

# MEXICAN IMMIGRANTS FACE THREATS TO CIVIL RIGHTS AND INCREASED SOCIAL HOSTILITY



## **Mexican Immigrants Face Threats to Civil Rights and Increased Social Hostility**

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## Contents

INTRODUCTION.....	5
What are civil rights? .....	6
Profile of Mexican immigrants in the United States .....	7
Unauthorized migration .....	9
COMPREHENSIVE IMMIGRATION REFORM AND ITS FAILURES .....	10
Deadlock in the Bush administration .....	11
Deadlock in the Obama administration .....	11
DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) .....	13
TRUMP ADMINISTRATION.....	15
Attempting to end DACA .....	17
The wall .....	18
IMMIGRATION APPREHENSIONS ON THE BORDER.....	18
FORCE, ABUSE, AND DEATH ON THE BORDER .....	19
Crossing deaths .....	22
Deaths as rights violations .....	23
UNACCOMPANIED MINORS .....	23
Policies toward unaccompanied minors .....	24
FAMILY SEPARATIONS AT THE U.S.-MEXICO BORDER .....	25
Conditions for minors in detention .....	29
Challenges based on international law .....	32
IMMIGRATION ENFORCEMENT IN THE 100-MILE ZONE .....	33
INTERIOR ENFORCEMENT.....	35
The 287(g) program .....	37
Secure Communities .....	39
Sanctuary jurisdictions .....	41
FEDERAL IMMIGRATION ARRESTS .....	47
Sensitive spaces .....	49
Who is arrested by ICE? .....	52
DEPORTATIONS.....	55
Who is deported? .....	56
Experiences of Mexican deportees.....	58
Experiences of discrimination in California .....	61
EXPERIENCES OF HOSTILITY AFTER THE 2016 ELECTION .....	62
Hate crimes .....	65
CONCLUSION .....	66

## INTRODUCTION

The report summarizes the continuities and shifts in immigration enforcement between the presidencies of Barack Obama (2009-2016) and Donald Trump (2017-present). It sheds light on the laws and policies of immigration enforcement, their implementation, and their effects. The focus is on assessing the extent to which the policies directly or indirectly create civil rights abuses of, and acts of social hostility toward, Mexican immigrants. People born in Mexico are the largest immigrant group in the United States and are the ethnic group that has been repeatedly targeted by Trump first as candidate and then as president.

Primary sources of evidence include administrative data collected by the Department of Homeland Security that is publicly available or which was released in response to the authors' request. Freedom of Information Act requests, hate crime incidents reported to the Federal Bureau of Investigation and the State of California Department of Justice, texts of laws and executive actions, and landmark court cases. A unique source of evidence for how Mexican migrants are experiencing changes between the Obama and Trump administrations is the Survey of Migration at Mexico's Northern Border (EMIF Norte for its Spanish acronym), which has been fielded in waves during this entire period. The report also draws on accounts from other academics, researchers, and investigative journalists.

The report provides evidence where possible on the experience of Mexican-born migrants in particular, even as many of the experiences reported here affect larger populations, including all Latinos in the United States regardless of birthplace, other immigrants, and other racial minorities.

We pay particular attention to the experience of the more than 4 million Mexican immigrants in California, home to more than a third of all Mexican immigrants in the United States. Beginning in the 1970s, the state of California and the jurisdictions within it have led the way on sanctuary policies as well as opposing efforts to eliminate unauthorized immigrants' access to public services. Since the 2000s, the state government of California has been a leader in many policies that are more accommodating of unauthorized immigrants. The vast state includes counties and cities that have enacted accommodating policies, as well as other jurisdictions that have created harsher policies.<sup>2</sup>

The report finds evidence of direct violations of civil rights, including family separations as an immigration deterrent, racial profiling of Mexicans and other Latinos, and instances of the abuse of force by immigration officials and police. On the whole, the indirect effects of recent and long-standing immigration policies are much larger and affect many more people. These indirect effects include border enforcement policies leading to a large-scale, on-going, and predictable loss of life of clandestine entrants as well as interior enforcement policies that make the Latino community on the whole more fearful, vulnerable, and that reduce their access to the equal protections of law enforcement and access to eligible public benefits. State-sponsored rhetoric creates a hostile

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<sup>2</sup> Allan Colbern and S. Karthick Ramakrishnan, "Citizens of California: How the Golden State Went from Worst to First on Immigrant Rights," *New Political Science* 40, no. 2 (2018): pp. 353-67.

environment for Latino immigrants in particular. The indirect effects of border and interior enforcement share many similarities across the Obama and Trump administrations.

### **What are civil rights?**

Civil rights include individual rights to liberty such as the freedoms of speech, conscience, religion, and assembly. The right to justice is both a right to protection *by* the state - for the individual to have access to effective legal remedies and equal protection - as well as protection *from* state abuses - to be free from government actions that violate rights of due process or which illegally discriminate, or which enact cruel punishments like torture.<sup>3</sup>

Practices that a government agency, legislative body, or court deem to be legal may still violate more fundamental laws. Civil rights are embedded in U.S. constitutional law as well as international treaties to which the United States is a state party, such as the International Covenant on Civil and Political Rights and the Convention against Torture,<sup>4</sup> treaties that it has signed but not ratified, such as the Convention on the Rights of Persons with Disabilities,<sup>4</sup> and conventions that it has not signed but which are in force internationally, such as the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.<sup>5</sup> In the United States, civil rights are generally understood through the framework of the Constitution and its interpretation by the courts, while in the international arena, civil rights are usually understood as a subset of human rights that apply universally to all human beings wherever they may be.<sup>6</sup>

This report highlights whether state practices are considered lawful or unlawful because that distinction carries serious social consequences. Analytically, however, we do not merely reproduce the government's legal categories and claims. Practices that a government at a given time and place assert to be lawful often violate independent standards of civil rights.

From the perspective of U.S. constitutional law, non-citizens, including those without legal authorization to be present, have significant civil rights simply by virtue of the fact that they are present in the territory of the United States. Some of these rights are the same for anyone (e.g., freedom from torture), while others, such as deportability, differ for citizens and noncitizens. Citizens cannot be deported, while non-citizens can be deported after a legal process.<sup>7</sup> The two

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<sup>3</sup> T.H. Marshall, *Citizenship and Social Class* (London: Pluto Press, 1992 [1950]), p. 30. <sup>4</sup> "International Covenant on Civil and Political Rights," March 23, 1976, *United Nations Treaty Series* vol. 78, no. 14668.; "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," Dec. 10, 1984, *United Nations Treaty Series*, vol. 1465, p. 85.

<sup>4</sup> "Convention on the Rights of Persons with Disabilities," May 3, 2008, *United Nations Treaty Series* vol. 2515, p.3.

<sup>5</sup> "Convention on the Rights of the Child," Sep. 2, 1990, *United Nations Treaty Series* vol. 1577, p. 3; "International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families," July 1, 2003, *United Nations Treaty Series*, vol. 2220, p. 3.

<sup>6</sup> Louis Henkin, "Rights: American and Human," *Columbia Law Review* 79 (1979): 405.

<sup>7</sup> Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge: Harvard University Press, 2007).

groups are treated unequally, but in a manner that the courts have said to be legal. Naturalized U.S. citizens have the same civil rights as native-born citizens.<sup>8</sup>

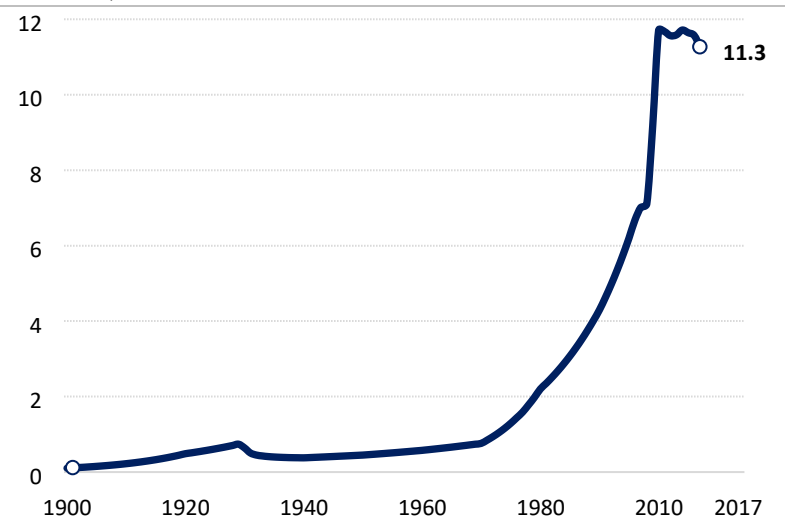
The extreme degree of hostile rhetoric and the mounting evidence of its pernicious effects, however, are particular to the Trump administration and may be responsible for an increase in hate crimes against Latinos in 2017. The increase in reported hate crimes was even greater in the state of California, suggesting that the more accommodating rhetoric and policies of state policymakers are not able to fully protect the rights of Latinos in the state.

### Profile of Mexican immigrants in the United States

Roughly 10% of people born in Mexico live in the United States.<sup>9</sup> Mexicans are the largest immigrant group in the United States, although the population has begun to shrink recently, and will likely continue to shrink as new inflows decline and as more Mexicans return home (see Figure 1).<sup>10</sup>

More than 36 million Hispanics in the United States claim Mexican origin. Just under a third were born in Mexico.<sup>11</sup> This report focuses on the experience of people born in Mexico who are now living in the United States or who attempted to enter the United States. Note, however, that the experiences and civil rights of all people of Mexican origin and even non-Mexican Hispanics, regardless of citizenship

**FIGURE 1 Mexican-born population of the United States, 1900-2017 (In millions)**



Source: Migration Policy Institute (MPI) tabulation of data from the U.S. Census Bureau's 2010-2017 American Community Surveys. Data for 1900 to 1990, excluding 1940 and 1950 were from Campbell J. Gibson and Emily Lennon, "Historical Census Statistics on the Foreign-born Population of the United States: 1850-1990," U.S. Census Bureau, Population Division, Working Paper No. 29, February 1999. 

<sup>8</sup> While the civil rights of native-born and naturalized citizens are the same, there is one difference in their political rights. Only "natural born citizens" may serve as president or vice-president (U.S. Constitution, Sec. 1, Art. 2 and XII Amendment).

