



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE U.S. SENATE JUDICIARY COMMITTEE

HEARING ON “OVERSIGHT OF THE ADMINISTRATION’S CRIMINAL ALIEN REMOVAL POLICIES”

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the Obama Administration’s removal and enforcement policies and the effect they have on communities.

Over the past year, the American Immigration Council has reviewed various aspects of the Administration’s immigration enforcement and removal policies, writing papers on topics ranging from criminalizing immigration to assessing Immigration and Custom Enforcement’s (ICE) Criminal Alien Program. Among our key findings are the following:

- There is abundant evidence that immigration is not linked to higher crime rates, as is explained in our publication, [“The Criminalization of Immigration in the United States”](#). Yet many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than substance. These laws are criminalizing an ever broadening swath of the immigrant population by applying a double standard when it comes to the consequences for criminal behavior. Immigrants who experience even the slightest brush with the criminal justice system, such as being convicted of a misdemeanor, can find themselves subject to detention for an undetermined period, after which they are expelled from the country and barred from returning. In other words, for years the government has been redefining what it means to be a “criminal alien,” using increasingly stringent definitions and standards of “criminality” that do not apply to U.S. citizens.
- The Criminal Alien Program (CAP) is a massive enforcement program administered by ICE and has become the primary channel through which interior immigration enforcement takes place. Our report, [“Enforcement Overdrive: A Comprehensive Assessment of ICE’s Criminal Alien Program”](#), examines CAP’s evolution, operations, and outcomes between fiscal years 2010 and 2013 based on government data and documents. That data shows that through CAP’s enormous web, ICE has encountered millions and removed hundreds of thousands of people. However, the program mainly removed people with no criminal convictions, and people who have not been convicted

of violent crimes or crimes the Federal Bureau of Investigation (FBI) classifies as serious. CAP is not narrowly tailored to focus enforcement efforts on the most serious security or safety threats—in part because CAP uses criminal arrest as a proxy for dangerousness and because the agency’s own priorities have been drawn more broadly than those threats. CAP has also resulted in several anomalies, including an apparent bias against Mexican and Central American nationals.

- Lastly, as set out in our publication, [“Sanctuary Cities, Trust Acts, and Community Policing Explained”](#), the Council found that the term “sanctuary city” is often used incorrectly to describe trust acts or community policing policies that limit entanglement between local police and federal immigration authorities. These policies make communities safer and increase communication between police and their residents without imposing any restrictions on federal law enforcement activities. In addition, Courts have ruled that states and localities that honor ICE detainers (i.e., ICE requests to hold a person even though they are otherwise eligible for release from criminal custody) may be held liable for Fourth Amendment violations. As a result, several counties have been forced to pay six-figure settlements to individuals after holding them on detainers for more than 48 hours.

Last year, the Department of Homeland Security (DHS) adopted new policy guidance that attempts to focus immigration enforcement on certain categories of individuals while, according to DHS Secretary Jeh Johnson, “deprioritizing those undocumented who have been here for years, committed no serious crimes, and have in effect become integrated members of society.”¹ In a report released earlier this year, the Migration Policy Institute (MPI) predicted a drop in total deportations if DHS followed through on its new policy guidance.² MPI wrote that the new guidance, “if strictly adhered to, is likely to reduce deportations from within the United States by about 25,000 cases annually—bringing interior removals below the 100,000 mark.”³

According to a recent media report, DHS deported 231,000 people over the past 12 months, which is the lowest number since 2006.⁴ Moreover, the share of individuals deported on criminal grounds rose somewhat, from 56 percent to 59 percent. This could be a welcome indication that DHS has shifted its strategies and is now focusing on quality over quantity. However, this is not to say that DHS has necessarily is now deporting only dangerous criminals. For example, “recent illegal entrants” remain a high priority target for ICE even though recently crossing the border without authorization says nothing about whether or not an individual has a criminal history or violent proclivities; it also does not speak to a person’s ties to the United States or past residence here. Nonetheless, if DHS is focusing its efforts on finding more potentially deportable immigrants who pose a danger to society, rather than rounding up every potentially deportable immigrant within reach, then it is taking a welcome step in the right direction.

¹ Secretary Jeh Johnson, “Statement on the Migration Policy Institute Report,” July 23, 2015, <http://www.dhs.gov/news/2015/07/23/statement-secretary-jeh-c-johnson-migration-policy-institute-report>.

² Marc R. Rosenblum, “Understanding the Potential Impact of Executive Action on Immigration Enforcement,” Migration Policy Institute, July 2015, <http://www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement>.

³ Ibid.

⁴ Alicia Caldwell, “U.S. Government Depports Fewest Immigrants in Nearly a Decade,” Associated Press, October 2015, <http://bigstory.ap.org/article/1f2b76154513479fa2bb86ea0210a00d/us-government-deports-fewest-immigrants-nearly-decade>.

ATTACHMENT A



New Deportation Numbers May Signal More Targeted Enforcement

By Walter Ewing, Senior Researcher, American Immigration Council

Available online at <http://immigrationimpact.com/2015/10/06/new-deportation-numbers-may-signal-more-targeted-enforcement/>.

The Department of Homeland Security (DHS) may finally be devoting more of its immigration enforcement resources to deporting people who represent a real threat to public safety. According to a recent media report, DHS deported 231,000 people over the past 12 months, which is the lowest number since 2006. Moreover, the share of individuals deported on criminal grounds rose somewhat, from 56 percent to 59 percent. This is a welcome indication that DHS has shifted its strategies and now is focusing on quality over quantity. In prior years, DHS had spent far too many enforcement resources rounding up and deporting individuals who have very minor criminal convictions or no criminal records at all. The drop in deportations also may reflect the downward trend in recent arrivals, especially from Mexico.

The decrease in actual deportations is not surprising. In a report released earlier this year, the Migration Policy Institute (MPI) predicted a drop in total deportations were DHS to follow through on its new policy guidance, which was issued as part of the President's executive actions on immigration announced in November 2014. The DHS guidance says that the immigration agencies will focus resources on individuals who pose threats to "national security, public safety, and border security." MPI wrote that the new guidance, "if strictly adhered to, is likely to reduce deportations from within the United States by about 25,000 cases annually—bringing interior removals below the 100,000 mark."

This does not represent diminished enforcement, but smarter, more effective, and more humane enforcement. Consider that in 2013, when more deportations were being carried out, U.S. Immigration and Customs Enforcement (ICE) statistics indicated that four-fifths of all deportations conducted by the agency did not fit ICE's own definition of what constitutes a "Level 1" priority. This many needless deportations translate into tens of thousands of families torn apart by the removal of a parent, spouse, or sibling.

This is not to say that DHS has necessarily seen the light and is now deporting only dangerous criminals. "Recent illegal entrants" remain a high priority target for ICE, even though being a recent unauthorized border-crosser says nothing about whether or not an individual has a criminal history or violent proclivities; it also does not speak to a person's ties to the United States or past residence here. Still, if DHS is spending fewer resources rounding up every potentially deportable immigrant within reach, in favor of rounding up more potentially deportable immigrants who pose a danger to society, then it is taking a welcome step in the right direction.