them for asylum would be repatriated to Haiti without further deliberation.

When Congress enacted "expedited removal" in 1996 for certain arriving and recently arrived aliens who lacked documentation, it incorporated the concept of "credible fear" into the statute in the hope that it could also be used as a screening-out device for aliens making asylum claims.

Unfortunately, what has happened is a high approval rate for credible fear claims—the stories have spread as to how to achieve a credible fear—and the resulting backlog in the immigration court system, which the Chairman has referred to, have meant that, in

practice, “credible fear” has served to screen into the United States undocumented aliens who don’t really have an asylum claim, but can meet the “credible fear” test, the low threshold.

That explains why so many illegal border-crossers don’t run from the U.S. Border Patrol, but instead seek them out to make their “credible fear” claims subject to that low threshold.

Congressional intent in enacting “expedited removal” has been frustrated by the presence of this low-threshold “credible fear” screening-in device. But Congress can and should amend the immigration laws to remove the role of credible fear in frustrating expedited removal.

All Border Patrol and other Customs and Border Protection agents should be mandated to receive training and asylum law as part of their basic training. Such trained agents should be authorized to make asylum adjudications as part of the expedited removal process. Expedited removal was created by Congress. Congress can amend the law. All references to credible fear in further hearings by an immigration judge should be removed from the expedited removal statute.

The statute could then be amended to read, “If an asylum-trained officer determines that an alien does not have a well-founded fear of persecution pursuant to Section 208, the officer shall order the alien removed from the United States without further hearing or review.” That is not that different from the statute the way it reads now.

Additionally, just as the credible fear standard may have—and let me just say I think that is the single most effective change to facilitate immigration enforcement that can be made, is strengthening the expedited removal process at our border.

Additionally, just as the credible fear standard may have lost value as alien smugglers game the system and spread the stories that work, so the asylum statute itself, 208, while a useful addition to our immigration law when added in 1980, may have lost value as the stories have spread that work in convincing an adjudicator to grant asylum.

How did we meet our obligations before 1980 when 208 entered our law? We had a statute, withholding of deportation, that prevents the removal of aliens if the alien’s life is threatened on account of race, religion, nationality, social group, or political opinion.

I would like to see Congress consider enhancing the withholding of removal statute by adding to it some of the benefits of asylum with the goal of having a single enhanced withholding of removal statute for the protection of refugees. That statute has and will have a higher burden of proof than the asylum statute and should, therefore, be less susceptible to fraud.

I thank the Chairman and the Committee.

[The prepared statement of Ms. Ting follows:]

Testimony of Jan C. Ting

Professor of Law, Temple University Beasley School of Law, Philadelphia (Former Assistant  
Commissioner, Immigration and Naturalization Service, U.S. Department of Justice)

United States House of Representatives

Committee on the Judiciary

February 3, 2015, Rayburn House Office Building 2141, 11 a.m.

“EXAMINING THE ADEQUACY AND ENFORCEMENT OF OUR NATION’S  
IMMIGRATION LAWS”

I. Introduction

I thank Chairman Goodlatte and all the members of the U.S. House of Representatives Committee on the Judiciary for the invitation and opportunity to testify today on the adequacy and enforcement of our nation’s immigration laws.

I want to begin by stating that I do not consider our immigration system to be “broken”, as it’s frequently described by members of both political parties. That fact that we now have at least 11 million aliens illegally present in the United States is less the fault of “the system” than it is the unwillingness of many Americans and elected officials to make the basic, but difficult choice as to what kind of immigration system we want.

Do we want to allow unlimited immigration to the United States, as we did during the first century of our nation’s history? Or alternatively, do we want to enforce a limit on the number of immigrants we allow every year, knowing that will mean turning away many people who resemble our own ancestors, who are neither criminals nor national security threats, and who only want to work and pursue the American dream of a better life for themselves and their families? And if those people enter in violation of our limit, maintenance of the limit will require us to try to remove them.

Too many Americans and elected officials cannot bring themselves to countenance the enforcement of immigration limits if it means excluding and removing aliens who remind us of our ancestors. But they also are unwilling to accept unlimited immigration to the United States either.

It's a binary choice. Either no limit on immigration, taking everyone who wants to come except criminals or national security threats or, alternatively, enforcement of a limit, turning away many even though they are neither criminals nor national security threats. If we could decide which option we wanted, then we could implement policies aimed at achieving that goal.

Too hard a choice, many are saying in effect. Give us a third choice. And that is the direction towards which President Obama and his administration are trying to lead the country, towards a third choice of leaving legal immigration limits on the books, but simply not enforcing them, and then providing legalization as needed whenever confronted with the results of large numbers of illegal immigrants. Does anyone think that will work? I call it a formula for permanent dysfunction.

## II. The Abandonment of Deterrence in Immigration Enforcement

A former colleague of mine at Temple University used to say that the poor people of the world may be poor, but they are not stupid, that they are as capable "as anyone in this room", he used to say, of using cost-benefit analysis to determine what is in their own self-interest, and they do that all the time.

Large numbers of foreign persons would like to immigrate and work in the U.S. but are prevented from doing so by the limits on immigration enacted into U.S. law by Congress. If we wish to deter persons immigrating to the U.S. illegally in violation of our legally imposed limits, we should increase the costs of illegal immigration and lower the benefits. Conversely, if we want more illegal immigration, we should lower the costs and increase the benefits of illegal immigration. People are not stupid, and will use cost-benefit analysis to act on what they believe is in their best interest.

Deterrence is important to immigration law enforcement because border security alone cannot prevent large numbers of persons from illegally entering the country if they are determined to do so. For one thing, as many as half the illegal population of the U.S. may have entered legally on temporary visas and simply overstayed. Even as to those entering without inspection at the border, security is more effective if the numbers attempting to enter are smaller, and conversely less effective when the numbers attempting to enter are large.

Administration initiatives have affected the cost/benefit analysis of those contemplating illegal immigration to the U.S. in various ways. First the administration's endorsement of and advocacy for a broad legalization for illegal aliens in the U.S., such as the so-called "comprehensive immigration reform" passed by the U.S. Senate in the previous Congress, sends the message that, if only they can get themselves into the U.S., they will benefit from the



legislation when it passes, just as illegal immigrants present in the U.S. benefited from the broad amnesty enacted by Congress in 1986.

Second, the administration's announcement of "prosecutorial discretion" objectives and priorities, applied not case by individual case, but benefiting broad identifiable categories of illegal aliens, provided encouragement to those considering illegal entry into the U.S., that if they could avoid committing crimes and prompt detection, they might be viewed as low priorities for removal from the U.S.

Providing illegal immigrants with work authorization and other benefits, was enacted by unilateral presidential executive order in 2012 for "childhood arrivals" under the age of 31 as of June 15, 2012. By another unilateral presidential executive order announced on November 20, 2014, those benefits were extended to "childhood arrivals" regardless of age, and to parents of U.S. citizen or legal permanent resident children. It would seem reasonable for those considering illegal entry into the U.S. to anticipate that the categories of those qualifying for work authorization despite illegal presence might be expanded yet again by future executive order.

And because President Obama had on many occasions publicly denied having the power to act unilaterally by executive order in the way that he did, professed limits on future presidential action like that found in the Office of Legal Counsel memo of November 19, 2004, on which President Obama relied, might also reasonably be ignored in the calculations of those contemplating illegal entry into the U.S.

An example of how administration policies dramatically shifted the cost/benefit analysis in favor of attempting illegal entry into the U.S. was the 2014 "surge" of alien minors and families across our southern border. According to Department of Homeland Security statistics, 68,541 unaccompanied alien minors were apprehended at the border in 2014, an increase of 945% over the 6,560 apprehended in 2011, before President Obama's DACA executive order was announced. In addition, 68,445 alien family members traveling together were apprehended at the border in 2014, an increase of 815% over the number apprehended in 2011.

Central American newspapers reported that U.S. government policies now permitted unauthorized alien minors to enter the U.S. and stay, and reported that such migrants received accommodations, food, and English classes before being reunited with family members in the U.S.<sup>1</sup>

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<sup>1</sup> Chumley, Cheryl K., "El Salvador, Honduras newspapers tell youth: Go north—U.S. life is good," Washington Times, June 12, 2014. <http://www.washingtontimes.com/news/2014/jun/12/el-salvador-honduras-media-tell-youth-go-north-us/>

Among the consequences of the 2014 border “surge” are growing backlogs and delays in removal hearings scheduled to be heard in the U.S. immigration court system. The Wall Street Journal reported last week that nonpriority cases are being bumped off the court docket and would get a November 29, 2019, court date, which it described as “a bureaucratic placeholder.”<sup>2</sup> Such delays in U.S. efforts to remove illegal immigrants constitute another benefit tilting the cost/benefit analysis in favor of illegal immigration to the U.S.

I have criticized the president’s unilateral deferred action executive orders in an article<sup>3</sup> and in testimony to the Judiciary Committee of the U.S. Senate on December 10, 2014.<sup>4</sup> My argument is, first, that the deferred action exceeds the statutory bounds of prosecutorial discretion:

In 1996, Congress enacted, and President Clinton signed into law, new Section 235(a)(1) of the INA (codified as 8 U.S.C. Section 1225(a)(1)) that every alien present in the United States without having been admitted “shall be deemed for purposes of this Act an applicant for admission.” And Congress also specified in Section 235(b)(2) that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a (removal) proceeding under section 240.”

A large part of the November 19, 2014, OLC Opinion (pages 14-20) is devoted to reciting instances of deferrals of immigration enforcement action by former Presidents, which the Opinion treats as precedents for President Obama’s own deferred-action program. In fact none of the alleged precedents, which were short-term and involved limited numbers of very specific categories of aliens, was ever subject to judicial review, so their value as constitutional precedent cannot be assumed. In any event, even if these prior actions were lawful, they are readily distinguished from the President’s proposal to defer the detention and removal of nearly 5,000,000 illegal aliens. Some are also distinguishable as explicit exercises of broad presidential authority over foreign affairs, which is not the case, and not asserted, in President Obama’s deferred action executive order.

The example seemingly most helpful to the Administration’s case is the 1990 “Family Fairness” program implemented under President George H.W. Bush to grant “voluntary departure” (“VD”) to some of the spouses and children of illegal aliens who had been authorized

<sup>2</sup> Barrett, Devlin, “Save the Date: Immigrants Face Judge in 2019”, page A6, The Wall Street Journal, January 29, 2015.

<sup>3</sup> “President Obama’s ‘Deferred Action’ Program for Illegal Aliens Is Plainly Unconstitutional”, December 2014, <http://www.cis.org/Obama-Deferred-Action-Amnest-Executive-Action-Unconstitutional>

<sup>4</sup> <http://www.judiciary.senate.gov/imo/media/doc/12-10-14TingTestimony.pdf>

by IRCA in 1986 to apply for and receive permanent residence (cited on page 14 of the OLC opinion).

President Bush regarded these individuals as victims of an oversight in the drafting of IRCA and worked with Congress to fix it, achieving the fix as part of the Immigration Act of 1990, which provided legal immigrant visas to such spouses and children. The enactment by Congress of this legislation within months of the announcement of the “Family Fairness” initiative demonstrates the close consultation between the Bush administration and Congress, and the concurrence of Congress in efforts to fix the particular problem.

As Justice Jackson famously said in *Youngstown Sheet and Tube v. Sawyer*, “When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum,” but, “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.”<sup>5</sup>

My second concern over the deferred action executive order is the availability of advance parole to deferred action beneficiaries.

The President’s “parole” authority originated as an exception to the limits on the number and categories of aliens who could be admitted to the United States on a temporary or permanent basis under the INA. The parole authority, now codified at Section 212(d)(5) (8 U.S.C. § 1182(d)(5)), authorizes the President to “parole” into the United States an otherwise inadmissible alien “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”

According to the House Judiciary Committee in 1996 when that restrictive language was added to the statute: “Parole should only be given on a case-by-case basis for specified urgent humanitarian reasons, such as life-threatening medical emergencies, or for specified public interest reasons, such as assisting the government in a law-enforcement-related activity. It should not be used to circumvent Congressionally-established immigration policy or to admit aliens who do not qualify for admission under established legal immigration categories.”<sup>6</sup>

Could any federal court hold that DACA parole or parole granted to deferred action beneficiaries is not being used “to admit aliens who do not qualify for admission under established legal immigration categories”? On USCIS Form I-131 issued in 2013 (on pages 4 and 8), the USCIS asserts “in its discretion” that DACA beneficiaries may be granted advance parole to travel outside the U.S. for educational or employment purposes, though not authorized by Congress in INA Section 212(d)(5).

<sup>5</sup> 343 U.S. 579, 635-636 (1952).

<sup>6</sup> Section 523, House REPT. 104-469, on HR 2202 (March 4, 2996), <https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf> .

The reason the Administration wants to and will also abuse the parole statute in the case of the newly deferred 5 million illegal aliens is to provide them with a pathway to a green card and citizenship, contrary to the ardent representations that the deferred action is not a pathway to citizenship. Here is how that's going to work:

Unlike most of the DACA beneficiaries, most of the new deferred action beneficiaries will eventually qualify as immediate relatives of US citizens, since most qualify for deferred action because they are parents of US citizens or permanent residents who will become US citizens.<sup>7</sup>

Since immediate relative visas are not limited numerically, there's no waiting list, and they are immediately available. Any alien who qualifies for an immigrant visa which is currently available can apply for and claim it at a US consulate abroad. But if the deferred action beneficiaries try to do that, most would be barred from re-entering the U.S. because their illegal presence in the U.S. for more than one year makes them inadmissible for ten years upon their departure from the U.S.<sup>8</sup>

There is a statute that allows some aliens who are in the U.S. already to claim available immigrant visas in the U.S., without departing from the U.S. or triggering the statutory 10-year inadmissibility bar. But that statute providing "adjustment of status" is only available to aliens "admitted or paroled" into the U.S., and those who have entered illicitly without inspection do not qualify.<sup>9</sup>

Here's why advance parole is the magic bullet which clears the pathway to citizenship for most deferred action beneficiaries when they qualify as immediate relatives:

The Board of Immigration Appeals, a branch of the U.S. Department of Justice, ruled in 2012 in *Matter of Arrabelly*, that despite prior illegal presence in the U.S., an alien departing from the U.S. with an advance parole allowing re-entry is not a departure under INA Sec. 212(a)(9)(B)(i)(II) which would trigger the 10-year inadmissibility bar.<sup>10</sup>

And, upon returning to the U.S. with an advance parole, the alien having been "paroled" now magically satisfies the threshold requirement of Section 245 and qualifies for adjustment of

<sup>7</sup> US citizen children cannot sponsor their parents for immediate relative green cards until the children attain age 21. INA Sec. 201(b)(2)(A)(i) (8 U.S.C. Sec. 1151(b)(2)(A)(i)).

<sup>8</sup> INA Sec. 212(a)(9)(B)(i)(II) (8 U.S.C. Sec. 1182(a)(9)(B)(i)(II)).

<sup>9</sup> INA Sec. 245(a) (8 U.S.C. Sec. 1255(a)).

<sup>10</sup> 25 I&N Dec. 771 (BIA, 2012), <http://www.justice.gov/eoir/vll/intdec/vol25/3748%20%28final%29.pdf>.

status, and can claim the immediate relative visa or any other immediately available visa without leaving the U.S.

So the representations of the Administration that the deferred action initiative does not provide a pathway to citizenship will likely be false for most of the beneficiaries.

My third concern with the deferred action executive order is that granting employment authorization to millions of illegal aliens directly contradicts numerous court decisions holding that the Executive Branch may not under color of its power to administer the immigration laws circumvent the statutory limits on the number of aliens allowed to compete in the U.S. labor market.

Section 274A(a) of the INA, added by IRCA in 1986 makes it unlawful “to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.”<sup>11</sup> The term “unauthorized aliens” was defined at Section 274A(h)(3) as all aliens other than aliens authorized to work “under this Act or by the Attorney General.”<sup>12</sup> A federal regulation, 8 C.F.R. § 274a.12, contains a list of the categories of alien who are not “unauthorized aliens” and who may therefore qualify for Employment Authorization.

According to the November 19, 2014, OLC Opinion (page 21, fn. 11), the Attorney General has interpreted the clause “by the Attorney General” as conferring unlimited discretion to use “the regulatory process” to except any class of alien from the definition of “unauthorized alien.” According to the OLC Opinion (page 22), the exception applicable to illegal aliens awarded deferred action under the President’s new program is found at 8 C.F.R. § 274a.12(c)(14), which refers to aliens who have been granted “deferred action, defined as an act of administrative convenience to the government which gives some cases lower priority, if the alien establishes an economic necessity for employment.”

A 2007 memorandum from the USCIS Ombudsman says that section 274a.12(c)(14) had a more modest scope: “There is no statutory basis for deferred action . . . . According to informal USCIS estimates, the vast majority of cases in which deferred action is granted involve medical grounds.”<sup>13</sup> So narrowly based a regulation, having no basis in the statute, cannot serve as authority for the indiscriminate issuance of millions of Employment Authorization Documents contemplated by the President’s new deferred-action program. While the courts must normally defer to a Secretary’s interpretation of his own regulations, this does not apply

<sup>11</sup> Codified as 8 U.S.C. Section 1324a(a).

<sup>12</sup> 8 U.S.C. Section 1324a(h)(3).

<sup>13</sup> [http://www.dhs.gov/xlibrary/assets/CISOmbudsman\\_RR\\_32\\_O\\_Deferred\\_Action\\_04-06-07.pdf](http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf).

when an “alternative reading is compelled by the regulation’s plain language or by other indications of the Secretary’s intent at the time of the regulation’s promulgation.”<sup>14</sup>

Whether or not that regulation was ever intended to have the colossal scope attributed to it by the OLC Opinion, the more important question is whether a regulation of that scope is in fact authorized by 8 U.S.C. § 1324a (h)(3) (INA Sec. 274A(h)(3)). In other words, when Congress wrote and passed the IRCA in 1986, were the four words “by the Attorney General” inserted into the statute to empower the President to grant EADs to unlimited numbers of aliens, including millions of the very illegal alien workers whose employment IRCA was intended to prevent?

According to Chapman University law professor John C. Eastman, ascribing any such intention to Congress would be illogical. Had Congress intended the phrase “or by the Attorney General” to confer such broad and potentially limitless discretion on the Executive Branch, then “none of the carefully circumscribed exemptions would be necessary. . . . [T]he more likely interpretation of that phrase is that it refers back to other specific exemptions in Sections 1101 or 1324a that specify when the Attorney General [or Secretary of Homeland Security] might grant a visa for temporary lawful status.”<sup>15</sup>

In other words, Section 274A(h)(3)’s reference to aliens authorized to work “by the Attorney General” has a more obvious and rational explanation than a *carte blanche* to invite the whole world to work here. As noted above, the INA provides for the issuance of specified numbers and categories of immigrant and nonimmigrant visas and prescribes which of those visas entitles the alien to work in the United States. At the same time the INA authorizes the entry and residence of various categories of aliens without visas, including refugees, asylum applicants, and aliens eligible for TPS: in those cases the INA separately authorizes or requires the Attorney General to provide the aliens with EADs.<sup>16</sup> As Professor Eastman reasons, “by the Attorney General” surely refers to those statutory authorizations and not to wholesale surrender to the President of the Congress’s otherwise exclusive authority to determine whether an alien may enter, remain, or work in the United States.

Post-IRCA legislation is consistent with Professor Eastman’s analysis. On at least three occasions in the two decades after IRCA became law, Congress has enacted immigration

<sup>14</sup> *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (quoting *Gardebring v. Jenkins*, 485 U.S. 415, 430 (1988)).

<sup>15</sup> John C. Eastman, President Obama’s ‘Flexible’ View of the Law: The DREAM Act as Case Study, ROLL CALL, Aug. 28, 2014, <http://www.rollcall.com/news/Obamas-Flexible-View-of-the-Law-The-DREAM-Act-as-Case-Study-235892-1.html?pg=2&dczone=opinion>.

<sup>16</sup> E.g., INA Sec. 208(c)(1)(B) (asylum), 244(a)(1)(B) (temporary protected status), 8 U.S.C. Sec. 1738 (refugees).

legislation providing that the Attorney General (or the Secretary of Homeland Security) “may authorize” a class of aliens “to engage in employment in the United States.”<sup>17</sup> The aliens that might be authorized to work included “battered spouses,” as well as certain nationals of Cuba, Haiti, and Nicaragua. Why would Congress pass bills granting the Executive Branch discretionary authority to issue EADs to such narrowly defined categories of aliens if Congress had already empowered the Executive Branch in 1986 with discretion to issue EADs to anyone in the world?

To summarize, the question presented by 8 U.S.C. § 1324(h)(3) is whether the more reasonable interpretation of IRCA’s reference to “by the Attorney General” was that (1) Congress intended to exclude from the definition of “unauthorized alien” those aliens for whom the Attorney General was permitted or required by IRCA and numerous other provisions of the INA to issue EADs or (2) Congress intended to empower the President to nullify IRCA with the stroke of his pen by granting EADs to the very aliens whose employment IRCA was enacted to prevent? The question answers itself. To quote the D.C. Circuit Court of Appeals, an Executive Branch procedure that exposes American workers to substandard wages and working conditions “cannot be the result Congress intended.”<sup>18</sup>

The federal courts have repeatedly and consistently held that the Executive Branch may not through administrative action circumvent the INA’s qualitative or numerical limits on employment visas, following Supreme Court pronouncements in *Karnuth*<sup>19</sup> and *Sure-Tan*<sup>20</sup> that the policy and purpose of immigration law is preservation of jobs for American workers against the influx of foreign labor.

In 2002, in *Hoffman Plastics v. N.L.R.B.*, the Supreme Court itself invalidated a federal agency’s award of back pay to an illegal alien. The Court held that the IRCA amendments to the INA were a “comprehensive scheme that made combatting the employment of illegal aliens in the United States central to the policy of immigration law,” that awarding back pay to an illegal alien was “contravening explicit congressional policies” to deny employment to illegal immigrants, and that such an award would “unduly trench upon explicit statutory prohibitions critical to federal immigration policy” and “would encourage the successful evasion of

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<sup>17</sup> Pub. L. No. 105-100, Title II, § 202 (1997) (Cuban and Nicaraguan nationals); Pub. L. No. 105-277, div. A, § 101(h) (1998)(Haitians); Pub. L. No. 109-62, Title VIII, 814(c) (2006) (battered spouses).

<sup>18</sup> *Mendoza v. Peres*, 754 F.3d 1002, 1017 (2014).

<sup>19</sup> *Karmuth v. United States*, 279 U.S. 231, 244 (1929).

<sup>20</sup> *Sure-Tan v. United States*, 467 U.S. 883, 893 (1984).

apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations.”<sup>21</sup>

Other federal circuit and district courts have invalidated executive branch agency decisions that enabled employers to avoid their collective bargaining contracts by hiring unauthorized alien workers. In May of 1985, the D.C. Circuit found in *International Union of Bricklayers and Allied Craftsmen v. Meese* that labor unions had standing to challenge the issuance of temporary worker visas to aliens who plainly did not qualify for those visa categories. The court reasoned that, in construing the immigration laws, the courts “must look to the congressional objective behind the Act,” which was “concern for and a desire to protect the interests of the American workforce.”<sup>22</sup> In 1985, citing the Supreme Court’s decision in *Karnuth* and the D.C. Circuit’s decision in *Bricklayers*, the U.S. District Court for the Northern District of California declared that an “INS Operations Instruction” that expanded the category of aliens eligible for temporary work visas beyond those specified in the statute was “unlawful” and that its enforcement was “permanently enjoined.”<sup>23</sup>

Four years later, in *Longshoreman v. Meese*, the Ninth Circuit found that the INS’s overbroad definition of “alien crewman” (who did not require labor certification in order to work near the docks) failed to promote “Congress’ purpose of protecting American laborers from an influx of skilled and unskilled labor.”<sup>24</sup>

In 2014, in *Mendoza v. Perez*, the D.C. Circuit ruled that the Department of Labor had used improper procedures to create special rules for issuing temporary visas in the goat and sheepherding industry. The court held that the “clear intent” of the temporary worker provisions enacted by Congress was “to protect American workers from the deleterious effects the employment of foreign labor might have on domestic wages and working conditions” and that an Executive Branch procedure that exposed American workers to substandard wages and working conditions “cannot be the result Congress intended.”<sup>25</sup>

A very recent case that may provide a precedent for standing in any challenge to the issuance of EADs to illegal aliens under the President’s deferred-action program is *Washington*

<sup>21</sup> 535 U.S. 137, 138, 140-141, 148 (2002).

<sup>22</sup> 761 F.2d 798, 804 (D.C. Cir. 1985).

<sup>23</sup> *Int’l Union of Bricklayers v. Meese*, 616 F.Supp. 1387 (1985).

<sup>24</sup> 891 F.2d 1374, 1384 (9th Cir. 1989).

<sup>25</sup> 754 F.2d 1002, 1017 (2014).



*Alliance of Technology Workers v. USDHS*,<sup>26</sup> a case in which American technology workers are challenging the legality of the Department of Homeland Security's 18-month extension of a program that permits foreign students to work in the United States after completing their studies. In a decision dated November 21, 2014, the U.S. District Court for the District of Columbia denied the government's motion to dismiss that claim, holding that the plaintiffs enjoyed "competitor standing," a doctrine which recognizes that a party suffers a cognizable injury when "agencies lift regulatory restrictions on their competitors or otherwise allow increased competition."

The competitive advantage enjoyed by the alien students in that case was exemption from employment taxes, which made them less expensive to hire. The illegal alien beneficiaries of the President's deferred-action program may also enjoy a competitive advantage by virtue of their exemption from the employer mandates of the Affordable Care Act.

### III. Asylum Abuse and Expedited Removal

When I last testified in this hearing room on February 11, 2014, my subject was "Asylum Fraud: Abusing America's Compassion?"<sup>27</sup> In that testimony I suggested that making asylum claims has become commonplace as a path to an immigrant green card for aliens without other alternatives, and that false asylum claims have become common and often deceive the U.S. asylum adjudicators into granting asylum status. The perception that false asylum claims often work and at least delay removal of illegal aliens from the U.S., sometimes for long periods, adds to the benefit side of the cost/benefit analysis attracting illegal immigration to the U.S.

Convictions for and exposures of false asylum claims are difficult and expensive to attain. The difficulties are compounded when the number of asylum applications is increasing.<sup>28</sup> The total number of affirmative asylum applications has more than doubled in five years, exceeding 80,000 in FY2013. Over the same five years, so-called "credible fear" asylum applications made at the border have increased sevenfold from less than 5,000 to more than

<sup>26</sup> Civil Action No. 14-529, U.S. District Court for the District of Columbia.

<sup>27</sup> [http://judiciary.house.gov/\\_cache/files/ce51425e-3e89-4007-a98d-7153ac6f2b4c/jan-c-ting-asylum-fraud-testimony-final.pdf](http://judiciary.house.gov/_cache/files/ce51425e-3e89-4007-a98d-7153ac6f2b4c/jan-c-ting-asylum-fraud-testimony-final.pdf)

<sup>28</sup> For a story of how aliens are smuggled into the U.S. to make asylum claims, and the pressures on immigration judges who reject those claims, see Frances Robles, "Tamils' Smuggling Journey to U.S. Leads to Longer Ordeal: 3 Years of Detention", New York Times, Feb. 2, 2014, <http://www.nytimes.com/2014/02/03/us/tamils-smuggling-journey-to-us-leads-to-longer-ordeal-3-years-of-detention.html>

36,000 in FY2013.<sup>29</sup> Statistics from USCIS Asylum Division show an approval rate of 92% for credible fear claims in FY 2013.<sup>30</sup> Those statistics were compiled before the 2014 border surge.

The concept of “credible fear” was instituted by the former Immigration and Naturalization Service as an informal screening out device for the large numbers of Haitian people interdicted via boats on the high seas headed for the United States after the Haitian coup of 1991. The idea was that people interdicted via boats who could not articulate a credible fear that could qualify them for asylum would be repatriated to Haiti without further deliberation.

When Congress enacted “expedited removal” in 1996 for certain arriving and recently arrived aliens who lack documentation authorizing legal admission, it incorporated the concept of “credible fear” into the statute, in the hope that it could also be used as a screening out device for such aliens making asylum claims.<sup>31</sup> Unfortunately the high approval rate for credible fear claims, and the resulting backlog in the immigration court system, have meant that in practice “credible fear” has served to screen into the U.S. undocumented aliens wishing to make asylum claims. That explains why many illegal border crossers don’t run from the U.S. Border Patrol, but instead seek them out to make asylum claims subject only to the low threshold of credible fear.

Congress enacted “expedited removal” into U.S. law to facilitate prompt removal of undocumented aliens. That congressional intent has been frustrated by the presence of the low-threshold “credible fear” screening-in device. But Congress can and should amend INA Section 235(b)(1) to remove the role of credible fear in frustrating expedited removal.

All Border Patrol and other Customs and Border Protection agents should be mandated to receive training in asylum law as part of their basic training. Such trained agents should be authorized to make asylum adjudications as part of the expedited removal process. All references to credible fear and further hearings by an immigration judge should be removed from the statute. INA Section 235(b)(1)(B)(iii)(I) could then be amended to read: “If an asylum-trained officer determines that an alien does not have a well-founded fear of persecution pursuant

<sup>29</sup> Cindy Chang and Kate Linthicum, “U.S. seeing a surge in Central American asylum seekers”, Los Angeles Times, Dec. 15, 2013, <http://articles.latimes.com/2013/dec/15/local/la-me-ff-asylum-20131215>

<sup>30</sup> Data provided by U.S. Citizenship and Immigration Services (USCIS) on December 9, 2013.

<sup>31</sup> INA Section 235(b)(1). (8 U.S.C. Section 1225(b)(1)).

to section 208, the officer shall order the alien removed from the United States without further hearing or review.”<sup>32</sup>

Additionally, just as the credible fear standard may have lost value as alien smugglers game the system and spread the stories that “work” in demonstrating credible fear, so the asylum statute itself, INA Section 208, while a useful addition to our immigration law when added in 1980, may have lost value as the stories have been spread that “work” in convincing an adjudicator to grant asylum.

How did the U.S. meet its obligations under the Convention and Protocol on the Status of Refugees before 1980? The answer is through withholding of deportation, now withholding of removal, INA Section 241(b)(3), 8 U.S.C. Section 1231(b)(3). That statute prevents the removal of an alien to any country if, “the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”

I would like to see Congress consider enhancing Section 241(b)(3) by adding to it some of the benefits of asylum, like adjustment of status to legal permanent resident, and following to join of spouses and minor children, under certain specified conditions, with the goal of replacing the asylum statute with a single enhanced withholding of removal statute for the protection of refugees. That statute has and will have a higher burden of proof than the asylum statute,<sup>33</sup> and should therefore be less susceptible to fraud.

#### IV. Conclusion: Why we should enforce immigration laws.

Ever since Congress began to limit the number of immigrants into the United States, the Supreme Court has repeatedly held that protecting American workers was one of Congress’s “great” or “primary” purposes. In 1929, the Court in *Karmuth v. United States* found that, “The various acts of Congress since 1916 evince a progressive policy of restricting immigration. The history of this legislation points clearly to the conclusion that one of its great purposes was to protect American labor against the influx of foreign labor.” A half century later, in *Sure-Tan v. United States*, the Court held that a “primary purpose in restricting immigration is preservation of jobs for American workers.”

<sup>32</sup> For comparison, INA Section 235(B)(1)(B)(iii)(I) as currently enacted says: “Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.”

<sup>33</sup> See *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

The federal courts have repeatedly and consistently held that the Executive Branch may not through administrative action circumvent the INA's qualitative or numerical limits on employment visas. In 2002, in *Hoffman Plastics v. N.L.R.B.*, the Supreme Court itself invalidated a federal agency's award of back pay to an illegal alien. The Court held that the 1986 IRCA amendments to the INA were a "comprehensive scheme that made combatting the employment of illegal aliens in the United States central to the policy of immigration law," that awarding back pay to an illegal alien was "contravening explicit congressional policies" to deny employment to illegal immigrants, and that such an award would "unduly trench upon explicit statutory prohibitions critical to federal immigration policy" and "would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations."<sup>34</sup>

Other federal circuit and district courts have invalidated executive branch agency decisions that enabled employers to avoid their collective bargaining contracts by hiring unauthorized alien workers. In May of 1985, the D.C. Circuit found in *International Union of Bricklayers and Allied Craftsmen v. Meese* that labor unions had standing to challenge the issuance of temporary worker visas to aliens who plainly did not qualify for those visa categories. The court reasoned that, in construing the immigration laws, the courts "must look to the congressional objective behind the Act," which was "concern for and a desire to protect the interests of the American workforce."<sup>35</sup> In 1985, citing the Supreme Court's decision in *Karnuth* and the D.C. Circuit's decision in *Bricklayers*, the U.S. District Court for the Northern District of California declared that an "INS Operations Instruction" that expanded the category of aliens eligible for temporary work visas beyond those specified in the statute was "unlawful" and that its enforcement was "permanently enjoined."<sup>36</sup>

Four years later, in *Longshoreman v. Meese*, the Ninth Circuit found that the INS's overbroad definition of "alien crewman" (who did not require labor certification in order to work near the docks) failed to promote "Congress' purpose of protecting American laborers from an influx of skilled and unskilled labor."<sup>37</sup>

In 2014, in *Mendoza v. Perez*, the D.C. Circuit ruled that the Department of Labor had used improper procedures to create special rules for issuing temporary visas in the goat and sheepherding industry. The court held that the "clear intent" of the temporary worker provisions enacted by Congress was "to protect American workers from the deleterious effects the

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<sup>35</sup> 761 F.2d 798, 804 (D.C. Cir. 1985).

<sup>36</sup> *Int'l Union of Bricklayers v. Meese*, 616 F.Supp. 1387 (1985).

<sup>37</sup> 891 F.2d 1374, 1384 (9th Cir. 1989).

employment of foreign labor might have on domestic wages and working conditions” and that an Executive Branch procedure that exposed American workers to substandard wages and working conditions “cannot be the result Congress intended.”<sup>38</sup>

In contrast, we should note the January 28 statement of President Obama’s nominee for Attorney General, Loretta Lynch, in response to a question from Senator Sessions:

SESSIONS:

“Let me ask you this: In the workplace of America today when we have a high number of unemployed, we’ve had declining wages for many years, we have the lowest (percentage?) of Americans working, who has more right to a job in this country? A lawful immigrant who’s here, a green-card holder or a citizen, or a person who entered the country unlawfully?”