<sup>9</sup> "International Migrants by Country," Pew Research Center, November 10, 2016, <http://www.pewglobal.org/interactives/migration-tables/>.

<sup>10</sup> Ana Gonzalez-Barrera, "More Mexicans Leaving Than Coming to the US," Pew Research Center: Hispanic Trends, November 19, 2015, [http://unionstats.gsu.edu/4960/PewResearchCenter\\_MoreMexicansLeavingThanComing\\_2015.pdf](http://unionstats.gsu.edu/4960/PewResearchCenter_MoreMexicansLeavingThanComing_2015.pdf).

<sup>11</sup> "Selected Population Profile in the United States: 2017 American Community Survey 1-Year Estimates," United States Census Bureau, 2017, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_17\\_1YR\\_S0201&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_S0201&prodType=table).

or number of generations their family has lived in the United States, are affected by the political debates around Mexican immigration.<sup>12</sup>

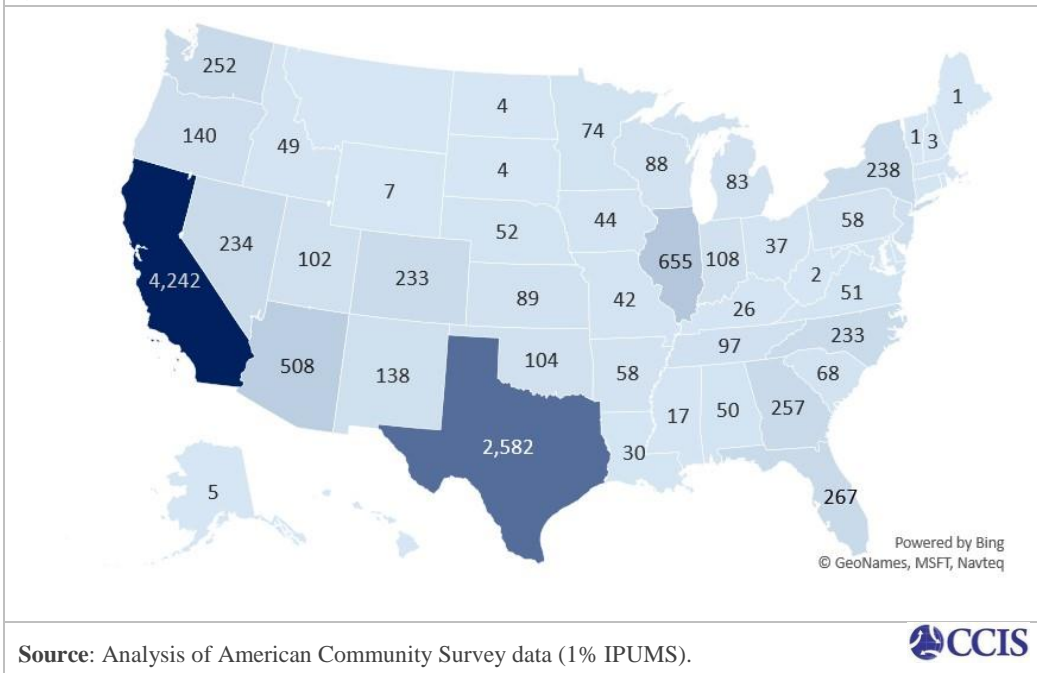
The Mexican immigrant population in the United States is the largest national-origin group. In 2017, the 11.3 million people born in Mexico living in the United States represented 3% of the total U.S. population, 25% of its immigrants, and 57% of its Latino immigrants.<sup>13</sup>

More than half of the Mexican immigrant population lives in just two states: 36% in California (4.2 million) and 22% in Texas (2.6 million), followed by Illinois, Arizona, Florida, Georgia, Washington, New York, Nevada, and North Carolina.<sup>14</sup>

Mexico is one of the leading sources of legal as well as unauthorized migration to the United States. In 2017, nearly 3.5 million people born in Mexico were naturalized U.S. citizens. More than 3.2 million were lawful permanent residents (LPRs) in 2014.<sup>15</sup> The estimated share

**FIGURE 2 Mexican immigrants in the United States, 2016**

(In thousands)



of the unauthorized population born in Mexico fell from 50% in 2014 to 48% in 2016. In 2016, there were an estimated 5.4 million unauthorized immigrants from Mexico living in the United States.<sup>16</sup>

<sup>12</sup> Tomás R Jiménez, *Replenished Ethnicity: Mexican Americans, Immigration, and Identity* (Berkeley: University of California, 2010).

<sup>13</sup> This report uses Latino and Hispanic interchangeably.

<sup>14</sup> “S0201 - Selected Population Profile in the United States: 2017 American Community Survey 1-Year Estimate,” U.S. Census Bureau’s American Community Survey Office, November 1, 2018, <http://factfinder2.census.gov>.

<sup>15</sup> James Lee and Bryan Baker, “Estimates of the Lawful Permanent Resident Population in the United States: January 2014,” June 2017, U.S. Department of Homeland Security, Office of Immigration Statistics, <https://www.dhs.gov/sites/default/files/publications/LPR%20Population%20Estimates%20January%202014.pdf>.

<sup>16</sup> “U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade,” Pew Research Center: Hispanic Trends, November 27, 2018, <http://www.pewhispanic.org/2018/11/27/u-s-unauthorized-immigrant-total-dips-to-lowestlevel-in-a-decade/>.



## Mexican immigrants in California

The state of California has the largest immigrant population of any state in the country, including the largest population of Mexican immigrants. In 2017, California was home to 10.6 million immigrants, of which 4.2 million (40%) were from Mexico.

Mexican immigrants live throughout the Golden State, but the population is concentrated around its largest cities. The Los Angeles region, for example, has the largest population of Mexican immigrants in California (39%), followed by Riverside-San Bernardino (13%), and the San Diego metropolitan area (8%).

In 2017, 35% of Mexican immigrants in California were naturalized citizens and 2% were born in Mexico to at least one U.S. citizen parent, making them U.S. citizens by birth. Sixty-three percent were not U.S. citizens, including an estimated 49% of the total Mexican-born population that was unauthorized.<sup>17</sup>

## Unauthorized migration

Many of the controversies around the civil rights of immigrants in the United States relate to unauthorized immigration. There are two basic types of unauthorized migration, each of which carries a different set of rights. The most important distinction is between 1) improper entry and 2) entering legally but violating the terms of a visa. Improper entry, such as evading border inspections or crossing with false documents, is a criminal misdemeanor punishable by up to six months in prison. A civil penalty of between \$50 and \$250 can also be assessed.<sup>18</sup><sup>19</sup> Illegal reentry is a felony punishable by up to two years in prison and a civil fine. If the individual was formally deported (“removed”) before reentry, the criminal penalty is between two and twenty years, depending on the circumstances around the previous deportation.<sup>20</sup> While the law does not mention any particular national-origin group, the historical record shows that Congress criminalized entry without inspection for the first time in 1929, in an effort to target people of Mexican origin.<sup>20</sup>

Entering legally and overstaying a visa is an administrative violation of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), but is *not* a criminal offense. Remaining in the United States beyond a visa term is considered a form of “unlawful presence” that incurs a cancellation of the visa, possible deportation, and restrictions on subsequent attempts

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<sup>17</sup> Analysis of the 2017 American Community Survey,

IPUMS-USA, University of Minnesota, [www.ipums.org](http://www.ipums.org), and “Profile of the Unauthorized Population: California,” Migration Policy Institute, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/CA>.

<sup>18</sup>

<sup>19</sup> U.S. Code § 1326.

<sup>20</sup> Immigration Act of March 4, 1929, 70<sup>th</sup> Cong. 2<sup>nd</sup> Sess. (1929-1929). See the discussion in Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965* (University of North Carolina Press, 2017).

to apply for a U.S. visa.<sup>21</sup> There are no criminal penalties, such as prison terms or fines, assessed for overstaying a visa.

Regardless of legal status, immigrants in the United States have a set of basic rights, including the right to due process, legal representation, and children's right to a high school education.<sup>2223</sup>

## **COMPREHENSIVE IMMIGRATION REFORM AND ITS FAILURES**

Growing partisan polarization on immigration policy has stymied legislative efforts to create comprehensive immigration reform that would address legalization of the long-term resident unauthorized population, border enforcement, employer sanctions, legal immigration, temporary worker programs, and related issues.

The last major grand bargain over U.S. immigration policy was accomplished in 1986 during the Reagan administration. At the time, there was no clear partisan split on immigration policy. Cultural conservatives, who tended to be Republicans, typically opposed immigration (especially of non-Europeans), while Democratic-leaning organized labor opposed temporary worker programs. Business interests favoring Republicans supported more open immigration policies across the board, as did groups focusing on rights and immigrant ethnic lobbies that leaned toward Democrats.<sup>24</sup>

During the 1980 Republican presidential primary debate between George H. W. Bush and Ronald Reagan, Bush called for a policy based on an understanding of "labor needs, and human needs." He lamented the effects of U.S. immigration policy. "We're creating a whole society of really honorable, decent, family-loving people that are in violation of the law, and secondly we're exacerbating relations with Mexico," he said.

Reagan's response was equally accommodating of immigrants from Mexico. "Rather than... talking about putting up a fence, why don't we work out some recognition of our mutual problems, make it possible for them to come here legally with a work permit, and then, while they're working and earning here, they pay taxes here," he proposed. "And when they want to go back they can go back, and cross. And open the border both ways, by understanding their problems."<sup>25</sup> The tone of the Republican establishment in the 1980s was remarkably welcoming compared to a generation later.

The difference was not just talk. In 1986, the Immigration Reform and Control Act (IRCA) passed with strong bipartisan support, by a vote of 63 to 24 in the Senate, with support from 34 Democrats and 29 Republicans, and by 238 to 173 in the House, with support from 161 Democrats and 77

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<sup>21</sup> Immigration and Nationality Act § 222(g) and § 212(a)(9)(B); 8 U.S. Code § 1182.

<sup>22</sup> Hiroshi Motomura, "The Rights of Others: Legal Claims and Immigration Outside the Law," *Duke Law Journal* (2009): 1723

<sup>24</sup> Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002).

<sup>25</sup> "George H. W. Bush and Ronald Reagan Debate on Immigration in 1980," *TIME*, February 3, 2017, [https://www.youtube.com/watch?v=YsmgPp\\_nlok](https://www.youtube.com/watch?v=YsmgPp_nlok).

Republicans. Reagan signed the bill into law. IRCA legalized the status of 2.7 million immigrants, three-quarters of whom were Mexican, in return for increased funding for immigration enforcement and sanctions on employers who knowingly hired an immigrant without legal authorization to work.<sup>26</sup>

### **Deadlock in the Bush administration**

Party polarization around immigration, particularly in the House of Representatives, sharply increased by the 2000s. During the administration of George W. Bush (2000-2008), the Republican-controlled House passed the Border Protection, Anti-terrorism and Illegal Immigration Control Act in 2005 by a margin of 239 to 182, along largely partisan lines. The bill included a wide range of restrictive enforcement measures without any legalization or new guest worker programs. Most importantly, if enacted, it would have for the first time criminalized unlawful presence for overstaying visas, rather than treating it as an administrative violation as it is under current law. Both unlawful presence and unlawful entry would have been categorized as felonies.<sup>27</sup> In reaction, hundreds of thousands of immigrant rights activists took to the streets in more than 140 cities across 39 states in protest.<sup>28</sup> The Republican-controlled Senate did not take up the House bill.

The following year, the Senate passed the Comprehensive Immigration Reform Act of 2006, which proposed to bridge the partisan divide by legalizing unauthorized immigrants meeting various qualifications and granting more temporary worker visas in exchange for greater spending on immigration enforcement. The bill passed the Senate by a vote of 62 to 36. Although President Bush supported the bill, it was backed by only 23 Republican senators and opposed by 32. Among Democratic senators, 38 supported the bill and four opposed.<sup>29</sup> The House and Senate did not create a conference committee to resolve differences in the proposed laws and create a single bill for a vote. Neither the 2005 nor 2006 bills became law. These episodes vividly illustrated the growing bipartisan split around immigration policies.

### **Deadlock in the Obama administration**

Despite their many other policy differences, the George W. Bush and Barack Obama administrations approached immigration reform in broadly similar ways. Both presidents ramped up deportations and sought a compromise in Congress that would include more border enforcement in return for a large-scale legalization program.

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<sup>26</sup> Pia M. Orrenius and Madeline Zavodny, "Do Amnesty Programs Reduce Undocumented Immigration? Evidence from IRCA," *Demography* 40, no. 3 (2003): 437-50.; Immigration Reform and Control Act (IRCA), Pub.L. 99-603, 100 Stat. 3445.

<sup>27</sup> Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (20052006), <https://www.congress.gov/bill/109th-congress/house-bill/4437>.

<sup>28</sup> Adrian D. Pantoja, Cecilia Menjivar and Lisa Magaña, "The Spring Marches of 2006 Latinos, Immigration, and Political Mobilization in the 21st Century," *American Behavioral Scientist* 52, no. 4 (December 2008): pp. 499-506.

<sup>29</sup> U.S. Senate Roll Call Vote on Passage of the Bill (S.2611 As Amended), 109th Cong. 2nd Sess., [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=109&session=2&vote=00157](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00157).

The Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act in June 2013.<sup>30</sup> The bill's initial framework was released by a bipartisan group of senators known as the "Gang of Eight." The Senate ultimately passed the bill by a 68 to 32 margin, with fourteen Republicans voting with all Democrats in favor. While the success in the Senate created expectations for quick House action,<sup>31</sup> the House, which at the time had a Republican majority, refused to consider the bill. The bill eventually died in the 113<sup>th</sup> Congress.

Most prominently, the bill would have established a pathway to citizenship for millions of undocumented immigrants in the United States over a 13-year period, and over a shorter amount of time for agricultural workers and DREAMers.<sup>32</sup> The bill was supported by Republican elites such as Karl Rove<sup>33</sup> and Grover Norquist,<sup>34</sup> as well as by more than 110 conservative economists.<sup>35</sup>

House Republicans opposed the bill, claiming that border security needed to be addressed first before legalizing the status of 11 million unauthorized immigrants. Many also argued, along with their constituents, that the Senate bill amounted to nothing but amnesty for "illegal aliens and their employers."<sup>36</sup> Political scientist Christopher Parker contended that the real reason the House failed to consider the bill stemmed from nativist sentiments, and Republican members "represent constituencies haunted by anxiety associated with the perception that they're 'losing their country' to immigrants from south of the border."<sup>35</sup>

The 16-day government shutdown in October 2013 deepened the tensions between Democrats and Republicans, Congress and the executive branch, and within the Republican party. Congress did not pass a comprehensive immigration bill during Obama's tenure, and Obama turned to executive actions to protect unauthorized immigrants brought to the United States as children.

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<sup>30</sup> Border Security, Economic Opportunity, and Immigration Modernization Act. S.744, 113th Cong. (2013-2014), <https://www.congress.gov/bill/113th-congress/senate-bill/744>.

<sup>31</sup> Muzaffar Chishti and Faye Hipsman, "U.S. Immigration Reform Didn't Happen in 2013; Will 2014 Be the Year?" Migration Policy Institute, January 9, 2014, <https://www.migrationpolicy.org/article/us-immigration-reform-didnthappen-2013-will-2014-be-year>.

<sup>32</sup> The term "DREAMer" refers to young unauthorized immigrants who were brought to the United States as children, who have lived and gone to school in the United States, and who in many cases identify as American. The name derives from the 2001 Development, Relief and Education for Alien Minors Act, which was never passed (DREAM Act, S.1291, 107th Congress (2001-2002), <https://www.congress.gov/bill/107th-congress/senatebill/1291>).

<sup>33</sup> Karl Rove, "Immigration Reform and the Hispanic Vote," *The Wall Street Journal*, June 5, 2013, <https://www.wsj.com/articles/SB10001424127887323844804578527010474733462>.

<sup>34</sup> Grover Norquist, "Immigration Reform is a No-Brainer to Help the Economy," *The Guardian*, April 24, 2013, <https://www.theguardian.com/commentisfree/2013/apr/24/immigration-reform-grover-norquist-support>.<sup>35</sup>

"Economists Immigration Letter," May 23, 2013, <https://www.scribd.com/document/143242444/EconomistsImmigration-Letter>.<sup>36</sup> Ronald W. Mortensen, "'Immigration Reform' Equals Amnesty for Illegal Aliens and Their Employers," Center for Immigration Studies, April 29, 2013, <https://cis.org/Immigration-Reform-Equals-Amnesty-Illegal-Aliens-and-Their-Employers>.

<sup>35</sup> Christopher Parker, "The (Real) Reason Why the House Won't Pass Comprehensive Immigration Reform," Brookings, August 4, 2014, <https://www.brookings.edu/blog/fixgov/2014/08/04/the-real-reason-why-the-house-wont-pass-comprehensive-immigration-reform/>.

## **DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)**

Since 2001, immigration reformers have sought to legalize the status of unauthorized immigrants who came to the United States as children. Legislative proposals have all failed to pass Congress despite significant support among Republicans and overwhelming support from Democrats.<sup>36</sup> The bill that came closest to succeeding was the 2010 version that passed the House but fell five votes short of a motion to end a filibuster in the Senate.<sup>37</sup>

In the wake of this legislative deadlock, the Obama administration announced executive action in June 2012 that authorized Citizenship and Immigration Services (USCIS) to use its prosecutorial discretion not to deport undocumented young people who met certain conditions. DACA recipients were not given permanent immigrant status, but they were granted relief from deportation and allowed to work legally. Recipients were required to renew their status every two years.<sup>40</sup> Immigrants from 205 countries and territories applied for DACA status, but Mexican nationals were the primary beneficiaries. A September 2013 report found that Mexicans filed 74.9% of DACA applications. Given that Mexicans were an estimated 71.1% of the total DACA-eligible population, they were slightly over-represented in the program. This was likely a consequence of extensive publicizing of the program in Spanish-language media and outreach efforts by the Mexican consulates and non-governmental organizations active in the Mexican community.<sup>41</sup>

Most DACA applications were approved. By the first half of 2016, 88% of requests for DACA status had been approved and another 5% were pending.<sup>42</sup> In the initial applications, Mexican applicants were half as likely to be denied as other groups, presumably because on average they had better information and consular services that facilitated gathering the required information to document their case for DACA relief.<sup>43</sup> As of September 2017, approximately 800,000 people had been granted DACA at some point since 2012. The active DACA population was 689,800, of whom 79.4% were born in Mexico.<sup>44</sup>

Obama announced an expansion of the DACA program in November 2014. Eligibility was extended to unauthorized immigrants older than 30 and those who had arrived as children before January 1, 2010. Relief was extended from a two to three-year term.<sup>45</sup>

At the same time, the Obama administration announced the Deferred Action for Unauthorized Immigrant Parents (DAPA) program that would provide relief to certain unauthorized immigrants who had lived in the United States since 2010 and had children who were either U.S. citizens or lawful permanent residents. As with DACA, eligibility for the DAPA program was restricted to

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<sup>36</sup> DREAM Act, S.1291, 107th Congress (2001-2002), <https://www.congress.gov/bill/107th-congress/senatebill/1291>; Dream Act of 2017, S.1615, 115<sup>th</sup> Cong. (2017-2018), <https://www.congress.gov/bill/115thcongress/senate-bill/1615?q=%7B%22search%22%3A%5B%222017+Dream+Act%22%5D%7D&s=5&r=3>.

<sup>37</sup> Removal Clarification Act of 2010, H.R. 5281, 111<sup>th</sup> Cong. (2009-2010), <https://www.congress.gov/bill/111thcongress/house-bill/5281>. <sup>40</sup> “Deferred Action for Childhood Arrivals” applied to those younger than 31 who had arrived in the United States before age sixteen and before June 14, 2007; continuously resided in the United States for at least five years and

those who did not have a serious criminal record and who did not pose a threat to national security. Parents would receive a three-year, renewable work permit and relief from

were still in the United States on June 15, 2012; were in school, had graduated from high school, obtained a GED (general education development) certificate, or were an honorably discharged veteran; had not been convicted of a felony, a significant misdemeanor, or multiple misdemeanors; and did not pose a threat to national security or public safety (“Memorandum: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” U.S. Department of Homeland Security, June 15, 2012, <https://www.dhs.gov/xlibrary/assets/s1exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.)