LYNCH:

“Well, Senator, I believe that the right and the obligation to work is one that’s shared by everyone in this country regardless of how they came here. And certainly, if someone (is?) here, regardless of status, I would prefer that they be participating in the workplace than not participating in the workplace.”

The statement of Attorney General nominee Loretta Lynch, not only shows an unfamiliarity with a basic tenet of U.S. immigration law, but a fundamental lack of understanding of why we have immigration law. Which brings us back to the first basic question I raised today, which so many Americans cannot or will not answer, whether we should allow unlimited immigration, or alternatively enforce a limit on immigration.

Clarity on this question will make clear which immigration policies we should and should not be pursuing.

This concludes my testimony, and I again thank Chairman Goodlatte and all the members of the committee for the invitation and opportunity to testify today.

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<sup>38</sup> 754 F.3d 1002, 1017 (2014).

Mr. GOODLATTE. Thank you, Professor Ting.  
Ms. Vaughan, welcome.

**TESTIMONY OF JESSICA M. VAUGHAN, DIRECTOR OF  
POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES**

Ms. VAUGHAN. Good morning. And thank you for the opportunity to testify.

Currently, immigration enforcement is in a state of collapse. The vast majority of illegal aliens face no threat of deportation, regardless of when or how they arrived. New illegal arrivals continue from land, air, and sea, and the size of the illegal population stopped declining several years ago. We now know that millions of these illegal aliens and short-term visa-holders have been issued work permits outside the limits set by Congress.

The Obama administration's deliberate dismantling of enforcement has imposed enormous costs on American communities in the form of lost job opportunities, stagnant wages for native workers, higher tax bills to cover increasing outlays for social services and benefits, compromised national security, and needless public safety threats.

One of the most urgent tasks now before Congress is to restore integrity to our immigration laws by ending the massive catch-and-release scheme put in place by the Obama administration. This has to include the establishment of more effective deterrents to illegal settlement and tools for more efficient enforcement.

But it has now become clear that, even if those improvements are made, just as the Border Patrol's good work in apprehending illegal border-crossers is undercut by policies that result in their release, good work by ICE can be undercut if those same illegal aliens that they arrest in the interior are simply released and issued a work permit. That is a benefit. That is not prosecutorial discretion.

Statistics published by the DHS show clearly that, over the last several years, even as illegal border crossings have grown and the number of over-staying visitors is large, the number of deportations has plummeted and the number of illegal aliens allowed to stay and work in the United States has increased.

Apprehensions, which are generally considered an indicator of the number of people trying to enter illegally, have increased by 43 percent since 2011, and this is largely due to the increase in unaccompanied minors and family units who arrived last summer.

Those arrivals are continuing, by the way, and the numbers for unaccompanied juveniles are still about double the rate of 2 years ago. The apprehension statistics are concerning enough, but they don't tell the whole story. CBP has yet to disclose how all these cases were disposed of, specifically how many of those apprehended were released into the United States instead of removed and how many of them may have been issued a work permit.

From other government data, we do know that only a few hundred of the surge arrivals have been deported. While it is generally accepted that 40 percent of the illegally residing population is comprised of over-stayers, they are not a high priority for deportation.

In 2013, only 3 percent of ICE deportations were classified as overstays. The most concerning aspect of the thoroughly dismal en-

forcement numbers are the interior numbers, which are important because they have a direct effect on American communities. ICE deportations from the interior have dropped nearly 60 percent since 2009, and they are already down another 20 percent from last year.

Despite Administration claims of a focus on felons, criminal alien deportations are down, too. Criminal alien deportations are down 30 percent over last year at this time and 40 percent since 2012, and this is despite the fact that ICE is able to identify more criminal aliens than ever before as a result of the Secure Communities program.

The Administration's so-called prosecutorial discretion policies that are responsible for this lawlessness have public safety consequences. We learned earlier this year that ICE released more than 36,000 convicted criminal aliens from its custody, many with serious convictions, and now we know that a large number of them have been arrested again for subsequent offenses.

In 2014, ICE released another 30,000 convicted criminal aliens. It is bad enough that they are released, but ICE has cut back on the supervision as well. More and more are released on bond or recognizance, and there have been tragic consequences, as recently happened in Arizona, where an illegal alien who was a convicted felon on burglary charges was released by ICE without supervision and then, while waiting for his deportation hearing that still is unresolved 2 years later, murdered a 21-year-old convenience store clerk over two packs of cigarettes.

So it has been reported that this Committee is hard at work on legislation, and I look forward to seeing the results. But I again want to emphasize that, unless Congress acts immediately to rein in executive abuse of power, specifically the issuance of work permits and catch-and-release, all of the good work that comes about as a result of enforcing the laws is for naught.

Thank you.

[The prepared statement of Ms. Vaughan follows:]

Examining the Adequacy and Enforcement of Our Nation's Immigration Laws  
 U.S. House Judiciary Committee  
 February 3, 2015

Statement of Jessica M. Vaughan  
 Center for Immigration Studies

Thank you, Chairman Goodlatte and Ranking Member Conyers, for the opportunity to testify on the state of immigration law enforcement and how it might be improved. Currently immigration law enforcement is in a state of collapse. The vast majority of illegal aliens face no threat of deportation (regardless of when or how they arrived); new illegal arrivals continue from land, air and sea; and the size of the illegal population stopped declining several years ago. The Obama administration's deliberate dismantling of enforcement has imposed enormous costs on American communities in the form of lost job opportunities and stagnant wages for native workers, higher tax bills to cover increasing outlays for social services and benefits, compromised national security, and needless public safety threats. One of the most urgent tasks now before Congress is to restore integrity to our immigration laws by ending the massive catch and release scheme put in place by the Obama administration, implementing more effective deterrents to illegal settlement, and providing the tools for more efficient enforcement.

**Dramatic Decline in Enforcement**— Statistics published by the Department of Homeland Security (DHS) show clearly that over the last several years, even as illegal border crossings have grown and the number of overstaying visitors is large, the number of deportations has plummeted and the number of illegal aliens allowed to stay and work in the United States has increased. The drop in enforcement activity has become particularly acute since the President's executive action went into effect in late November, 2014.

- 1) *Border Crossing Attempts.* Since 2011, the number of illegal crossers apprehended by the Border Patrol has increased from by 43 percent, from 340,000 to 487,000.<sup>1</sup> It is generally believed that border apprehensions are an indicator of the number of attempted illegal border crossings, and that approximately half of those who attempt illegal entry are successful. U.S. Customs and Border Protection (CBP) states that "The uptick is largely due to the increase in unaccompanied children and family units who turned themselves in to Border Patrol agents in South Texas this summer." These cases totaled 137,000 in 2014 alone.

Although the apprehensions statistics are concerning enough, they do not tell the whole story. CBP has yet to disclose how all these cases were disposed of – that is, how many of those apprehended were removed or returned, and how many were released into the United States? Of those released, how many have concluded their immigration proceedings or absconded from those proceedings? For example, separate government statistics indicate that only a few hundred of the surge arrivals have been deported.<sup>2</sup>

- 2) *Overstays.* It is generally accepted that 40 percent of the illegally residing population is comprised of aliens who overstayed beyond the time or purpose authorized by their status.

<sup>1</sup> John F. Simanski, *Immigration Enforcement Actions: 2013*, Department of Homeland Security, [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf) and the "CBP Border Security Report, Fiscal Year 2014," published by U.S. Customs and Border Protection.

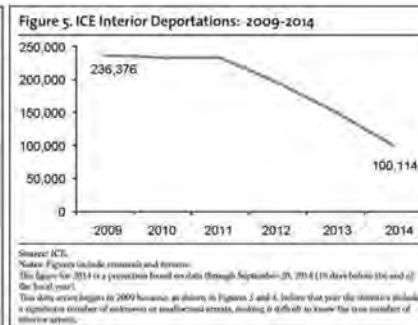
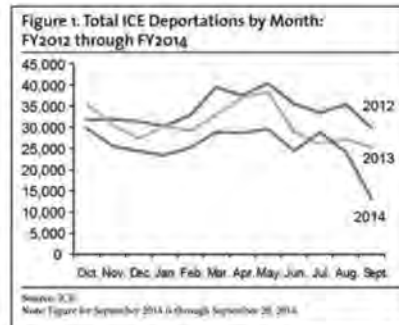
<sup>2</sup> Testimony of Jessica M. Vaughan, House Immigration subcommittee, December 10, 2014, <http://cis.org/node/5796>.



According to an unpublished report I have reviewed that was prepared by the DHS based on arrival and departure records, in 2012 approximately 263,000 aliens who were admitted on B-1 or B-2 visitor visas or under the Visa Waiver Program were identified as having remained in the country beyond their authorized duration of stay.<sup>3</sup>

Overstayers are not a high priority for deportation. In 2013, only three percent (11,596 out of 368,485) of the aliens deported by U.S. Immigration and Customs Enforcement (ICE) were overstays.<sup>4</sup>

- 3) *DHS Deportations.* Total deportations by all three DHS immigration enforcement agencies (Border Patrol, ICE and CBP-OFO) have declined by 37 percent since 2009, from 978,000 to 616,000. This has occurred despite an increasing number of apprehensions and continuing overstay arrivals.<sup>5</sup>
- 4) *Interior Deportations.* The number of ICE deportations from the interior has dropped 58 percent since the peak in 2009, from 236,000 to 102,000 in 2014.<sup>6</sup>



- 5) *Criminal Deportations.* The number of criminal aliens deported from the interior has declined by 43 percent since 2012, from 153,000 to 87,000, despite increases in the number of criminal aliens encountered and screened by officers.

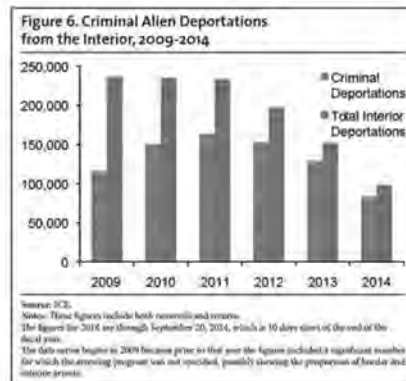
In 2014, ICE deported 69,000 fewer criminals from U.S. communities than it did in 2012. This has occurred despite the fact that ICE has the ability to identify more criminal aliens than ever before, thanks to the nationwide implementation of the Secure Communities program, which links the DHS databases to the national fingerprint matching system.

<sup>3</sup> Department of Homeland Security, "Nonimmigrant Overstays: Fiscal Year 2012," unpublished report reviewed by author.

<sup>4</sup> Source is a database of all ICE removals in 2013 obtained through a FOIA request, using the Entry Status classification, and includes all those labeled non-immigrants, Border Crossing Card holders, temporary workers, students, and other temporary categories of admission.

<sup>5</sup> DHS Office of Immigration Statistics yearbooks and annual reports, [http://www.dhs.gov/immigration-statistics?utm\\_source=frequent\\_page&utm\\_medium=web&utm\\_campaign=dhs\\_fr](http://www.dhs.gov/immigration-statistics?utm_source=frequent_page&utm_medium=web&utm_campaign=dhs_fr).

<sup>6</sup> Jessica M. Vaughan, "ICE Enforcement Collapses Further in 2014," Center for Immigration Studies, <http://cis.org/ICE-Enforcement-Collapses-Further-2014>.



- 6) *Criminal Releases.* In 2013, ICE released 36,007 convicted criminal aliens from its custody.<sup>7</sup> Of these, 193 had homicide convictions, 426 had sexual assault convictions, and 303 had kidnapping convictions. As of September, 2014, 5,700 of them (16 percent) had been arrested again for subsequent offenses, and 1,000 have been again convicted. ICE has taken only 1,600 back into custody.<sup>8</sup>

In 2014, ICE released another 30,000 convicted criminal aliens.<sup>9</sup>

As of September, 2014, there were 166,781 convicted criminal aliens who had received final orders of removal who had not departed but were still at large in the United States after release by ICE. In addition, there were 174,283 convicted criminals with pending deportation proceedings who were at large in the United States, released by ICE.<sup>10</sup>

Moreover, many convicted criminal aliens are allowed to walk out of ICE custody without being enrolled in a program of supervision. For example, ICE officer report that fewer aliens are being enrolled in the Intensive Supervision Appearance Program (ISAP), in which criminal aliens wear an electronic monitoring bracelet and check in frequently with monitors. I am told that while once this program was used frequently for lower level offenders, now it is rarely used, in favor of allowing the criminal alien to bond out without supervision. Members of this committee may wish to ask ICE to disclose how frequently this program is being used to supervise criminal aliens after release, which type of aliens are required to participate compared with prior years, and how many of these aliens have re-offended.

<sup>7</sup> Jessica M. Vaughan, "ICE Document Details 36,007 Criminal Alien Releases in 2013," Center for Immigration Studies: <http://cis.org/ICE-Documents-Details-36000-Criminal-Aliens-Release-in-2013>.

<sup>8</sup> DHS records provided to Sen. Chuck Grassley, released on January 30, 2015, <http://www.grassley.senate.gov/sites/default/files/news/upload/Immigration%20-%202001-30-15%20Breakdown%20of%20Subsequent%20Crimes%20List.pdf>.

<sup>9</sup> Testimony of DHS Secretary Jeh Johnson before the House Homeland Security Committee on December 2, 2014.

<sup>10</sup> ICE Weekly Departures and Detention Report, September 22, 2014: [http://cis.org/sites/cis.org/files/wrd-9-22-14\\_0.pdf](http://cis.org/sites/cis.org/files/wrd-9-22-14_0.pdf).

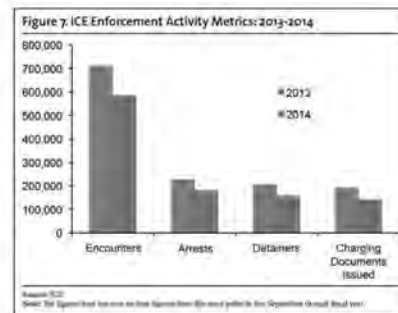
- 7) *Gang Arrests.* Although gang members are said to be a high priority for enforcement, in fact the number of gang member arrests by Homeland Security Investigations (HSI) agents has declined considerably. According to ICE records, the number of gang arrests declined from 5,080 arrests to 3,917 arrests from 2012 to 2013, a drop of 23 percent. The 2013 total is the lowest number of gang arrests since 2008.<sup>11</sup>

Further, ICE gang investigators have expressed concerns to me that gang members they arrest (usually after conviction on state charges) and turn over to Enforcement and Removal Operations (ERO) for detention and removal processing are sometimes de-prioritized and released – and even allowed to apply for work permits – which can unravel their prosecution and removal case, not to mention threaten public safety.

ICE officers also report that informants who once agreed to work for ICE to help dismantle major gang conspiracies in exchange for the ability to stay here now are telling ICE that they have no incentive to do so, because they qualify for the president's amnesty or know that they can take advantage of "prosecutorial discretion" policies. One gang investigator told me that some illegal alien gang members actually taunt ICE agents, knowing they are now virtually untouchable for deportation.

- 8) *ICE Metrics.* Interior enforcement activity as measured by all of the other key metrics tracked by ICE – encounters, arrests, detainers and charging documents issued – show declines in recent years. In 2014, deportation processing was initiated for approximately 143,000 aliens out of the 585,000 aliens encountered by ICE agents. Tens of thousands of those let go had been labeled a criminal threat.<sup>12</sup>

ICE officers have told me that since the administration's policies of prosecutorial discretion were expanded, they are processing a small fraction of the number of aliens that they used to process. One recently told me that his office used to process as many as 100 aliens per day but, since the president's executive actions went into effect, now they are processing closer to five aliens per day, with the same staff and budget – meaning the government is spending perhaps 20 times more in resources to deport each alien as was the case before. This reality suggests that the president's executive actions were less about prioritizing resources and more about protecting illegal aliens.



<sup>11</sup> Source is ICE records obtained by the author through a FOIA request.

<sup>12</sup> Ibid.

- 9) *The Non-Departed*. The number of aliens who have received a final order of removal, but who are still in the United States, has risen to nearly 900,000 as of September, 2014.<sup>13</sup> This number has grown by 40,000 in just two years. Part of the reason is that, even with the administration's mass dismissals of "non-priority" cases in lieu of immigration hearings, many of the aliens whose case are completed and who are ordered removed simply do not comply if they are not detained. They were never a priority for enforcement under this administration, but now the president's recent executive action specifically nullified all removal orders and enforcement actions involving "non-criminals" taken before January 1, 2014.
- 10) *Legal Action*. One factor behind the erosion of enforcement has been a steady stream of predatory law suits aimed at obstructing ICE from doing its job. The administration has contributed to the success of these lawsuits by declining to challenge them; offering prompt settlements; withholding assistance from local enforcement partners; and issuing controversial policy statements, sometimes without sound legal foundation, that can be used by plaintiffs hostile to the government's mission. If one were to think of immigration litigation against the government and its enforcement partners as a game, then the Obama administration is throwing it.

One prime example is ICE's abandonment of detainers as an enforcement tool – a perfectly legitimate, lawful tool that not only helps ICE do its important job, but protects the public and ICE officers as well. The administration is pretending that it abandoned this tool because of unfavorable court rulings, but in fact top agency leaders initiated the dubious policy statements that were simply accepted by the courts – leaving ICE's local law enforcement partners who had cooperated in good faith (and in compliance with actual federal regulations) twisting in the wind and subject to significant legal and financial liability.<sup>14</sup> The final nail in the coffin came in one of the November 2014 executive action memos declaring the "end of Secure Communities" by prohibiting ICE officers from issuing detainers in all but rare cases.

- 11) *Suspension of Laws That Deter Frivolous Asylum Claims and Smuggling of Family Members*. Obama administration policy changes have significantly increased incentives for aliens to claim fear of return to their homeland, political asylum, or pay human smugglers to bring family members into the United States illegally. Instead of keeping these new illegal arrivals in custody near the border and promptly repatriating the vast majority who are unqualified, the administration has changed policies to allow them to live and work in the United States indefinitely, under the guise of what it calls "deportation proceedings." Just this week, the Department of Justice announced that potentially tens of thousands of so-called "non-priority" deportation cases would be granted postponements to November, 2019 – giving these illegal aliens nearly five more years to live and work in this country.<sup>15</sup>
- 12) *Failure to Enforce REAL ID Provisions*. According to documents leaked by a Transportation Security Administration (TSA) whistleblower, illegal aliens who have been issued a state driving privilege card are permitted to use the card for federal purposes such as boarding an airplane. This policy makes life more convenient for illegal aliens and anyone fraudulently obtaining one of these cards, but is a flagrant disregard of the REAL ID Act, and poses a serious risk to security for the public.
- 13) *Dismantling Worksite Enforcement and Fraud Control*. Successful programs to address illegal employment (the main magnet for illegal immigration), identity theft, and benefits fraud have

<sup>13</sup> Ibid.

<sup>14</sup> See Dan Cadman and Mark H. Metcalf, *Disabling Detainers: How the Obama Administration Has Trashed a Key Immigration Enforcement Tool*, Center for Immigration Studies, January, 2015: <http://cis.org/disabling-detainers>.

<sup>15</sup> Devlin Barrett, "U.S. Delays Thousands of Immigration Hearings By Nearly Five Years," *Wall St. Journal*, January 28, 2015, [http://www.wsj.com/article\\_email/justice-department-delays-some-immigration-hearings-by-5-years-1422461407-1MyQjAxMTExNTIxOTUyODk5Wj](http://www.wsj.com/article_email/justice-department-delays-some-immigration-hearings-by-5-years-1422461407-1MyQjAxMTExNTIxOTUyODk5Wj).

been de-prioritized and starved of resources, nearly to extinction. This ensures that those who make it past the Border Patrol or through visa controls can work illegally, steal identities, use false documents, make false claims, avoid taxes, collect social services, and commit traffic offenses, all without much fear of punishment or removal. There is no more powerful incentive for people to keep trying to come here illegally than the realistic understanding that you will be allowed to stay and that the crimes and infractions committed in connection with your illegal status will be ignored. Moreover, without meaningful worksite enforcement, there is no incentive for employers to maintain a legal workforce, and they will continue to hire illegal workers.

#### **Fallout from Failing to Remove Deportable Aliens –**

- 1) *Issuance of Work Permits.* In addition to suspending enforcement against all but the most egregious violators, the Obama administration has egregiously abused its ability to issue work permits. According to USCIS records, from 2009 to 2014, the agency issued 5,461,568 *new* work permits to aliens – these are work permits issued *in addition to* legal immigrant and guest worker admissions. Of these 5.5 million new work permits, more than 3 million were issued to illegal aliens and aliens admitted on temporary business, tourist, visa waiver, or student visa statuses that do not allow employment.

Included among the 3 million new work permit holders are many aliens who do not qualify for any legal status and are in deportation proceedings. This includes: aliens who were arrested by ICE but released on an order of supervision; aliens seeking suspension of deportation or a stay of removal; criminal and non-criminal aliens ordered removed but whose countries will not take them back; asylum applicants; and illegal aliens granted parole into the country after arriving from Central America in the border surge of 2012-14.

- 2) *Public Safety Hazards.* There is a human cost to the policies that prevent ICE officers from arresting, detaining and removing illegal aliens who have committed crimes and engaged in reckless behavior such as drunk and/or reckless driving. Some recent examples:

**Katerin Gomez**, age 35 and mother of three children under age 13, was killed in Chelsea, Massachusetts on October 18, 2014 by a stray bullet through her window. The gun was fired during a street brawl allegedly by Hector Ramires, a 21-year old illegal alien member of the notoriously violent MS-13 gang, who was at large awaiting trial for two prior arrests for armed robbery (one with a gun, one with a knife), in which his illegal status and gang membership were noted. The police report also includes mention of prior criminal involvement in his home country of Honduras. ICE did not issue a detainer nor initiate deportation proceedings after either prior arrest, nor did it make an effort to charge Ramires as an illegal alien in possession of a firearm, which is a felony punishable by up to 10 years in prison.

**Grant Ronnebeck**, age 21, was killed while working at a convenience store in Mesa, Arizona on January 22, 2015. The accused is Apolinar Altamirano, one of the 36,007 convicted criminals freed by ICE in 2013. Altamirano had a gang and drug-related felony burglary conviction but was released by ICE without supervision to await an immigration court hearing, still pending after two years.

**Magno Sosa**, age 32, was shot twice in the head and killed on January 17, 2015 in Everett, Massachusetts. The accused is Rigoberto Escobar, an illegal alien who was out on pretrial probation for assault and battery with a dangerous weapon and assault and

battery on a police officer. Again, ICE had declined to issue a detainer or pursue immigration charges after the assault and battery arrests, most likely because of policies forbidding officers from initiating charges on illegal aliens who have not yet been convicted.

Numerous reports show that illegal aliens who are released back into the community instead of detained for prompt removal have a high likelihood of re-offending. Senior ICE officials have told me that about 50 percent of arrested aliens freed from ICE custody or freed by local law enforcement agencies in defiance of detainers have re-offended.

**Short Term Action Congress Can Take to Address Enforcement Needs**

- A. Restrict DHS appropriations so that no funds may be used to implement any executive actions or policy directives that prevent enforcement officers from performing their jobs and/or allow large classes of illegal aliens to avoid deportation and receive work permits.
- B. Prevent illegal employment with a phased-in universal E-Verify mandate and other measures to boost employer compliance and address identity theft.
- C. Authorize and direct the Border Patrol to keep illegal border crossers in custody in the immediate border region, and that the only form of due process available shall be Expedited Removal.
- D. Clarify the authority and imperative for the transfer of aliens from local to federal custody for enforcement. Impose sanctions on local governments that obstruct the process.
- E. Provide funding for an increase in detention capacity for immigration enforcement agencies, and require that DHS use it for that purpose.
- F. Clarify ICE's authority to use accelerated forms of due process, especially for recent border crossers and criminal aliens, in order to relieve pressure on the immigration courts.
- G. Restore funding and flexibility to programs such as 287(g) that enhance ICE deportation capacity and address local public safety needs.
- H. Revise the fee collection and expenditure process for USCIS to prevent the use of fees paid by legal immigrants and sponsors for any purpose not specifically authorized by Congress. This would prevent the executive branch from diverting immigrants' fees away from the legal processing system and anti-fraud efforts.
- I. Mandate the next step toward implementation of a biometric entry-exit tracking system, whether implementation of biometric exit and air and sea, or implementation of biometric entry data collection from all non-citizen land arrivals.
- J. Withhold approval for any relaxation in visa issuance procedures, interview requirements or visa waiver program expansion until anti-fraud programs are enhanced and the annual number of new overstays is reduced by 50 percent.
- K. Clarify the categories of aliens who may be issued work permits, and examine the merits of a bar on issuing work permits to aliens in deportation proceedings.

Jessica M. Vaughan  
 Director of Policy Studies  
 Center for Immigration Studies  
 Washington, DC

Mr. GOODLATTE. Thank you, Ms. Vaughan.

Dr. Rosenblum, am I pronouncing your name correctly?

Mr. ROSENBLUM. "Rosenblum." Thank you.

Mr. GOODLATTE. "Rosenblum." Okay. Well, I am only two for four here today, but we will work on that.

And welcome. Thank you.

**TESTIMONY OF MARC R. ROSENBLUM, DEPUTY DIRECTOR,  
U.S. IMMIGRATION POLICY PROGRAM, MIGRATION POLICY  
INSTITUTE**

Mr. ROSENBLUM. Thank you.

Chairman Goodlatte, Ranking Member Conyers, Members of the Committee, thank you for the opportunity to testify today.

In any immigration system, illegal immigration depends on three factors: the economic, social, and demographic drivers of my migration flows; the laws that define who may enter legally; and immigration control measures to enforce these rules. When the drivers of migration exceed the legal limits, the result is illegal immigration, unless adequate enforcement measures are in place to prevent it.

In the U.S. case, large-scale illegal immigration began in the late 1960's after two legislative developments: Congress eliminated the U.S.-Mexico Bracero Program, which had admitted 450,000 guest workers per year; and it passed the 1965 Immigration and Nationality Act, which imposed the first numerical limits on permanent migration from Mexico and Latin America.

These changes occurred as America's transition to a post-industrial economy boosted demand for low-skilled, low-wage workers and as demographic changes resulted in a growing prime-age workforce in Mexico and an aging workforce in the U.S.

Congress held hearings on illegal immigration starting in 1970, but didn't pass legislation until 1986, and serious enforcement only began in the mid-1990's. With strong migration drivers, limited legal visas, an inadequate enforcement system, the unauthorized population increased from fewer than 2 million in 1970 to 12.4 million at its peak in 2007.

The story is different in the post-9/11 period and particularly in the last decade. Following passage of the Secure Fence Act, DHS has installed over 650 miles of border fencing covering every part of the border the Department has identified as appropriate.

The Border Patrol has virtually eliminated the use of voluntary return for border-crossers. The proportion of border apprehension subject to voluntary return fell from about 95 percent during the 1990's, to 82 percent in 2005, to less than 10 percent today.

Following implementation of the Streamline program and other efforts to expand border prosecutions, almost one in four people apprehended at the border now face criminal charges, up from just 3 percent in 2005. Perhaps the biggest change since 2005 is with respect to interior enforcement.

Removals from within the United States increased from fewer than 50,000 per year to 188,000. Criminal removals have more than doubled, from 91,000 in 2003 and just 30,000 in 1995, to 207,000 in 2012. And overall removals have averaged 406,000 per year since 2009, the 6 biggest years in U.S. history.

So one point I want to emphasize is that the changes since 2005 have produced results. As I describe in my written statement and in two recent MPI reports on deportation policy, which I ask also be entered into the record, new resources and strategies have had a dramatic impact.

When you look at what we know about the proportion of border-crossers being apprehended, add smuggling fees, add recidivism and deterrence, it is clear that the costs of illegal immigration have increased and that tough enforcement influences people's migration decisions.

So what we have seen is that apprehensions of Mexicans at the southwest border fell from 1.6 million in 2000 to 226,000 in 2014. That is an 86 percent reduction in 15 years and the lowest level we have seen since 1969.

Most importantly, the total unauthorized population has fallen by 1 million people since 2007, the first time we have ever seen a drop in this number other than through legalization. And the latest numbers I have seen say that it is still falling, that it is down to 11 million in 2013.

The other point I want to emphasize that these gains have not come cheaply. The United States has spent \$208 billion on immigration enforcement since 2001. We spend more money on immigration enforcement than on all other Federal criminal law enforcement agencies combined. Immigration now accounts for 47 percent of all cases in Federal, district, and magistrate courts, crowding out other issues.

Hundreds of cities and counties, along with three States and the District of Columbia, have passed legislation limiting how local law enforcement can cooperate with DHS because they believe aggressive enforcement endangers their communities.

And more than 3.6 million deportations since 2003, including more than 1.3 million of people living inside the United States, have had a huge impact on U.S. families and communities. A growing number of Americans rejects this approach.

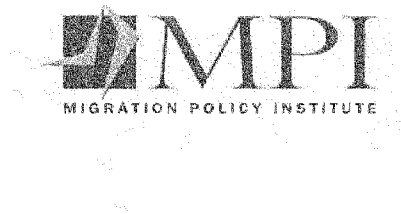
We know what it would take to design a more efficient and sustainable enforcement system. Illegal immigration is a three-dimensional issue based on the underlying demand for migration flows, the supply of visas, and enforcement. Yet, for 40 years, U.S. policy has focused almost entirely on enforcement. By failing to address the structural roots of immigration flows or the policy roots of illegality, we have battled illegal immigration with one hand tied behind our back.

I urge this Committee to support a more balanced set of policies that also address these supply-and-demand issues that are the root causes of illegal immigration. Balanced policies in the long run will be more efficient, more effective, and more humane.

Thank you very much.

[The prepared statement of Mr. Rosenblum follows:]





Testimony of  
Marc R. Rosenblum  
Deputy Director, U.S. Immigration Program  
Migration Policy Institute

*Examining the Adequacy and Enforcement of Our Nation's Immigration Laws*

Before

House Judiciary Committee

February 3, 2015

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

Good morning. My name is Marc Rosenblum, and I am deputy director of the U.S. immigration program at the Migration Policy Institute, an independent, non-partisan think tank in Washington, DC that analyzes U.S. and international migration trends and policies. Thank you for the opportunity to testify today.

In any immigration system, illegal immigration depends on three factors: 1) the economic, social and demographic drivers of migration; 2) laws that define who may enter legally; and 3) immigration control measures to enforce these rules. When the drivers of migration produce a larger flow than the law permits, the result is illegal immigration, unless adequate enforcement measures are in place to prevent it.

In the U.S. case, the drivers of migration have exceeded the legal limits for most of the last 50 years and the United States has lacked adequate enforcement measures to prevent illegal immigration during much of this period. As a result, the population of unauthorized immigrants increased from fewer than 2 million people in 1970 to a high of 12.2 million in 2007. (About 80 percent of U.S. unauthorized immigrants are from Mexico and Central America, who are the focus of my statement today.) The unauthorized population stopped increasing in 2007, and has fallen by 1 million people since then. As far as we know, this is the first time in U.S. history that the unauthorized population has fallen without a legalization program.

What does this mean regarding the adequacy of immigration enforcement? To answer this question, I would like to outline the causes of illegal migration to the United States, provide a brief history of U.S. policy responses and describe the current immigration enforcement system. In short, the United States was slow to mount an effective response to rising unauthorized inflows, but changes since 2005 have produced substantial gains in enforcement capacity both at the Southwest border and within the United States. These gains have required high levels of spending that will increasingly yield marginal returns on investment, and that have already proven difficult to sustain. Thus, I conclude by recommending that Congress adopt a broader approach to controlling illegal immigration: combining the most promising enforcement strategies with additional policies designed to address the root causes of unauthorized flows.

### **Understanding the Causes of Illegal Migration**

The United States experienced very little illegal immigration prior to 1965, and most unauthorized flows were seasonal, with workers typically returning home annually. Two changes initiated an era of large-scale illegal immigration. First, in 1964 and 1965, Congress eliminated the U.S.-Mexico Bracero program (through which several million Mexicans came to work temporarily in U.S. agriculture between 1942-1964) and passed the 1965 amendments to the Immigration and Nationality Act (INA). These changes ended guestworker migration from Mexico, which had stood at 450,000 people per year during

the 1950s, and imposed strict numerical limits on permanent migration from Mexico and the rest of Latin America, which had previously been uncapped.

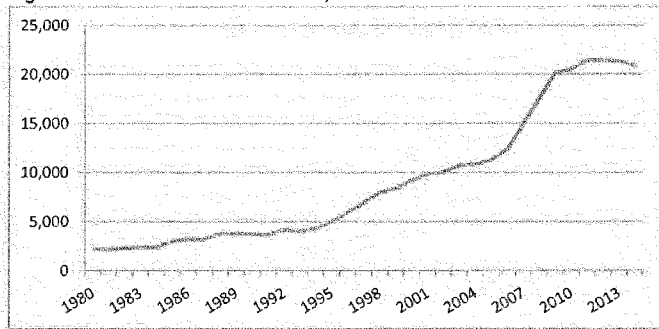
The second change, which coincidentally also started in the 1960s, was a long and substantial increase in the drivers of low-skilled migration from Mexico and Central America. These drivers included structural changes in the U.S. and global economy that resulted in a growing demand for low-skilled workers in more diverse industries. Essentially, as the United States shifted from a heavily unionized industrial economy to a post-industrial service economy, U.S. employers sought more low-skilled, low-wage, non-union workers; and U.S. workers became better educated and less willing to take lower-skilled jobs at prevailing wages.

The drivers also included demographic changes: a baby boom in Mexico that ushered in a rapidly growing young, prime migration-age population coming after an earlier baby boom in the United States that has resulted in an aging population here. A third driver of regional migration is a strong culture of migration, which emerged over the course of two or three generations in hundreds of Mexican villages whose working populations migrated to the United States during earlier U.S.-sponsored guestworker programs.

Over time, family reunification has also become an important “pull” factor. Mexican and Central American immigrants in the United States have limited ability to sponsor family members abroad for immigrant visas; many therefore travel illegally to join family members who settled earlier in the United States. A final important “push” factor in recent years has been political instability and poor citizen security, especially in parts of Central America.