<sup>41</sup> Tom K. Wong et al., “Undocumented No More: A Nationwide Analysis of Deferred Action for Childhood Arrivals or DACA,” Center for American Progress, September 2013, <https://cdn.americanprogress.org/wpcontent/uploads/2013/09/DACAReportCC-2-1.pdf>.

<sup>42</sup> “Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2016,” U.S. Citizenship and Immigration Services, June 30, 2016, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca\\_performancedata\\_fy2016\\_qtr3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2016_qtr3.pdf).

<sup>43</sup> Wong et al. 2013.

<sup>44</sup> “Approximate Active DACA Recipients: Country of Birth as of September 4, 2017,” U.S. Citizenship and Immigration Services, September 4, 2017, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca\\_population\\_data.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf).

<sup>45</sup> “Fact Sheet: Immigration Accountability Executive Action,” The White House Office of the Press Secretary, November 20, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/fact-sheet-immigrationaccountability-executive-action>.

deportation. An estimated 3.6 million immigrants, mostly from Mexico and Central America, would have been eligible for the program.<sup>38</sup>

Texas and 25 other states with Republican governors sued to block implementation of the DACA expansion and DAPA. The plaintiffs argued that the executive actions violated the Constitution by usurping powers reserved to Congress, violated the Administrative Procedures Act, and would unconstitutionally force states to spend millions of dollars, without federal funding, to issue driver’s licenses to DAPA recipients. Judge Andrew Hanen of the federal district court in Brownsville, Texas, issued a preliminary nationwide injunction against the executive actions in

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<sup>38</sup> Randy Capps et al, “Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA’s Potential Effects,” Migration Policy Institute; Urban Institute, February 2016, <https://www.migrationpolicy.org/sites/default/files/publications/DAPA-Profile-FINALWEB.pdf>.

February 2015.<sup>39</sup> The 5th U.S. Circuit Court of Appeals upheld the injunction.<sup>40</sup> On June 23, 2016, the Supreme Court upheld the injunction on the DAPA program and DACA expansion by a 4-4 vote in *United States v. Texas*.<sup>41</sup>

## TRUMP ADMINISTRATION

Hostility toward Mexico, Mexican immigrants, Muslim immigrants, and Central Americans have been consistent pillars of Donald Trump’s presidential campaign and administration. Trump repeatedly referred to Mexico as not being a friend of the United States and even explicitly as an “enemy” when discussing trade.<sup>42</sup> Even before his campaign, Trump’s public comments singled out Latino and African Americans as being responsible for violent crime in U.S. cities.<sup>43</sup> Trump announced his presidential candidacy on June 16, 2015, by attacking Mexican immigrants for allegedly importing crime:

When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.<sup>52</sup>

The rhetorical demonization of immigrants in general and Latinos in particular stretches far back into U.S. history.<sup>44</sup> In the 2000s, the Fox News television network, the conservative program of former CNN commentator Lou Dobbs, and right-wing talk radio were particularly strident proponents of the notion that Mexicans are “invading” the United States. Mainstream media have also promoted a “Latino threat narrative” and “immigrant threat narrative” in which Latinos and immigrants are inaccurately represented as a source of crime and uncontrolled fertility.<sup>45</sup>

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<sup>39</sup> *Texas v. United States*, 86 F. Supp. 3d 591, 677 (S.D. Tex. 2015), [https://www.txs.uscourts.gov/sites/txs/files/114-cv-254\\_145X20977588\\_0.pdf](https://www.txs.uscourts.gov/sites/txs/files/114-cv-254_145X20977588_0.pdf)

<sup>40</sup> *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), <http://www.ca5.uscourts.gov/opinions/pub/15/15-40238CV0.pdf>

<sup>41</sup> *United States v. Texas*, 579 U.S. \_\_\_\_ (2016), <https://supreme.justia.com/cases/federal/us/579/15-674/#tabopinion-3589827>.

<sup>42</sup> Donald Trump, Twitter post, July 10, 2014, 12:24 p.m., <https://twitter.com/realDonaldTrump/status/487316463204986880>; Donald Trump, Twitter post, June 30, 2015, 5:57 a.m., <https://twitter.com/realDonaldTrump/status/615866741994954752>.

<sup>43</sup> Donald Trump, Twitter post, June 5, 2013, 1:05 a.m., <https://twitter.com/realDonaldTrump/status/342190428675796992>; Donald Trump, Twitter post, February 24, 2015, 4:47 p.m., <https://twitter.com/realDonaldTrump/status/570384640281870337>. <sup>52</sup> “Here’s Donald Trump’s Presidential Announcement Speech,” *TIME*, June 16, 2015, <http://time.com/3923128/donald-trump-announcement-speech/>.

<sup>44</sup> David Scott FitzGerald and David Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge: Harvard University Press, 2014).

<sup>45</sup> Leo Chavez, *The Latino Threat: Constructing Immigrants, Citizens, and the Nation* (Stanford: Stanford University Press, 2013); Marisa Abrajano and Hajnal Zoltan L., *White Backlash: Immigration, Race, and American Politics* (Princeton: Princeton University Press, 2015), p. 37. <sup>55</sup> Gregory Korte and Alan Gomez, “Trump ramps up rhetoric on undocumented immigrants: ‘These aren’t people. These are animals,’” *USA Today*, May 16, 2018, <https://www.usatoday.com/story/news/politics/2018/05/16/trumpimmigrants-animals-mexico-democrats-sanctuary-cities/617252002>.

The Trump administration consistently uses dehumanizing language to describe groups of Latino immigrants, portrays unauthorized migrants and asylum seekers as an “invasion,” and suggests that migrants are coming to the United States en masse to kill U.S. citizens.

For example, in May 2018, Trump told officials at a White House meeting that unauthorized immigrants were less than human: “We have people coming into the country or trying to come in, we’re stopping a lot of them, but we’re taking people out of the country. You wouldn’t believe how bad these people are,” Trump said. “These aren’t people. These are animals.”<sup>55</sup>

The following month he tweeted that illegal immigrants were an infestation:

Democrats are the problem. They don’t care about crime and want illegal immigrants, no matter how bad they may be, to pour into and infest our Country, like MS-13. They can’t win on their terrible policies, so they view them as potential voters!<sup>46</sup>

The language of fear and dehumanization extends beyond Trump himself. For instance, the White House website called members of the MS-13 gang “violent animals” in May 2018.<sup>47</sup>

An October 2018 midterm election campaign ad was banned by Facebook, CNN, NBC, and Fox News, but not before NBC aired it during a primetime American football game and Trump promoted it on Twitter. The ad intersperses footage of unauthorized Mexican immigrant Luis Bracamontes, who was convicted of murdering two sheriff’s deputies in 2014, with images of a caravan of Central Americans passing through Mexico breaking down police barriers and running through the streets. The text on the screen reads, “ILLEGAL IMMIGRANT, LUIS BRACAMONTES, KILLED OUR PEOPLE!” as courtroom footage records an obviously deranged man threatening to “kill more cops soon.”<sup>48</sup>

ICE officials have been ordered to portray unauthorized immigrants arrested in raids as dangerous criminals. According to a memorandum released in a Freedom of Information Act request, then-DHS Director John Kelly ordered field offices before a large February 2017 raid to put together a list of the worst criminals they found so the raid could be publicly justified.

Please put together a white paper covering the three most egregious cases for each of the [REDACTED] LOCATIONS. One paragraph for each of the

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<sup>46</sup> Donald Trump, Twitter post, June 19, 2018, 6:52 a.m., [https://twitter.com/realDonaldTrump/status/1009071403918864385?ref\\_src=twsrc%5Etfw](https://twitter.com/realDonaldTrump/status/1009071403918864385?ref_src=twsrc%5Etfw).

<sup>47</sup> “What You Need To Know About The Violent Animals Of MS-13,” The White House, May 21, 2018, <https://www.whitehouse.gov/articles/need-know-violent-animals-ms-13/>.

<sup>48</sup> Michael M. Grynbaum and Niraj Chokshi, “Even Fox News Stops Running Trump Caravan Ad Criticized as Racist,” *The New York Times*, November 5, 2018, <https://www.nytimes.com/2018/11/05/us/politics/nbc-caravanadvertisement.html>.; Donald Trump, Twitter post, October 31, 2018, 1:18 p.m., <https://twitter.com/realDonaldTrump/status/1057728445386539008>.



egregious case [sic] – describing the facts of the case. If a location has only one egregious case – then include an extra egregious case from another city.<sup>49</sup>

In short, the Trump campaign and administration built on a long history of media and political entrepreneurs denigrating Mexicans as a threat and made this a core feature of the administration’s messaging. Government-sponsored hate speech indirectly violates the civil rights of its rhetorical targets by fostering hostile actions from private citizens.

### **Attempting to end DACA**

Hostility toward Mexicans and immigrants expanded from verbal attacks to harsh policy measures after Trump took office. While the Trump campaign and administration had given contradictory signals about its position toward the status of Dreamers, the president rescinded the DACA program on September 5, 2017.<sup>50</sup> The administration argued that immigrants in the program were lawbreakers who hurt native workers by taking jobs. However, federal district courts in San Francisco, New York, the District of Columbia, and Texas ruled that U.S. Citizenship and Immigration Services (USCIS) must accept applications for renewal from recipients participating in the original DACA program.<sup>51</sup> USCIS restarted accepting renewal applications in January 2018.<sup>52</sup>

In November 2018, the Ninth Circuit Court of Appeals ruled against the rescission of DACA. The plaintiffs, a coalition of the University of California and several states, claimed that ending DACA constituted a violation of equal protection under the law, as guaranteed by the Constitution, since the program disproportionately affected Mexicans. They pointed to the Trump administration’s repeated comments about Mexicans as evidence of animus that led to targeted ethnic discrimination by the government. The Ninth Circuit sided with the plaintiffs, stating that the “plaintiffs provide substantially greater evidence of discriminatory motivation, including the rescission order’s disparate impact on Latinos and persons of Mexican heritage.”<sup>53</sup> The final disposition of DACA is likely to be decided in 2019 by the Supreme Court, where conservative justices have held a 5-4 majority since October 2018.

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<sup>49</sup> Alice Speri, “Top Trump Official John Kelly Ordered ICE to Portray Immigrants as Criminals to Justify Raids,” *The Intercept*, October 16, 2017, <https://theintercept.com/2017/10/16/top-trump-official-john-kelly-ordered-ice-toportray-immigrants-as-criminals-to-justify-raids/>.

<sup>50</sup> “Memorandum on Rescission of Deferred Action For Childhood Arrivals (DACA),” U.S. Department of Homeland Security, September 5, 2017, <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>; “Here’s What President Trump Has Said About DACA in the Past,” *TIME*, Sep. 5, 2017, <http://time.com/4927100/donald-trump-daca-past-statements/>.

<sup>51</sup> *Regents of the University of California v. United States Department of Homeland Security* 3:17-cv-05211 (N.D. Cal. Jan. 9, 2018); *Batalla Vidal v. Nielsen* 1:16-cv-04756 and *State of New York v. Trump* 1:17-cv-05228 (E.D.N.Y. February 13, 2018); *NAACP v. Trump and Princeton University v. United States* 1:17-cv-02325 (D.D.C. April 24, 2018); *Texas v. United States* 18-00068 (S.D. Tex. May 1, 2018).

<sup>52</sup> “Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction,” U.S. Citizenship and Immigration Services, February 14, 2018, <https://www.uscis.gov/humanitarian/deferred-action-childhoodarrivals-response-january-2018-preliminary-injunction>.

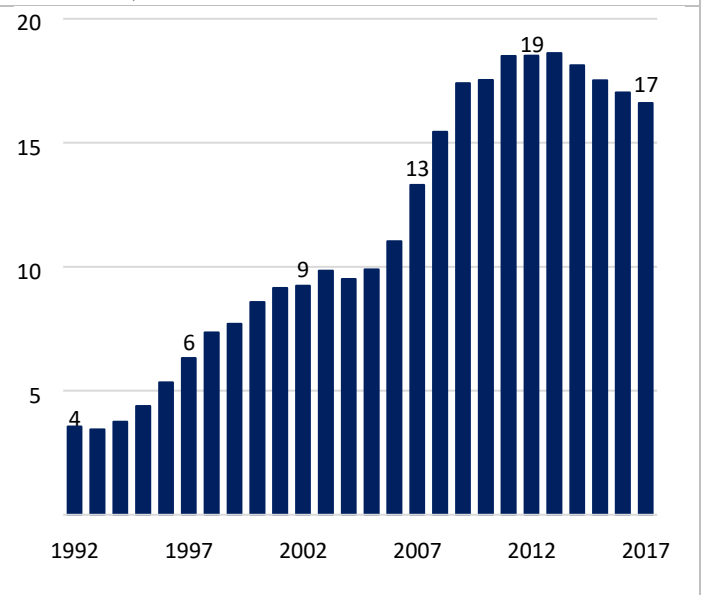
<sup>53</sup> *Regents of the University of California v. United States Department of Homeland Security* No. 3:17-cv-05211 (N.D. Cal. Nov. 8, 2018), <http://cdn.ca9.uscourts.gov/datastore/opinions/2018/11/08/18-15068.pdf>.

## The wall

Trump repeatedly pledged from the beginning of his campaign to build a wall along the U.S.-Mexico border.<sup>54</sup><sup>55</sup> Five days after Trump’s inauguration, the president signed his first executive order, calling for “the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism.”<sup>56</sup> On March 23, 2018, the administration secured \$1.57 billion for barriers along the Southwest border, far less than the \$25 billion it originally sought.<sup>57</sup>

**FIGURE 3 Border Patrol has more than quadrupled in size since 1992**

*(Total Border Patrol agents on Southwest border, in thousands)*



Note: Years are fiscal years.

Source: U.S. Border Patrol Staffing Statistics.



## IMMIGRATION APPREHENSIONS ON THE BORDER

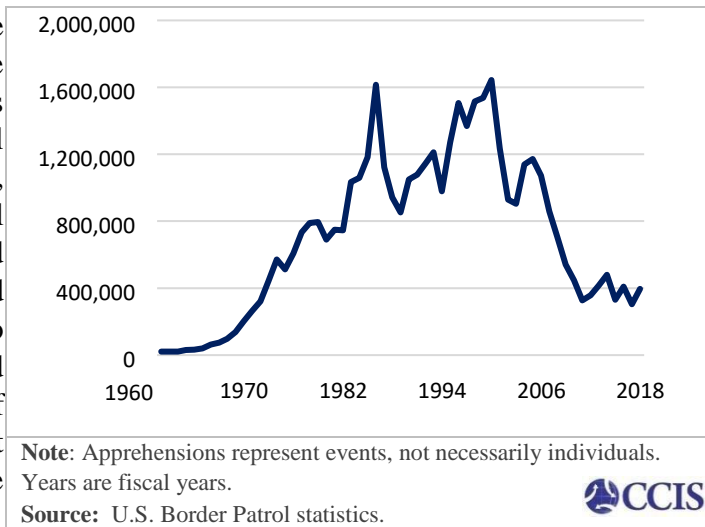
**FIGURE 4 U.S. Border Patrol apprehensions, FY1960-2018**

<sup>54</sup> “Trump Orders Mexican Border Wall to Be Built and Plans to Block Syrian Refugees,” *New York Times*, Jan. 25, 2017, <https://www.nytimes.com/2017/01/25/us/politics/refugees-immigrants-walltrump.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer>.

<sup>56</sup> “Executive Order: Border Security and Immigration Enforcement Improvements,” Jan. 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcementimprovements/>

<sup>57</sup> “Build a wall, and make Mexico pay for it,” PolitiFact, March 23, 2018, <https://www.politifact.com/truthometer/promises/trumpometer/promise/1397/build-wall-and-make-mexico-pay-it/>.

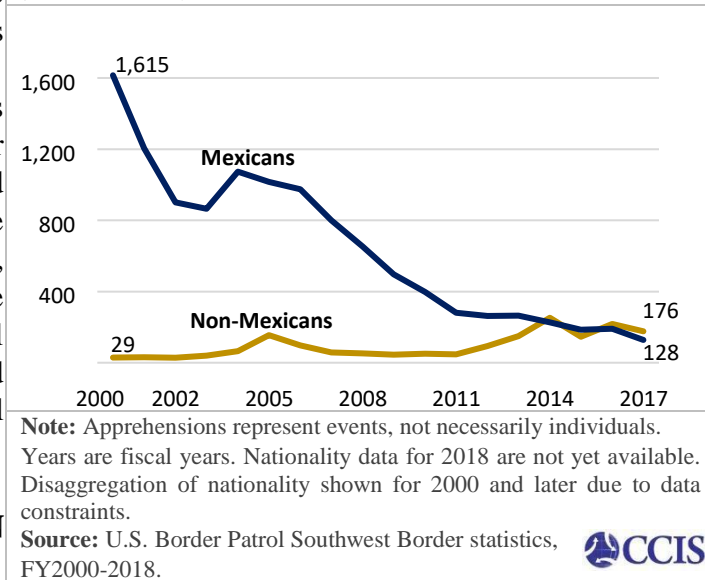
The idea of constructing obstacles on the U.S.-Mexico border is not new. Since the early 1990s, the federal government has built increasingly elaborate physical barriers on its border with Mexico, quadrupled the number of Border Patrol agents (see Figure 3), and deployed military technologies such as infrared cameras, motion sensors, and drones to deter clandestine entry and apprehend unauthorized migrants.<sup>58</sup> The number of Border Patrol agents peaked at approximately 19,000 in 2013, during the Obama administration.



These policies drove up immigrant apprehensions until they peaked at 1.6 million in 2000, before falling precipitously. Figure 4 shows the rise and fall of large-scale apprehensions. During the final years of the Obama administration and first two years of the Trump administration, apprehensions of unauthorized crossers fell to the lowest levels since the 1970s.

Historically, Mexican nationals have comprised the vast majority of individuals apprehended. However, the Mexican share declined over the 2000s (Figure 5). By 2014, Mexicans no longer comprised the majority of apprehended persons, even as they remained the single largest nationality apprehended. By 2017, the share of Mexicans apprehended at the Southwest border had fallen to 42% of all apprehensions, as more migrants and asylum seekers arrived from Central America.

**FIGURE 5 Apprehensions on Southwest border by nationality, FY2000-2017**  
*(In thousands)*



## FORCE, ABUSE, AND DEATH ON THE BORDER

The deployment of thousands of Border Patrol agents on the U.S.-Mexico border has led to increased deaths of migrants. The deaths that are indirect effects of border enforcement strategies that funnel unauthorized migrants into dangerous wilderness areas are much more numerous than shootings by agents. Independent investigations show that lethal and non-lethal use of force by the Border Patrol is inadequately investigated.

<sup>58</sup> David FitzGerald and Rafael Alarcón, “Migration: Policies and Politics,” in *Mexico and the United States: The Politics of Partnership*, edited by Peter H. Smith and Andrew Selee (Boulder: Lynne Rienner, 2013).

No central agency maintains statistics on deaths directly caused by Border Patrol agents or assesses how many of those deaths were the result of lawful practices or unlawful killings. A coalition of NGOs documented 81 deaths at the hands of Border Patrol agents, mostly from shootings or during car chases, between January 2010 and September 2018.<sup>59</sup> The deaths took place in a wide variety of circumstances, including the action of agents off-duty, but have included documented instances in which agents on duty killed unarmed migrants.