### **U.S. Immigration Enforcement: A Brief History**

The convergence of strong economic, demographic and social drivers of migration along with a limited number of legal immigration channels immediately produced increasing unauthorized flows, but lawmakers struggled to craft a policy response. After holding a series of hearings on immigration control between 1970 and 1972, Congress took 15 years to pass the 1986 Immigration Reform and Control Act (IRCA). IRCA legalized most existing unauthorized immigrants, made it illegal for employers to knowingly hire unauthorized workers—in an effort to eliminate the “jobs magnet” attracting illegal flows—and authorized a 50 percent increase in Border Patrol staffing. IRCA marked the beginning of sustained investments in the agency that continue today (see Figure 1).

**Figure 1: U.S. Border Patrol Personnel, 1980-2014**

Note: Nationwide totals as of September 20, 2014.

Source: U.S. Customs and Border Protection, "U.S. Border Patrol Fiscal Year Staffing Statistics," accessed January 30, 2015, [www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf).

Nonetheless, IRCA's employer sanctions provisions were poorly designed, leaving many loopholes for employers to hire unauthorized workers, and thus have not effectively deterred unauthorized employment.<sup>1</sup> Increased border enforcement had the unintended effect of discouraging circularity, instead causing more unauthorized immigrants to settle permanently in the United States.<sup>2</sup> And IRCA's amnesty provisions excluded recent arrivals and the family members of those legalizing. As a result, even after IRCA legalized about 2.7 million unauthorized immigrants, a sizeable residual population remained that was ineligible for legalization, and the unauthorized population grew from 3.2 million people in 1986 to 5.8 million a decade later.<sup>3</sup>

A second major development in U.S. immigration enforcement occurred in 1996, with passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). A primary goal of IIRIRA was to strengthen and streamline the deportation process. Prior to

<sup>1</sup> According to the Congressional Research Service (CRS), a total of 2,176 employers were fined for violating employment eligibility verification requirements under the Immigration Reform and Control Act (IRCA) between 1999 and 2012, including 495 in 2012; see Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, CRS report R40002 (Washington, DC: CRS, 2013), 5, <http://fas.org/sgp/crs/homesecc/R40002.pdf>. By comparison, the Pew Research Center estimates that there were about 8.1 million unauthorized workers in 2012; see Jens Manuel Krogstad and Jeffrey S. Passel, "5 Facts about Illegal Immigration in the U.S.," (Pew Research Center FactTank blog, November 18, 2014), [www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s/](http://www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s/). For a fuller discussion of IRCA's design flaws, see Marc R. Rosenblum, *Immigration Enforcement at the Worksite: Making it Work* (Washington, DC: Migration Policy Institute, 2005), [www.migrationpolicy.org/research/immigration-enforcement-worksite-making-it-work](http://www.migrationpolicy.org/research/immigration-enforcement-worksite-making-it-work).

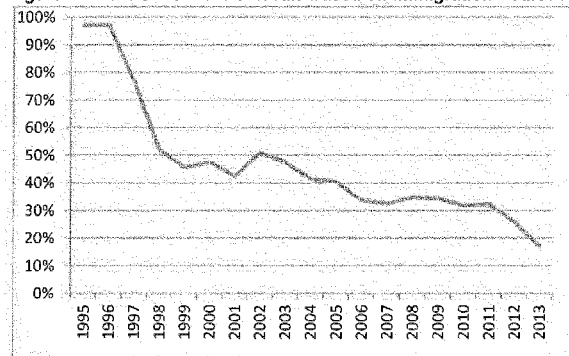
<sup>2</sup> See Wayne A. Cornelius and Idean Salehyan, "Does Border Enforcement Deter Unauthorized Immigration? The Case of Mexican Migration to the United States of America," *Regulation and Governance* 1 (2007); Douglas S. Massey, Jorge Durand and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002).

<sup>3</sup> Ruth Ellen Wasem, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, CRS Report RL33874 (Washington, DC: CRS, 2012), 3, <http://fpc.state.gov/documents/organization/202461.pdf>.

IIRIRA, almost all deportations were informal “returns,” which involved bussing immigrants to the nearest port of entry (or flying them home) with no additional legal consequences. IIRIRA made it much easier for enforcement agents to “remove” unauthorized immigrants, a formal legal process that makes deportees legally inadmissible for at least five years, and subjects them to possible criminal penalties upon a subsequent unlawful entry. IIRIRA also mandated deportation for an expanded list of violations, thereby limiting discretion of immigration judges to provide relief from deportation.<sup>4</sup>

Thus, IIRIRA transformed immigration enforcement from a system relying on immigration courts to one based increasingly on administrative removals, implemented by the Department of Homeland Security (DHS) with limited opportunity for judicial review. As Figure 2 illustrates, 97 percent of all removals in the years before IIRIRA’s passage involved hearings in immigration court, versus just 17 percent of all removals in 2013.<sup>5</sup>

**Figure 2: Share of Formal Removals Based on Immigration Court Proceedings, FY 1995-2013**



*Note:* Removals resulting from court proceedings are defined as removals *other than* expedited removals, reinstatements of removal and stipulated removals. Figure excludes data on stipulated removals for fiscal year (FY) 2012-2013; as a result the actual percentages of removals involving court proceedings were somewhat lower for these years.

*Source:* Adapted from Rosenblum and Meissner, *Deportation Dilemma*.

IIRIRA appears to have had little impact on illegal immigration, however. Apprehensions at the Southwest border, considered a proxy measure of unauthorized border crossers, averaged 1.2 million annually in the five years prior to IIRIRA’s passage, versus 1.5 million in the five years afterwards.<sup>6</sup> Moreover, just as border enforcement had the unintended consequence of discouraging circularity, the so-called three- and 10-year bars on re-entry

<sup>4</sup> For a fuller discussion, see Marc R. Rosenblum and Doris Meissner with Claire Bergeron and Faye Hipsman, *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, 2014), [www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement](http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement).

<sup>5</sup> *Ibid.*

<sup>6</sup> Migration Policy Institute (MPI) calculations from U.S. Border Patrol, “Total Illegal Alien Apprehensions by Fiscal Year,” accessed January 30, 2015, [www.cbp.gov/newsroom/media-resources/stats](http://www.cbp.gov/newsroom/media-resources/stats).

created by IIRIRA have prevented certain unauthorized immigrants who may be eligible for a green card from leaving the country to claim their visa, thereby adding further to the growth of the unauthorized population within the United States.<sup>7</sup> Overall, the estimated unauthorized population continued to increase, reaching 8.5 million in 2000 and peaking at 12.2 million in 2007.<sup>8</sup>

### U.S. Immigration Enforcement: The Current System

Congress authorized substantial additional investments in immigration enforcement after the 9/11 attacks, and particularly since 2006. These investments, along with important policy decisions by the Bush and Obama administrations, have transformed the U.S. immigration enforcement system and mark the beginning of a new era in immigration enforcement. New enforcement programs and strategies beginning in 2005-2006, along with economic and demographic changes in the United States and Mexico, have been associated with a sustained downturn in illegal immigration, and today's immigration enforcement system appears far more effective than the pre-2005 system.

One change since 2005 was that, with passage of the Secure Fence Act in 2006, Congress and DHS completed the installation of fencing and vehicle barriers along strategically important sectors of the border. As Figure 3 illustrates, while the U.S. Immigration and Naturalization Service (INS) and its successor agencies within DHS installed just 120 miles of new fencing between 1996 and 2006, DHS added another 500 miles of fencing between 2006 and 2010. As of 2013, DHS had installed fencing and barriers along 99.7 percent of the border miles it had identified as appropriate to do so.<sup>9</sup> Along with these barriers, DHS also invested in new roads, lighting, sensors, manned and unmanned aircraft, marine vessels, video and radar systems, night vision equipment and thermal imaging technology.<sup>10</sup>

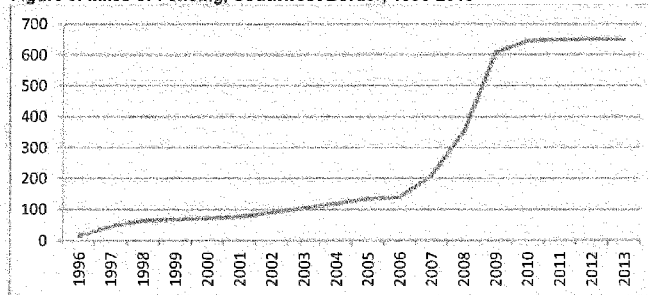
<sup>7</sup> IIRIRA Section 301 mandated that unauthorized immigrants who leave the country wait outside the United States for three or 10 years—depending on the length of their illegal stay—before re-entering the country legally. MPI estimates that these three- and 10-year bars have stranded more than 1 million unauthorized immigrants inside the United States—immigrants who otherwise would have been eligible for permanent residency or temporary work visas based on sponsorship by an employer or by a family member who is a U.S. citizen or legal permanent resident (LPR). See MPI Data Hub, "Profile of the Unauthorized Population: United States," accessed January 30, 2015, [www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US](http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US).

<sup>8</sup> Wasem, *Unauthorized Aliens Residing in the United States*, 3; Pew Research Center, *Unauthorized Immigrant Population Trends of States, Birth Countries and Regions* (Washington, DC: Pew Research Center, 2014), [www.pewhispanic.org/2014/12/11/unauthorized-trends/](http://www.pewhispanic.org/2014/12/11/unauthorized-trends/).

<sup>9</sup> Testimony of Homeland Security Secretary Janet Napolitano before the Senate Judiciary Committee, *The Border Security, Economic Opportunity, and Immigration Modernization Act*, S. 744, 113th Cong., 1st sess., April 23, 2013, [www.dhs.gov/news/2013/04/23/written-testimony-dhs-secretary-janet-napolitano-senate-committee-judiciary-hearing](http://www.dhs.gov/news/2013/04/23/written-testimony-dhs-secretary-janet-napolitano-senate-committee-judiciary-hearing).

<sup>10</sup> Homeland Security Secretary Jeh Johnson, "Border Security in the 21<sup>st</sup> Century," (remarks at Center for Strategic and International Studies, Washington, DC, October 9, 2014), [www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century](http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century). Also see Lisa Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*, CRS Report R42138 (Washington, DC: CRS, 2014), 15-19, <http://fas.org/sgp/crs/homsec/R42138.pdf>.

Figure 3: Miles of Fencing, Southwest Border, 1996-2013



Source: Adapted from Seghetti, *Border Security: Immigration Enforcement Between Ports of Entry*.

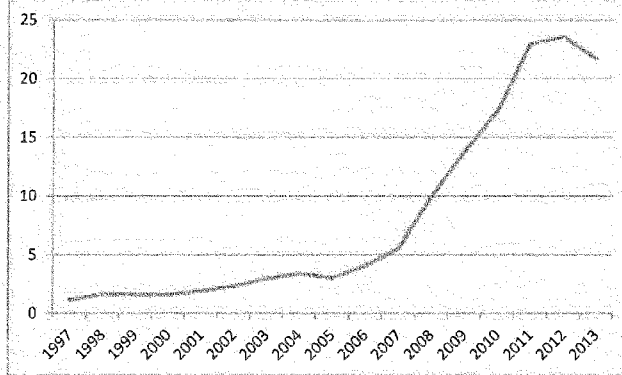
A second change concerns U.S. Customs and Border Protection (CBP) enforcement practices at the border. With increased resources and falling illegal entries, CBP has the ability to focus more attention on individual cases. Thus, beginning in 2005, the agency adopted a number of policies aimed at enhancing penalties for border crossers, rather than simply deporting them via “voluntary return” through the nearest port of entry. As part of this shift, DHS began to consistently detain people apprehended at the border either until they could be deported or until an immigration judge found them eligible to remain in the United States.<sup>11</sup>

Also in 2005, DHS and the Department of Justice (DOJ) initiated Streamline, a fast-track prosecution program designed to charge large numbers of unauthorized immigrants with the federal criminal offenses of illegal entry and illegal re-entry. During Streamline hearings, which now operate in most of the nine Southwest border sectors, defendants appear before U.S. magistrate judges where they are charged in groups, rather than individually; they typically plead guilty to misdemeanor illegal entry charges, though they are often originally charged with felony illegal re-entry. Illegal entry charges carry prison sentences ranging up to six months. As a result of Streamline and increased prosecutions in standard court settings for smuggling and other charges, the proportion of immigrants apprehended at the Southwest border who were subject to immigration-related criminal charges increased from 3 percent in 2005 (and 1 percent in 1997) to 24 percent in 2012, before declining somewhat to 22 percent in 2013 (see Figure 4).<sup>12</sup>

<sup>11</sup> U.S. Customs and Border Protection (CBP), “DHS Secretary Announces End to ‘Catch and Release’ on Southern Border,” (press release, August 23, 2006). Previously, many border crossers with pending removal hearings were paroled or released into the United States with an order to appear in court at a future date.

<sup>12</sup> Rosenblum and Meissner, *The Deportation Dilemma*, 20-22.

**Figure 4: Criminal Immigration Cases in Border Districts as Share of Border Apprehensions, FY 1997-2013**



Source: Rosenblum and Meissner, *Deportation Dilemma*.

DHS's approach to border enforcement has also been transformed by its use of the Automated Biometric Identification System (IDENT) biometric database. As of September 2013, IDENT included more than 160 million unique records, making it the largest biometric database in the world.<sup>13</sup> Since 2000, the Border Patrol has collected fingerprint records and digital photographs from almost 100 percent of illegal border crossers, and it uses the records to identify and track repeat crossers and convicted criminals.

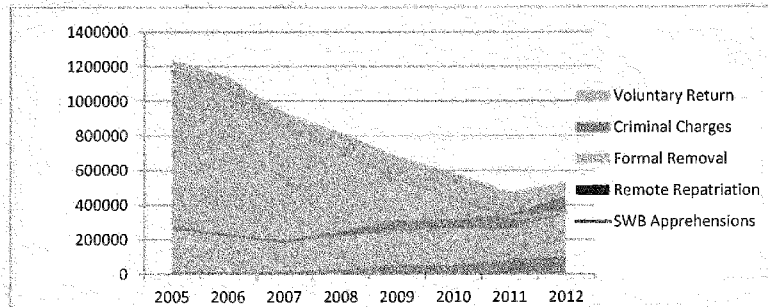
Under a program now known as the Consequence Delivery System (CDS), the Border Patrol prioritizes criminals and repeat crossers for enhanced immigration penalties, including formal removal instead of informal return, immigration-related criminal charges through Streamline and standard forms of prosecution, and "remote repatriation," in which migrants are deported hundreds of miles away from their point of apprehension in an effort to discourage re-entry.<sup>14</sup> As Figure 5 illustrates, the combination of increased resources and falling border apprehensions has allowed the Border Patrol to reduce the share of border crossers subject to voluntary return, and to substantially increase the use of enhanced penalties.

<sup>13</sup> Seghetti, *Border Security: Immigration Inspections at Ports of Entry*, 23.

<sup>14</sup> See *Ibid.* for a fuller discussion, as well as Rosenblum et al., *The Deportation Dilemma*.



**Figure 5: CBP Consequence Delivery System: Southwest Border Enforcement Outcomes, FY 2005-12**



Source: Seghetti, *Immigration Enforcement Between Ports of Entry*.

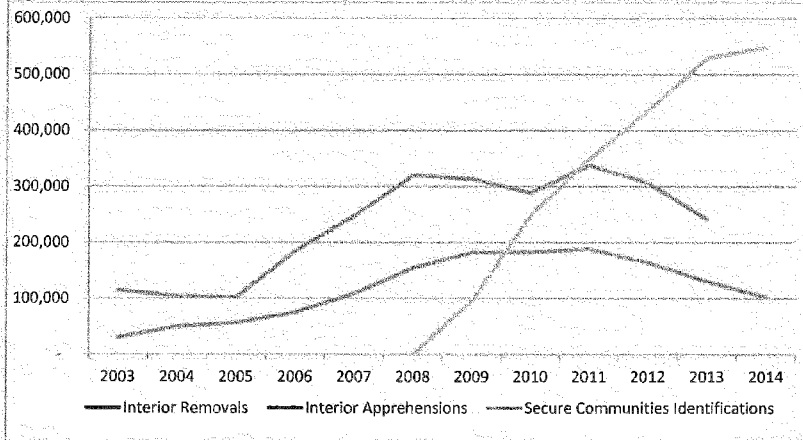
In addition to these changes at the border, the other significant development in the post-9/11 period—and mostly after 2005—is that Congress and DHS have initiated important programs aimed at identifying, detaining and deporting unauthorized immigrants located in the U.S. interior. The National Fugitive Operations Program (NFOP), created in 2003, involves teams of U.S. Immigration and Customs Enforcement (ICE) officers that apprehend deportable non-citizens—including fugitives (i.e., people who fail to appear at immigration hearings or fail to comply with immigration orders), people with multiple immigration violations and convicted criminals—in their homes, worksites and in public places. The Criminal Alien Program (CAP), which absorbed two earlier INS programs in 2007, focuses on initiating removal proceedings against non-citizens in jails and prisons after they have completed their sentences. And the 287(g) program, which geared into full action in 2006, trains state and local law enforcement officers to identify and interview deportable aliens in their communities and as they are being booked into local jails, before transferring them into ICE custody.<sup>15</sup>

Interior enforcement has also been greatly transformed by IDENT, which has been linked to the FBI's main biometric criminal database, the Integrated Automated Fingerprint Identification System (IAFIS). Since 2008, the Secure Communities program has used IDENT-IAFIS data sharing to automatically check the immigration records of persons booked into a jail or prison and undergoing a criminal background check. When Secure Communities flags a potentially deportable immigrant, ICE may issue an immigration detainer—a document requesting that the arresting agency hold a person for up to 48 hours after completing criminal justice processing and then transfer them into ICE custody.

<sup>15</sup> Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, CRS Report R42057 (Washington, DC: CRS, 2012), <http://fas.org/ssp/crs/homesec/R42057.pdf>; Randy Capps, Marc R. Rosenblum, Cristina Rodriguez and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* (Washington, DC: MPI, 2011), <http://migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

As Figure 6 illustrates, NFOP, CAP, 287(g) and Secure Communities have substantially increased the number of non-citizens identified, apprehended and deported from the U.S. interior. Prior to 2005, DHS typically apprehended about 100,000 migrants per year in the interior, and removed less than half that number. By 2008, apprehensions climbed to over 300,000 per year, and removals to over 150,000. And with Secure Communities now operational in every law enforcement jurisdiction in the country, DHS identified more than half a million non-citizens through its relationships with local jails and prisons in 2013, though not all Secure Communities identifications are removable.

**Figure 6: Interior Enforcement Outcomes, FY 2003-2013**



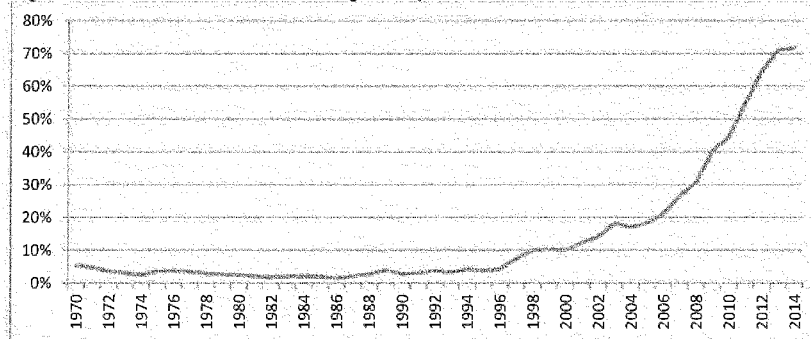
*Note:* Secure Communities identifications for 2014 are a Migration Policy Institute (MPI) estimate of the 12-month total based on reported data for the first 11 months of the fiscal year.

*Sources:* MPI calculations from DHS, *Yearbook of Immigration Statistics*, various years; ICE Enforcement Integrated Database (EID) for FY 2003-13; DHS Office of Immigration Statistics (OIS), *Immigration Enforcement Actions*, 2010-13; U.S. Immigration and Customs Enforcement, *Secure Communities: IDENT/IAFIS Interoperability Report*, August 2014.

These policy changes at the border and in the interior since 2005 represent a maturation of the legislative changes Congress initiated with the 1996 IIRIRA. As Figure 7 illustrates, virtually all deportations prior to IIRIRA consisted of informal returns, and formal removals accounted for 10-18 percent of removals in the decade after IIRIRA's passage. More recently, removals have accounted for a much larger share of deportations, growing from 21 percent in 2006 to 72 percent of deportations in 2014.<sup>16</sup>

<sup>16</sup> Also see Rosenblum and Meissner, *Deportation Dilemma*.

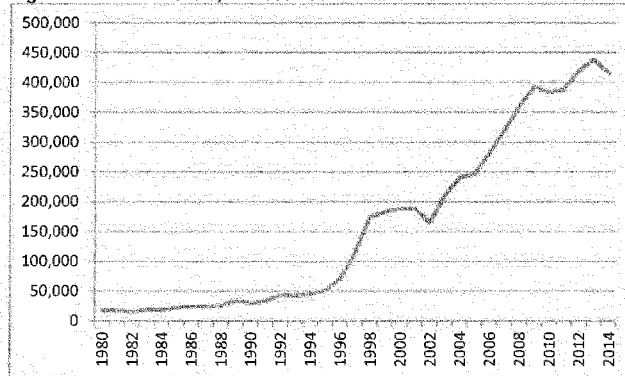
Figure 7: Formal Removals as a Percentage of Deportations, FY 1970-2014



Source: Adapted from Rosenblum and Meissner, *Deportation Dilemma*.

How has immigration enforcement evolved under the Obama administration? As Figures 2 through 7 indicate, the Obama administration has maintained key programs initiated under President Bush, including the high level of criminal prosecutions at the border, the shift from voluntary returns to formal removals and the expansion of interior enforcement. Interior removals reached an all-time high of 188,000 in 2011; and even after falling back to 102,000 in 2014 they remain twice as high as pre-2006 levels. Overall, as Figure 8 indicates, the Obama administration has completed more removals than any of its predecessors.

Figure 8: Total Removals, FY 1980-2014

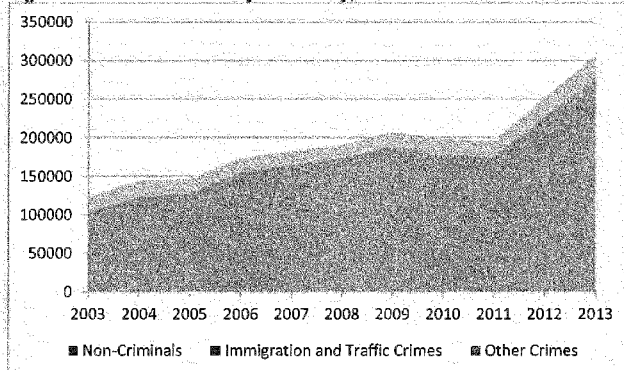


Sources: DHS, *Yearbook of Immigration Statistics* FY 2003, <http://www.dhs.gov/yearbook-immigration-statistics#>; DHS, "End of Year Statistics FY 2014," <http://www.dhs.gov/news/2014/12/19/dhs-releases-end-year-statistics>.

The most significant change since 2009 is that the Obama administration has taken a series of steps to focus its enforcement efforts on certain high-priority cases. Building on long-standing congressional priorities and policies undertaken by previous administrations, the Obama administration published a pair of policy guidance memoranda in 2010 and 2011 formally identifying as enforcement priorities noncitizens convicted of a crime, people who obstruct immigration controls by disobeying immigration court orders or failing to show up for deportation and recent illegal entrants.<sup>17</sup> According to MPI's analysis of ICE enforcement data, 96 percent of all DHS removals since 2009 fall within these three categories.<sup>18</sup>

As Figures 9 and 10 illustrate, the Obama administration's focus on its stated enforcement priorities mostly resulted in a continuation of Bush administration trends with respect to border enforcement, but substantial changes with respect to interior enforcement. At the border, the great majority (77 percent) of removals are of non-criminals or people convicted only of immigration or traffic crimes (11 percent); these percentages are almost unchanged between 2003-2008 and 2009-2013.

**Figure 9: Border Removals by Criminality, FY 2003-2013**



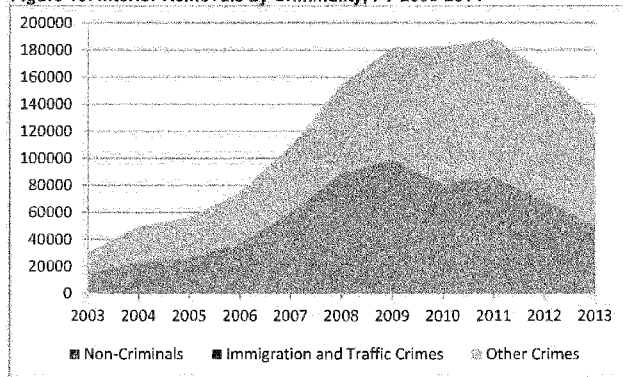
Source: Adapted from Marc R. Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Washington, DC: MPI, 2014), <http://migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>.

<sup>17</sup> Memorandum from U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton to all ICE employees, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (memorandum, June 30, 2010), [www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf](http://www.ice.dhs.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf); Memorandum from ICE Director John Morton to all ICE Field Office Directors, Special Agents in Charge, and Chief Counsel, "Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (memorandum, June 17, 2011), [www.ice.gov/doclib/foia/prosecutorial-discretion/pd-consist-w-civil-imm-enforce-ice-priorities.pdf](http://www.ice.gov/doclib/foia/prosecutorial-discretion/pd-consist-w-civil-imm-enforce-ice-priorities.pdf).

<sup>18</sup> Marc R. Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Washington, DC: MPI, 2014), <http://migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>.

In the interior, half of all deportations under the Bush administration were of non-criminals or people convicted only of immigration or traffic crimes, including 57 percent of interior removals in 2008. Following the Obama administration's effort to shift the focus of interior enforcement to serious criminals, the share of non-criminals among interior removals fell to 13 percent in 2013, while the proportion convicted of serious crimes (i.e., crimes other than immigration and traffic offenses) grew to 62 percent. Overall, criminal removals more than doubled, from 84,000 in 2003 to an all-time high of 207,000 in 2012.

**Figure 10: Interior Removals by Criminality, FY 2003-2014**



Source: Adapted from Rosenblum and McCabe, *Deportation and Discretion*.

## Evaluation of the Current System

The subject of this hearing is “the adequacy and enforcement” of immigration laws. Evaluating adequacy and enforcement raises two overarching questions: How effective are current enforcement policies at preventing illegal immigration? And what are the costs of current enforcement policies?

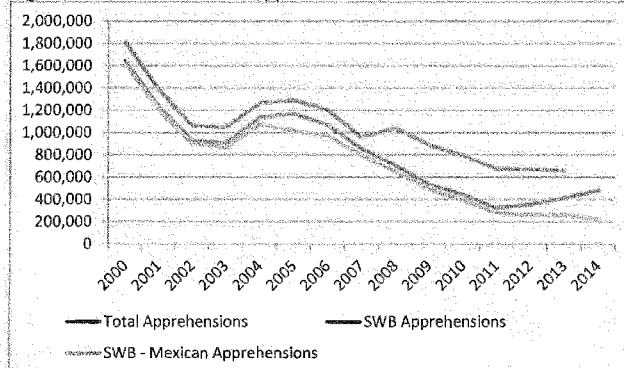
### The Effectiveness of Immigration Enforcement

#### *Border Patrol Apprehensions*

Traditionally, DHS and its predecessor the INS have relied on apprehensions of unauthorized immigrants at the Southwest border as their primary measure of enforcement effectiveness: fewer apprehensions imply fewer crossing attempts, and thus less illegal immigration. As Figure 11 indicates, Southwest border apprehensions fell to 328,000 in 2011, the lowest level since 1972. While apprehensions rebounded somewhat between 2012 and 2014, the 2014 total of 487,000 apprehensions was still less than one-third the 1.68 million apprehensions recorded in the peak year of 2000. Moreover, apprehensions of Mexicans have continued to fall since 2011, reaching a low point of

227,000 in 2014. This number is significant because Mexicans have traditionally accounted for about 97 percent of unauthorized immigrant apprehensions.<sup>19</sup>

**Figure 11: Southwest Border Apprehensions, Overall and From Mexico, FY 2000-2014**



Source: DHS, *Statistical Yearbook* FY 2013, and DHS, "End of Year Statistics FY 2014."

With apprehensions of Mexicans still at historic lows, the growth in apprehensions since 2011 consists almost entirely of Central Americans, about half of whom are families and children presenting themselves at the border and seeking asylum or another form of humanitarian protection.<sup>20</sup> While these flows are clearly a cause for concern, they

<sup>19</sup> MPI calculations based on DHS Statistical Yearbook data for 1990-2011. By comparison, Mexicans accounted for just 47 percent of Border Patrol apprehensions in FY 2014.

<sup>20</sup> Available evidence suggests that at least half of children and families fleeing Central America and arriving at the U.S. border are escaping conditions that may entitle them to humanitarian protection under existing legislation. In 2014, the UN High Commissioner for Refugees (UNHCR) found 58 percent of surveyed unaccompanied children had valid humanitarian claims. See UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, DC: UNHCR, 2014), 6, [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf). In 2010, the Vera Institute of Justice found that approximately 40 percent of surveyed children in custody of the Office of Refugee Resettlement (ORR) were potentially eligible for relief from removal; see Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children through the Immigration System* (New York: Vera Institute of Justice, 2012), 24, [www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf](http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf). In 2014, the Refugee and Immigrant Center for Education and Legal Services (RAICES) found that 63 percent of surveyed unaccompanied children in ORR custody at Lackland Air Force Base in San Antonio, Texas were eligible for relief from removal. See RAICES, "At Least 63% of Refugee Children at Lackland Air Force Base Qualify for Relief," (news release, July 22, 2014), [www.raices.org/#!/At-Least-63-of-Refugee-Children-at-Lackland-Air-Force-Base-Qualify-for-Relief/c4x3/48917F75-F1DC-40B4-8F0C-2E27D9D0065](http://www.raices.org/#!/At-Least-63-of-Refugee-Children-at-Lackland-Air-Force-Base-Qualify-for-Relief/c4x3/48917F75-F1DC-40B4-8F0C-2E27D9D0065). According to a report by the *New York Times*, lawyers counseling nearly 300 women in Artesia, New Mexico found that as many as 80 percent could win asylum claims. See Julia Preston, "In Remote Detention Center, a Battle on Fast Deportations," *New York Times*, September 5, 2014, [www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html](http://www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html). American Immigration Lawyers Association (AILA) attorneys in Artesia found that most screened mothers and children would likely qualify as refugees under U.S. law. See AILA, "AILA Letter to Congress on Artesia," September 16, 2014, [www.aila.org/content/default.aspx?bc=671416866150093](http://www.aila.org/content/default.aspx?bc=671416866150093). Also see International Rescue Committee (IRC), "IRC Field Visit to Texas and Arizona: Key Findings and Recommendations to Policy Makers," October 2014, [www.rescue.org/sites/default/files/resource-file/Unaccompanied%20children%20in%20the%20U.S.%20IRC%20report.pdf](http://www.rescue.org/sites/default/files/resource-file/Unaccompanied%20children%20in%20the%20U.S.%20IRC%20report.pdf).

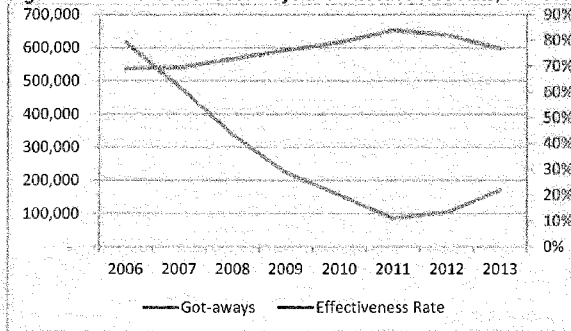
represent a distinct phenomenon from traditional unauthorized immigrants. And with most women and children from Central America surrendering to the first Border Patrol agent they encounter rather than attempting to evade apprehension, the rapid rise in these flows should not be interpreted as an indicator of ineffective border controls, but rather as evidence of a broader shock to the region.

*"Got-Aways" and the Border Patrol's Effectiveness Rate*

Focusing exclusively on apprehensions is problematic because apprehensions do not account for successful illegal entries. Do fewer apprehensions mean fewer crossing attempts, or that more unauthorized immigrants are evading detection? To address this question, at least since 2006 the Border Patrol has generated an independent assessment, based on surveillance data and agent intelligence, of "got-aways," i.e., the number of immigrants successfully crossing the border without inspection.<sup>21</sup> The Border Patrol also uses its estimate of got-aways and "turnbacks" (i.e., individuals escaping apprehension by returning to Mexico) to calculate an "effectiveness rate," defined as the sum of apprehensions and turnbacks (i.e., successful enforcement outcomes) divided by the sum of apprehensions, turnbacks and got-aways (i.e., total crossing attempts). While agents' estimates of got-aways and turnbacks are based in part on their subjective judgments of facts on the ground and rely on imperfect information, these metrics are important because they represent the agency's most systematic attempt to directly measure enforcement failures and the effectiveness of border enforcement.

As Figure 12 indicates, the Border Patrol's estimate of got-aways fell from more than 600,000 in 2006 to just 85,000 in 2011, and remained at 170,000 in FY 2013—a 70 percent decline in seven years. The effectiveness rate climbed from 69 percent in 2006 to 84 percent in 2011, before dropping back to 77 percent in 2013. The slip in these statistics since 2011 is primarily driven by the surge in Central American arrivals in the Rio Grande Valley sector; corresponding statistics for the other eight sectors in 2013 were 68,000 got-aways and an effectiveness rate of 84 percent.

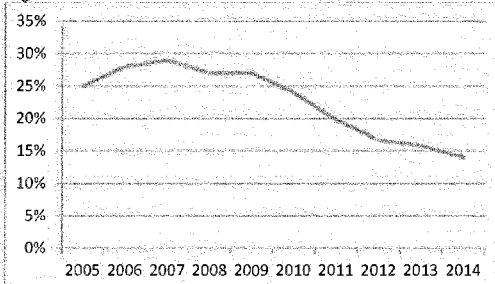
<sup>21</sup> For a fuller discussion, see testimony of Rebecca Gambler, Director Homeland Security and Justice Issues, Government Accountability Office (GAO), before the Subcommittee on Border and Maritime Security, House Committee on Homeland Security, "Goals and Measures Not Yet in Place to Inform Border Security Status and Resource Needs," 113<sup>th</sup> Cong. 1<sup>st</sup> session, February 26, 2013, [www.gao.gov/assets/660/652331.pdf](http://www.gao.gov/assets/660/652331.pdf).

**Figure 12: Border Patrol Got-Aways and Effectiveness Rate, FY 2006-2013**

Source: MPI calculations from Government Accountability Office (GAO), *Border Patrol: Goals and Measures Not Yet in Place to Inform Border Security Status and Resource Needs* (Washington, DC: GA), 2013), [www.gao.gov/assets/660/650730.pdf](http://www.gao.gov/assets/660/650730.pdf); U.S. Border Patrol, *Southwest Border Gotaways and Turnbacks by Sector: FY2012-FY2013*.

#### *Recidivism and Deterrence*

Another measure of border enforcement effectiveness is the recidivism rate, or the share of deportees that is re-apprehended on a subsequent crossing attempt. While recidivism confronts the same methodological problem as apprehensions—i.e., does a low recidivism rate indicate a low level of re-entries or a high level of success among repeat crossers?—recidivism is still a key enforcement measure since it reveals the extent to which migrants are not deterred even after being deported within the same year. As Figure 13 indicates, recidivism peaked (in the period for which CBP has collected and analyzed the data) in 2007 at 29 percent and has declined every year since then, reaching a low of 14 percent in 2014.

**Figure 13: Border Patrol Recidivism Rates, FY 2005-2014**

Source: Adapted from Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*; Rosenblum and Meissner, *Deportation Dilemma*.



U.S. data sources cannot detect successful deterrence (i.e., cases in which migrants do not attempt re-entry), but certain Mexican surveys ask deportees about their intentions to re-enter the United States. According to the most recent available information, Mexicans repatriated in 2010 were less likely than those returned in 2005 to intend such attempts again. Among those who were deported in 2010 after migrating illegally to look for work (83 percent of those in the survey), 60 percent reported that they intended to return to the United States immediately, and 80 percent reported that they intended to return eventually, down from 81 percent and 92 percent, respectively, in 2005. Among new unauthorized migrants (those who had spent less than a week in the United States before being repatriated to Mexico), 18 percent of those repatriated in 2010 reported that they would not return compared to 6 percent in 2005.<sup>22</sup> Thus, among both long-term and short-term Mexican migrants who were deported, the share who intended to attempt a return trip to the United States dropped over the most recent reported five-year period.

### *Smuggling Fees*

The great majority of unauthorized migrants to the United States make use of smugglers to help them enter the United States.<sup>23</sup> Migrants' reliance on smugglers, along with the prices they are charged, provide an additional indicator of border enforcement effectiveness, as more effective enforcement increases the costs to smugglers of bringing migrants across the border and the value of their services, both of which should be reflected in higher smuggling fees.<sup>24</sup> Figure 14 depicts average smuggling fees paid by unauthorized migrants crossing the U.S.-Mexican border according to data collected by the Princeton University Mexican Migration Project (MMP). The MMP data, in constant dollars, show a steady increase in border crossing costs over the course of the last 25 years, with costs reaching about \$3,000 per crossing in 2012.<sup>25</sup> Other reports indicate that smuggling fees are even higher: \$4,000 to cross the border by foot in 2012, and \$9,000 to be smuggled around the U.S.-Mexico border by sea.<sup>26</sup>

<sup>22</sup> See Jeffrey Passel, D'Vera Cohn and Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero--And Perhaps Less* (Washington, DC: Pew Hispanic Center, 2012), 24-25, [www.pewhispanic.org/files/2012/04/PHC-04-23a-Mexican-Migration.pdf](http://www.pewhispanic.org/files/2012/04/PHC-04-23a-Mexican-Migration.pdf).

<sup>23</sup> See Princeton University Mexican Migration Project (MMP), "Graph 2: Access to Border-Crossing Guides and Family/Friends on First Undocumented Trip," accessed January 30, 2015, <http://mmp.opr.princeton.edu/results/002coyote-en.aspx>.

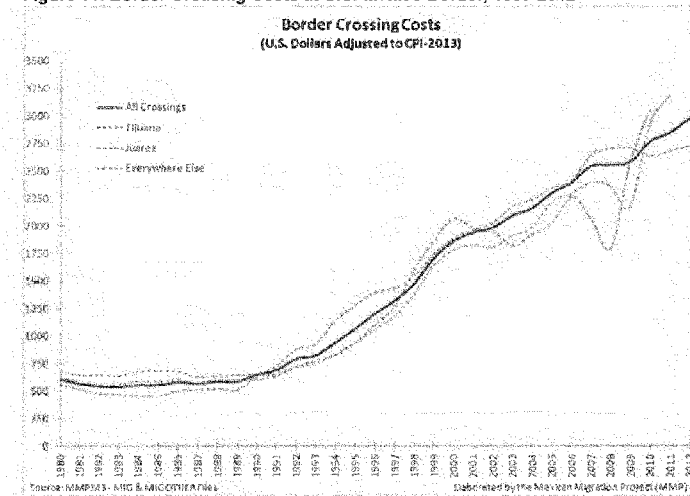
<sup>24</sup> See Bryan Roberts, Gordon Hanson and Derek Cornwell, et al., *An Analysis of Migrant Smuggling Costs along the Southwest Border* (Washington, DC: DHS Office of Immigration Statistics, 2010), [www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf).

<sup>25</sup> MMP, "Graph 1: Border Crossing Costs," accessed January 30, 2015, <http://mmp.opr.princeton.edu/results/001costs-en.aspx>.

<sup>26</sup> Alex Nowratseh, "The Conservative Case for Immigration Tariffs," *CEInPoint* no. 177 (2012),

<http://cel.org/sites/default/files/Alex%20Nowratseh%20-%20The%20Conservative%20Case%20for%20Immigration%20Tariffs.pdf>.

Figure 14: Border Crossing Costs at U.S.-Mexico Border, 1980-2012



Source: Princeton University Mexican Migration Project.

#### Total Unauthorized Population

Arguably the most important indicator of the overall effectiveness of immigration enforcement is the size of the U.S. unauthorized population. By this basic metric, the U.S. enforcement system was, on balance, ineffective for the first four decades after 1965, as the estimated unauthorized population in the United States increased every year for which estimates are available, with the exception of 1986-1988, when 2.7 million unauthorized immigrants legalized through IRCA.<sup>27</sup>

Also by this basic metric, immigration enforcement has been broadly effective over the last seven years, as the unauthorized population has fallen from 12.2 million people in 2007 to about 11.2 million people in 2012-2013—a drop of 8 percent in seven years.<sup>28</sup> While a significant share of this drop is related to the U.S. recession of 2007-2009 along with economic and demographic changes in Mexico, the sustained drop in illegal immigration over such a long period—along with data described above on Border Patrol effectiveness, recidivism, border deterrence, smuggling fees and the expansion of interior enforcement

<sup>27</sup> Wasem, *Unauthorized Aliens Residing in the United States*; Arthur F. Corwin, "The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981," *Law and Contemporary Problems* 45 (1983).

<sup>28</sup> Pew Research Center, *Unauthorized Immigrant Population Trends of States, Birth Countries and Regions*. DHS estimates that the unauthorized population dropped from 11.8 - 12.0 million in 2007 to 11.4 million in 2012; Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012* (Washington, DC: DHS Office of Immigration Statistics, 2013). [www.dhs.gov/sites/default/files/publications/ois\\_ill\\_pe\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf).

programs—strongly suggest that tough new enforcement measures put in place after 2005 have discouraged new illegal immigration to the United States and re-entry attempts among deportees. Other scholars have reached similar conclusions.<sup>29</sup>

### The Costs of Immigration Enforcement

#### *Direct Costs*

As described above, Congress has invested heavily over a sustained period in U.S. immigration enforcement capabilities, particularly since 9/11. Figure 15 depicts historical immigration enforcement spending, including INS budgets data for 1980-2002 and budget data for DHS immigration enforcement agencies (i.e., CBP, ICE, and US-VISIT) for 2003-2014. As the figure indicates, DHS's enforcement budget has averaged \$18.5 billion in the last five years, more than three times the total INS budget in 2000, and about 18 times the INS budget in 1980 (all figures in constant 2014 dollars). Since the 9/11 attacks, the United States has spent \$208 billion on immigration enforcement. H.R.399, as ordered reported by the House Homeland Security Committee, would authorize an additional \$4.2 billion in border security spending for 2015-2019.<sup>30</sup>

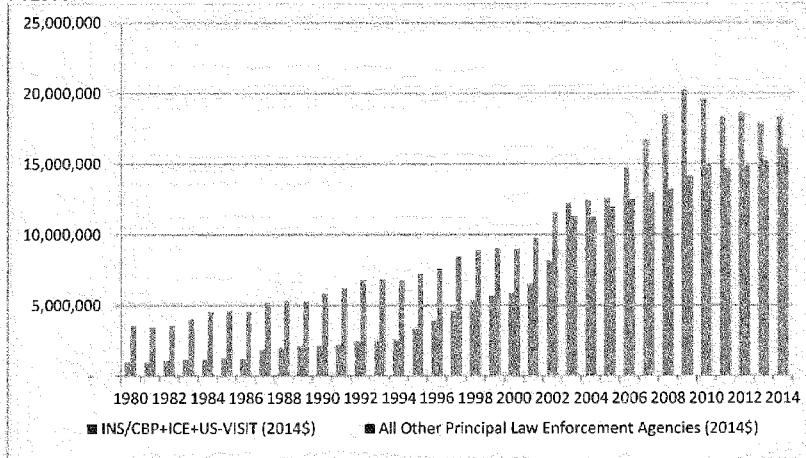
By comparison, the United States has spent an annual average in the last five years of \$15.2 billion on *all other federal criminal law enforcement agencies combined*.<sup>31</sup> Notably, INS budgets consistently lagged the budgets of other law enforcement agencies in the 20 years before 9/11, but immigration enforcement spending has grown three times faster than other federal law enforcement spending since 2000.

<sup>29</sup> See for example, Jeffrey Passel, D'Vera Cohn and Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero—and Perhaps Less* (Washington, DC: Pew Hispanic Center, 2012), [www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/](http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/); Manuela Angelucci, "U.S. Border Enforcement and the Net Flow of Mexican Illegal Migration," *Economic Development and Cultural Change* 60 no. 2 (2012): 311-357; Scott Borger, Gordon Hanson and Bryan Roberts, "The Decision to Emigrate From Mexico," (presentation at the Society of Government Economists annual conference, Washington, DC, November 6, 2012).

<sup>30</sup> Congressional Budget Office (CBO), Cost Estimate for H.R. 399, January 26, 2015, [www.cbo.gov/sites/default/files/cbofiles/attachments/hr399.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr399.pdf).

<sup>31</sup> Other federal law enforcement agencies include the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); see Doris Meissner, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), <http://migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

**Figure 15: Spending on Immigration and Other Federal Law Enforcement Agencies, FY1980-FY2014**



Notes: The principal federal law enforcement agencies listed here outside the immigration arena are the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Source: Adapted from Doris Meissner, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), <http://migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

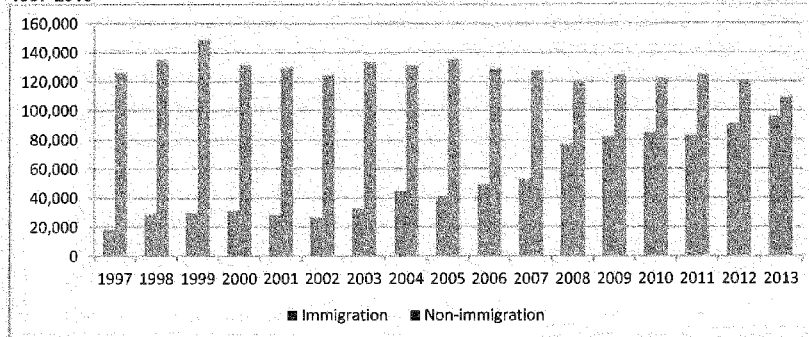
#### *Impact of Immigration Enforcement on Other Law Enforcement Priorities*

The more rapid increase in immigration enforcement versus other federal law enforcement spending raises questions about the opportunity costs of immigration control: how does spending on DHS affect resources available for other enforcement functions? More concretely, the interaction between immigration enforcement and other parts of the legal and criminal justice system means that prioritizing migration control affects the ability of other law enforcement agencies to do their work.

For example, Figure 16 depicts cases completed in federal district and magistrate courts for FY 1997-2013. Prior to 2004 immigration cases accounted for 15-20 percent of all such cases; but the increased focus on immigration-related criminal charges in border districts has pushed this proportion steadily higher, with immigration cases accounting for 47 percent of all district and magistrate court hearings in FY 2013. Moreover, as Figure 16 indicates, this shift not only reflects growth in the number of immigration cases, which increased from 18,000 cases in 1997 to 96,000 in 2013, but also a fall in the number of all other federal cases, which dropped from 126,000 to 109,000 cases during this period.

These data suggest that immigration prosecutions are crowding out other federal law enforcement priorities.

**Figure 16: Immigration and Non-Immigration Cases in U.S. District and Magistrate Courts, FY 1997-2013**



Source: Adapted from Rosenblum and Meissner, *The Deportation Dilemma*.

Another way that immigration enforcement affects other law enforcement activities relates to the interaction between ICE and state and local law enforcement agencies. In particular, a number of immigrant rights and civil liberties groups have raised concerns that the 287(g) program and Secure Communities have undermined trust between state and local law enforcement agencies and immigrant communities, and thereby discouraged immigrants from reporting crimes, creating a barrier to community policing practices.<sup>32</sup> This concern, along with concerns about the uncompensated costs of immigrant detention, has also been raised by a number of law enforcement agencies—though others support the program—and by a DHS task force on Secure Communities.<sup>33</sup>

#### *Effects of Enforcement on U.S. Communities*

Tough immigration enforcement also has adverse consequences for U.S. communities, particularly immigrants and citizens of foreign descent. The most immediate impact of enforcement is felt by deported immigrants and—in many cases—their U.S. families. A 2012 report, for example, found that 205,000 noncitizens deported between July 2010 and September 2012 were parents of U.S.-citizen children—23 percent of all deportations during that period.<sup>34</sup>

<sup>32</sup> Capps, Rosenblum, Rodríguez and Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*.

<sup>33</sup> DHS Advisory Council, "Task Force on Secure Communities Findings and Recommendations," September 2011, 24, [www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf](http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf); Chuck Wexler, *Critical Issues in Policing Series: Police Chiefs and Sheriffs Speak Out* (Washington, DC: Police Executive Research Forum, 2008), [www.policeforum.org/assets/docs/Free-Online-Documents/Immigration/police%20chiefs%20and%20sheriffs%20speak%20out%20on%20local%20immigration%20enforcement%202008.pdf](http://www.policeforum.org/assets/docs/Free-Online-Documents/Immigration/police%20chiefs%20and%20sheriffs%20speak%20out%20on%20local%20immigration%20enforcement%202008.pdf).

<sup>34</sup> Seth Freed Wessler, "Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years," December 17, 2012, Colorlines, [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html).

Some immigrant rights and civil liberties groups have argued that both border and interior enforcement have led to racial profiling and wrongful detentions.<sup>35</sup> Streamline, in particular, raises concerns about whether migrants receive adequate due process protections during border criminal proceedings, as in some sectors there is reportedly only one defense lawyer for a group of up to 60 defendants at a hearing.<sup>36</sup>

Enforcement also affects economic activity and quality of life in border communities and other locations with large immigrant populations. For example, intense border enforcement can disrupt local economic activity by discouraging trade and travel.<sup>37</sup> And while reduced illegal entries mitigate damage done to remote wilderness areas by border crossers, environmental groups have generally argued that the construction of fencing, roads and other tactical infrastructure damage sensitive border-area ecosystems.<sup>38</sup>

#### *Border Crime and Migrant Mortality*

A final significant set of costs associated with today's immigration enforcement regime concerns its impact on border crime and migrant mortality. While the concentration of enforcement resources at the Southwest border has contributed to historically low crime rates in U.S. border towns and cities, it appears to have exacerbated migrant mortality and crime on the Mexican side of the border by making migrants more reliant on smugglers and more likely to cross in dangerous locations. DHS estimates that an average of about 411 border crossers have died per year—more than one a day—since 2005, the period of most intense border enforcement.<sup>39</sup> By comparison, earlier research identified fewer than 60 deaths per year between 1993 and 1995—a period of more border crossings but lower Border Patrol staffing and relatively limited enforcement infrastructure.<sup>40</sup> In other words, the mortality rate among border crossers has grown as immigration enforcement has tightened.

<sup>35</sup> New York University School of Law, New York Civil Liberties Union and Families for Freedom, *Justice Derailed: What Raids On New York's Trains And Buses Reveal About Border Patrol's Interior Enforcement Practices* (New York: NYU School of Law, New York Civil Liberties Union and Families for Freedom, 2011), [www.nyclu.org/files/publications/NYCLU\\_justicederailedwsb\\_0.pdf](http://www.nyclu.org/files/publications/NYCLU_justicederailedwsb_0.pdf); Lornet Turnbull and Roberto Daza, "Climate of fear grips Forks illegal immigrants," *Seattle Times*, June 26, 2011, [http://seattletimes.com/html/localnews/2015435439\\_forks27m.html](http://seattletimes.com/html/localnews/2015435439_forks27m.html).

<sup>36</sup> American Civil Liberties Union, "Immigration Reform Should Eliminate Operation Streamline," (issue brief, undated), [www.aclu.org/files/assets/operation\\_streamline\\_issue\\_brief.pdf](http://www.aclu.org/files/assets/operation_streamline_issue_brief.pdf).

<sup>37</sup> See GAO, *U.S.-Mexico Border: CBP Action Needed to Improve Wait Time Data and Measure Outcomes of Trade Facilitation Efforts*, GAO-13-603 (Washington, DC: GAO, 2013), [www.gao.gov/assets/660/656140.pdf](http://www.gao.gov/assets/660/656140.pdf).

<sup>38</sup> See e.g., Defenders of Wildlife, *On the Line: The Impact of Immigration Policy on Wildlife and Habitat in the Arizona Borderlands*, [www.defenders.org/publications/on\\_the\\_line\\_report.pdf](http://www.defenders.org/publications/on_the_line_report.pdf). Also see Ross W. Gorte, Carol Hardy Vincent, Laura A. Hanson and Marc R. Rosenblum, *Federal Land Ownership: Overview and Data*, CRS Report R42346 (Washington, DC: GAO, 2012), <http://fas.org/sgp/crs/misc/R42346.pdf>.

<sup>39</sup> U.S. Border Patrol, "Southwest Border Deaths by Fiscal Year, 1998 - 2014," [www.cbp.gov/sites/default/files/documents/HP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/HP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014_0.pdf).

<sup>40</sup> Maria Jimenez, "Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border," ACLU of San Diego & Imperial Counties, October 1, 2009, [www.aclu.org/files/pdfs/inmigrants/humanitariancrisisreport.pdf](http://www.aclu.org/files/pdfs/inmigrants/humanitariancrisisreport.pdf).

## Conclusion and Recommendations

In conclusion, although the United States was slow to respond to increasing illegal immigration in the 1970s and 1980s, the last two decades have seen a substantial investment in border and interior enforcement resources and increasingly effective strategies to prevent illegal border crossings and to identify and deport people from within the United States. The greatest increase in deployment of enforcement resources and strategies has occurred since 2005-2006; and the estimated number of unauthorized immigrants in the United States has dropped by about 1 million since 2007. Illegal immigration from Mexico, in particular, has not only ground to a halt but has substantially reversed during this period. While some of these enforcement gains reflect diminished economic and demographic drivers of migration, both the timing of new enforcement programs and the detailed enforcement metrics described above suggest that recent enforcement efforts are an important factor explaining reduced illegal immigration.

These enforcement gains have not come cheaply as the federal government now spends more money on immigration enforcement than on all other federal criminal law enforcement priorities combined. In so doing, the modern era of immigration enforcement also implicates other key U.S. law enforcement efforts, and has especially adverse consequences for the U.S. families of unauthorized immigrants. Today's enforcement system also has adverse implications for the civil rights, economic activity and other quality of life issues in many U.S. communities; and they have likely contributed to increased crime and violence on the Mexican side of the border.

A serious assessment of these costs raises questions about how sustainable the enforcement-only response is. A more robust U.S. economy will result in stronger drivers of immigration; will the policy response focus exclusively on enforcement? Future enforcement gains in the U.S. interior will be even more difficult to achieve, as declining illegal immigration in recent years mean that remaining unauthorized immigrants are deeply entrenched in their communities.

We know what it would take to design a more efficient and sustainable enforcement system. Illegal immigration is a three-dimensional issue: based on the underlying demand for migration flows, the supply of visas, and enforcement. Yet for 40 years, U.S. policy has focused almost entirely on enforcement. By failing to address the structural roots of migration flows or the policy roots of *illegal* immigration, we've battled illegal immigration with one hand tied behind our back. I urge this committee to support a more balanced set of policies that address the root causes of illegal immigration—policies that in the long run will be more efficient, more effective, and more humane.

Mr. Chairman, this concludes my testimony. I thank you for the opportunity to testify and would be pleased to answer any questions.

Mr. GOODLATTE. Thank you, Dr. Rosenblum.

I'll recognize myself first for questions.

Professor Ting, I was particularly taken by your statement, which I agree with, that the primary purpose of our immigration laws is to protect the jobs and wages of American workers.

Would you elaborate on that and tell us whether you think that the current Administration is fulfilling that purpose.

Mr. TING. Mr. Chairman, it seems like every month we have new employment figures come out and the Administration does a little victory lap celebrating the increasing number of jobs.

But, as everyone knows, wages have remained stagnant in the United States and a lot of American workers are suffering from either unemployment or underemployment, working multiple part-time jobs, trying to string a life together. I think it is clear that we haven't recovered from the recovery. And, yet, the stock market seems to be hitting highs every month, record highs.

And I think it is not a contradiction that the stock market keeps hitting highs and American workers keep suffering from low wages and underemployment. I think there is an effort underway to facilitate immigration, legal and illegal, into the United States in order to suppress the wages of American workers.

And I think there is a lot of talk about rising economic inequality in America. I am concerned about that. And I think, you know, dealing with illegal immigration is part of doing something for American workers, protecting their jobs, protecting their wages.

In Philadelphia, we have got fast-food workers and baggage handlers at the airport demanding a raise to \$15 an hour in 2015. Good luck with that. Because the President has already announced he is going to add 5 million illegal immigrants to the legal workforce in 2015, and every employer knows that.

So, you know, I don't think our American workers are going to get the raise that they want and need. And I think we have to look at the reason why, with rising numbers of jobs, wages don't go up. If you believe in market theory, wages should be going up. They are not. It has something to do with immigration.

Mr. GOODLATTE. Thank you very much.

Let me say to Dr. Rosenblum I appreciate your enthusiasm for the success of this Administration, but the facts tell a different story.

When you look at actual ICE interior removals from 2009, the first year of the Obama administration, through 2014, they have dropped from 237,941 to 102,224 last year. I think that is a dramatic representation of what is really happening with regard to enforcement of immigration laws.

And, Sheriff Babeu, I would like to ask you if you could comment on what you are experiencing right there in the field along the border in terms of what is happening with immigration into this country.

Sheriff BABEU. Yes, Mr. Chairman.

I can tell you that the day after, when we had 1070, the Supreme Court had a ruling that said local law enforcement was not for—under the Supremacy Clause, to be involved in that particular case on that ruling.

We had immigration—



Mr. GOODLATTE. And the next day the Obama administration removed Arizona from participating in the program altogether, didn't they?

Sheriff BABEU. Correct. We were the one State that was actually, I believe, punished for that.

And the situation, as I outlined a little bit, in terms of the smuggling routes that are occupied largely by the Sinaloa Cartel, Homeland Security has even said publicly 75 to 100 of these lookout posts that have been identified. There is far more than that. They are not all occupied at the same time. So this is what we see, this robust effort that still is ongoing.

I have literally hundreds of press releases here. There have been cases, 30 to 50 illegals that are running through neighborhoods in the western part of my county. Largely, we are a pass-through county. So they are oftentimes transported by vehicles. And many times we see them make a 3- to 5-day march that is very dangerous through very treacherous, high-temperature desert.

We often find ourselves that are—responding to emergencies because they are targeted for all kinds of crimes, anything from robbery to—

Mr. GOODLATTE. Let me interrupt you because my time is running down.

But isn't a major component of this not just what is done along the border, but having interior enforcement where, instead of what is occurring today, which appears to be a policy of catch-and-release, to actually have laws that make sure that people who nowadays are—I was down on the border last year and I saw them turning themselves in voluntarily—

Sheriff BABEU. Right.

Mr. GOODLATTE [continuing]. And then claiming all kinds of things that allow them to remain in the United States.

Is reforming those laws and allowing the ICE agents to do their job a critical part of an enforcement? And is that occurring with this Administration right now?

Sheriff BABEU. That is not, Mr. Chairman. As I pointed out, the countless cases we see 5 times deported, 10 times, 12 times—in that one case, 17 times—I am proud to admit, and it is confirmed by the Border Patrol that they have been deported. So if there is no catch and release, how are they coming back? And it stands to reason that that is not as many times as they actually came into the country illegally.

Mr. GOODLATTE. Thank you very much. My time has expired.

The gentlemen from Michigan, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Thank you very much.

Dr. Rosenblum, would you care to respond to the Chairman's question that was posed to you? Do you recall it?

Mr. ROSENBLUM. Sure. Thank you, Congressman.

We recently analyzed ICE's administrative removal records and were able to analyze their interior removals and their border removals. And what the data we have looked at show is that interior removals increased from 73,000 in 2008 to—I am sorry, from 150,000 in 2008 to 188,000 in 2011. And then they had declined to 131,000 in 2013.

But what you also see in the data is that criminal removals from the interior have increased over this period. So, in 2008, there were only 81,000 criminal removals from the interior versus 114,000 in 2013. So we have seen a little bit of a quantity versus quality tradeoff where the Administration appears to be focusing, you know, as they have said in their formal description of their policy, to be focusing on criminal removals from the interior and focusing on border enforcement. So we have seen the border removals numbers go up and the interior criminal removals go up.

Mr. CONYERS. Thank you so much.

Let me ask you about a comment that Sheriff Babeu made in his written testimony—that “the failure to secure the border after the Reagan amnesty got us where we are today with 11 million or more illegals in our Country.”

I think you addressed this point in your written testimony. Could you give us a response here before the Committee?

Mr. ROSENBLUM. Sure. Thank you. I mean, there is no question that illegal immigration has increased since the 1986 IRCA. And one reason is that IRCA was a flawed bill strictly from an enforcement perspective. Its biggest shortcoming is that the employer sanctions provisions are mostly unenforceable. So IRCA left in place the jobs magnet that continues to attract most unauthorized immigrants.

And in fortifying the border, IRCA started a trend of raising the costs of crossing the border, which has increased. But at least for the first 10 or 20 years, what social scientists who have studied the border have found is that it increased the cost enough to discourage circularity so people who arrived stopped going home, but it didn't increase the cost enough to prevent people from coming. So IRCA and the border enforcement in the 1980's and 1990's tended to trap unauthorized immigrants within the U.S.

But the most important thing that IRCA failed to do was address any of the drivers of illegal immigration or any of the disparity between the supply and demand of visas. So IRCA failed to provide visas to satisfy the demand for labor flows that existed.

Mr. CONYERS. Thank you, sir.

Sheriff Babeu, I wanted to see if you could direct me to the memo in which Secretary Johnson showed ICE would no longer enforce the law against the 11 million people in the country or that it would grant deferred action to 20 million people. Do you have those documents?

Sheriff BABEU. Absolutely. Through the Chair—this is a memo dated November 20. And it is from Secretary Jeh Johnson to—he has 22 subagencies. And he outlines in great detail the six-page memo. And I will point you to page number 4, section C, that if they had been present in the United States continuously since January 1st of 2014—and on that page, it is outlined in great detail about prosecutorial discretion. And you don't have to be a lawyer to figure out that that wasn't intended for an entire class of people or to just arbitrarily waive the law as has been done here.

It is for certain—

Mr. CONYERS. I am going to have to—I see the lights on here.

Sheriff BABEU. Yes, sir.

Mr. CONYERS. Dr. Rosenblum, do you have any comment to the response that we have from the sheriff?

Mr. ROSENBLUM. What I understand from the memo—I have looked at that memo from 2014. That memo defines the Department's enforcement priorities and also describes within each of the different priority levels the criteria for making an individual determination, looking at the totality of the circumstances about, you know, whether or not ICE and other enforcement agents are directed to consider discretion in a case. But I don't read the memo to categorically describe a whole class.

Mr. CONYERS. Let me go to my last question.

In recent years, critics of the Administration have begun to add removals and returns together in an attempt to argue that the Administration is not enforcing our immigration laws like it used to.

What do you think of that criticism?

Mr. ROSENBLUM. Well, Congress in 1996 created the removal process. And it is designed as a tougher form of enforcement that carries with it bars on admissibility and criminal penalties for people who reenter.

What we have seen over the years is that the total number of deportations, removals plus returns, maps very closely to the total number of apprehensions. They are correlated at .94. So it is almost the same number.

And the trend that we see in the last couple of decades, and especially the last decade, is that within the total body of deportations, the share of the removals has increased sharply. It is now about three-quarters.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. GOWDY [presiding]. I thank the gentleman from Michigan.

Before we go to the gentleman from Texas, the gentleman from Virginia sought recognition.

Mr. FORBES. Mr. Chairman, I think the memo that the Ranking Member asks speaks for itself pretty much and I am sure he would want it made a part of the record.

So, without objection, I hope we will admit that memo as part of the record and then I think everyone can read it for themselves.

Mr. GOWDY. Without objection.

[The information referred to follows:]

Secretary  
U.S. Department of Homeland Security  
Washington, DC 20538



**Homeland  
Security**

November 20, 2014

MEMORANDUM FOR: Thomas S. Winkowski  
Acting Director  
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

Leon Rodriguez  
Director  
U.S. Citizenship and Immigration Services

Alan D. Bersin  
Acting Assistant Secretary for Policy

FROM: Jeh Charles Johnson  
Secretary

SUBJECT: **Policies for the Apprehension, Detention and  
Removal of Undocumented Immigrants**

This memorandum reflects new policies for the apprehension, detention, and removal of aliens in this country. This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). This memorandum should inform enforcement and removal activity, detention decisions, budget requests and execution, and strategic planning.

In general, our enforcement and removal policies should continue to prioritize threats to national security, public safety, and border security. The intent of this new policy is to provide clearer and more effective guidance in the pursuit of those priorities. To promote public confidence in our enforcement activities, I am also directing herein greater transparency in the annual reporting of our removal statistics, to include data that tracks the priorities outlined below.

The Department of Homeland Security (DHS) and its immigration components—CBP, ICE, and USCIS—are responsible for enforcing the nation's immigration laws. Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. And, in the exercise of that discretion, DHS can and should develop smart enforcement priorities, and ensure that use of its limited resources is devoted to the pursuit of those priorities. DHS's enforcement priorities are, have been, and will continue to be national security, border security, and public safety. DHS personnel are directed to prioritize the use of enforcement personnel, detention space, and removal assets accordingly.

In the immigration context, prosecutorial discretion should apply not only to the decision to issue, serve, file, or cancel a Notice to Appear, but also to a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action, parole, or a stay of removal instead of pursuing removal in a case. While DHS may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. Thus, DHS personnel are expected to exercise discretion and pursue these priorities at all stages of the enforcement process—from the earliest investigative stage to enforcing final orders of removal—subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position.

Except as noted below, the following memoranda are hereby rescinded and superseded: John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, March 2, 2011; John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens*, June 17, 2011; Peter Vincent, *Case-by-Case Review of Incoming and Certain Pending Cases*, November 17, 2011; *Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems*, December 21, 2012; *National Fugitive Operations Program: Priorities, Goals, and Expectations*, December 8, 2009.

#### **A. Civil Immigration Enforcement Priorities**

The following shall constitute the Department's civil immigration enforcement priorities:

##### **Priority 1 (threats to national security, border security, and public safety)**

Aliens described in this priority represent the highest priority to which enforcement resources should be directed:

- (a) aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- (b) aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;
- (c) aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;
- (d) aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and
- (e) aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the *Immigration and Nationality Act* at the time of the conviction.

The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

##### **Priority 2 (misdemeanants and new immigration violators)**

Aliens described in this priority, who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. Resources should be dedicated accordingly to the removal of the following:

- (a) aliens convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element

was the alien's immigration status, provided the offenses arise out of three separate incidents;

- (b) aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence;<sup>1</sup> sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence);
- (c) aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014; and
- (d) aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

These aliens should be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or users Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.

#### **Priority 3 (other immigration violations)**

Priority 3 aliens are those who have been issued a final order of removal<sup>2</sup> on or after January 1, 2014. Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly to aliens in this priority. Priority 3 aliens should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

<sup>1</sup> In evaluating whether the offense is a significant misdemeanor involving "domestic violence," careful consideration should be given to whether the convicted alien was also the victim of domestic violence; if so, this should be a mitigating factor. See generally, John Morton, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, June 17, 2011.

<sup>2</sup> For present purposes, "final order" is defined as it is in 8 C.F.R. § 1241.1.

**B. Apprehension, Detention, and Removal of Other Aliens Unlawfully in the United States**

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein. However, resources should be dedicated, to the greatest degree possible, to the removal of aliens described in the priorities set forth above, commensurate with the level of prioritization identified. Immigration officers and attorneys may pursue removal of an alien not identified as a priority herein, provided, in the judgment of an ICE Field Office Director, removing such an alien would serve an important federal interest.

**C. Detention**

As a general rule, DHS detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirement of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, DHS officers or special agents must obtain approval from the ICE Field Office Director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

**D. Exercising Prosecutorial Discretion**

Section A, above, requires DHS personnel to exercise discretion based on individual circumstances. As noted above, aliens in Priority 1 must be prioritized for removal unless they qualify for asylum or other form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Likewise, aliens in Priority 2 should be removed unless they qualify for asylum or other forms of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or USCIS Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Similarly, aliens in Priority 3 should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the



integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

In making such judgments, DHS personnel should consider factors such as: extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative. These factors are not intended to be dispositive nor is this list intended to be exhaustive. Decisions should be based on the totality of the circumstances.