Agents are rarely prosecuted. For instance, agent Lonnie Swartz was tried in Arizona in 2018 for manslaughter and second-degree murder charges in the death of a 16-year-old Mexican national, José Antonio Elena Rodríguez, who was shot in the back ten times after throwing rocks at agents while standing on the Mexican side of the border in Nogales, Sonora.<sup>60</sup> Swartz was the first U.S. officer prosecuted in a cross-border shooting.<sup>61</sup> After two different juries deadlocked on a voluntary manslaughter charge and acquitted him of the other charges, federal prosecutors announced in December 2018 that they would drop the case against Swartz.<sup>71</sup>

A formal review of Border Patrol agents' use of firearms between January 2010 and October 2012 by the Police Executive Research Forum found widespread deficiencies and abuses in the Border Patrol's use of firearms. The report stated that among 13 cases of agents firing in confrontations with armed suspects, all seemed reasonable. However, not all of the 4 cases of agents in boats firing after objects were thrown at them were reasonable. Of 15 cases of agents firing at or into vehicles, agents took at least some of the shots "out of frustration" or because they had unnecessarily put themselves into the path of fleeing drivers. The report concluded that agents should only fire when there was an immediate physical threat from a source other than a moving vehicle. The report reviewed 25 cases of agents firing shots after rocks were thrown at them and found a wide variety of situations that included shootings in line with existing policy on the use of force and other "shootings of more questionable justification." The latter generally involved shootings across the border at individuals on the Mexican side. An additional ten shootings were justified by self-defense, according to the report.<sup>62</sup>

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<sup>59</sup> "Deaths by Border Patrol," Southern Border Communities Coalition, September 18, 2018, [http://www.southernborder.org/deaths\\_by\\_border\\_patrol](http://www.southernborder.org/deaths_by_border_patrol).

<sup>60</sup> "2<sup>nd</sup> trial begins for border agent who fatally shot Mexican teen through border fence," *azcentral.*, October 25, 2018, <https://www.azcentral.com/story/news/politics/border-issues/2018/10/25/border-agent-lonnie-swartz-2nd-trial-2012-fatal-shooting-jose-antonio-elena-rodriguez-mexico-fence/1761356002/>; Howard Fischer Capitol Media Services, "Prosecutors won't dispute that Nogales teen shot by agent was throwing rocks," *Tucson.com*, June 29, 2017, [https://tucson.com/news/local/prosecutors-won-t-dispute-that-nogales-teen-shot-by-agent/article\\_f35b26581e67-550e-8c32-22afb8a783.html](https://tucson.com/news/local/prosecutors-won-t-dispute-that-nogales-teen-shot-by-agent/article_f35b26581e67-550e-8c32-22afb8a783.html).

<sup>61</sup> Kristine Phillips, "U.S. border agent who repeatedly shot Mexican teen through a fence acquitted of murder," *The Washington Post*, April 24, 2018, [https://www.washingtonpost.com/news/post-nation/wp/2018/04/24/u-s-border-agent-who-repeatedly-shot-mexican-teen-through-a-fence-acquitted-of-murder/?utm\\_term=.e02012479913](https://www.washingtonpost.com/news/post-nation/wp/2018/04/24/u-s-border-agent-who-repeatedly-shot-mexican-teen-through-a-fence-acquitted-of-murder/?utm_term=.e02012479913).

<sup>71</sup> Astrid Galvan, "Feds won't pursue 3<sup>rd</sup> trial against Border Patrol agent Lonnie Swartz," *azcentral.*, December 6, 2018, <https://www.azcentral.com/story/news/politics/border-issues/2018/12/06/no-new-trial-lonnie-swartz-border-killing-jose-antonio-elena-rodriguez/2232683002/>.

<sup>62</sup> "U.S. Customs and Border Protection Use of Force Review: Cases and Policies," The Police Executive Research Forum, February 2013, <https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf>. The report did not consistently enumerate the number of incidents that its authors judged to fall into different categories.

According to the CBP, its agents' use of firearms declined from 55 incidents in fiscal year 2012 to 17 in 2017 (see Figure 6). Use of less-lethal force, such as Tasers and batons, stayed fairly constant over the same period, with 948 annual uses. In 2017 the Border Patrol used force in 89% of all of the incidents in which force was used by one of the agencies within CBP.<sup>63</sup>

**FIGURE 6 Border Patrol's use of force, FY 2012-2017**

	2012	2013	2014	2015	2016	2017
Firearm	55	45	23	28	26	17
Less-Lethal Device and Other	873	1168	997	724	947	979
<b>Total</b>	<b>928</b>	<b>1213</b>	<b>1020</b>	<b>752</b>	<b>973</b>	<b>996</b>

**Note:** Years are fiscal years. Data does not include incidents for off-duty CBP personnel. "Less-Lethal Device and Other Less-Lethal Force" include use of batons, electroshock weapons, physical strikes without a weapon, and others.

**Source:** U.S. Border Patrol Use of Force Statistics.



Thousands of allegations of abuse have been filed against Border Patrol agents. Analyses of these internal complaints have found that a majority of the complaints relate to physical abuse and that most are not investigated. Relatively few formal civil rights complaints are filed against the Border Patrol through the Office of Civil Rights and Civil Liberties (CRCL) – an office tasked with investigating civil rights complaints made by the public and advising the DHS on civil rights policies. Its data should be interpreted with caution. In order to file a formal complaint, one must call, e-mail, or fax the Department of Homeland Security.<sup>64</sup> The office announced in June 2018:

The DHS Office for Civil Rights and Civil Liberties (CRCL) has received an extraordinarily large volume of calls regarding the administration's zero-tolerance policy. We are working diligently to document every contact we receive and are attempting to keep our voice mailbox clear for additional messages. If you call our line and are not able to leave a message, we encourage you to call back or send us an email. Due to the high number of calls and emails, however, we may not be able to answer or respond and we apologize for any inconvenience this may cause.<sup>65</sup>

Not everyone who experiences a violation of their civil rights will be able to file a formal complaint. As of this writing, the Border Patrol has not released data showing the number of complaints against the agency during the Trump administration.

A 2017 report by the American Immigration Council found that hundreds of internal complaints against Border Patrol agents went uninvestigated and unpunished.<sup>66</sup> The report analyzed data from

<sup>63</sup> "CBP Use of Force Statistics," U.S. Customs and Border Protection, November 2, 2018, <https://www.cbp.gov/newsroom/stats/cbp-use-force#>.

<sup>64</sup> "Make a Civil Rights Complaint," U.S. Department of Homeland Security, August 7, 2018, <https://www.dhs.gov/file-civil-rights-complaint>.

<sup>65</sup> "CRCL is Experiencing a High Volume of Calls," U.S. Department of Homeland Security, June 21, 2018, <https://www.dhs.gov/news/2018/06/21/crcl-experiencing-high-volume-calls>.

<sup>66</sup> Guillermo Cantor and Walter Ewing, "Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered," American Immigration Council, August 2, 2017, <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrolagents-continue-go-unanswered>. Note that this report utilizes a different source of data – complaints and reports of abuse are not necessarily comparable.

CBP’s internal affairs office and found that almost all of the complaints analyzed resulted in “no action” against the alleged abusing officer. That report also found that roughly three-fifths of cases analyzed were for physical abuse.

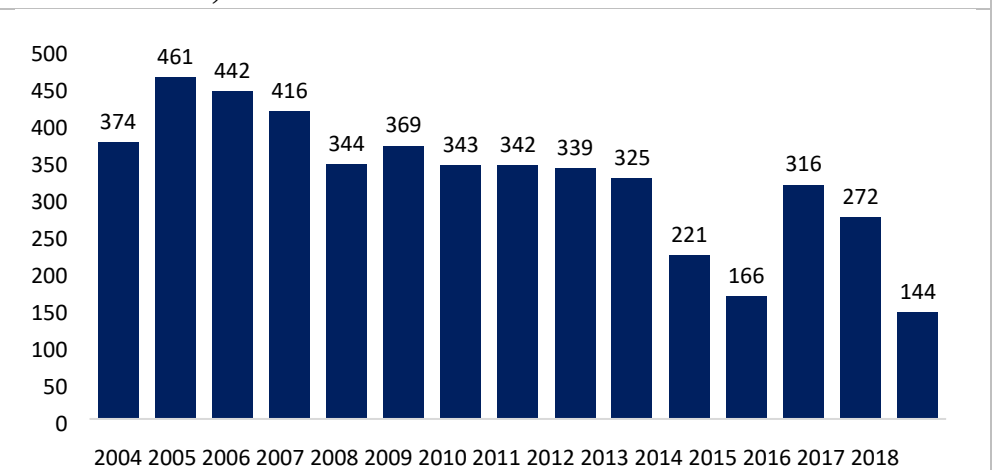
### Crossing deaths

One of the well-documented consequences of U.S. border enforcement strategy is to indirectly increase the deaths of migrants attempting to cross the border clandestinely. Between 1998 and 2017, the Border Patrol reported 7,216 total migrant deaths on the Southwest border.<sup>67</sup>


This figure is certainly an undercount for at least two reasons. First, only found human remains are reported, and an

unknown number of bodies remain lost in the remote deserts, mountains, canals, and rivers along the border. The clandestine nature of migrants’ entrances means people cross through remote areas where they are hard to detect, including their remains if they perish.

**FIGURE 7 Total number of Mexicans who died while crossing into the U.S., 2004-2018**



**Note:** 2018 is partial data as of June 30, 2018. Some unidentified persons were assumed to be Mexican: 96 in 2018, 110 in 2017, and 109 in 2016.

**Source:** Mexican Ministry of Foreign Relations data provided by Mexican consulates on the U.S. border. 

Second, there is no

central reporting agency for bodies found in the United States, and the Border Patrol often does not record deaths of migrant bodies found by other law enforcement agencies or civilians. Independent analyses by the U.S. Government Accountability Office and two different news agencies have found evidence of hundreds of migrant deaths that were not included in Border Patrol statistics.<sup>68</sup> The death toll along the border is thus higher than shown in the official statistics collected by the U.S. and Mexican governments.

<sup>67</sup> “Southwest Border Deaths by Fiscal Year,” U.S. Border Patrol, 2017, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2017.pdf>.

<sup>68</sup> Rob O’Dell, Daniel González and Jill Castellano, “‘Mass disaster’ grows at the U.S.-Mexico border, but Washington doesn’t seem to care,” *azcentral.*, December 14, 2017, <https://www.azcentral.com/story/news/politics/border-issues/2017/12/14/investigation-border-patrol-undercountsdeaths-border-crossing-migrants/933689001/.c>; Bob Ortega, “Border Patrol failed to count hundreds of migrant deaths on US soil,” CNN, May 15, 2018, <https://www.cnn.com/2018/05/14/us/border-patrol-migrant-death-countinvs/index.html>.; “Illegal Immigration Border-Crossing Deaths Have Doubled Since 1995; Border Patrol’s

The harsh terrain of the Southwest border has claimed the lives of many Mexican nationals. Some human remains are never identified because many migrants do not carry documents, and wilderness conditions make identification difficult. Thus, it is impossible to know for certain the Mexican share of the death toll. The Mexican Ministry of Foreign Relations estimated that 316 Mexican nationals died crossing the border in 2016, declining to 272 in 2017.