#### **E. Implementation**

The revised guidance shall be effective on January 5, 2015. Implementing training and guidance will be provided to the workforce prior to the effective date. The revised guidance in this memorandum applies only to aliens encountered or apprehended on or after the effective date, and aliens detained, in removal proceedings, or subject to removal orders who have not been removed from the United States as of the effective date. Nothing in this guidance is intended to modify USCIS Notice to Appear policies, which remain in force and effect to the extent they are not inconsistent with this memorandum.

#### **F. Data**

By this memorandum I am directing the Office of Immigration Statistics to create the capability to collect, maintain, and report to the Secretary data reflecting the numbers of those apprehended, removed, returned, or otherwise repatriated by any component of DHS and to report that data in accordance with the priorities set forth above. I direct CBP, ICE, and USCIS to cooperate in this effort. I intend for this data to be part of the package of data released by DHS to the public annually.

#### **G. No Private Right Statement**

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Mr. GOWDY. I thank the gentleman from Virginia.

The Chair now recognizes the past Chairman of the Judiciary Committee, the gentlemen from Texas, Mr. Smith.

Mr. SMITH OF TEXAS. Thank you, Mr. Chairman.

Sheriff, let me direct my first comment and question to you and that is thank you for what you are doing in your good work in protecting the lives and property of the residents of the county you represent. And I hope they appreciate that too.

You mentioned in your testimony that we are not even using the facilities we have now to detain dangerous individuals. In fact, there are I think 10,000 beds that are going unused right now. And yet you combine that with this Administration's decision to release thousands of dangerous illegal immigrants who have been charged with such crimes as manslaughter and armed robbery. I have no idea why the Administration wants to do this to the American people.

But I would like to ask you what solutions you would propose so that we can stop this kind of policy that does destroy lives and property, all of which could be prevented.

Sheriff BABEU. First, Congressman Smith, through the Chair, it is outrageous what has been allowed to happen. And if I had a mass jailbreak in my county and let out hundreds, if not thousands, of violent criminals, many of them, I would be arrested. And this has to stop. We saw—

Mr. SMITH OF TEXAS. In effect, the Administration has ordered the largest jailbreak in American history.

Sheriff BABEU. The largest jailbreak in American history has occurred right under our noses. And nobody is talking about it.

The information, I demanded this information, even spoke to Senator McCain. He said, Sheriff, Sheriff, I promise you I am going to get you those names.

Well, I am still waiting for the names of those criminals, and we will never get it. We will never get these names. And the reason why is because we will then connect 2,228 criminals to new crimes that have been committed against our citizens all across this country. And who should be held responsible and answer to these victims except this Administration and those people who have knowingly released and intended for this harm to take place.

Here is one of these cases. This illegal that Ms. Vaughan spoke about, Altamirano, who is 29, from Mexico, it wasn't just robbery that he pled guilty to. He kidnapped a woman for over a week and sexually assaulted her, according to the victim. We are in America; you believe the victims.

This guy executed this 21-year-old young man who worked as a store clerk in a QuikTrip convenience store and shot him, murdered him over a back of cigarettes.

And ICE won't even answer to—and all we are hearing is excuses in how this guy was released. And we are outraged in our State. And this just underscores the fact of what is going on, that these people aren't held accountable, serious, violent offenders.

Mr. SMITH OF TEXAS. There is absolutely no excuse for this Administration to perpetuate those policies that result in American lives being lost or property damaged or injuries that have occurred. I couldn't agree with you more on that.

Professor Ting, I just wanted to thank you for your testimony. I don't have a question. But I want to point out that Chairman Goodlatte, in his opening statement, emphasized what you also said and that is that apprehensions along the border no longer necessarily result in individuals being sent home. Oftentimes it is a golden ticket to come into the country and establish legal residence. And that is largely because of people gaming the asylum laws or largely because of the Administration not enforcing the asylum laws, again a travesty that results in basically ignoring and undermining current immigration law.

Ms. Vaughan, let me go to you for my next question. This is quite amazing. Under this Administration, we have seen illegal border crossings go up. We have seen deportations go down. We have a million people in the country here illegally who have been ordered removed who still are in this country. You wonder how bad it has to get before this Administration decides to enforce current immigration laws.

Now, you have done a lot of research on those individuals who have been either charged with or convicted of serious crimes and a lot of research on the recidivism rate. Would you go into more detail about how many of these individuals were released? How many have committed additional crimes? And we might make the point that the recidivism rate is over a year or two. Long term, a lot more will commit additional crimes, all of which would have been avoidable had this Administration done what it should have done and that is send a lot of these individuals home.

But would you elaborate on some of your research in that regard?

Ms. VAUGHAN. Sure. I would be happy to. What we know from the 36,000 convicted criminal aliens who were released in 2013 is 16 percent of them were subsequently re-arrested by local law enforcement agencies, 16 percent of them. And only a portion of those were taken back into custody by ICE.

This Committee has also commissioned research based on actual records that found a very high recidivism rate. I believe it was something like 56,000 new crimes committed by criminal aliens who were released instead of removed under the Secure Communities Program.

What I am told by ICE officials and have been told on a number of occasions what they believe from their internal data is there is a recidivism rate of about 50 percent of criminal aliens who are released by ICE or released—

Mr. SMITH OF TEXAS. Fifty percent? Half will commit additional crimes against innocent Americans?

Ms. VAUGHAN. Right. And that is both criminal aliens released by ICE and also those criminal aliens who are released by local law enforcement agencies that want to obstruct immigration enforcement through not honoring detainers—50 percent is too high a risk to the public.

Mr. SMITH OF TEXAS. All of which could be avoided.

Ms. VAUGHAN. Right.

Mr. SMITH OF TEXAS. Thank you all for your testimony.

Thank you, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Texas.

The Chair now recognizes the gentlelady from Texas, Ms. Jackson Lee.

MS. JACKSON LEE. I thank the gentleman and I thank the Chairman. And as I started out in my remarks, I really do hope that this can be a constructive process where we truly do look to find solutions.

I would offer to say that not one of us—I will count Republicans and Democrats—would hold to the tragic and horrible killing of the constituent in your jurisdiction, Sheriff, none of us. And we would want the individual immediately brought to justice.

I take issue, however, to condemn public servants, ICE officers, of whom I know that you have probably had deep and abiding professional relationship with, as being at fault for any of these charges that are being made here today.

I do want to say that not funding the Department of Homeland Security for this year and beyond is certainly not the answer.

We need to ensure that we are paying Border Patrol agents, PSOs, ICE officers, and the array of individuals who are responsible in many different ways of securing the border.

What I do want to raise a question in order to try to understand a little better, you had an opportunity at an event dealing with an election of a Governor in the State of Arizona to announce that a bus or buses of unaccompanied children would be showing up in Oracle, Arizona. And the public pronouncement, which I would offer to say that the responsibilities of law enforcement officers are to be protect and serve, no matter who comes into the territory, as long as they are innocent, provoked a despicable scene of individuals who were anti-immigration and then, of course, those who were supporting it.

It so happens as it has been recorded—and I ask unanimous consent to put an article, dated July 15, 2014, in the record from the Republic.

I ask unanimous consent, Mr. Chairman.

MR. GOWDY. Without objection.

[The information referred to follows:]

'Sheriff Showboat' Babeu has disgraced the office

<http://www.azcentral.com/story/opinion/editorial/2014/07/15/paul-babeu/>

## 'Sheriff Showboat' Babeu has disgraced the office

Editorial Board, The Republic | [azcentral.com](http://www.azcentral.com) 5:41 p.m. MST July 15, 2014

**Our View:** A man charged with keeping the peace brought chaos to Oracle. How incomprehensible can you get?



(Photo: Nick Orr/The Republic)

The actions of Pinal County Sheriff Paul Babeu in the last several days have been incomprehensible.

And irresponsible.

That they are calculated and political goes without saying. But while Babeu is an elected politician — and a self-obsessed camera hog — he is first and foremost a keeper of the peace. Or is supposed to be. And at that duty he has disgraced his office.

At events promoting a Republican candidate for governor last week, Babeu blurted out that a group of Central American children caught at the Texas border would be bused to Oracle, north of Tucson.

Later, he shared precise details of where and when they would arrive with a group of immigration-enforcement activists. And again in an interview with a Valley TV news station. According to Babeu, "whistleblowers" with the U.S. Department of Homeland Security tipped him off.

Whistleblowers. Those would be federal authorities foolish enough to share potentially explosive information with Babeu.

The end result? Totally predictable chaos.

[Dueling protests](http://www.azcentral.com/story/news/arizona/politics/2014/07/15/arizona-immigrant-children-oracle-protests-throw-babeu/12650166/) /story/news/arizona/politics/2014/07/15/arizona-immigrant-children-oracle-protests-throw-babeu/12650166/ sprang up near the location in Oracle, including confrontations between people opposed to the immigrants coming to Oracle and those supporting them.

We should all be thankful — Babeu, as much as anyone — that the heated arguments erupting in the sweltering heat Tuesday didn't boil over into something more serious. Had someone been injured as a result of Babeu's gross political negligence, the fault would have rested entirely on Sheriff Showboat.

Then came the buses with the kids. The wrong kids. Angry activists quickly surrounded a pair of school buses loaded with local children on their way to YMCA day camp.

**ROBERTS:** [Oracle is no Murrieta](http://www.azcentral.com/story/news/arizona/politics/2014/07/15/immigration-protest-b-babeu/1270571/) /story/news/arizona/politics/2014/07/15/immigration-protest-b-babeu/1270571/

'Sheriff Showboat' Babeu has disgraced the office

<http://www.azcentral.com/story/opinion/editorial/2014/07/15/paul-ba...>

Hoping to orchestrate Arizona's own version of the raucous anti-immigrant protests in Marietta, Calif., Babeu instead orchestrated a gauntlet of terror for 40 or 60 kids en route to a day of ping pong and basketball at the YMCA Triangle Y Camp.

But wait, Babeu's manipulative grandstanding is worse than you may think.

As dozens of protesters roiled up onto the scene on the Mt. Lemmon highway, Babeu had the astonishing lament to declare he was there to serve as "peacemaker."

Think of the pyromaniac who torches his own house, then throws himself on the mercy of the court as a homeless waif. According to one protest organizer, Babeu told her "the only way to stop this was for our community and the area to organize."

And so he did, effectively, organize and manipulate the incident. Then he sent out a host of Pinal County deputies to maintain some semblance of the peace he single-handedly threatened. That's gall.

**MONTAGE: Sheriff Underpans and migrant kids** (<http://story/monter/2014/07/15/sheriff-paul-babeu-accused-immigrant-children/136754780>)

But it is more than just hypocrisy and gall. It is an abdication of Babeu's prime directive — which, whether he realizes it or not, is real peace-keeping. Not calculated gambits to resurrect a political career he nearly destroyed with those preening, indiscreet selfies he texted.

Regardless where people stand on the federal policies responsible for this tragic march of Central American children to the U.S. border, taking out political frustrations on these kids is just cruel.

But if a higher order of cruelty — and carelessness — for a peace officer to use his elected office to play on anger and fear.

If Tuesday's confrontation had gone only slightly more awry, Babeu's time in politics would be, officially, done. And justifiably so.

It may be anyway. How incomprehensibly irresponsible can you get?

**RELATED: Limonier mistakes bus for migrants** (<http://story/limonier/2014/07/15/arizona-politician-mistakes-campers-for-migrant-children/127012780>)

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Feb. 15, 2015, 1:49 p.m.

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Ms. JACKSON LEE. It was reported that as these bus loads of children came, it was determined that these children were youngsters going to a YMCA Triangle Y Camp.

Is that the case, Sheriff?

Sheriff BABEU. Through the Chair, no, that is not the case. A person who was running for Congress made a scene and believed that that was the case. In reality, there was, in secrecy, 40 to 50 Central American juveniles who were, in fact, delivered to the Sycamore Canyon Ranch.

Ms. JACKSON LEE. But do you think it is appropriate, no matter whether those kids came at this time—are you denying this, that you did not say that there was not a scene with these youngsters? Did you provide protection for these youngsters going to the YMCA camp?

Sheriff BABEU. Absolutely. And through the Chair and Congresswoman—

Ms. JACKSON LEE. Would you send us an article that shows that you provided protection to those youngsters? Because it is indicated that your expression provoked a scene for youngsters who were, in fact, going to a YMCA camp.

If you have the ability to rebut that, I would appreciate it if you would submit it into the record. I am going to go on to another question.

I would like to ask unanimous consent to put into the record “The ACLU Obtains Judgment Against Arizona Sheriff on Officer’s use of the S.B. 1070, ‘Show Me Your Papers’ Law.”

I ask show unanimous consent to put this into the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]



## ACLU Obtains Judgment Against Arizona Sheriffs and Pinal County Based on Officers' Use of SB 1070 "Show Me Your Papers" Law

December 18, 2014

FOR IMMEDIATE RELEASE  
CONTACT: 212-549-2666, [media@aclu.org](mailto:media@aclu.org)

PHOENIX – The ACLU obtained a judgment Wednesday against Pinal County Sheriff Paul Babeu, two sheriff's deputies and Pinal County on behalf of an Arizona woman who unlawfully spent five days in the custody of immigration authorities. Following a traffic stop, Maria Cortes was "cited and released" by a sheriff's deputy who then instructed another sheriff's deputy to transport Ms. Cortes to a nearby Border Patrol station. The \$25,000 judgment resolves a lawsuit filed by the ACLU in federal district court in September.

"It was a nightmare to spend those five days in detention not knowing what was going to happen to me or my children," said Maria Cortes, who at the time of her detention had a pending U-Visa application stemming from her status as a victim of domestic violence. "I offered to show the officer who stopped me a copy of my pending U-Visa, but he said he wasn't interested. I hope something good comes of my terrible experience and that what happened to me never happens again in Pinal County."

Ms. Cortes claimed that her detention was prolonged solely based on a suspicion that she was an undocumented immigrant, violating her Fourth Amendment right to be free from unreasonable searches and seizures. The incident occurred on Sept. 29, 2012; Ms. Cortes was granted a U-Visa less than a year later.

Ms. Cortes' case was the first federal lawsuit to challenge the application of the "show me your papers" law in Arizona.

Since the "show me your papers" provision of Arizona's anti-immigrant law SB 1070 went into effect two years ago, the ACLU has documented numerous cases of racial profiling and illegal detention by law enforcement officials throughout the state. In Tucson alone, the ACLU has filed several "Notices of Claim" alleging that law enforcement officers have engaged in racial profiling and illegal detention as a result of the law.

"SB 1070 encourages officers to presume people are undocumented simply because of the color of their skin or the way they speak," said Araceli Martinez-Olguin, staff attorney with the ACLU Immigrants' Rights Project. "We filed suit on behalf of Ms. Cortes to highlight the harm that stems from having a 'show me your papers' law on the books. We're pleased to announce a resolution that provides Ms. Cortes a measure of justice and we hope that individuals who experience racial profiling will continue to report that abuse."

Last year, the ACLU took action against the South Tucson Police Department (STPD) on behalf of an individual who was detained by officers without any legal basis and turned over to the Border Patrol. The claim charged false arrest and imprisonment, unreasonable search and seizure and violation of his equal protection under the law. A lawsuit was averted in May of this year after STPD agreed to overhaul the department's policies with respect to immigration enforcement.

In addition to Martinez-Olguin, attorneys on the case include Victoria Lopez, Dan Pochoda and Joel Edman of



ACLU Obtains Judgment Against Arizona Sheriffs and Pinal County... <https://www.aclu.org/print/immigrants-rights/aclu-obtains-judgment-...>

the ACLU of Arizona, and Donald W. Brown, Alexa Hansen and Aseem Padakone of Covington & Burling LLP.

Click [here](#) for a copy of the amended complaint and [here](#) for a copy of the judgment in *Cortes v. Lukosky*.

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Published on American Civil Liberties Union (<https://www.aclu.org>)

**Source URL:** <https://www.aclu.org/immigrants-rights/aclu-obtains-judgment-against-arizona-sheriffs-and-pinal-county-based-officers-use>

Ms. JACKSON LEE. This indicates that an individual by the name of Ms. Cortes, who was a victim of domestic violence, which this Committee takes very seriously, was stopped by some of your officers and, rather than allowing her to show her papers, was immediately put into detention, I guess along with her children.

Do you have knowledge of that?

Sheriff BABEU. That is not true. She wasn't put in detention with her children.

Ms. JACKSON LEE. Then why would you obtain a judgment? Let me say this—did you, was the judgment obtained against the—

Sheriff BABEU. Through the insurance carrier for \$25,000 to settle a frivolous lawsuit, they did, yes.

Ms. JACKSON LEE. Let me thank you for that and move on to the next question.

Let me ask, Dr. Rosenblum, on this question of laws like S.B. 1070 and juxtapose it against the fair Executive action that the President has authority to do but the Executive actions are prioritizing enforcement and deal with DACA family members, as opposed to a law like S.B. 1070, which, in the instance, you may not have heard me, it deals with an individual who was stopped and papers were not asked for, and they were detained. And they were a victim of domestic violence.

Mr. GOWDY. You may answer the question.

Mr. ROSENBLUM. Thank you. Certainly my understanding is that one of the intentions of the President's Executive actions announced in 2014 would be to focus enforcement more on criminals and recent border crossers and less on families and people who have children in the U.S.

And the intention of S.B. 1070, I think, is more focused on identifying potentially deportable noncitizens, you know, by authorizing State and local law enforcement to query them about their documents.

Ms. JACKSON LEE. Does it have a successful impact—

Mr. GOWDY. The gentlelady's time has expired.

The Chair would now recognize the gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Sheriff, would you pronounce your name again?

Sheriff BABEU. Babeu.

Mr. CHABOT. Babeu?

Mr. BABEU. Yes, sir.

Mr. CHABOT. Okay. I will probably just call you "sheriff."

First of all, would you like any additional time to clear up or clarify anything that my esteemed colleague on the other side of the aisle may have brought up?

Sheriff BABEU. Yes, sir. Through the Chair, I thank you, Congressman. This case with the suspect who was stopped for a violation of traffic enforcement, there was actually, we had custody 29 minutes, including the time to transport to our U.S. Border Patrol.

Now, the call—Senate Bill 1070 says, required by the Supreme Court, we shall—we don't have an option—law enforcement shall, if we have a reasonable suspicion somebody is in the country illegally, inquire and determine, and we called ICE and Border Patrol. They said, Bring that person to us. We did. And including less than

a half an hour, that person was held for 5 days by the Border Patrol, not by us. There was no children, as the Congresswoman represented in her statement. And that was, was that entire case.

The case, talk to Carl Shipman, the director, with the case of close to 50 unaccompanied juveniles who were apprehended in your State of Texas and were flown to my State of Arizona. I have a problem with that.

And the fact that you had Jeh Johnson testify before this Congress who said there would be transparency, that we would—under oath, he said that he has directed and required all of his administrators to call and coordinate with State, local and county officials when they send any of these unaccompanied juveniles to their jurisdiction.

That never happened. It was done in secrecy. When this was learned and this information was put out, now it is somehow my fault that the Administration has done this under secrecy? I have a problem with that. And so that is what happened in reality.

Mr. CHABOT. Thank you.

Let me go to another line of questioning here briefly, Sheriff.

Could you discuss the morale relative to the men and woman that serve under you when you have devoted your time to law enforcement, protecting the public and enforcing the law, and then you see the very people that you have picked up under appropriate circumstances time and time again back out there, especially when a fairly considerable number of those apparently are criminals who 50 percent of the time are committing more crimes against American citizens, what does that do to the men and women under you and having to do that on an ongoing basis?

Sheriff BABEU. Congressman, through the Chair, that this appears to be an endless battle. And you rely on us to enforce the law. You write the laws. We carry them out. We enforce them. When it comes to immigration, it appears there is no law because there are no consequences largely—as pointed out, what has gone on in my county.

And so this acts like a neon flashing sign on the border that if you get to the border, you are home free. And that is, in effect, what has happened.

The morale, because we are professionals, is always professional. We maintain a high level of morale just in the fact that we continue the fight. And, in fact, if the Federal Government won't do the job, we will gladly step up.

Yet what we ask for is for the Federal Government and for this Congress to carry out and make sure the laws are enforced and empower your Federal law enforcement officers to actually be able to do their job that they are trained to do and sworn to protect our country.

Mr. CHABOT. Thank you very much. I have got a little over a minute left. And I would like to divide this between the professor and Ms. Vaughan here.

Both of you had mentioned about the effect that illegal immigration and particularly this Administration's lack of seriousness about dealing with it, but really it has happened over previous Administrations as well, what effect that has had on American jobs, on the fact that wages have been stagnant for such a long time?

Even though, Professor, as you indicated, the stock market has been going up, wages really haven't. My colleagues on the other side like to talk about the middle class. Well, those are the folks that are being hurt, I think, most by illegal immigration and the competition there.

Could you each address—now I have got about 30 seconds, so 15 each.

Mr. TING. I think it is a national scandal, this rising inequality in America and people's willingness to ignore the role of immigration in that phenomenon. You know, the Administration says jobs are going up every month. They are taking a victory lap on that. But wages are not going up.

Why aren't wages going up? Market theory says wages should go up if demand for workers increases. And people are just ignoring the role of immigration.

Indeed, the President bringing 5 million illegal immigrants into the legal workforce in 2015, giving them work authorization and saying, Go out and compete with American workers for jobs. And it is actually illegal to discriminate against these work-authorized aliens in favor of American workers.

So, you know, I think we have to recognize there are victims here, and the victims are American workers trying to get by on part-time jobs and having to compete with increasing numbers of work-authorized illegal immigrants to the United States.

Mr. CHABOT. Thank you.

Ms. Vaughan, quickly.

Ms. VAUGHAN. There is not an economist in this country who will tell you that we have a shortage of unskilled labor. And this is what is causing the stagnant wages. And it is also that people are—you can't just look at the unemployment rate. You need to also look at the underemployment rate out there and the fact that people are forced into jobs that they don't want.

Just 2 days ago, I spoke with a man who told me that he had worked for 15 years in masonry in Rhode Island and can no longer get a job. His boss had to close the company because they have been completely displaced by companies that hire illegal workers, and he had to get a job washing cars. That is a job. He is not unemployed. But it is not what he was trained for. It is not what he has skills in. And these are real stories of real Americans who are being harmed by the Administration's refusal to enforce the law.

Mr. CHABOT. Thank you.

Thank you, Mr. Chairman.

Mr. GOWDY. The gentleman's time has expired.

The Chair will now recognize the gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Gowdy.

Professor Ting, you talked about income inequality and correlated it to this immigration situation.

Don't you think income inequality has a lot more to do with maybe the tax structure we have in this country, the lack of a minimum wage, lack of public spending to create jobs on infrastructure? Isn't that more important?

Mr. TING. Well, I am all for tax reform. I also teach tax. I am all for closing the carried interest loophole. I am all for narrowing the gap between income from capital and income from labor.

Mr. COHEN. You don't think hedge funds guys up in Manhattan should pay the tiny taxes they do on what they do on—I am being facetious. I agree with you.

Mr. TING. Well, yeah, I think it is outrageous that Warren Buffett pays a lower marginal tax rate than his secretary.

Mr. COHEN. Thank you.

Sheriff Babeu, first of all, I want to thank you for your service to our country, serving in Iraq and all. You have an amazing story. And there are so many issues we could get into that I find of interest.

In your testimony, you talk about drugs being brought through your county and it is one of the major—is that mostly marijuana?

Sheriff BABEU. Through the Chair, Congressman, largely marijuana is a cash crop. But there is methamphetamine. The largest importer into the United States is Mexico for meth. Cocaine, heroin, black tar—

Mr. COHEN. But marijuana is the number one drug that comes through there.

Sheriff BABEU. In terms of size and volume, yes.

Mr. COHEN. Do you think, in your experience, if possibly this country had a different policy or laws concerning marijuana, that we would have less likely cartels shipping marijuana into our country if we had either decriminalized it or something like that?

Sheriff BABEU. No. And every Arizona sheriff, the majority of us are Democrats, have voted against even the medicinal marijuana, nevermind the proposed recreational use of marijuana. And we do not believe that by legalizing or allowing some recreational use will somehow collapse the cartels. It is about a criminal syndicate that is driven by money and power. And they will do anything—

Mr. COHEN. But if they are growing marijuana legally in Washington and Colorado, they don't need the cartels to give them marijuana. So if you had it to where some way it could be, that would take away their market, wouldn't it?

Sheriff BABEU. No. It is different. If you want to talk about the taxation and the incentive there for the Government. But in terms of the street value, it is far cheaper to buy marijuana from Mexico. And it is very different, when you look at the strains that the medicinal marijuana provides for certain illnesses, from glaucoma to pain and other things, it is all synthetic in many regards; it is strains and far more powerful.

So the relative inexpense of marijuana that is coming in and the cash crop, they even build in 10 to 20 percent loss of apprehensions from law enforcement into there.

Mr. COHEN. You are against medical marijuana, like children that need Charlotte's Web or they call it—I think, Rachels in Israel—where they are combining this non—

Sheriff BABEU. Again, in Arizona, it is the law. So we enforce the law. I don't have a problem with the fact that there is medical marijuana in Arizona. And I have spoken out publicly about this.

Mr. COHEN. Let me ask you this—

Sheriff BABEU. It is the abuse of it. Because we have seen people drive vehicles, show up at work, and operate equipment, and so forth. That is the concerns that we have had.

Mr. COHEN. Thank you, sir.

You were on some radio show that is Political Cesspool, which is appropriately named, I think, having read about it.

You regret having done that, do you not?

Sheriff BABEU. Through the Chair, that was probably 4 years ago. We had no idea of their background and that they had made statements that appeared bigoted or racist. I don't associate with that. And we immediately disavowed any of their beliefs or past statements. That has nothing to do with me.

Mr. COHEN. Good. Good. And you have become, I guess, more careful about what shows you are on?

Sheriff BABEU. We have been on probably as many as you, if not more. And so I have a staff member that vets everybody. And somehow, at that point, that slipped through. And we immediately ensured the public knew that, in fact, we reject those people if—anybody, whoever they are—have those beliefs.

Mr. COHEN. I thank you for that. And I know people can make mistakes. As a matter of fact, I think one of our colleagues, who I respect greatly, went on that show and didn't know either. So people can make mistakes. And I appreciate your making clear that that was a mistake.

Because the fact is—they are out of my district apparently—but some of the stuff they stand for is reprehensible. And I thank you for your honesty.

I yield back the balance of my time.

Mr. GOWDY. I thank the gentleman from Tennessee.

The Chair will now recognize the gentleman from Virginia, Mr. Forbes.

Mr. FORBES. Mr. Chairman, I thank you for this hearing because it is one of those few hearing where people get what they ask for. We came in, we heard our friends on the other side of the aisle saying, we just want the facts, we just want the facts.

And, Sheriff, thank you for giving them to them.

We have heard one newspaper article after another newspaper article or story recited by our friends on the other side of the aisle. But thank you for being the eyewitness who can come here and refute them all. And I know a lot of times they didn't give you an opportunity to respond to that. But we thank you for doing that.

The one thing I will agree that I heard in the opening comments is it is, indeed, unfortunate that the President would indicate that he would be willing to shut down the Department of Homeland Security unless the act that funds it allows him to take actions many constitutional experts believe to be the most flagrant attack on the Constitution we have seen in years, an attack that will impact not just our time but the lifetime of our children.

But I am also not fearful of the false choice our friends on the other side of the aisle offer, that we must turn our eyes, ignore the unconstitutional act of this President if we want to fund the Department of Homeland Security.

The oath we took as Members of the Congress was not, as much as we love it, to defend Arizona or California or Virginia; it was

to defend the Constitution of the United States. And when this President or any President attacks that Constitution, this Committee, this Congress has the same duty under that oath to protect and defend against those attacks as it does to protect and defend against the attacks of some wrongdoers secretly entering across our border to attack that same Constitution or the citizens it protects.

Now, professor Ting, I would like to ask you—the President admitted in 2011 and numerous times thereafter that with respect to the notion that I can just suspend deportations through Executive order, that is just not the case because there are laws on the books that Congress has passed.

He went on to say the executive branch's job is to enforce and implement those jobs. There are enough laws on the books by Congress that are very clear in terms of how we have to enforce our immigration system, that for me to simply through Executive order ignore those congressional mandates would not conform with my appropriate role as President.

My question to you is this: Isn't that exactly what DHS has been doing, suspending the deportation process and creating an enforcement-free zone for millions of unlawful and criminal aliens? And do you think the President is violating his duty under the Constitution to faithfully execute those laws?

Mr. TING. Yes. I think I have written on that subject and I have said that I think the Executive action is unconstitutional and a usurpation of congressional powers. It is legislation by the executive.

And also, you know, Chairman Goodlatte has put into the record many of the President's earlier statements about the limitations on his authority, which he subsequently ignored, which I think calls into question whether there are any other limitations.

You know, he says his own Office of Legal Counsel opinion says, Well, you can't extend this to parents of DACA beneficiaries. Well, is that going to hold up? You know, what is the next step? If this Executive order is sustained, you know, what is the next step? And I think you may see Executive orders reaching other people that the President has said, Well, we can't extend it to them. Well, now that I think about it, why not? And extend it further.

There is no limitation. And that feeds into the cost-benefit analysis that people are thinking about, whether to come to the United States illegally or not. You know, people are saying, Well, you know, you just get yourself in there and then you wait for the next piece of Executive action to come along and provide you with work authorization.

I think it is feeding the process. If you want more illegal immigration, you raise the benefits and lower the costs. If you want—

Mr. FORBES. Ms. Vaughan, let me ask you what Mr. Ting has said also—you heard how Dr. Rosenblum has talked about this great enforcement that this Administration has done on our immigration laws. Is he right on that?

Ms. VAUGHAN. No, he is not. If you look at the total body of statistics—and the best ones to look at are ICE's own internal metrics—you see that not only are interior deportations down, total deportations down, including all three agencies, but also even the

number of criminal aliens being removed from the interior every year has plummeted.

They keep the records for their own use internally. And that is the best measure of what is happening.

And I think the most important metric is the size of the illegal population residing in the United States, which stopped declining after Congress gave resources to Federal agencies to use on enforcement, we made progress on the size of the illegal population. But that has stopped now.

Mr. FORBES. Thank you for letting us get these facts put on the record.

And with that, I yield back.

Mr. GOWDY. I thank the gentleman from Virginia.

And the Chair will now recognize the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you.

Professor Ting, you are a Republican, are you not?

Mr. TING. I am a registered Republican, although I have supported Democrats, including the President. It is public record. I was kicked out of the Republican Party in Delaware as a result of having taken that stance.

And I am sorry I didn't say in the tax question that I think the high watermark of tax reform was in 1986 when the Democrats and the Republicans agreed on setting the capital gains and the ordinary income rate at 28 percent.

Mr. JOHNSON. Thank you. You are at this point active in Republican Party politics, are you not?

Mr. TING. That is not true. I am not active in Republican Party politics since I was basically pushed out of the Delaware Republican Party. Indeed, I have relocated. I now live in a different State. I live in Pennsylvania, not in Delaware anymore.

Mr. JOHNSON. But certainly you are not Democratically affiliated?

Mr. TING. I am a registered Republican. But I think of myself as pretty darned independent, as indicated by my support of tax reform. But I also think the Republicans are right on immigration. And, you know, really my question is, who in Congress speaks for America workers?

Mr. CHABOT. Mr. Chairman, I have a point of order. I don't think it's ever been the practice of this Committee to be asking witnesses what their political—

Mr. JOHNSON. Could I get my time stopped if—

Mr. CHABOT. Yeah, I don't have any problem with that. I mean, I didn't ask Mr. Rosenblum any questions, but I certainly didn't ask him his political affiliation and—

Mr. GOWDY. The gentleman from Ohio's point is well taken. Although Professor Ting is more than defending himself. And he may actually go back to his support for this President at some point.

So, with that, I am sure Mr. Johnson is going to leave politics and get to immigration at some point.

Mr. JOHNSON. I am but after I make sure I answer my pre-questions. In other words, I am building up to something. And I would appreciate giving me the discretion to do that without further interruption.



Mr. GOWDY. You have the discretion to ask. And Professor Ting can decide whether or not he wants to answer.

Mr. JOHNSON. And I have heard enough from Professor Ting at this point. I would love to talk with you further.

I would ask the same question of Ms. Vaughan, you are a Republican also, are you not?

Ms. VAUGHAN. I am a registered Republican, yes.

Mr. JOHNSON. Okay. Sheriff Babeu, you too, correct?

Sheriff BABEU. I became the first Republican sheriff of my county.

Mr. JOHNSON. All right. Okay.

Now, Sheriff Babeu, you know, you are a strict opponent of immigration reform, comprehensive immigration reform, correct?

Sheriff BABEU. Through the Chair, comprehensive immigration reform, as I understand it, you may be referring to—

Mr. JOHNSON. Well, let me ask you this question—you are opposed to immigration of persons south of the border coming to the U.S.?

Sheriff BABEU. No, that is absolutely not true. I support legal immigration, not illegal immigration.

Mr. JOHNSON. Let me ask you this question—you realize that we have been struggling with comprehensive immigration reform for many years in this country, and it is politics that keeps us from doing it, correct?

Sheriff BABEU. No. I think that—

Mr. JOHNSON. You don't think it is politics—

Sheriff BABEU. I think that it is enforcement of the law. You may be dealing—

Mr. JOHNSON. We are talking about changing the law so that we can have comprehensive immigration reform. But you are opposed to us doing that, correct?

Sheriff BABEU. The process and I will—

Mr. JOHNSON. Are you opposed to us considering comprehensive immigration—

Sheriff BABEU. In the order that you are doing it, yes. The border needs to be secured first, and then you can address that issue after.

Mr. JOHNSON. Okay. All right. And that is a Republican position, a Republican Party position. And you are a Republican, and I understand that.

Let me ask you this question—do you need automatic weapons to help you with border control?

Sheriff BABEU. We have in Arizona—through the Chair—

Mr. JOHNSON. If you could say yes or no, and then you could explain.

Sheriff BABEU [continuing]. Semi-automatic weapons.

Mr. JOHNSON. Do you need automatic weapons?

Sheriff BABEU. We don't have to have automatic weapons, no.

Mr. JOHNSON. Do you need mine-resistant ambush-protected vehicles to help you patrol the border?

Sheriff BABEU. Not for the border, but for our SWAT team, yes.

Mr. JOHNSON. Thank you. Do you need silencers in order to help you patrol the border?

Sheriff BABEU. For our SWAT team, that is a tactical move, but it is not necessarily targeted for—

Mr. JOHNSON. Why does your SWAT team need ambush, mine-resistant ambush protected vehicles?

Sheriff BABEU. Because, sir, through the Chair, our county doesn't have the money to buy a SWAT vehicle.

Mr. JOHNSON. Why do you need it in order to enforce border security? Why do you need a mine-resistant ambush——

Sheriff BABEU. We don't. And this is where——

Mr. JOHNSON. Thank you.

Mr. GOWDY. No, sir—Sheriff, you may answer the question.

You may not ask a question and then not allow the witness to answer it.

Mr. JOHNSON. I wanted a yes or no answer. He answered the question. And I am ready to move on.

Mr. GOWDY. Sheriff, have you answered the question as completely as you would like to?

Mr. JOHNSON. Mr. Chairman, I am ready to move on.

Mr. GOWDY. The gentleman is not recognized.

Sheriff, have you answered the question as completely as you would like to?

Sheriff BABEU. And this is where us and——

Mr. JOHNSON. Mr. Chairman, regular order, please. Regular order.

Sheriff BABEU. In law enforcement—we have 420,000 residents of my county. And we are the SWAT team.

Mr. JOHNSON. Point of information, Mr. Chairman.

Sheriff BABEU. All 13 law enforcement agencies. And for high-risk warrants, barricade situations——

Mr. JOHNSON. Mr. Chairman——

Sheriff BABEU [continuing]. Almost never have we used——

Mr. JOHNSON. Mr. Chairman——

Sheriff BABEU [continuing]. An armored vehicle for anything——

Mr. JOHNSON. Point of order, Mr. Chairman.

Sheriff BABEU [continuing]. Illegal immigration, Mr. Chairman.

Mr. JOHNSON. Point of order, Mr. Chairman.

Mr. GOWDY. Thank you, Sheriff.

The gentleman is out of time. If you have another question——

Mr. JOHNSON. I have a point of order that I would like to state.

Mr. GOWDY. State your point of order.

Mr. JOHNSON. Is it within the rules of this Committee that the Chairman can interrupt a legislator asking a question of a witness——

Mr. GOWDY. If that legislator is not allowing the witness to answer questions, you are daggone right he can, yes, sir.

The gentleman is out of time.

Mr. JOHNSON. I take exception to the Chairman—abuse of authority as to——

Mr. GOWDY. The Chair will now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I want to thank the witnesses, as I heard earlier, for their direct answers that we did receive and those anchored in fact.

I wanted to point out first to Sheriff Babeu, I have been to the top of those Lookout Mountains, those spotter locations. I have done one-strut landings with a Blackhawk up on top. And knowing

that they have scattered down the mountain, it is kind of hard to catch them. I am glad you caught some. And I would like to see a lot more of that, by the way. And I would like to see you have all the resources necessary. And I regret that S.B. 1070 ended up in the court the way it did. I was there to witness that.

I wanted to just put a statement out here and judge your reaction. I was listening to Donald Trump in Iowa a week ago, and he said this, "We have to build a fence. And it has got to be a beauty. And who can build better than me?"

Your reaction to that, Sheriff.

Sheriff BABEU. Well, you are speaking to a retired Army officer, combat engineer. And I helped build this 14-foot corrugated steel no-climb fence that was originally sponsored by Congressman Hunter. In fact, a credit to President Clinton, signed that bill and authorized a double barrier fence, not a triple barrier.

We don't need, as Mr. Trump and others, an entire, we are not building the great wall of Mexico. That there are tactical areas that you interlock these manmade barricades or obstacles and you interlock them with natural terrain features. We know how to do that well. And so there are 700 miles of the 2,000 miles of border that would need this barrier.

Mr. KING. Could we agree that we should just simply build that fence until they stop going around the end?

Sheriff BABEU. Taking a line from Senator McCain, build the dang fence.

Mr. KING. Thank you, Sheriff.

Also I wanted to turn to Ms. Vaughan, and I am listening to the number this keeps coming up, 11 million, 11 million, 11 million. When I came here 12 years ago, it was 12 million. Now it is 11 million. What has happened to that million that disappeared while there were millions pouring over the border?

Ms. VAUGHAN. Well, the numbers went down from 2007 until about 2009. And we think that was a result of several things. First of all, increased resources that Congress gave to ICE to boost enforcement of laws.

Secondly, State and local governments passing laws within their jurisdiction to support Federal immigration enforcement efforts.

And also the economy was not great and the lure of jobs was not as bright as it had been.

But the numbers stopped falling along about 2010 and have remained stagnant since then, even as more and more—

Mr. KING. Thank you. Also I wanted to point out a narrative and go back to Sheriff Babeu, and that is that sometime last summer, late July, I was standing on the banks of the Rio Grande River at Roma, Texas. And there with a couple of Border Patrol agents and two local city police—they were there most of the time, came and went a little bit, having a conversation with them—we watched as two coyotes inflated a raft on the other side of the river, loaded a pregnant lady in it, ran her across the river, pulled their raft up against the shoreline. And they helped the lady out, handed her her two bags of her possessions. The coyote that helped her out got back in the raft. The two of them went back to Mexico. The level of animation among the officers there was a little less than I would see if they were writing a speeding ticket in Iowa.

Is that a typical scenario? And is it likely she applied for asylum? That was July, so I presume the baby is born by now, an American citizen. Is that a typical scenario?

Sheriff BABEU. Not in our county. We are not actually a border county. But the three counties south of us, funnel shape the traffic up through Pinal County. But we don't see a lot of, in our county, pregnant illegals.

Mr. KING. Aside from her condition, which is just the observed condition, is it, is it your understanding that it is typical when someone gets across the border, that they apply then for asylum and that the only people that we really send back are those that will accept the proposal of a voluntary return on the spot or in a short hearing?

Sheriff BABEU. Yes.

Mr. KING. And so we are the welcome mat. And the point of securing the border if we are going to be there to be the welcome mat is significantly diminished by the policies of this Administration, would you agree?

Sheriff BABEU. Yes, sir.

Mr. KING. Thank you. Then I will turn to Professor Ting. And I am looking at a number here, 92,898,000 Americans—almost 93 million Americans—simply not to the workforce, a 30 percent of the population, 29 point and change, not in the workforce.

And I am listening to the testimony here and, of course, I have been thinking of this for a while—it seems to me that we need a demographer to project to us what America looks like if this continues.

But you have given it so much thoughtful consideration. I would ask you if you could tell us what you think America looks like if the Constitution and the rule of law usurped by the executive branch and the door is open for an endless supply of immigration, could you give me a picture of what America looks like?

Mr. TING. Well, I worry about that picture of the future. You know, what is special about America is our Constitution and our deliberative process of government, which includes the role for the Congress, as well as the executive branch. And I think that is being threatened by kind of imperial Executive orders. If this Executive order stands, where is the limit?

I think we do need to think more about growth of immigration. Both my parents were immigrants. I love immigrants, right? We all should respect immigrants because we are all descended from people that came here from somewhere else. And we are told that includes Native Americans too.

But, you know, how much—that is the question. And it is a hard question. Given the fact that we respect immigrants and admire immigrants, how many are we going to take every year? And we have to kind of strike the balance.

I also just want to say if we do nothing, we are stuck with the most generous legal immigration system in the world, bar none. We admit more legal immigrants with a clear path to full citizenship every year than all the rest of the nations of the world combined. That is if we do nothing. That is our legal immigration system. And I have testified before Congress and said it is a system that is worthy of a nation of immigrants.

So, you know, we welcome legal immigrants into the United States. We are doing our part in America. We benefit from legal immigration. But there has to be a limit. And we have to enforce that limit. Otherwise, it is not really a limit.

Mr. CHABOT [presiding]. The gentleman's time has expired.

The gentlelady from California, the former speaker of the California, Ms. Bass.

Ms. BASS. Thank you.

Mr. CHABOT. Glad to see you back here.

Ms. BASS. Thank you, Mr. Chair.

Mr. CHABOT. Okay. Ms. Bass is recognized. Thank you.

Ms. BASS. Thank you.

Thank you for being here today, Mr. Rosenblum. I wanted to ask you a couple of questions. But also if you wanted to respond to some of the questions that were asked previously, you know, you could take the opportunity to do that.

But Professor Ting, where did Native Americans come from? You said Native Americans were immigrants. I was just wondering.

Mr. TING. I don't know. You know, I read that the ancestors of Native Americans migrated across the land bridge from Asia to the Americas.

Ms. BASS. Okay. Thank you. I was just wondering. I would actually never heard that.

Mr. TING. I don't claim any expertise other than having read that that is the case.

Ms. BASS. Thank you.

Mr. Rosenblum, I believe that you mentioned that most of the people that are coming now who are seeking asylum are from Central America.

And I wanted to know if you would talk about that. That is an issue and a population that impacts my city and also my district. A lot of Central Americans are there.

And my understanding is that many or most of them are coming not only from what you said but what I see at home are coming because of the specific conditions in El Salvador and Honduras, where the crime rate is so bad.

I wanted to know, based on your analysis, if you thought that DACA was actually a magnet for their immigration.

And also it is my understanding, I think another witness has said that most of the unaccompanied children and families who were apprehended have not been deported. And I was wondering if you could explain your thoughts as to why that was the case.

Mr. ROSENBLUM. Thank you for those questions.

So let me first say something about the unaccompanied children arriving from Central America. We have heard the argument made that DACA is a magnet that is attracting those children. But, in fact, I mean, there are two strong pieces of evidence that that is not correct. One is that the surge of Central Americans began in January of 2012, which was 6 months before DACA was announced. So they couldn't have been coming because of DACA because they came before DACA.

But the more important point is that—and this applies also to the general discussion we have had about how Professor Ting has

argued that the President's lax enforcement has been a big magnet that is encouraging people to come.

But what we have seen is that the numbers of Mexican arrivals—and this goes to Ms. Vaughan's comments as well—the numbers of Mexican arrivals continue to fall. They have fallen every year for the last 14 years. And they are at a 40-year low. So we have had an 86 percent drop of Mexican arrivals since 2000, despite DACA and despite, you know, the other Executive actions.

So what we see instead is that there are very specific factors pushing immigration from Central America. And those are the violence in large parts of El Salvador and Honduras and Guatemala, to a lesser extent, the economic impact.

And another big factor is that the smuggling networks that connect Central America to the United States have adapted their behavior and provide sort of door-to-door service that didn't used to exist.

But there is extensive research—and I have quite a few citations in my written testimony—by the United Nations, by several different humanitarian organizations that work with those arriving children, who have conducted interviews and they found that 50 percent to, up to two-thirds likely have valid humanitarian claims under existing U.S. Law. So, you know, those kids are a distinct phenomenon that raise all kinds of important questions about how our laws handle a humanitarian crisis like that.

And the most important question being that we don't have judicial capacity to quickly process them, which is really what the problem is. When they arrive, the reason that they are not quickly adjudicated is that they have 2-year waits to go before a judge. So that is really where the weakness is in our enforcement system is the ability to quickly adjudicate those cases.

But to lump them in as regular unauthorized immigrants denies the reality that they are fleeing very specific circumstances and arriving under very different conditions. So we should look at them and understand what is really going on there.

Ms. BASS. And that certainly has been the complaint in my district actually is the backlog.

But I was wondering also if you could speak to the decline in Mexican immigrants coming across the border.

The other big complaint in my district is the number of deportations that have happened under President Obama. People in—at least in LA—feel that his number of deportations have been very, very high.

So is that the reason why? Because there is certainly a lot of violence in Mexico as well.

Mr. ROSENBLUM. Well, we are certainly seeing increased enforcement at the border and in the interior when you look at the numbers. And there has been this discussion here on the panel also that there is catch and release happening at the border and a lot of voluntary returns.

But when you look at the Border Patrol data, that is just not true. The Border Patrol historically did voluntary return for over 95 percent of the people they apprehended. As recently as 2005, it was 80 percent. And now it is under 10 percent. So what they are doing is they are putting people on expedited removal and rein-

statement of removal and increasingly charging them in criminal courts. So there is evidence that that has, you know, had a real deterrent impact on the Mexican numbers.

But certainly we have seen that the overall removal numbers have gone up. And I am sure that is what people in your district are commenting on.

Ms. BASS. Thank you.

I yield back my time.

Mr. CHABOT. The gentlelady's time has expired. Thank you.

The gentleman from Arizona, Mr. Franks, is recognized for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, let me start out by just quoting something that I think is important. You know, we are talking about immigration today. And some of the discussions center around what some of us believe was the unconstitutional actions of the President. But it is important to note that the President might have many obligations, but one most paramount obligation is the following sworn oath that he made: "I do solemnly swear that I will faithfully execute the Office of President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States."

Article I, section 8, clause 4, of the Constitution provides that Congress shall have power to "establish a uniform rule of naturalization."

The Supreme Court has long found that this provision of the Constitution grants Congress the plenary power over immigration policy.

Yet, Mr. Chairman, I believe that the recent Executive action by the President on illegal immigration is categorically incompatible with the oath that he made when he laid his hands on the Lincoln Bible 6 years ago.

And I obviously am concerned, like many of us, on the immigration policy. But a greater concern here is the critical nature that this Committee and this President has to maintain our oath to the Constitution. And I believe that the President's actions fundamentally abrogate his oath. And I believe it is important for us to consider that. And I wanted to put that on the record.

Now, Mr. Chairman, if I could turn to the panel.

Sheriff Babeu, let me just in total openness here tell the rest of the folks here, you and I are good friends. And I have a great deal of respect for you. And your credibility on this issue is unimpeachable.

So I ask you, do you think that the new policies implemented by the Obama administration serve as an adequate deterrence or perhaps an invitation to those who seek to enter our country illegally? And do you think these policies—what kind of message do they send to criminal aliens as to the consequences of their conduct?

Sheriff BABEU. Congressman Franks, through the Chair, one, we all appreciate you. Even though you are not one of the Congressman in our county, we love you just the same.

Clearly this acts as an incentive that if, not just the fact that it is—we keep hearing 5 million. This document by Jeh Johnson includes, whatever that number of illegals here from January 1st of

2014, includes all of them. So this is where that deferred action is far larger than this 5 million figure that we simply keep hearing about. That will act as an incentive.

The other thing we are seeing—everybody says these numbers are down. Yes, in fact, they are.

And Janet Napolitano, when she was the Secretary, was at a press conference in our State one time and the media came around, Well, Sheriff, how do you refute that crime is down all along the border? I said crime is down all cross America and all the violent crime statistics.

And the fact that we forget that our economy, everybody has talked about a recession. There are communities in my county that had 21 percent plus unemployment.

And so imagine what is going to happen now that we had 1986 with Simpson-Mazzoli Act, and now with 11 million plus illegals. There is a third wave that is coming if we don't secure the border. So that should be the alarm that is sounded now.

Mr. FRANKS. Thank you, sir. I appreciate your good work.

And, Professor Ting, if I could pass a question to you, sir. The Committee has received reports that the Mexican drug cartel members are abusing the credible fear process to bypass regular immigration checks in order to get into the country. And that has been confirmed in meetings with staff, that there are internal documents making these claims.

And I wonder if you could expand on that and tell us why you think that is happening and what the implications are.

Mr. TING. Well, I think all you have to do is look at the approval rate for the credible fear questions that are being asked at the border to see that it is almost a green light for people that want to make a credible fear claim at the border. And then they get put in the line to await a hearing date before an immigration judge where they can make their asylum claim.

The lines are growing. The system is under attack just from the sheer numbers of people coming across and making credible fear claims. You know, people are qualifying for work authorization because they are in line for so long. How are they supposed to support themselves while they are waiting for their hearing?

And, you know, I am going off track here, but the people who are most adversely affected by all this illegal immigration qualifying for work authorization are legal immigrants, the people that just got here and who are legally entitled to work here. And they are being forced to compete with illegal immigrants, and so it is the less-educated, less-skilled segment of our workforce that is most suffering from this competition from illegal immigration.

And credible fear is just part of it. As I have testified, it was never intended to be used the way that it is being used now, as a means of entry for people that don't meet the threshold for asylum, but they can get through the credible fear test and get into the United States. I don't think that was ever the intent of Congress when they enacted credible fear and put it in the statute. And I am hopeful that someday you will take it out.

Mr. FRANKS. Thank you, Mr. Chairman.

Thank you.



Mr. GOODLATTE. The gentleman from Florida, Mr. Deutch, is recognized for 5 minutes.

Mr. DEUTCH. Thanks, Mr. Chairman.

Professor Ting, I think credible fear claims are there so that we don't send people back to violence, right? Credible fear claims are available so people don't go back to a situation where they could be killed. So I would disagree with the suggestion that the credible fear claim be taken out of statute, thereby making the decision that it is appropriate for us to remove a possible step that can save someone's life.

But let me get to my comments that I wanted to make. I spent some time this morning thinking about how it is that we got here. And it seems to me that the debate over immigration reform has regressed and it has done so rapidly. How did a Congress that was on the cusp of fixing our broken immigration system end up back at square one?

In 2013, the Senate included in its comprehensive immigration reform bill portions of the McCaul border security legislation which was deemed unworkable and unrealistic on its own. Let's be honest, in 2015, the McCaul border security bill on its own remains just as unworkable and unrealistic. And instead of uniting behind comprehensive immigration reform, we're once again dividing among party lines and splitting into factions with separate agendas.

Democrats are more than willing to accept increased spending of the border within the context of broader immigration reform. We just believe that the status quo is unworkable. We spend more money on border security than we do on any other Federal law enforcement priority, and we still have 11 million undocumented immigrants here. Instead of treating them like criminals, Democrats believe reform must invite them to come out of the shadows, pay a penalty, pay their taxes, and maybe—just maybe—someday get the chance to apply for citizenship.

We also share the commitment of our Republican colleagues to reform our visa programs, respond to the needs of businesses that rely on high-skilled technology workers, and low-skilled guest workers. Likewise, Democrats and Republicans who share the priorities of the faith community want an immigration system that puts families first. So that is the issue I would like to bring up today with our panel, how we treat families.

Our Nation has a long history of providing protection to people fleeing violence, as I referred to earlier. People fleeing religious persecution, political censorship, and oppression. But today we treat most of those seeking asylum as criminals. Upon arriving here, they are held in facilities that are for civil detention in name only. The reality is that most are just sections of private prisons where we keep hardened criminals.

Indeed, an April 2013 report by the United States Commission on International Religious Freedom determined that nearly 84 percent of the 33,400 detention beds maintained by ICE were actually prisons, not civil detention sites. Refugees held in these jail-like detention facilities have their movements, their privacy, and their personal freedom restricted. And when we treat refugees as criminals, we don't sound like the United States of America, the country

that is supposed to lead the world with its values for human rights, for justice, and for fairness.

The purpose of detention is to ensure the people show up in court. Today many of them are mothers with young children fleeing extreme transnational gang violence in Central America. We don't need to lock them up in prison or immediately deport them. They have no reason to flee immigration court. Indeed, returning families with young children to their home countries without a review of their asylum claim could be a life or death situation.

We ought to be reviewing their claims for asylum, making efforts to resettle them, and make them feel at home in our communities as quickly as possible. We should embrace far less costly, and far more human and humane alternatives to detention. Detention costs more than \$2 billion a year. This is a daily cost of \$159 per day, per detainee. Alternatives to detention—including release on bond, supervised released, and community-based programs—cost between 70 cents and \$17 per person per day.

But Congress has imposed on law enforcement a quota on how many people must be held in detention facilities every day. Immigration and customs officials, like all officers of law, should have the discretion to make their decisions based on facts, not some quota imposed by politicians. Welcoming refugees seeking safety and security in our country by placing them in detention is inconsistent with our Nation's values for respect and humanity. Our debate on immigration reform needs to reflect our moral leadership.

And so I would ask, Dr. Rosenblum, that when you talk about judicial capacity and a need to adjudicate cases, we are spending so much money following the detention bed mandate. What would it cost for us to fully address this shortfall to make sure that cases could be quickly adjudicated, something that I think everybody would agree is necessary?

Mr. ROSENBLUM. Thank you. I wish that I could give you an exact number, and I can get back to you with that. What I can tell you is that since 9/11, while we have tripled our spending on ICE and CBP on enforcement, we have only increased our immigration judges by about 70 percent. So the reason that the backlogs are getting longer and longer is that we have systemically underfunded immigration judges, and we are putting more and more people into the system, but there is not the capacity for them to flow through it.

Mr. DEUTCH. Thank you.

Thank you, Mr. Chairman.

Mr. GOODLATTE. Thank you.

Chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

Thank the witnesses for being here.

I heard testimony earlier that about 50 percent of those illegally here after being released without being deported commit crimes against other Americans. I know as a judge, when I was considering bail or bond, that was a primary consideration, the likelihood of them returning and the public safety. I can't imagine releasing somebody on a makeable job if both sides agree the defendant had

a 50 percent chance of re-offending, committing a further crime if I let him go. That is just unconscionable.

We talk about the children and the women and the people across America and protection of families. My gosh, we are releasing criminals to go after them? That is outrageous.

Well, and then also, I hear, Sheriff, you say 30 to 50 criminals per day are being released in your county alone by a CIS. That is the very people the President has called bad actors and yet his policies are responsible for letting them go upon the families of America.

Well, let me just say, I am very concerned about the way the money is being spent. And, by the way, for those that are not familiar, we had a lot of crimes being committed in the U.S. and in my State in the 1980's, so America reacted, Texas reacted. We elected criminal judges, tough prosecutors, and we are reaping the benefits of people who were law-enforcement-minded going into the sheriffs jobs, prosecutors jobs, judges jobs. And we will be able to ride that for a while before people with bleeding hearts let the criminals go, and then people eventually will have another wave while they react when the crimes go up. I know that that is just a cycle, but right now we are in a cycle of letting criminals go.

And the criminal law in America is something that concerns me at the Federal level because of something called the Antideficiency Act. I am not sure if the witnesses are familiar with that, but the law is very clear: If Congress appropriates money for one purpose, it is not to be used for another purpose unless proper steps are utilized. And so I know that we have heard from the news, there was a facility built over in Crystal City for awarding these amnesty work permits.

Some of us are wondering where that money came from. You know, we hear clamoring that they need more money, but where did that money come from? Because I know Congress certainly was not notified that they were shifting funds from one appropriated purpose to Crystal City and to awarding these 5 million or so work permits that basically amount to amnesty.

Do any of the witnesses know where that money came from?

Ms. VAUGHAN. I think that is something that Congress should be asking. Because USCIS, the agency that is responsible for issuing these benefits, has not collected a single dime in fees from any future applicants for the new deferred action work permit program. So it certainly appears that they have perhaps been hoarding money skimmed from the fees paid by legal immigrants. USCIS is funded by fees paid by legal immigrants and their sponsors for a service that they get. And these fees are carefully—

Mr. GOHMERT. Right. And that creates another problem because we have seen reports that people—my office is helping—that came here legally as immigrants we welcome, trying to get a spouse in. They have paid higher fees to try to expedite those, and it turns out this Administration is illegally moving that money over to give priority to people that came in illegally, thus putting people that are trying to do the legal immigration process a terrible disservice by putting them at the back of the line.

So I know, Ms. Vaughan, you are in the business of investigating these, and I hope you will assist us.

Professor Ting, are you familiar with Antideficiency Act and how it might be brought to bear on this situation?

Mr. TING. I am not.

Mr. GOHMERT. Well, I would encourage you as a law professor, if you would, to look at that.

And also, just in finishing, Congress has the power even after the Supreme Court decision in the Arizona case to ask for help and appropriate money. Sheriff, would you have any problem if we block granted money from CIS to local law enforcement to get local law enforcement to help do the job that CIS is not being allowed to do?

Sheriff BABEU. No problem whatsoever.

Mr. GOHMERT. That is what I thought. Thank you very much.

Mr. GOODLATTE. Chair thanks the gentleman and recognizes the gentleman from Louisiana for 5 minutes.

Mr. RICHMOND. Thank you, Mr. Chairman.

Dr. Rosenblum, thank you for coming and I will let President Fos know that you are representing him very well here.

Professor Ting, you in your suggestions, you said that maybe we should remove asylum completely and go to the withholding of removal and at the same time educate our Border Patrol officers so that they can make that determination. I am sure you know that asylum and withholding of removal have two different legal standards. So withholding of removal is a more-likely-than-not or 50-percent-plus-one standard, and asylum is more likely than not, which the courts define as reasonable. So they are probably in the 40 to 50 percent range.

If we go to what you are suggesting, withholding of removal, then people who are in that very reasonable possibility would be sent back to the danger that is very reasonable that they would encounter. Is that what we are trying to do? I mean, does your suggestion hinge on the standard or the Border Patrol agent executing it or making the evaluation?

Mr. TING. Well, I am saying the reality on asylum has changed. I think the asylum statute was a worthy and noble effort on the part of the Congress back in 1980, when it was added to our immigration law. But we got along without it before 1980, and we fulfilled our commitment under the Convention for the Protection of Refugees before 1980, and we did it through withholding of removal. And I think we could do it again.

I think there are many differences between the two statutes. I think asylum offers more benefits. I think some of those benefits could be added to withholding of removal, but I certainly noted in my testimony that there is a different burden of proof that attaches. I am concerned about asylum fraud, which I think is widespread, and I have testified to a Subcommittee of this Committee——

Mr. RICHMOND. If I can, I don't mean to interrupt you but I have to. Let me ask you about, do you have any concern with the new time and resources that would be dedicated by those agents to evaluating the claim as opposed to patrolling the border?

Mr. TING. I am very concerned about expenditure of resources, and I have listened with attention to the concerns of the Committee on the high expenditures that go into immigration enforcement. But the easiest way to cut expenditures would be just to re-

peal all immigration laws and say everyone in the world could come to the United States. That would cut expenditures on immigration enforcement. So if you want to cut it to the bone, just repeal all the immigration laws.

If you are going to enforce a limitation, someone has got to do this. The worst of all possible worlds is to keep the limitation on the books, keep spending the money but not enforce the limits. That, to me, is the worst possible possibility.

Mr. RICHMOND. Sheriff Babeu, let me ask you a question, and I pulled up an article where you were speaking at a neighborhood watch meeting—and this is not a gotcha moment—where you said that many of the ICE detainees are held at private facilities which are contracted to house criminal illegals. ICE reportedly plans to reduce their available beds from 34,000 to 25,700.

But what is important is what you characterized it as, and here, my interpretation is you characterized this as the largest prison break attributed to the Administration. But here you call it the largest pardon, due to mass budget cuts, which I would necessarily tend to agree with. So, as you characterize it, is it the Administration, or is it just the pure dysfunction in Washington not getting a comprehensive immigration bill and some on spending? So which would it be, in your opinion?

Sheriff BABEU. Through the Chair, Congressman, at that time, when all that was going on was during the sequester.

Mr. RICHMOND. Right.

Sheriff BABEU. And so that was probably the first turn up the volume of you want to feel pain—2,228 at that time—

Mr. RICHMOND. Correct.

Sheriff BABEU [continuing]. And it was reported that 5,000 to 10,000 were said to be scheduled for release, and it was halted because it became public knowledge. So I would say it is not just the dysfunction; it is everybody was a part at one time. And it is not Congress' decision to release those people. It certainly wasn't mine. It was this Administration's decision—

Mr. RICHMOND. But we did in that sequester. That was Congress who did sequester.

Let me ask you one final question.

Sheriff BABEU. Yes.

Mr. RICHMOND. If your dispatchers or you received a call, and you have three officers on duty and the call said, I have an active shooter, I have a bank robbery, and a hostage situation—three different situations. I have a car accident, and I have some other trivial—and shoplifting. If you had three officers, where would you assign them in terms of triage and the importance, and as the President setting up the categories of deportation, didn't he do the same thing?

Mr. GOODLATTE. The time of the gentleman has expired, but the witness will be permitted to answer the question.

Mr. RICHMOND. Mr. Chairman, thank you, and I yield back.

Sheriff BABEU. Certainly, in local law enforcement county, our priority one calls, which is a threat to somebody's life or property secondary would be the active shooter and the armed robbery, which we have had those—bank robberies—in our county. But here is the point, the highest priority is these now 24,000 that are in

these authorized beds that we have all agreed that whether they have committed multiple misdemeanors or serious violent felony offenses and convictions, that these people are the bad actors.

Those people must be returned to whatever country they come from. And that is the problem that most in America are having heartburn over, certainly us in law enforcement, because they are being released. And we don't know where they are going and what their names are. And I have asked for that information numerous times under Freedom of Information. It has been denied to me as a sheriff for 2 years.

If you ask, Congressman, even though you are from Louisiana, who is in my jail and what charges they are, you will get it that quick. And that is because I am compelled to provide that information, yet here I am the sheriff, and they won't give me this information in my own county.

Mr. GOODLATTE. Chair recognizes the gentleman from Pennsylvania, Mr. Marino, for 5 minutes.

Mr. MARINO. Thank you, Chairman.

Dr. Rosenblum, if you would, please, do you believe that we should secure the borders before we start talking about any immigration reform? Because I believe that whenever we are talking about the borders aren't secured, we are just going to have an onslaught of people. Do you agree with that?

Mr. ROSENBLUM. I believe that it will be much easier for DHS to secure the borders more effectively and at a lower cost if it is combined with visa reform.

Mr. MARINO. Talking about individuals that may be here legally but their visas have expired for some reason or another.

Mr. ROSENBLUM. Visa over-stayers. I am not sure I understand the question, sir.

Mr. MARINO. Are you referring to visa over-stayers?

Mr. ROSENBLUM. My argument is that a big part of why we have struggled so much to secure the border is that the demand for immigration within the U.S., employers and families who want to bring people here, and within extending regions, Mexico and Central America, is much greater than what our laws currently allow.

Mr. MARINO. But you do agree that we need to secure the borders?

Mr. ROSENBLUM. Yes.

Mr. MARINO. All right. Good. That is a start.

And I don't like this term "comprehensive." What does comprehensive mean? This is so complicated that this cannot be done in one fell swoop.

I am going to quote some figures. I see you have some really—I have been reading this—not here, but also before you got here—information concerning people that were sent back, individuals, under what circumstances they were sent back. But first of all, do you agree with me that—and I am sure you have read this in the media—that the only part of DHS that we do not want to fund is amnesty for illegals. Are you clearly aware of that?

Mr. ROSENBLUM. That Congress has not funded amnesty for—

Mr. MARINO. Yes.

Mr. ROSENBLUM. Yes.

Mr. MARINO. Okay. And you are clearly aware that it is the up to the President if he wants to shut down the entire DHS because he can't have his way on illegal immigrants, correct?

It is not a tough one, professor. You are a Ph.D., okay.

Mr. ROSENBLUM. I mean, Congress and the executive branch negotiate over legislation, so it would sort of take two to tango on that, I think, sir.

Mr. MARINO. Oh, two to tango. But if you are in that position—let me put you in that position—would you shut down all of DHS because you don't get one small part?

Mr. ROSENBLUM. Um—

Mr. MARINO. I think you have answered it.

Okay. Let me give you some stats that I got from PolitiFact, on PunditFact, from Dobbs Report, from Washington Times, from Breitbart, and actually, U.S. Customs had a report that came out that I went back to and they were asking me, where did you get that document. But in 2008, turnaways at the border were about 36 percent of the overall figures that this Administration factored in.

Now, it is my understanding, previous Administrations—and I have done work on this—have not counted turnaways at the border as sending people back. And that has increased to 64 percent in 2013. So it is very clear that the Administration is fudging the figures by adding turnaways at the border. Do you agree with that?

Mr. ROSENBLUM. The research that I have seen from the GAO, the data on turnbacks and gotaways is in a GAO report that came out in December 2012, and that report starts counting turnbacks in 2006. So it was the previous Administration. But I agree with you—

Mr. MARINO. I am not disputing what previous Administrations should have done and didn't do and may have as far as figures are concerned. But you agree with me that these figures that the Administration is putting out include turnaways at the border—not people here, not in this country that they are sending back.

Mr. ROSENBLUM. You are talking about their deportation numbers?

Mr. MARINO. Yes.

Mr. ROSENBLUM. So I believe that every Administration counts people who are put into removal at ports of entry as removals. What has changed under this Administration is—

Mr. MARINO. But I am talking about once they set foot on U.S. soil. And it is clearly—

Mr. ROSENBLUM. They are apprehended on U.S. soil and then deported.

Mr. MARINO. Yeah. But this Administration is using people when they get to the border, when they get to that guard and they are sending them back, they don't get a chance to get into the United States, those figures are factored in there.

Mr. ROSENBLUM. When people are apprehended at the border and put into expedited removal, for example, those were definitely counted removals. That was previously true and still true.

Mr. MARINO. Okay, good.

Mr. ROSENBLUM. I agree with you on—

Mr. MARINO. So you agree with me on several matters here, and we need reform.

Do you agree with me on this? My colleagues on the other side of the aisle for 2 years, they had the White House, they had the Senate, and they had the House; they did nothing on comprehensive immigration reform. And I am going to be the first to stand up and say neither did any other previous Administration. And it is at a point now where it is desperate from a multitude of areas, and you and I would agree on some and not the others.

How about the workforce? Can you address some issues on the workforce, pursuant to—right now there are between 800,000 and 1 million people that are not looking for work. Those figures aren't even in the unemployment numbers. And the reason why the unemployment numbers, in part, are coming down, is because those people stopped looking for work. You agree with me on that?

Mr. ROSENBLUM. Yes.

Mr. GOODLATTE. The time of the gentleman has expired.

Mr. MARINO. And I will yield back, then.

Thank you, sir.

Mr. GOODLATTE. I thank the gentleman.

Chair recognizes the gentleman from New York, Mr. Jeffries, for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chairman.

And I thank the witnesses for their presence here today.

Sheriff Babeu, are you familiar with a publication call the Arizona Daily Star?

Sheriff BABEU. Yes.

Mr. JEFFRIES. Is that a credible news organization?

Sheriff BABEU. I don't decide who is credible and who is not. I know that most of the news—I don't know if they print in paper or are online, but I have seen them numerous times as being credible.

Mr. JEFFRIES. Okay. Thank you.

Now, 5 years ago, you appeared on a radio program entitled Political Cesspool, correct?

Sheriff BABEU. Yes. That was addressed by, I believe, Mr. Johnson earlier.