### **Deaths as rights violations**

To what extent should these deaths be considered a civil rights violation? The intent of U.S. border enforcement policy beginning in the mid-1990s during the Clinton administration was to build up enforcement in urban areas to detect and deter clandestine entry. Officials expected that the natural hazards of wilderness areas would dissuade migrants from crossing between the more heavily fortified urban areas. “We did believe that geography would be an ally for us,” Immigration and Naturalization Service Commissioner Doris Meissner said. “It was our sense that the number of people crossing through the Arizona desert would go down to a trickle once people realized what [it’s] like.”<sup>69</sup>

The number of deaths quickly rose, and the most common types of deaths changed. More people succumbed to exposure to extreme heat and cold, dehydration, and drowning. Although the human toll of the new policy quickly became apparent, the federal government intensified its policy. By 2014, DHS had constructed more than 650 miles of fencing.<sup>70</sup> While entry without inspection is a misdemeanor under federal law, and there is no internationally recognized right of a foreign national to enter another country, U.S. border enforcement strategy knowingly causes massive loss of life. The harms of the policy are disproportionate to their justifications, continue despite the policy’s known effects, and thus are arguably a violation of the “right to life” that is a core feature of the International Covenant on Civil and Political Rights to which the United States is party.<sup>81</sup> Regardless of whether U.S. courts consider the policy to be a violation of migrants’ civil rights, the strategy has unquestionably raised the death toll.

### **UNACCOMPANIED MINORS**

Thousands of child migrants began arriving at the U.S.-Mexico border during the Obama administration and have continued to arrive during the Trump administration. Unaccompanied minors and their rights have thus received much political attention. Special procedures are in place for minors who arrive at the U.S. border without a parent, or who as the following section describes, arrive with a parent but are forcibly separated and turned into unaccompanied minors

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Efforts to Prevent Deaths Have Not Been Fully Evaluated,” U.S. Government Accountability Office, August 2006, <https://www.gao.gov/new.items/d06770.pdf>.

<sup>69</sup> Wayne A. Cornelius, “Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy,” *Population and Development Review* 27, no. 4 (2001): 661-85.

<sup>70</sup> *Ibid.*, p. 675. <sup>81</sup> “International Covenant on Civil and Political Rights,” 1976, Art. 6.; Maria Jimenez, “Humanitarian Crisis:

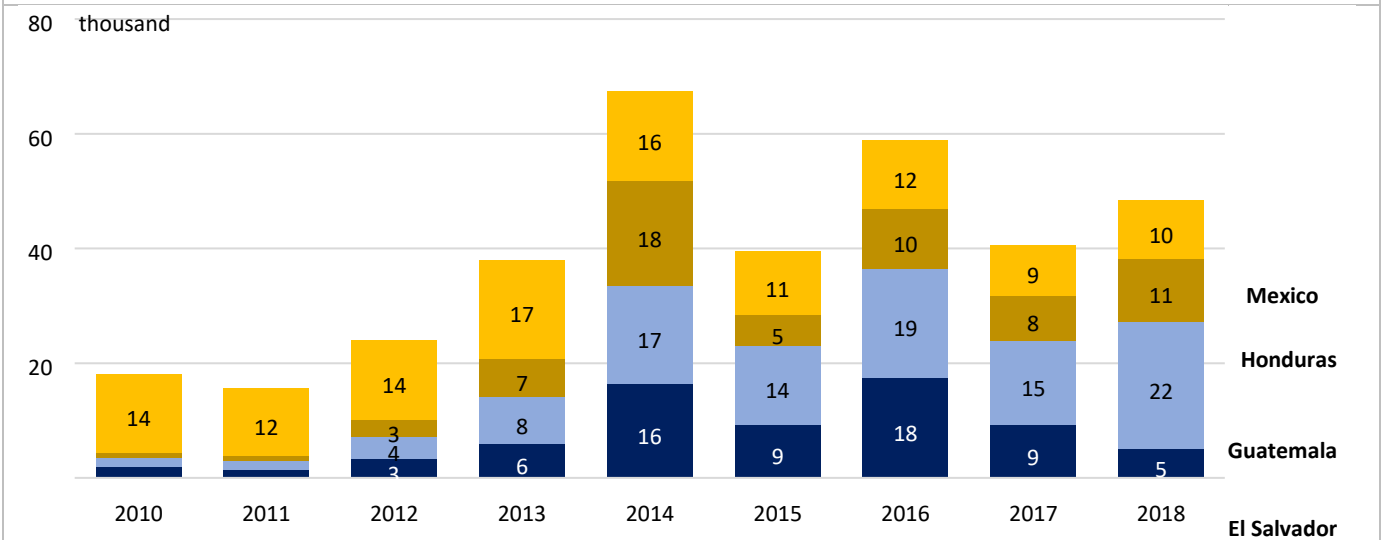
Migrant Deaths at the U.S.-Mexico Border,” ACLU, October 1, 2009, [https://www.aclu.org/sites/default/files/field\\_document/humanitariancrisisreport.pdf](https://www.aclu.org/sites/default/files/field_document/humanitariancrisisreport.pdf).

by federal agents. The design and implementation of these policies has been widely criticized for systematically violating the civil rights of parents and children.

“Unaccompanied alien children” (UACs) are legally defined as children who lack lawful immigration status in the United States, are under the age of 18, and are without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody.<sup>82</sup>

The vast majority of unaccompanied minors arriving at the Southwest border come from Mexico, Guatemala, Honduras, and El Salvador (see Figure 8). The overall number of UAC arriving at the U.S. border hit its peak in 2014, reaching almost 70,000, and has declined since then. In 2014, some 16,000 unaccompanied Mexican minors were apprehended at the Southwest border. Over the past few years, an increasing number of children and families have been arriving from Guatemala, Honduras, and El Salvador – the region of Central America known as the “Northern Triangle.” High levels of violence, abject poverty, food insecurity, and lack of state protection of children and families are considered the major push factors driving the recent upswing in migrant flows from the Northern Triangle to the United States.<sup>83</sup>

**FIGURE 8 Unaccompanied children apprehended at Southwest border, by country of origin, 2010-2018** (In thousands)



Note: Years are fiscal years. 'Other' not shown.

Source: U.S. Border Patrol Southwest border statistics, accessed as of December 1, 2018.



<sup>82</sup> 6 U.S.C. § 279(g)(2)

<sup>83</sup> Marc R. Rosenblum and Isabel Ball, “Trends in Unaccompanied Child and Family Migration from Central America,” Migration Policy Institute, January 25, 2016, <https://www.migrationpolicy.org/research/trendsunaccompanied-child-and-family-migration-central-america>.

### **Policies toward unaccompanied minors**

The treatment of unaccompanied migrant minors in the United States is regulated by the Flores



Settlement Agreement of 1997<sup>71</sup> and two statutes: the Homeland Security Act of 2002<sup>72</sup> and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.<sup>73</sup>

The Flores Settlement Agreement of 1997 established a nationwide policy for the detention, treatment, and release of UAC and recognized their particular vulnerability as minors. Most prominently, the agreement requires the U.S. government to do two things. First, it has to release children from immigration detention “without unnecessary delay” – no more than 20 days – to parents, other adult relatives, or licensed programs willing to accept custody, in that order of preference. Second, *Flores* requires the government to hold children in the “least restrictive” conditions available, and to provide them with basic necessities, like food and water, medical treatment in emergencies, toilet and sinks, adequate temperature control and ventilation, and separation from unrelated adults whenever possible.

The 2008 TVPRA codified parts of the *Flores* settlement into federal law. In 2015, U.S. district judge Dolly Gee ruled that the *Flores* requirements apply to both children who have been accompanied by their parents and unaccompanied children.<sup>74</sup> Gee also ordered DHS to release parents detained along with their children.<sup>88</sup> The Ninth Circuit in 2016 affirmed that *Flores* applied to all children but reversed the district court decision that parents should be released as well.<sup>75</sup>

The TVPRA requires unaccompanied minors from Canada and Mexico to be screened within 48 hours of being apprehended, and, if no signs of trafficking or fear of persecution are reported, to allow them to return to their home countries without additional penalties or being placed in immigration proceedings. The process is called “voluntary return.” The United States has agreements with Mexico and Canada to manage the repatriation process. If Customs and Border Protection (CBP) concludes that the child is a potential victim of trafficking or has a possible claim to asylum, or if a conclusion cannot be drawn within 48 hours, the TVPRA mandates that the child shall immediately be transferred to the custody of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services. Once transferred, Mexican and Canadian children are treated like all other unaccompanied minors in detention.

## **FAMILY SEPARATIONS AT THE U.S.-MEXICO BORDER**

Just seven weeks after Trump took office, then-DHS Secretary John Kelly told CNN that his agency was planning to separate children from their unauthorized immigrant parents at the border

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<sup>71</sup> Flores Settlement Agreement of 1997, <https://www.clearinghouse.net/chDocs/public/IM-CA-0002-0005.pdf>.

<sup>72</sup> Pub.L. 107–296, 116 Stat. 2135, enacted November 25, 2002.

<sup>73</sup> Pub.L. 110-457, 122 Stat. 5044, enacted Dec. 23, 2008.

<sup>74</sup> *Flores v. Johnson*, 212 F. Supp. 3d 864 (C.D. Cal. 2015).<sup>88</sup>

*Flores v. Lynch*, 212 F. Supp. 3d 907 (C.D. Cal. 2015).

<sup>75</sup> *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016). See the discussion in Marc R. Rosenblum, “Unaccompanied Child Migration to the United States: The Tension between Protection and Prevention,” Transatlantic Council on Migration: A Project of the Migration Policy Institute, April 2015 and William A. Kandel, “Unaccompanied Alien Children: An Overview,” Congressional Research Service, January 18, 2017, <https://www.sfbur.org/forms/lawyerreferrals/immigration/unaccompanied-alien-children-an-overview.pdf>.