Mr. JEFFRIES. Okay. I just want to make sure the record is clear. Now, that program was hosted by James Edwards and Eddie Miller, correct?

Sheriff BABEU. I am not sure who it was hosted by.

Mr. JEFFRIES. You don't recall who it was hosted by?

Sheriff BABEU. I don't. There was a show that I believe it was Ms. Jackson Lee who raised the issue earlier.

Mr. JEFFRIES. Okay. Now, the Political Cesspool program has been recognized by both the Southern Poverty Law Center and the Anti-Defamation League as a form for hosting White supremacists, anti-Semites, and other hate mongering, correct?

Sheriff BABEU. From my understanding that once we became aware of any of their past comments, we disavowed who they are, what they stand for. They didn't say any of that on the show. We were talking about immigration, as we do quite often outside the State, via telephone. So there is no relationship. This was one con-



tact that we immediately disavowed any association with or any of their espoused views or reported espoused views.

Mr. JEFFRIES. Thank you for that response. And I appreciate the fact that—I do believe in good faith—you have disavowed the views that were brought to your attention, according to your testimony after appearing on the program. But I just want to make sure that the record is clear.

And, Mr. Chairperson, I ask unanimous consent that we enter into the record an article from the Arizona Daily Star, dated July 20, 2010.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

[The information referred to follows:]

2/3/2015

Host says Sheriff Babeu knew of program's 'pro-White' beliefs

## Host says Sheriff Babeu knew of program's 'pro-White' beliefs



JULY 20, 2010 10:24 AM • BY TIM STELLER, ARIZONA DAILY STAR

Pinal County Sheriff Paul Babeu knew what kind of radio program he was going on when he appeared on a "pro-White" show July 10, the host alleged today.

James Edwards, who hosted the interview along with Eddie Miller, said Miller spoke with Babeu and his spokesman multiple times before the interview.

"For Sheriff Babeu to change his mind and now regret coming on our show, for whatever reason, is his right. For him to act as though he had no idea of our ideology is a lie," Edwards said in a written statement on the show's website.

Edwards described that ideology as "paleoconservative" and described himself as a "pro-White" Christian.

But Babeu's spokesman, Tim Gaffney, said Tuesday afternoon "It was never divulged what their beliefs are."

"They never had a conversation with me and made anything clear to me at all about their white-supremacist beliefs or anything of that nature," Gaffney said.

Babeu's appearance on the show came to broad attention Monday, when Media Matters, a left-leaning website that analyzes news coverage, published a story on it.

On Monday night, Gaffney apologized for having booked the appearance, one of dozens of interviews the sheriff has done since gaining fame as a border-security hardliner in April.

Babeu was interviewed by Miller and Edwards July 10 from Millington, Tenn.-based station WLRM.

Gaffney, who became the sheriff's office spokesman in late June, said in a statement that he had vetted the radio station's website but not that of The Political Cesspool. That website declares "We represent a philosophy that is pro-White."

It goes on: "We wish to revive the White birthrate above replacement level fertility and beyond to grow the percentage of Whites in the world relative to other races."

[http://tucson.com/news/local/border/host-says-sheriff-babeu-knew-of-program-s-pro-white/article\\_303b6465-9424-11df-a712-001cc4c00260.html?print=true&ci...](http://tucson.com/news/local/border/host-says-sheriff-babeu-knew-of-program-s-pro-white/article_303b6465-9424-11df-a712-001cc4c00260.html?print=true&ci...) 1/2

2/3/2015

Host says Sheriff Babeu knew of program's 'pro-White' beliefs

Gaffney described the interview as a mistake.

"During the past month, I have been inundated with media requests from local, national and international outlets to have Pinal County Sheriff Paul Babeu interviewed because of his outspoken need to secure our border," Gaffney wrote Monday night.

"I have weeded out most all requests from any outlets or groups that have any connection with possible hate groups. Unfortunately, last week it appears that I may have let one such interview take place."

He cited a scheduled interview with Tucson-based Internet-radio host Clay Douglas as an example of an interview that he canceled because of the host's apparent ideology.

Babeu knew nothing about the Political Cesspool show until he appeared on it July 10, Gaffney said in his statement. The interview itself focused on much of the same material — border security and SB 1070 — that Babeu has discussed in dozens of interviews since he rose to national prominence in April.

However, Edwards' statement offers a different version of events:

"Eddie Miller spoke with the Sheriff personally, a week in advance of the interview, during which it was made specifically clear (so there could be no 'confusion') the nature of our paleoconservative radio program (which was mentioned several times by name) and some of the attacks we've sustained from hate groups like the ADL [Anti-Defamation League] and SPLC [Southern Poverty Law Center]."

As the hosts conversed during the July 10 show, waiting for Babeu to call in, co-host Miller said: "Of all the people we've interviewed on this radio show, I would say the only people that came close to getting me this excited was Dr. David Duke."

David Duke is a former Ku Klux Klan leader who ran for U.S. Senate in Louisiana in 1996.

Gaffney, a medically retired Mesa police officer, took over as the department's spokesman from Lt. Tamatha Villar at the end of June.

Contact reporter Tim Steller at 807-8427 or [tsteller@azstarnet.com](mailto:tsteller@azstarnet.com)

Mr. JEFFRIES. Okay. And that article, Sheriff, states that James Edwards, who hosted the interview, along the Eddy Miller, said that Miller spoke with you and his spokesman, your spokesperson, multiple times before the interview.

And then it goes on to quote Mr. Edwards and says: "For Sheriff Babeu to change his mind and now regret coming on our show for whatever reason is his right. For him to act as though he had no idea of our ideology is a lie," Edwards said in a written statement on the show's Web site. That is Mr. Edwards' representation of what took place in advance of your appearance on the show.

If I could turn to Professor Ting, every President since Eisenhower has taken Executive action to provide some form of immigration relief, correct?

Mr. TING. Other presidents have taken

Executive action in immigration, but I believe all of those cases are distinguishable from the Executive action that President Obama has taken on a variety of reasons, not least of which is a the sheer number involved.

Mr. JEFFRIES. To be precise, it has happened 39 times since the 1950's, correct?

Mr. TING. I am not sure of the exact number. I am aware that there are precedents that are cited by President Obama's Office of Legal Counsel in their report. I have read their report. I think all their examples are distinguishable.

Mr. JEFFRIES. Are you aware that President Reagan and President Bush did it in connection with the family fairness policy after the 1986 Immigration Reform and Control Act was passed by Congress?

Mr. TING. I have specifically addressed the family fairness example in my written testimony, and I explain in my written testimony why that is distinguishable from what President Obama is trying to do.

Mr. JEFFRIES. Right. Now, Congress has never given the President the resources necessary to deport all 11 million undocumented immigrants, correct?

Mr. TING. There is never enough resources for any agency in this government that I am aware of.

Mr. JEFFRIES. That is just a yes or no question.

Okay. So I take it that the answer is no.

In fact, \$8.5 billion is allocated in this particular appropriations bill that we will be considering. In order to deport all 11 million undocumented immigrants, it would take \$285 billion. And so my question to you is if Congress has not given the President the capacity to deport all 11 million undocumented immigrants, doesn't the Administration have the inherent authority to decide that it is going to prioritize deportations of felons over deportations of families?

Mr. TING. Congressman, with respect, I think this notion that the only alternative is to deport 11 million illegal aliens is a straw man that is put out there. I mean, what is at issue and what I think that Congress needs to debate is whether the policies of this Administration encourage further illegal immigration into the United States or not. That is what is at stake.

I will concede, you will never get the amount of illegal immigration down to zero. That will never happen. You will never get the number of illegal immigrants down to zero. But you have to set a policy that affects the cost-benefit analysis of people wanting to come to the United States illegally as to whether you tip them toward not coming and violating our law and overwhelming our system, or whether you tip them in favor. Yeah, let's get the heck in there and see what benefits come our way. That is what is at stake. It is not a question of, well, either deport 11 million people or don't. That, I agree with you, is never going to happen.

Mr. JEFFRIES. Thank you.

Mr. GOODLATTE. Time of the gentleman has expired.

I want to—since a document was made a part of the record that casts aspersion on the character of the sheriff—I want to give Sheriff Babeu an opportunity to respond if he chooses to.

Sheriff BABEU. Yes, Mr. Chairman, and Congressman, I meet and probably take as many photos with individuals as you do or other members of this panel. It never means that if I talk to somebody that I all the sudden assume their positions or their beliefs or their entire history. Even though I am in law enforcement, I didn't do a criminal history on you prior to talking with you. And it certainly doesn't mean that I subscribe to your beliefs or political views.

Mr. GOODLATTE. Chair recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. I thank the Chairman.

Professor Ting, I want to go to, 22 times the President said he couldn't do what he turned around and did. Two of those were while he was candidate Obama. The other 20 were while he was President Obama. And I want to just take one of those statements and kind of walk through it. In fact, the two that he made while he was candidate may have had an impact on your decision to vote for him. I think you indicated to one of the Members on the other side of the aisle that you voted for President Obama, where he was talking about adhering to the Constitution, recognizing the separation of powers and the proper role of each branch of government.

But I want to just focus on one of these statements and kind of walk you through it and show where you agree with President Obama: There are those who have argued passionately that we should simply provide those who are here illegally with legal status or at least ignore the laws on the books and put an end to deportation until we have better laws. I believe such an indiscriminate approach would be both unwise and unfair.

You would agree with that, wouldn't you, Professor, to ignore the laws and end deportation would be unwise and unfair?

Mr. TING. I am aware of the 22 examples that have oft been cited, and I think the President was right at the time that he said those things, and I think he is wrong to have overridden his better judgment in the past.

Mr. JORDAN. He made this statement in July of 2010. And so I guess my simple question is, it is unfair and unwise to not follow the law; you would agree?

Mr. TING. Yes.

Mr. JORDAN. It goes on further. It would suggest to those thinking about coming here illegally that there would be no repercussions for such a decision and this could lead to a surge in more illegal immigration. If we don't follow the law, if we don't deport, if we don't do what the law says, you, in fact, could have a surge in illegal immigration, correct?

Mr. TING. Absolutely. And I think——

Mr. JORDAN. And that is exactly what we have seen; is that correct?

Mr. TING. Yes, I agree.

Mr. JORDAN. All right. He finishes with this: Ultimately, our Nation, like all nations—oh—and it would also ignore the millions of people around the world who are waiting in line to come here legally.

You agree too that if we don't follow the law and end deportation, it hurts those who are doing it the right way and could hinder and prolong their ability to follow the law and become a legal citizen of this great country. Would you agree with that, professor?

Mr. TING. I absolutely agree, and we should not forget that there are qualified legal immigrants that have been waiting in line in excess of 20 years for their chance to immigrate to this country legally. So when we are dealing with how we should handle illegal immigrants, we should not forget——

Mr. JORDAN. Right.

Mr. TING [continuing]. Those people standing in line trying to do it the right way.

Mr. JORDAN. No kidding. No kidding.

Okay. And then: Ultimately, our Nation, like all nations, has the right and obligation to control its borders, set laws for residency and citizenship. And no matter how decent they are, no matter those who broke the law should be held accountable.

You would agree that the rule of law is important and those who broke the law should be held accountable, wouldn't you, Professor?

Mr. TING. Yes, of course.

Mr. JORDAN. And you would agree that a sovereign nation has a right to control its border and actually set those laws?

Mr. TING. Absolutely.

Mr. JORDAN. And that people break them, they should be held accountable.

So here is the question: We have a bill that comes due or a funding bill that expires in 24 days, and in that legislation, we have said and we have done exactly what the President said back when you probably decided you were going to vote for him, back in July of 2010. We got a bill that is coming due, and it is real simple. We say in that bill we are going to fund and take care of Department of Homeland Security, but we are not going to allow the people's money, the American taxpayer money, to be used to violate everything the President said in that statement and to allow people to ignore the law and stay here and actually have benefits conferred on them.

Would you agree with that legislation we passed out of the House, Professor?

Mr. TING. Yes. I think, frankly, Congressman, if you didn't do that, a lot of Americans would wonder why you didn't do that—why

you didn't fund all the parts of DHS except for the part that you object to. That is what should be done, and then you should enter into negotiations with the President as to——

Mr. JORDAN. In his 22 statements where the President cited separation of powers, Constitution, the role of the various branches of government, the one power that the legislative branch has is the power to control the purse, the power of spending the people's—the taxing and spending authority, correct?

Mr. TING. Absolutely.

Mr. JORDAN. And we should stand firm, particularly in the matter of this substance—where it is about the rule of law, it is about the Constitution, it is about the sovereign right of a nation to control its border, and it is about treating legal immigrants in a fair and compassionate way—we should stand firm on the legislation we passed. Would you agree, Professor?

Mr. TING. I do.

Mr. JORDAN. Mr. Chairman, I yield back.

Mr. GOWDY [presiding]. Thank the gentleman from Ohio.

They have called votes, but I am going to try to get in the gentleman in from Rhode Island, if he is amenable to that.

Mr. CICILLINE. Yes.

Mr. GOWDY. Mr. Cicilline from Rhode Island.

Mr. CICILLINE. Thank you, Mr. Chairman. Mr. Chairman, barely a month ago when this Congress began, the majority pledged to put aside petty and purely political disagreements, and we promised to Congress that we would work constructively together on behalf of the American people, and yet today we find ourselves litigating the same tired and defeating arguments from years passed.

The Obama administration has made securing our borders a top-line priority, spending its limited enforcement resources on deporting felons, not families. But even as my esteemed colleagues across the aisle argue that this Administration is not serious about enforcement, they are refusing to fund the Department of Homeland Security for a second time in the last 15 months.

Until my friends on the other side of the aisle start to treat immigration reform as something more than a political talking point, we are going to be unable to achieve substantive, lasting progress on this issue.

And this hearing began with the premise that the lack of enforcement is the challenge. And I want to thank Dr. Rosenblum for sharing the facts, which no objective observer could conclude that that statement is true; in fact, that this is sort of unprecedented enforcement on virtually every measure. I want to make two quick points and ask one question.

Sheriff Babeu, you said, referring to this memorandum of Secretary Johnson, I think you have made the claim that it directed the Department of Homeland Security not to take action on any of the 11 million people in the United States and would result in 20 million additional people being allowed to remain here. You pointed to page 4(c). Just to be clear, this memorandum says emphatically, Our enforcement and removal policy should continue to prioritize threats to national security, public safety, and border security.

And what you refer to in 4(c) is actually one of the priorities for deportation and removal. So the note—there is no claim in here whatsoever that supports the claim you made.

And I ask that this article, “Statistics Don’t Support Pinal Sheriff Babeu’s Statement on Trafficking,” which is from the Arizona Republic, February 3, 2015, which goes through and has a series of analyses done on the claims that you make and finds that, in fact, they are not supported by evidence, I would ask unanimous consent that be made part of this record.

Second, I would just want to follow up on the gentlelady’s question from Texas in which you gave an alternate explanation about your involvement in a controversy involving a school bus filled with children. And I am quoting now from the Arizona—in fact, from The Republic, an editorial in which they say, and I quote, Hoping to orchestrate Arizona’s own version of the raucous anti-immigrant protest at Murrieta, California, that you instead orchestrated a gauntlet of terror for 40 or 60 kids en route to a day of ping pong and basketball at YMCA Triangle Y Camp. But wait, Babeu’s manipulative grandstanding is worse than you may think. As dozens of protesters rolled up onto the scene on the Mt. Lemmon highway, Babeu had the astonishing temerity to declare he was there to serve as “peacemaker.” Think of the pyromaniac who tortures his own house, then throws himself onto the mercy of the court as a homeless waif.

According to one protester organizer, Babeu told her, “The only way to stop this was for our community and the area to organize.”

This is an editorial entitled “‘Sheriff Showboat’ Babeu Has Disgraced the Office.” I ask that that be made part of the record.

[The information referred to follows:]



<http://www.azcentral.com/news/articles/2011/04/10/20110410pinal-sheriff-babeu-trafficking.html>

## **Statistics don't support Pinal Sheriff Babeu's statement on trafficking**

by **Dennis Wagner** - Apr. 10, 2011 12:00 AM  
The Arizona Republic

In mid-February, officers from more than a dozen police agencies swarmed the drug-trafficking corridor in western Pinal County's notorious Vekol Valley.

They got into wild vehicle chases, arrested 102 suspected smugglers, illegal immigrants and drug traffickers, and seized 3,200 pounds of marijuana.

When it was over, Sheriff Paul Babeu issued a news release declaring that Pinal County is "the No. 1 pass-through county in all of America for drug and human trafficking."

It's a line the sheriff has used countless times - most recently on Thursday in testimony before the U.S. Senate Committee on Homeland Security - as he criticizes the federal government for failing to secure the border.

There's just one problem: There is no data to support the assertion.

In fact, an *Arizona Republic* analysis of statistics from local, state and federal sources found that, while sheriff's officials do bust smugglers and seize pot, Pinal County accounts for only a fraction of overall trafficking.

The newspaper also found that other headline-grabbing claims by Babeu are contradicted by statistical evidence or greatly exaggerated.

For example, the charismatic first-term sheriff raised eyebrows two months ago when he predicted that his deputies would get into a gunbattle with cartel members in the desert during the next 30 to 60 days. The forecasted encounter did not happen.

Although critics, including the Department of Homeland Security and some border mayors, have challenged Babeu's veracity and questioned his motives, the sheriff shows no sign of tempering his claims.

In an undated letter seeking donations for a legal battle against the federal government, Babeu says "things are just going from bad to worse now that our own federal government has sided with the criminals instead of law enforcement."

Babeu, through a spokesman, declined to be interviewed, saying he was too busy. He did, however, respond to questions sent via e-mail. He wrote that Pinal County residents have reported such rampant increases in smuggling activity that they are terrified to leave their homes.

By contrast, DHS Secretary Janet Napolitano and others in the Obama administration point to statistical evidence that America's border is more secure than ever. They have drawn support from some border officials who publicly accuse Babeu of conducting a fear campaign.

Some county residents are concerned that the sheriff is overstating the crime rates in Pinal County. A group called Pinal County Residents of Responsible Leadership has been making automated phone calls in the area, with a male speaker criticizing Babeu's "irresponsible" rhetoric about border-related crime. Listeners who want to lodge a complaint with the sheriff's "political office" are transferred to the Arizona Republican Party.

### **Extent debated**

No one disputes that Pinal County, which lies 70 miles from the border, emerged as a smuggling channel during the past decade.

Up until the 1990s, smugglers and illegal immigrants could enter the United States almost anywhere without worry.

Then, gradually, border enforcement increased. Routes into California and Texas were squeezed until crime syndicates began relocating to the Sonora-Arizona line.

At first, crossings concentrated near Nogales, Douglas and other municipalities where roads were relatively accessible. As the crackdown expanded into those areas - with more agents, technology and fencing - smugglers were forced deep into the outback, trekking several days to evade an enforcement gantlet.

Federal officials say the plan all along was to make illegal crossings more difficult.

Today, much of the traffic moves through the Tohono O'odham Reservation and north into Pinal County, where smugglers and illegal immigrants can meet waiting vehicles near Interstate 8.

Now, federal officials say, the final squeeze points are under assault by task forces in places like Vekol Valley, where hundreds of human trails zigzag through the jagged mountains and thorny desert and where bandits sometimes prey on those who enter.

For years, a single deputy was assigned to patrol the entire western part of the county. Then, last year, Babeu, who oversees 700 full-time employees, including 210 deputies, announced a dramatic increase, telling KGUN9 TV in Tucson, "We're sending out three different teams of eight to 15 deputies in each that are heavily armed, even with sniper teams, out to the desert at all hours of the day and night."

Besides those deputies, law-enforcement task forces have flooded the area with agents and officers from the Border Patrol, Bureau of Land Management, Immigration and Customs Enforcement, Drug Enforcement Administration, Arizona Department of Public Safety and police from Casa Grande, Eloy and the Tohono O'odham Nation.

But is Pinal, an area larger than Connecticut with about 341,000 residents, "the No. 1 pass-through county in all of America" as Babeu claims?

The data showing amounts of drugs seized and numbers of illegal immigrants arrested in Arizona does not support his assertion - unless Babeu does not consider border counties "pass-through" areas.

DHS records for last year show that the Border Patrol seized 18 times as much marijuana and arrested 15 times as many illegal immigrants in Pima County as in Pinal. In Santa Cruz County last year, the agency seized nearly 10 times as much marijuana and arrested six times as many illegal immigrants as it did in Pinal. The agency also says 90 percent of all drug interdictions occur within 5 miles of the border and says only 3 percent of marijuana seizures made in its Tucson Sector occur in Pinal County.

In his e-mail, Babeu responded that "DHS and U.S. Border Patrol should expect to see higher numbers of drug seizures anywhere they have increased manpower, which historically has been along the border."

### **Claim check**

To assess Babeu's claims, *The Arizona Republic* obtained public records from the Pinal County Sheriff's Office, DHS and other federal agencies.

Among the findings:

◆Babeu told the *Berkshire (Mass.) Eagle* in February, "Out of the 3,000 counties in the nation, Pinal County ranks No. 1 when it comes to smuggling drugs and humans across the border."

That claim appears to be incorrect.

Although Babeu is often identified as a border sheriff, his jurisdiction is 70 miles removed from the Mexico line. Moreover, DHS records show Pinal County accounts for a tiny fraction of drug and immigrant captures, fewer than any of the three border counties within the Tucson Sector.

Last year, for example, agents recovered 527,667 pounds of marijuana in Pima County. That's 18 times as much marijuana as they captured in Pinal County. They also made 15 times as many arrests in Pima County. In Santa Cruz County, the Border Patrol reported nearly 10 times as much marijuana seized and six times as many arrests as in Babeu's jurisdiction.

Jeffrey Self, head of the Border Patrol's new Joint Field Command office in Tucson, said nine out of 10 undocumented-immigrant arrests in Arizona occur within 5 miles of the border. Only 2 percent of all illegal crossers are captured in Pinal County.

In his e-mail, Babeu said federal enforcement is stronger along the border, so arrest and seizure totals are higher there.

◆On Fox News, the sheriff told host Greta Van Susteren he's facing "one of the highest crime rates in America" and crime is "literally off the charts in Arizona."

That claim also appears to be inaccurate.

Pinal County does not have the highest crime rate in Arizona, which is listed 16th among the states for violent offenses, according to the Statistical Abstract of the United States.

An analysis of U.S. Census data and Department of Public Safety records shows 11 of Arizona's 15 counties have crime rates higher than Pinal County's. Residents of Maricopa County are victimized nearly twice as frequently as their neighbors to the south.

Pinal County records show violent crime plummeting over the past few years in every major category except homicides, where numbers are too small for statistical significance. Aggravated assaults in Pinal County decreased 29 percent since 2007.

Armed robberies are down 41 percent. Border Patrol records indicate that illegal-immigrant apprehensions in Pinal County have declined every year since 2008.

In his e-mail, Babeu acknowledged that crime is down in the area but said that decrease would be greater if the border was protected.

◆ In his letter to border mayors, and elsewhere, Babeu has said that federal intelligence analysts identified "75 to 100 mountains or high-terrain features that are occupied by Mexican drug cartels" in Pinal County.

According to Self, that tally represents the number of possible vantage points, not locations manned at any one time by cartel scouts.

In his e-mail, Babeu agreed with that clarification.

Critics say some of Babeu's other claims spread fear unnecessarily.

Babeu says the Arizona border is so porous that national security is in jeopardy, based on arrests in Pinal County of undocumented immigrants from terrorist-linked nations.

In the past decade, there is no known record of a terrorist entering the United States via Arizona's border. Since 2008, according to DHS and sheriff's records, only one undocumented immigrant - a Cuban - was detained from a nation on the State Department's list of state-sponsored terror nations. Three others were from Afghanistan and Sudan, countries with significant terrorism issues.

In his e-mail, Babeu said he is concerned that the entire border of nearly 2,000 miles remains open to intruders. "Even if only a few (non-Mexicans) were caught, how many more got through undetected?" he asked.

### **Still work to be done**

Babeu, who says cartels have put a green light out for his assassination, is hardly alone in bemoaning federal efforts along the border. Napolitano constantly complained about the same issue during her tenure as governor of Arizona.

Security has improved under her watch, though: The U.S. Government Accountability Office reported last year that control of the border has grown by 126 miles per year. Border Patrol staffing has more than doubled since 2004. Arizona now has 4,900 agents, plus 900 Customs and Border Protection officers and 561 National Guard

troops. The result, according to DHS: a nearly 40 percent drop in the number of immigrants caught entering Arizona unlawfully.

But there is still work to be done. The same GAO report said 56 percent of the U.S.-Mexico line is still not under "operational control."

Babeu said in his e-mail that having less than half of the border controlled amounts to "a failing grade," and government efforts are too little, too late.

"If this administration was truly committed to securing the border, they would have already implemented the . . . 10-Point Border Security Plan" advocated by Republican Sens. John McCain and Jon Kyl of Arizona. That proposal calls for more National Guard units, fences and other deterrents.

Independent experts say rhetorical exchanges and media sound bites often preclude rational approaches to border security.

Rick Van Schoik, director of the North American Center for Transborder Studies at Arizona State University, said Babeu may sincerely see Pinal County in a public-safety crisis based on his personal law-enforcement experience. At the same time, he said, "the border really is safer than it has been in a long time."

Van Schoik complained that vital issues, such as border trade and the threat of smuggled nuclear materials, get lost amid political posturing. He added that enforcement has improved, illegal crossings are down, drug seizures are up and border communities are generally safer. "By almost any metrics, CBP and DHS have accomplished a lot."

In Nogales, the biggest border city leading into Pinal County's smuggling pathway, no murders were reported in 2010 or 2009. In February, Mayor Arturo Garino and his counterparts in Douglas and San Luis wrote to Babeu, asking him to stop painting the border as crime-infested.

"Creating panic where only vigilance is warranted helps nobody," they wrote. "While your misstatements about efforts to keep communities along the U.S.-Mexico border may keep national media coming to Arizona, at the same time your consistent inaccuracies hurt cities and towns like ours" by sabotaging commerce.

Weymouth Fogelberg, who generated the automated phone calls criticizing Babeu, said he's 92 and tired of seeing elderly residents frightened by false rhetoric. "He's a very charming, intelligent man," Fogelberg said of the sheriff. "But he's using us for the furtherance of his political career."

Thayer Verschoor, communications director for the state Republican Party, said the phone strategy didn't work. "We've gotten some calls," he noted, "but most of them are actually pretty positive" about the sheriff.

Babeu said in his e-mail that he represents the people who elected him. "The citizens of Pinal County and Arizona have demanded help" in combating border-related crime, he wrote, adding that smugglers in his jurisdiction "will be met with a heavy law-enforcement presence."

Read

more: <http://www.azcentral.com/news/articles/2011/04/10/20110410pinal-sheriff-babeu-trafficking.html#ixzz3SbmdeNkp>

## 'Sheriff Showboat' Babeu has disgraced the office

Editorial board, The Republic | [azcentral.com](http://azcentral.com) 3:44 p.m. MST July 15, 2014

*Our View: A man charged with keeping the peace brought chaos to Oracle. How incomprehensible can you get?*



(Photo: Nick Oza/The Republic)

The actions of Pinal County Sheriff Paul Babeu in the last several days have been incomprehensible.

And irresponsible.

That they are calculated and political goes without saying. But while Babeu is an elected politician — and a self-obsessed camera hog — he is first and foremost a keeper of the peace. Or is supposed to be. And at that duty he has disgraced his office.

At events promoting a Republican candidate for governor last week, Babeu blurted out that a group of Central American children caught at the Texas border would be bused to Oracle, north of Tucson.

Later, he shared precise details of where and when they would arrive with a group of immigration-enforcement activists. And again in an interview with a Valley TV news station. According to Babeu, "whistleblowers" with the U.S. Department of Homeland Security tipped him off.

Whistleblowers. Those would be federal authorities foolish enough to share potentially explosive information with Babeu.

The end result? Totally predictable chaos.

Duelling protests ([/story/news/arizona/politics/2014/07/15/arizona-immigrant-children-oracle-protests-sheriff-babeu/12069169/](http://story/news/arizona/politics/2014/07/15/arizona-immigrant-children-oracle-protests-sheriff-babeu/12069169/)) sprang up near the location in Oracle, including confrontations between people opposed to the immigrants coming to Oracle and those supporting them.

We should all be thankful — Babeu, as much as anyone — that the heated arguments erupting in the sweltering heat Tuesday didn't boil over into something more serious. Had someone been injured as a result of Babeu's gross political negligence, the fault would have rested entirely on Sheriff Showboat.

Then came the buses with the kids. The wrong kids. Angry activists quickly surrounded a pair of school buses loaded with local children on their way to YMCA day camp.

**ROBERTS:** *Oracle is no Murietta (fortunately)* ([/story/laurieroberts/2014/07/15/oracle-protest-a-bus/12706371/](http://story/laurieroberts/2014/07/15/oracle-protest-a-bus/12706371/))



Hoping to orchestrate Arizona's own version of the raucous anti-immigrant protests at Murrieta, Calif., Babeu instead orchestrated a gauntlet of terror for 40 or 60 kids en route to a day of ping pong and basketball at the YMCA Triangle Y Camp.

But wait. Babeu's manipulative grandstanding is worse than you may think.

As dozens of protesters rolled up onto the scene on the M. Lemmon highway, Babeu had the astonishing temerity to declare he was there to serve as "peacemaker."

Think of the pyromaniac who torches his own house, then throws himself on the mercy of the court as a homeless walf. According to one protest organizer, Babeu told her "the only way to stop this was for our community and the area to organize."

And so he did, effectively, organize and manipulate the incident. Then he sent out a host of Pinal County deputies to maintain some semblance of the peace he single-handedly threatened. That's gall.

**MONTINI: Sheriff Underpants and migrant kids** ([/story/montini/2014/07/15/sheriff-paul-babeu-oracle-immigrant-children/12675479/](http://story/montini/2014/07/15/sheriff-paul-babeu-oracle-immigrant-children/12675479/))

But it is more than just hypocrisy and gall. It is an abdication of Babeu's prime directive — which, whether he realizes it or not, is real peace-keeping. Not calculated gambits to resurrect a political career he nearly destroyed with those preening, indiscreet selfies he texted.

Regardless where people stand on the federal policies responsible for this tragic march of Central American children to the U.S. border, taking out political frustrations on these kids is just cruel.

But if a higher order of cruelty — and carelessness — for a peace officer to use his elected office to play on anger and fear.

If Tuesday's confrontation had gone only slightly more awry, Babeu's time in politics would be, officially, done. And justifiably so.

It may be anyway. How incomprehensibly irresponsible can you get?

**RELATED: Lawmaker mistakes bus for migrants** ([/story/brehm-resnik/2014/07/15/arizona-pollician-mistakes-campers-for-migrant-children/12701279/](http://story/brehm-resnik/2014/07/15/arizona-pollician-mistakes-campers-for-migrant-children/12701279/))

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Mr. CICILLINE. And now I turn finally to Professor Ting, who says that immigration is bad for American workers and jobs. The American Enterprise Institute found that temporary foreign workers, both skilled and unskilled, actually boost U.S. employment. The same analysis found that millions of unauthorized workers and the priorities of family reunification would help, that there was no evidence, excuse me, that foreign-born workers would hurt the employment rate of U.S. workers. And, in fact, two reports, one by the Congressional Budget Office, found that the gross domestic product would grow by 5.4 percent, \$1.4 trillion, and wages would be increased by .5 percent for the entire labor force by 2033. In addition to that, there is a report from the President's Council of Economic Advisers that concludes that both—that average wages for all workers will increase as a result of the Executive action. I ask unanimous consent that both of those reports be included in the record.

And I would ask you, Dr. Rosenblum, is Professor Ting right that comprehensive immigration reform is bad for workers, American workers, and bad for American wages?

Mr. ROSENBLUM. Thank you. Well, we have had a lot of discussion about the economics of immigration. There are no economists on this panel. But when you read the economics literature, the academic economics literature, there is a pretty broad consensus that immigration boosts overall GDP, that it raises wages for the average U.S. worker. It raises wages most for middle-class and high-wage workers.

And I agree with Professor Ting that the one group that may compete a little bit with new immigrants are previous immigrants. But on that, economists are pretty broadly in agreement that immigration is good for the U.S. economy across a number of different indicators.

Mr. CICILLINE. Thank you.

I yield back, Mr. Chairman.

Mr. GOWDY [presiding]. All right. The gentleman yields back. We have a vote series, and we will—

Ms. JACKSON LEE. Mr. Chairman.

Mr. GOWDY. Yes, ma'am.

Ms. JACKSON LEE. I would like to enter a number of documents into the record, please. I would like to ask unanimous consent to enter these documents.

Mr. GOWDY. As expeditiously as you can so we don't miss votes.

Ms. JACKSON LEE. Thank you, Mr. Chairman, very much.

I would like to enter into the record data from the Customs and Border Protection indicating that apprehensions of unaccompanied children have gone down 38 percent in 2015 from the same time last year; and for family units, gone down in 2015, fiscal year 2015, from 2014, 12 percent. I ask unanimous consent to submit that document into the record.

Mr. GOWDY. Without objection.

Ms. JACKSON LEE. I would additionally like to submit into the record documentation from the Executive Office of Immigration Review indicating that in the time period of July 18, 2014, and December 23, unaccompanied children had a 14 percent absence rate, meaning—

Mr. GOWDY. Without objection.

Ms. JACKSON LEE. Without objection, thank you.

And then a document that indicates that adults had an absence rate of 23 percent, showing that they do appear at immigration hearings.

Mr. GOWDY. Without objection.

Ms. JACKSON LEE. And lastly, the EOI, the data from Executive Office of Immigration Reviews, the agency that conducts immigration hearings, that the data that they are collecting has started in the point of July 18, 2014.

Mr. GOWDY. Without objection.

Ms. JACKSON LEE. I ask unanimous consent.

Mr. GOWDY. Without objection, the documents will be admitted into the record.

[The information referred to follows:]

Official website of the Department of Homeland Security

Department  
of  
Homeland  
Security  
LogoU.S. Customs and  
Border Protection

## Southwest Border Unaccompanied Alien Children

Beginning last year and specifically in the last few months, CBP has seen an overall increase in the apprehension of Unaccompanied Alien Children from Central America at the Southwest Border, specifically in the Rio Grande Valley. While overall border apprehensions have only slightly increased during this time period, and remain at historic lows, the apprehension and processing of these children present unique operational challenges for CBP and HHS. Addressing the rising flow of unaccompanied alien children crossing our southwest border is an important priority of this Administration and the Department of Homeland Security (DHS), and Secretary Johnson has already taken a number of steps to address this situation.

### Southwest Border Unaccompanied Alien Children (0-17 yr old) Apprehensions

Comparisons below reflect Fiscal Year 2015 to date (October 1, 2014 - December 31, 2014) compared to the same time period for Fiscal Year 2014.

Sector	Fiscal Year 2014	Fiscal Year 2015	% Change
Big Bend Sector	43	60	40%
Del Rio Sector	613	316	-48%
El Centro Sector	114	98	-14%
El Paso Sector	212	266	25%
Laredo Sector	816	575	-30%
Rio Grande Sector	8,294	4,928	-41%
San Diego Sector	154	237	54%
Tucson Sector	2,550	1,415	-45%
Yuma Sector	56	115	105%

Southwest Border Unaccompanied Alien Children | U.S. Customs and... <http://www.cbp.gov/newsroom/stats/southwest-border-usacompanie...>

Sector	Fiscal Year 2014	Fiscal Year 2015	% Change
Southwest Border Total	12,852	8,010	-38%

#### Southwest Border Family Unit Apprehensions<sup>4</sup>

Comparisons below reflect Fiscal Year 2015 to date (October 1, 2014 - December 31, 2014) compared to the same time period for Fiscal Year 2014.

Sector	Fiscal Year 2014	Fiscal Year 2015	% Change
Big Bend Sector	13	76	485%
Del Rio Sector	507	280	-45%
El Centro Sector	109	146	34%
El Paso Sector	82	93	13%
Laredo Sector	595	357	-40%
Rio Grande Sector	5,689	5,343	-6%
San Diego Sector	430	426	-1%
Tucson Sector	1,042	621	-40%
Yuma Sector	44	126	186%
Southwest Border Total	8,511	7,468	-12%

#### U.S. Border Patrol Southwest Border and Rio Grande Valley Sector Other Than Mexicans

Comparisons below reflect Fiscal Year 2015 to date (October 1, 2014 - December 31, 2014)

Sector	FY2015
Rio Grande Valley	22,979
Southwest Border	31,507

#### Unaccompanied Alien Children Encountered by Fiscal Year

Southwest Border Unaccompanied Alien Children | U.S. Customs and... <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied...>

Fiscal Years 2009-2014; Fiscal Year 2015 to date (October 1, 2014 - December 31, 2014)

Country	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404	1,564
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057	2,746
Honduras	968	1,017	974	2,997	6,747	18,244	506
Mexico	16,114	13,724	11,768	13,974	17,240	15,634	2,787

#### Family Unit Apprehensions Encountered by Fiscal Year\*

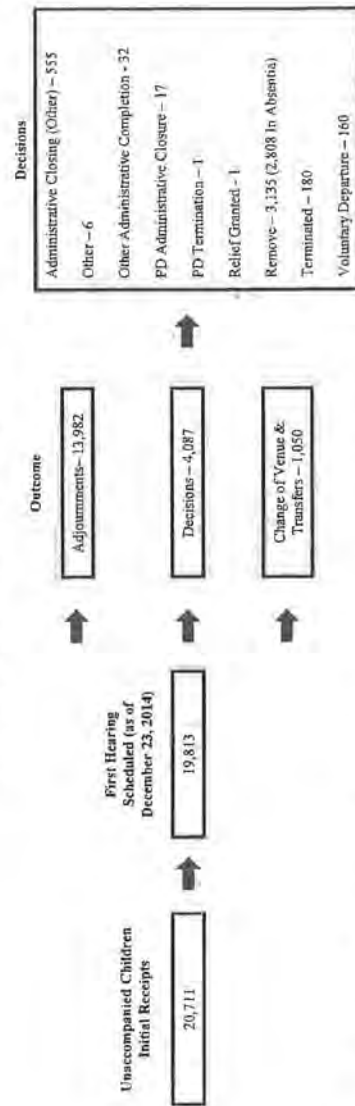
Fiscal Year 2015 to date (October 1, 2014 - December 31, 2014)

Country	FY 2015
El Salvador	1,911
Guatemala	2,501
Honduras	1,651
Mexico	1,158

\*Note: (Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol.)

Tags: Statistics Unaccompanied Alien Children (UAC) U.S. Border Patrol

## Executive Office for Immigration Review Unaccompanied Children Priority Code Adjudication July 18, 2014 – December 23, 2014



• The "initial receipts" capture new Notices to Appear that DHS files with EOIR's immigration courts for removal cases for unaccompanied children (UC), which falls into one of the four priority groups EOIR announced on July 18, 2014: unaccompanied child (UC), adults with a child or children detained (AWC/D), adults with a child or children released on alternatives to detention (AWC/ATD), and recent border crossers whom DHS is detaining (RBC/D). DHS is responsible for identifying which individuals fall into the priority categories. The Department of Homeland Security places priority case codes on the Notices to Appear before filing them with the immigration court. These case codes do not change as the case moves through the immigration court process. Consequently, we note that priority cases, including those marked as "adults with children - detained" or "recent border crosser - detained," will retain the designation DHS provides at the case onset, regardless of subsequent custody status. These initial receipts are for cases that DHS filed with EOIR between July 18, 2014 and December 23, 2014.

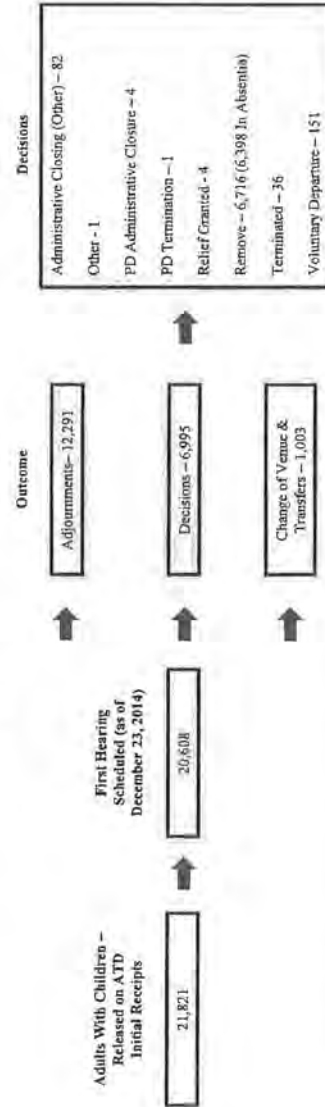
• "PD Administrative Closure" = A completion code used when an immigration judge grants administrative closure based on DHS/ICE's exercise of prosecutorial discretion, generally upon a joint motion of the parties.

• "PD Termination" = A completion code used when an immigration judge grants administrative termination based on DHS/ICE's exercise of prosecutorial discretion, generally upon a joint motion of the parties.

• "Administrative Closing - Other" = Administrative closure for reasons other than prosecutorial discretion, by joint motion or otherwise in accordance with applicable precedent decisions of the Board of Immigration Appeals (BIA).

• Please note that EOIR staff frequently enter and update information into the case database, so the statistics provided are subject to change.

## Executive Office for Immigration Review Adults With Children – Released on ATD Priority Code Adjudication July 18, 2014 – December 23, 2014



\* The "initial receipts" capture new Notices to Appear that DHS files with EOIR's immigration courts for removal cases for adults with a child or children released on alternatives to detention (AWC/ATD), which fall into one of the four priority groups EOIR announced on July 18, 2014: unaccompanied child (UC), adults with a child or children detained (AWC/D), adults with a child or children released on alternatives to detention (AWC/ATD), and recent border crossers whom DHS is detaining (RBC/D). DHS is responsible for identifying which individuals fall into the priority categories. The Department of Homeland Security places priority case codes on the Notices to Appear before filing them with the immigration court. These case codes do not change as the case moves through the immigration court process. Consequently, we note that priority cases, including those marked as "adults with children - detained" or "recent border crosser - detained," will retain the designation DHS provides at the case onset, regardless of subsequent custody status. These initial receipts are for cases that DHS filed with EOIR between July 18, 2014 and December 23, 2014.

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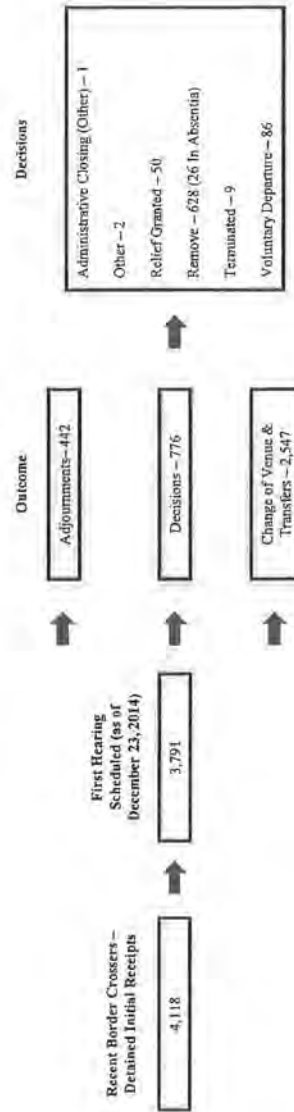
\* "PD Termination" = A completion code used when an immigration judge grants administrative termination based on DHS/ICE's exercise of prosecutorial discretion, generally upon a joint motion of the parties.

\* "Administrative Closing - Other" = Administrative closure for reasons other than prosecutorial discretion, by joint motion or otherwise in accordance with applicable precedent decisions of the Board of Immigration Appeals (BIA).

\* Please note that EOIR staff frequently enter and update information into the case database, so the statistics provided are subject to change.



## Executive Office for Immigration Review Recent Border Crosser - Detained Priority Code Adjudication July 18, 2014 – December 23, 2014



• The "initial receipts" capture new Notices to Appear that DHS files with EOIR's immigration courts for removal cases for recent border crossers whom DHS is detaining (RBC/D), which fall into one of the four priority groups EOIR announced on July 18, 2014: unaccompanied child (UC), adults with a child or children detained (AWC/D), adults with a child or children released on alternatives to detention (AWC/ATD), and recent border crossers whom DHS is detaining (RBC/D). DHS is responsible for identifying which individuals fall into the priority categories. The Department of Homeland Security places priority case codes on the Notices to Appear before filing them with the immigration court. These case codes do not change as the case moves through the immigration court process. Consequently, we note that priority cases, including those marked as "adults with children - detained" or "recent border crosser - detained," will retain the designation DHS provides at the case onset, regardless of subsequent custody status. These initial receipts are for cases that DHS filed with EOIR between July 18, 2014 and December 23, 2014.

• "PD Administrative Closure" = A completion code used when an immigration judge grants administrative closure based on DHS/ICE's exercise of prosecutorial discretion, generally upon a joint motion of the parties.

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• Please note that EOIR staff frequently enter and update information into the case database, so the statistics provided are subject to change.

Mr. GOWDY. To our witnesses, we apologize for the vote series. We are coming back, and we are coming back as quickly as we can right after the vote series.

With that, we will temporarily be in recess.

[Recess.]

Mr. GOWDY [presiding]. The Committee is back in order.

And the Chair would recognize the gentleman from Texas, former United States Attorney, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman.

As a former Federal prosecutor who has exercised prosecutorial discretion in charging hundreds of Federal immigration cases, I have enjoyed hearing the panel's diverse thoughts on the adequacy and enforcement of our Nation's immigration laws.

Dr. Rosenblum, I—Mr. Chairman, I am going to yield back my time.

Mr. GOWDY. The Chair will take your time and then yield my time to you if you want to ask questions in my slot. So we will do that.

And I would say this.

Professor Rosenblum, I was thinking on the way over to votes that the gentleman from Georgia asked everyone on the panel his or her political ideation except you. And I am not going to ask you your political ideation for this reason: It is of no consequence.

When you work, as the sheriff does, for a blindfolded woman holding a set of scales, politics doesn't matter. I am very disappointed that any of my colleagues would have asked. They have the right to do it. I am not going to ask you about that.

What I am going to ask you—and I am sure you do. I am sure you share with me an appreciation for members of law enforcement at all levels, but particularly State and local, who find themselves running toward danger so we don't have to and they have to deal with bad actors so we don't have to and they have to carry guns and wear bulletproof vests so we don't have to.

And I guess, if the sheriff—if you all were to have a moment after this hearing, I suppose that our sheriff today would tell you the same thing that my sheriffs back home, Sheriff Wright and Sheriff Loftis, would tell you, that one of the hardest parts of being a local law enforcement is when you have to sit down with the family members of crime victims.

If the victim lives, then you have that conversation with the victim herself or himself. If the victim doesn't and you find yourself talking to family members, invariably, the question always comes back to why was that person out. If they were out on bond when they committed the crime, they want to know why was the person out. If the person should have been deported and was not, they want to know why was the person here.

So how would you help Sheriff Babeu or my sheriffs explain to crime victims when the fact pattern is the person wasn't supposed to be here anyway, committed a crime while they were here, served their sentence and, rather than being deported, were put back out into the public to commit another offense? How would you explain that to crime victims?

Mr. ROSENBLUM. Thank you, Mr. Chairman.

I would not enjoy having those conversations. I am sure you are right, that that is a terrible position to be in.

You know, on this whole question of convicted criminals being released, I find that—I haven't studied those data like Ms. Vaughan has, but I think we all can agree that a plain reading of both the 2010 enforcement priorities and the 2014 enforcement priorities says that people who have been convicted of serious crimes are the executive branch's top enforcement priorities. So——

Mr. GOWDY. Do you consider domestic violence to be a serious crime?

Mr. ROSENBLUM. I believe that domestic violence crime would be in the top-priority category in both the 2010 and 2014. Certainly in 2010 it was. I mean, I see your counsel shaking her head. I may be wrong about 2014. It may be in the second category in 2014.

Mr. GOWDY. Well, what I found surprising was the comprehensive Senate immigration plan that so many of my colleagues on the other side fell in love with. You can actually be convicted of domestic violence and still remain on the path to citizenship. I find that almost impossible to believe.

Let me ask you this about law enforcement: Who investigates most homicide cases in the United States?

Mr. ROSENBLUM. I am sure that is State and local police.

Mr. GOWDY. Who investigates most robbery cases?

Mr. ROSENBLUM. I am sure as well.

Mr. GOWDY. Who investigates most domestic violence cases?

Mr. ROSENBLUM. State and locals.

Mr. GOWDY. Who investigates most adult sexual assault cases?

Mr. ROSENBLUM. I am sure that is also State and locals.

Mr. GOWDY. Who investigates most child sexual assault cases?

Mr. ROSENBLUM. State and locals.

Mr. GOWDY. Who patrols the interstate, even though it is inherently interstate, and, therefore, impacts interstate commerce? Who patrols that?

Mr. ROSENBLUM. That would also be State and locals.

Mr. GOWDY. Who went door to door after the Boston bombing along with the Bureau and the ATF?

Mr. ROSENBLUM. State and locals.

Mr. GOWDY. Who provides security to the very same colleagues who don't want and don't trust local law enforcement to enforce our immigration laws? Who provides security for them when they are back in their district having their town halls and their public events?

Mr. ROSENBLUM. State and locals.

Mr. GOWDY. So if you trust them to do all of that, why can't you trust them to do immigration cases?

Mr. ROSENBLUM. I think that that is an issue that is Congress' to decide.

Mr. GOWDY. I am asking you.

Would you support the SAFE Act, which allows State and local law enforcement to assist Federal law enforcement in enforcing our immigration laws?

You are their witness. I assume they brought you for a reason.

Mr. ROSENBLUM. I would say that, while I agree with you that State and locals play a role, obviously, in all of those law enforce-

ment functions, that there are certain unique things about immigration policy——

Mr. GOWDY. Such as?

Mr. ROSENBLUM. Such as that it is a transnational issue that has both domestic and international implications.

Mr. GOWDY. Counterfeiting does, too.

Mr. ROSENBLUM. And so, with an example like counterfeiting, the Federal Government sets the parameters for cooperation between the Feds and the locals. And so what Congress has done——

Mr. GOWDY. So you would support State and local working with the Feds and immigration?

Mr. ROSENBLUM. Well, what Congress has done is to create the 287(g) mechanism where the Feds——

Mr. GOWDY. All we are trying to do is canonize that in the SAFE Act.

So you would support that?

Mr. ROSENBLUM. I will confess that I am not sure exactly how the SAFE Act would differ from 287(g). 287(g) creates a mechanism where the Federal Government stipulates certain ways in which States and locals are allowed to cooperate.

So that seems to me to be something that DHS has, for the most part, chosen not to take advantage of because they judge that it doesn't serve their interests in how they want to manage immigration enforcement.

Mr. GOWDY. Well, I am almost out of time and then I am going to either go to the gentleman from Texas or Florida or Idaho.

One thing that has vexed me in the time that I have been in Congress—and perhaps you can help me—is this notion of sanctuary cities where you trust localities to not enforce Federal law, but, yet, you don't trust that same locality to actually enforce Federal law.

Can you help me reconcile how you can support the existence of sanctuary cities but, at the same time, not support those very same local law enforcement officers participating in enforcement?

Mr. ROSENBLUM. I think the way I would answer that is that certain States and localities, counties and cities have determined that their cooperation with DHS doesn't serve their constituents' interest because it creates a wedge between——

Mr. GOWDY. What do they do with the supremacy clause?

Mr. ROSENBLUM. They have chosen to limit the way they interact and to not honor those voluntary detainer requests because they——

Mr. GOWDY. That sounds like nullification to me. And I am from a State with a little experience in that.

Mr. ROSENBLUM. That is true.

So this is not an area where I have legal expertise. But I would say that, you know, the great majority of localities have cooperated with ICE detainer requests.

Mr. GOWDY. I get that.

But some have not and they are heralded as sanctuary cities, like that is some title to be aspired to. And I don't know what your next Law Review article's going to be, but I would love it if somebody could explain to me why you trust local actors to decide not

to enforce Federal law, but you don't trust those same local actors to actually enforce Federal law.

Mr. ROSENBLUM. Well, there is other jurisdictions that are enforcing by that definition.

Mr. GOWDY. The gentleman from Texas, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman, for yielding.

Dr. Rosenblum, earlier today I heard your testimony essentially with respect to the Obama administration's assertion that it is prosecuting felons, not families. You supported that and essentially said that the statistics bear out that there seems to be a focus on quality over quantity.

Did I hear that accurately?

Mr. ROSENBLUM. Yes, sir.

Mr. RATCLIFFE. Okay. Again, as a former Federal prosecutor, I certainly agree with prioritizing and focusing on the worst of the worst.

But would you agree with me that we can't do that and forsake the rest of the prosecutions with respect to the illegal population?

Mr. ROSENBLUM. Yes.

Mr. RATCLIFFE. Okay. So in the hundreds of cases that I have had the chance to prosecute in this area, I have had the opportunity to work with Immigration and Customs Enforcement on all of them. So I was struck by something that was said by President Obama's former head of ICE last June, John Sandweg.

Do you know Mr. Sandweg?

Mr. ROSENBLUM. I know of him.

Mr. RATCLIFFE. All right. Well, what he said was—in an interview last June was—and I am quoting—"If you are a run-of-the-mill immigrant here illegally, your odds of getting deported are close to zero."

Would you agree with that statement?

Mr. ROSENBLUM. The odds are very low for people who are in the U.S. and have not been convicted of a crime and have not previously been removed.

Mr. RATCLIFFE. Okay. And do you think that that is a proper approach by this Administration?

Mr. ROSENBLUM. I think that it is a policy decision that the Administration has made to prioritize the border, criminals, reinstatements of removal, and ICE fugitives.

I think that, as a matter of setting priorities, those are long-standing priorities. There is a long legislative history of Congress also identifying those goals.

Certainly I think probably most people on the panel would say, if we are going to pick the first four categories we should go after, those would all be on the list. So perhaps what we disagree about is how hard they should work also on people who fall outside of those categories.

But I agree with the idea of prioritizing criminals, border-crossers, reinstatements, and fugitives. I think that is noncontroversial.

Mr. RATCLIFFE. Well, I would agree with that.

But you agree with me that having close to zero percent chance of being deported if you are in this country illegally is not the standard that we should aspire to.

Mr. ROSENBLUM. I think that a close-to-zero chance is certainly less of a deterrent than a larger chance.

Mr. RATCLIFFE. Thank you.

I yield back, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Texas.

The Chair will now recognize the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

Professor Ting, somebody earlier asked you about the difference between the Family Fairness Act and the current actions of this President, but they didn't give you an opportunity to really explain that.

Mr. TING. Yes. I noticed that, too.

Mr. LABRADOR. Could you explain for us exactly how they are different. Because I agree with you that they are two different actions. And in one, in my opinion, the President was working with Congress.

Mr. TING. Absolutely.

Mr. LABRADOR. And in this instance, the President is working against the wishes of Congress, which is actually against the wishes of the American people.

Mr. TING. Yes. I have some interest in Family Fairness because I was working in the George H.W. Bush administration. So I remember it well.

And there was a feeling on the part of many people that some of the issues that needed to be addressed were not addressed by the Immigration Reform and Control Act of 1986, and particularly some sort of relief had to be provided for the spouses and minor children of the newly amnestied illegal—formerly illegal immigrants.

And President Bush was engaged in active negotiations with the Congress trying to get that done, and he did announce Family Fairness as an interim measure. But he did so within months after that, the Immigration Act of 1990 was agreed to and became law.

Mr. LABRADOR. And he did it with the consent and the cooperation of Congress. Is that not what happened?

Mr. TING. Absolutely. And I cited in my written testimony that, you know, the Supreme Court has said in the steel seizure case, *Youngstown Sheet & Tube*, that the President is at the peak of his authority when he acts with the explicit or implicit support of Congress and he is at the very nadir of his authority when he acts in defiance of Congress, as President Truman did when he seized the steel mills.

Mr. LABRADOR. And Obama's actions are in defiance of what Congress was expressly stated. Isn't that correct?

Mr. TING. Yes. I think that that is unquestionably clear.

Mr. LABRADOR. Okay. Dr. Rosenblum, you seem to agree that the President has prosecutorial discretion and you seem to be okay with his actions. Is that correct?

Mr. ROSENBLUM. I mean, I am not an attorney. But certainly there are smart lawyers who have made that case.

Mr. LABRADOR. Okay. Do you think it would be okay for a U.S. Attorney, for example, to decide that he or she is not going to prosecute marijuana laws in their district?

Mr. ROSENBLUM. Again, I mean, I am a little reluctant to really wade into this because it is a little outside my area of expertise.

But what I understand is that these are policy decisions that are made, you know, more by the executive branch than by an ICE officer or a U.S. Attorney.

Mr. LABRADOR. Okay. Professor Ting, I actually think the President exceeded his authority. But let's assume for a second that he did everything within his authority.

Would a U.S. Attorney be qualified to make a decision about prosecuting marijuana laws in his or her district? Do you think they have that prosecutorial discretion?

Mr. TING. I think it would be a breach of someone's authority to set out whole categories of laws that they are not going to enforce.

One can imagine people that disagree with the Clean Air laws saying "I am not going to enforce those laws."

Mr. LABRADOR. Or the tax laws.

Mr. TING. Or the tax laws.

"I believe in a 10 percent flat tax, and if people are defying the tax laws, as long as they pay 10 percent, I am going to say exercise prosecutorial discretion."

Mr. LABRADOR. But let's assume for a second—you and I agree that the President exceeded his authority—there is no question that there is prosecutorial discretion, but that he abused his discretion.

What would you think the American people would say if this President decided not to enforce marijuana laws and then, in fact, gave people licenses to purchase marijuana illegally?

Mr. TING. Yes. That is the difference.

You know, people were asking the sheriff, "Well, if you have a serious crime underway and you had a traffic accident, how do you allocate your resources?"

Well, okay. You deal with the serious crime, but you don't say, "From here on forward, we are not going to deal with traffic accidents anymore"—right?—"That is no longer"—

Mr. LABRADOR. Not only that, but you are going to tell people that you are going to give them a license to have traffic accidents, to actually violate the law.

Mr. TING. We are going to give benefits to people that commit traffic accidents.

Mr. LABRADOR. Exactly.

And then, if you commit one of those violations, we are actually going to give you more benefits to encourage further violations of the law.

Isn't that the difference that we are talking about?

Mr. TING. I think that is the apt analogy to what is happening.

Mr. LABRADOR. All right. Thank you very much.

I yield back my time.

Mr. GOWDY. I thank the gentleman from Idaho.

The Chair will now recognize the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

Professor Ting, we have had disputes—you mentioned the steel seizure case, Andrew Jackson, Lincoln, about the scope of presidential authority.

Is there any example in U.S. History that you are aware of where a president took an action that he had previously repeatedly and definitively said he did not have the constitutional authority to do?

Mr. TING. There may be. But I am not aware of it.

Mr. DESANTIS. I am not aware of it either.

Now, you pointed out immigration laws are meant to protect the jobs and wages of American workers.

The President—the media doesn't like to report this—he is not just deferring deportation, he is affirmatively conferring 5 million work permits on people who are in the country illegally.

That will have an upward pressure or a downward pressure on the wages of American workers, in your opinion?

Mr. TING. I think it is clearly going to have a downward pressure.

Mr. DESANTIS. And here is what really gets me. Illegal immigrants are exempt from Obamacare's employer mandate. So it is not just that there will be that downward pressure. An employer would have about a \$3,000 hiring preference over an illegal immigrant because they can go above 50 or even just providing the normal Obamacare benefit.

So that is going to exacerbate that downward pressure; will it not?

Mr. TING. Absolutely. Once these illegal aliens, these 5 million, get their work authorization, it becomes illegal to discriminate against them in hiring.

But, as you point out, there are actually affirmative reasons why you would want to discriminate against the American citizen, who is subject to the Affordable Care Act responsibilities, whereas this group of individuals would be exempt.

So we are setting up a situation where the American worker is affirmatively disadvantaged.

Mr. DESANTIS. Ms. Vaughan, when the President did the mini-amnesty in 2012, DACA, he had previously said he couldn't do that. Then he did it.

That had a negative effect on legal immigrants, isn't that correct, that their wait times increased? U.S. citizens were trying to bring over a foreign spouse, had to wait longer.

Their families were separated because the President was diverting resources away from legal immigrants to the illegals. Correct?

Ms. VAUGHAN. Yes. That is right. That has been shown in the processing time.

Mr. DESANTIS. And isn't it the case that the plan for this—now, we are in a fight to stop this—but the President's plan here is to use the fees that legal immigrants pay for their applications and he is going to divert those fees to administer his executive amnesty program. Correct?

Ms. VAUGHAN. That would have to be the case because of the way the fees are set and what they are charging for the deferred action benefit, the work permit.

They are not charging enough to cover what it actually costs. So they have two choices, either take fees that are paid by legal immigrants or cut corners on how the processing is done and refrain from hiring, for example, fraud investigators and other—



Mr. DESANTIS. And I guess they will do both there.

But if there was a negative impact on legal immigrants with a much smaller DACA program, you start talking about 5 million, that is going to have a significant impact on the ability of American citizens and legal immigrants to access the immigration system.

Isn't that the obvious deduction?

Ms. VAUGHAN. That is the inevitable outcome.

Mr. DESANTIS. The criminal convictions—I mean, we have 36,000 illegal immigrants who were convicted of crimes in fiscal year 2013. And those are not just ticky-tack crimes.

Isn't it true that that includes homicide convictions?

Ms. VAUGHAN. There were 169 homicide convictions.

Mr. DESANTIS. Sexual assaults, including child molestation?

Ms. VAUGHAN. Yes.

Mr. DESANTIS. Kidnapping?

Ms. VAUGHAN. Yes.

Mr. DESANTIS. Aggravated assault.

So these are people who clearly represent a danger to society. DHS releases them into the community. And guess what we know already.

Right now, of those 36,000, 1,000 have already been convicted of new crimes. And those crimes include rape, child molestation, assault with a deadly weapon. So these are Americans citizens who have been harmed because their Government has failed them.

And isn't it true, with Jeh Johnson's enforcement criteria and the tiers, they have actually relegated some sexual offenses to Tier 2? They say that those are significant misdemeanors. Isn't that correct?

Ms. VAUGHAN. Yes.

Mr. DESANTIS. So if they are already releasing people convicted of homicide, the fact that they put you in Tier 2, I think you can almost bet your bottom dollar those people are going to be released.

And that is a problem because you may have an offense, a sexual offense against a child, let's say, that qualifies, under their view, as a significant misdemeanor. But there may be reasons why that charge had to be brought. Maybe you have a child victim. You don't want to put that victim and the family through a criminal trial.

So you may be willing to plead somebody to, say, a year, make them register as a sex offender, because that is just the path that would be best for the child. That does not make the offender any less dangerous. And so DHS is saying, "Well, if you get a good plea bargain, we are going to put you back in." And we know that these people are likely to re-offend.

So this is a huge scandal. We are going to be doing this on the Oversight Committee and really digging deep because—I don't care—Republican, Democrat, this is just completely and utterly unacceptable.

And I yield back.

Mr. GOWDY. I thank the gentleman from Florida.

This concludes today's hearing.

But I want to thank you on behalf of all of us for your expertise, your collegiality toward one another and with the panel, your cordiality toward one another and with the panel. And so we want to say thank you.

I don't know if it is the standard witness fee that I think Members of Congress who today. So you are giving us your expertise, and we are grateful to you for that.

Without objection, all members will have 5 legislative days to submit additional questions for the witnesses or additional materials for the record.

With that, the hearing is adjourned.

[Whereupon, at 2:51 p.m., the Committee was adjourned.]

## A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

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February 23, 2015

JOURNAL OF THE  
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 (JASCE) is a peer-reviewed journal of the American Society of Climate Engineers (ASCE). It is the only journal in the world that is dedicated to the publication of research and development in the field of climate engineering. The journal covers a wide range of topics, including the design and construction of climate engineering systems, the environmental impacts of climate engineering, and the social and economic implications of climate engineering. The journal is published quarterly and is available online and in print.

Ms. Jessica Vaughan  
Director of Policy Studies  
Center for Immigration Studies  
1629 K Street N.W., Suite 600  
Washington, DC 20006

Dear Ms. Vaughan,

The Judiciary Committee held a hearing on "Examining the Adequacy and Enforcement of Our Nation's Immigration Laws" on Tuesday, February 3, 2015 in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Monday, March 23, 2015 to Kelsey Williams at [kelsey.williams@mail.house.gov](mailto:kelsey.williams@mail.house.gov) or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,

*Bob Goodlatte*  
Bob Goodlatte  
Chairman

Enclosure

Ms. Jessica Vaughan  
February 23, 2015  
Page 2

Questions for the record from Representative Doug Collins:

Ms. Vaughan, you mention that predatory lawsuits aimed at obstructing ICE from doing its job has contributed to the erosion of enforcement. You state that the Administration has contributed to the success of these types of lawsuits by declining to challenge them and offering settlements. Can you elaborate on this? Would you say the Administration is quickly settling these lawsuits as a means to justify and even implement their non-enforcement policies without public input?

Response for the record from Jessica Vaughan

The Obama administration has contributed to the success of predatory lawsuits aimed at weakening immigration enforcement and undercutting the ability of federal and local officials who enforce or assist in enforcing the law. The administration has initiated lawsuits, refused to assist when its law enforcement partners are challenged in court, and agreed to settle in lieu of defending the government's legitimate interests. In my opinion, they are seeking cover to accomplish their policy goal to severely reduce immigration enforcement without having to propose legislation or issue policy statements, memoranda, or other pronouncements that would be scrutinized, criticized and potentially found to be beyond their executive authority.

Here are a few examples:

1. In 2012, a group of illegal aliens in Tennessee filed a complaint alleging violation of their civil rights when, following citations for driving offenses, they were questioned about their immigration status and thereafter detained at ICE's request by Williamson County Sheriff's deputies, prior to ICE taking custody. The questioning, referral to ICE and detention were well within the law (8 USC 1373) and regulation (8 CFR 287.7). Because the cause of action against the Sheriff's department was related to a federal law and agency, the presiding judge issued an order inviting ICE to file an amicus brief giving its views on the legality of the local officers' actions. At the time, there was noticeable tension in the administration between career law enforcement personnel and individuals in leadership positions over the use of detainers and their critical role in the success of an enforcement program known as Secure Communities, which had dramatically increased ICE's ability to identify and arrest criminal aliens. Despite the obvious relevance to ICE's interests, and ICE's unrivaled expertise in the matters at hand, the government declined to provide the brief, leaving this local law enforcement partner to defend itself on a matter of federal law and regulation. In my opinion, ICE's failure to assist its partner, together with changes ICE's use and policies on detainers, was intended to have a chilling effect on local agencies' willingness to work with ICE, particularly regarding detainers.
2. ICE similarly declined to defend its enforcement authority in several other cases in Oregon, Rhode Island, and Maryland. The agency's practice of standing down rather than mounting a defense in the courts may be seen as tacit encouragement of additional legal action against the government.
3. The administration has initiated lawsuits against jurisdictions that it considers to be too enthusiastic or too effective in immigration enforcement. For example, the Department of Justice collaborated with local anti-enforcement activist groups on a lawsuit filed in 2012 against the Alamance County, NC Sheriff's Department alleging racial profiling in connection with the Sheriff's participation in the enforcement partnership program known as 287(g). The alleged violations have yet to be substantiated and are contradicted by ICE's periodic audits of the program, which found it to be properly administered and referred to it as a "model" program.
4. In 2013, the ACLU of Southern California filed a lawsuit targeting the ICE and Border Patrol practice of offering voluntary return in lieu of lengthy deportation hearings. DHS agreed to a settlement of the case, with the result that now officers in the San Diego Border Patrol Sector and

Los Angeles ICE Field Office (both areas with huge caseloads) must operate under cumbersome procedures that encourage Mexican illegal aliens to opt for immigration court hearings that can take up to seven years, instead of allowing them to encourage illegal aliens to agree to swift deportation with minimal consequences. This settlement will further bog down ICE and Border Patrol officers and the already dysfunctional immigration courts while giving illegal aliens permission to live and work here in de facto lawful status for many years. It has been reported that the ACLU is now working in Mexico to recruit deportees who left between June, 2009 and August, 2014 to come back to the United States to seek a new hearing of their case.

Submitted March 23, 2014  
Jessica M. Vaughan  
Director of Policy Studies  
Center for Immigration Studies