“to deter more movement.”<sup>76</sup> On April 6, 2018, Attorney General Jeff Sessions ordered all U.S. Attorney’s offices along the Southwest border to adopt a new “zero-tolerance policy.” Sessions called for criminal prosecution of improper entry offenses under 8 U.S.C. § 1325.<sup>77</sup> Before the zero-tolerance policy, immigration violations usually were treated as civil, rather than criminal, offenses, especially when they were committed by first-time crossers.<sup>78</sup> The zero-tolerance policy was intended to deter individuals from crossing the border with the threat of jail sentences and the separation of immigrant children from their parents. “If you cross the southwest border unlawfully, then we will prosecute you – it’s that simple,” Sessions said. “If you’re smuggling a child, then we’re going to prosecute you, and that child will be separated from you. If you don’t want your child separated, then don’t bring them across the border illegally.”<sup>79</sup>

On several occasions, the Trump administration has pointed to the *Flores* settlement as the reason it is “forced” to break up families at the border. It claims that because *Flores* effectively prohibits children from being detained at immigration detention centers together with their parents, it has no choice but to send the children away to separate facilities run by the U.S. Department of Health and Human Services. Relatedly, President Trump and his administration have claimed that family separation at the border is inevitable because of federal law created by Democrats.<sup>94</sup> These claims are not true. The Obama administration generally detained families together in ICE administrative custody, rather than the Department of Justice’s criminal system, or released families with a notice to appear in immigration court on the date of their hearing.<sup>80</sup> There is no U.S. law that mandates the separation of families. Family separation arises from the combination of the Trump administration’s zero-tolerance policy that requires detention of undocumented adult immigrants and the *Flores* requirements that prohibits child immigrant detention.

When immigrant families or individuals are apprehended by the Border Patrol, they are taken into the custody of DHS. Under the zero-tolerance policy, DHS officials refer any adult “believed to have committed any crime, including illegal entry” to the Justice Department for prosecution. After being held at detention centers, adult immigrants are tried in court for a misdemeanor of illegal

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<sup>76</sup> “Kelly: DHS is considering separating undocumented children from their parents at the border,” March 7, 2017, <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigrationborder/index.html>.

<sup>77</sup> “Memorandum for Federal Prosecutors along the Southwest Border,” Office of the Attorney General, April 6, 2018, <https://www.justice.gov/opa/press-release/file/1049751/download>.

<sup>78</sup> Miriam Valverde, “What you need to know about the Trump administration’s zero-tolerance immigration policy,” PolitiFact, June 6, 2018, <https://www.politifact.com/truth-o-meter/article/2018/jun/06/what-you-need-know-abouttrump-administrations-zer/>.

<sup>79</sup> Miriam Jordan, “How and Why ‘Zero Tolerance’ Is Splitting Up Immigrant Families,” *The New York Times*, May 12, 2018, <https://www.nytimes.com/2018/05/12/us/immigrants-family-separation.html>. <sup>94</sup> “Remarks by President Trump in Press Gaggle.” The White House, June 15, 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-gaggle/>; Donald Trump, Twitter Post, June 6, 2018, 4:58 a.m., <https://twitter.com/realdonaldtrump/status/1003969399148118016>.

<sup>80</sup> Muzaffar Chishti and Jessica Bolter, “Family Separation and ‘Zero-Tolerance’ Policies Rolled Out to Stem Unwanted Migrants, But May Face Challenges,” Migration Policy Institute, May 24, 2018, <https://www.migrationpolicy.org/article/family-separation-and-zero-tolerance-policies-rolled-out-stem-unwantedmigrants-may-face>.

entry for first-time offenders or a felony charge of illegal reentry for repeat offenders.<sup>81</sup> If convicted, they are sentenced to time served and deported.<sup>82</sup>

This policy effectively separated immigrant families that have been apprehended at the border together, because while parents are referred for prosecution in criminal court, their minor children – who cannot be criminally persecuted and are not allowed to be kept in federal criminal detention facilities<sup>83</sup> – are transferred to the custody of the Office of Refugee Resettlement (ORR) after being reclassified as “unaccompanied alien children.” ORR is responsible for feeding, sheltering, and providing medical care for the minors until it is able to release them to safe settings with sponsors, who are usually family members, while their immigration case is resolved.<sup>84</sup> The directive has not only put strain on migrants and the immigration courts across the country, but also on ORR’s UAC Program, which historically has only dealt with children whom it recognized as refugees or asylum-seekers.

According to the Trump administration, 2,342 children were separated from 2,206 parents at the U.S.-Mexico border between May 5 and June 9 due to the zero-tolerance policy.<sup>85</sup> A strong backlash against the family separation policy erupted from the administration’s opponents and even many allies – including former first ladies, religious leaders, Republican senators, and U.S. airlines refusing to transport children.<sup>101</sup>

On June 20, President Trump signed an executive order stopping families from being separated at the U.S.-Mexico border.<sup>86</sup> The executive order directed (1) the attorney general to file a request

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<sup>81</sup> Chris Cillizza, “The remarkable history of the family separation crisis,” *CNN*, June 18, 2018, <https://www.cnn.com/2018/06/18/politics/donald-trump-immigration-policies-q-and-a/index.html>.

<sup>82</sup> Salvador Rizzo, “The facts about Trump’s policy of separating families at the border,” *The Washington Post*, June 19, 2018, [https://www.washingtonpost.com/news/fact-checker/wp/2018/06/19/the-facts-about-trumps-policy-of-separating-families-at-the-border/?noredirect=on&utm\\_term=.c96b61809f3f](https://www.washingtonpost.com/news/fact-checker/wp/2018/06/19/the-facts-about-trumps-policy-of-separating-families-at-the-border/?noredirect=on&utm_term=.c96b61809f3f).

<sup>83</sup> *Reno v. Flores*, 507 U.S. 292 (1993); “Documents Relating to *Flores v. Reno* Settlement Agreement on Minors in Immigration Custody,” AILA, October 10, 2018, <https://www.aila.org/infonet/flores-v-reno-settlement-agreement.>; Kandel, “Unaccompanied Alien Children,” 2017.

<sup>84</sup> “Unaccompanied Alien Children Released to Sponsors By State,” Office of Refugee Resettlement, June 30, 2017, <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>.

<sup>85</sup> Dara Lind, “New statistics: the government is separating 65 children a day from parents at the border,” *Vox*, June 19, 2018, <https://www.vox.com/2018/6/19/17479138/how-many-families-separated-border-immigration>.<sup>101</sup> Amber Phillips, “How Republicans are divided over Trump’s immigration policy: For it, against it and keeping their mouths shut,” *The Washington Post*, June 19, 2018, [https://www.washingtonpost.com/news/thewix/wp/2018/06/19/is-trump-losing-his-support-in-congress-for-separating-families-at-the-border/?utm\\_term=.bca6e056883a.](https://www.washingtonpost.com/news/thewix/wp/2018/06/19/is-trump-losing-his-support-in-congress-for-separating-families-at-the-border/?utm_term=.bca6e056883a.); Matt Stevens and Sarah Mervosh, “The 4 Former First Ladies Condemn Trump’s Border Policy,” *The New York Times*, June 19, 2018, <https://www.nytimes.com/2018/06/19/us/politics/first-ladies-trump-family-separation.html>;

MaryAlice Parks, “Religious leaders implore Trump White House: Stop separating immigrant families,” *ABC News*, June 14, 2018, <https://abcnews.go.com/Politics/religious-leaders-implore-trump-white-house-stop-separating/story?id=55905666.>;

Jackie Wattles and Rene Marsh, “Airlines ask the government not to fly separated children on their planes,” *CNN*, June 20, 2018, <https://money.cnn.com/2018/06/20/news/companies/american-airlines-children-detention-bordertrump/index.html>.

<sup>86</sup> “Affording Congress an Opportunity to Address Family Separation,”

with Judge Gee to modify the *Flores* settlement and allow detained migrant families to be held together “throughout the pendency of criminal proceedings... or other immigration proceedings”; (2) DHS to maintain custody of detained families during criminal proceedings and asylum claim adjudication; (3) the Secretary of Defense and the heads of other agencies to find or construct facilities to house the detained families; and (4) the Attorney General to prioritize the adjudication of cases involving detained families.

Following the executive order, on June 21, the Department of Justice (DOJ) filed an application seeking to modify the *Flores* settlement so that migrant children could be detained with their parents together indefinitely at adult immigrant detention facilities.<sup>87</sup> The DOJ also sought to expand the type of licensed facilities where minors may be held. Judge Gee denied the request in *Flores v. Sessions* on July 10. She ruled that the Trump administration had no legitimate grounds on which to alter the *Flores* agreement and described the DOJ’s application as “a cynical attempt, on an *ex parte* basis, to shift responsibility to the judiciary for over 20 years of congressional inaction and ill-considered executive action that have led to the current stalemate.”<sup>88</sup>

Meanwhile, federal district judge Dana Sabraw issued a preliminary injunction against the family separation policy in *Ms. L. v. ICE* on June 26 and ordered the reunification of separated children with narrow exceptions. His order supported the plaintiffs’ claims that the policy violated rights of due process, particularly in failing to keep records that would facilitate family reunification and communication; the “right to family integrity;” and the “constitutional liberty interest” of parents “in the care, custody, and control of their children.”<sup>89</sup>

The cumulative effect of the rulings in *Flores v. Sessions* and *Ms. L. v. ICE* was to prevent the administration from separating families or keep them together in long-term detention.

On September 6, DHS published in the *Federal Register* a notice of proposed rulemaking on “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children.”<sup>90</sup> The rules proposed to terminate the *Flores* settlement agreement and effectively replace it with regulatory provisions that would allow the government to detain family units together indefinitely until their immigration cases were completed; to hold families in facilities that have not been licensed by state or local agencies; and to broaden the meaning of “emergencies” and “influxes” in ways that could create major loopholes.

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The White House, June 20, 2018, <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunityaddress-family-separation/>.

<sup>87</sup> “Defendants’ Memorandum of Points and Authorities in Support of *Ex Parte* Application for Relief from the Flores Settlement Agreement,” CV 85-4544-DMG (C.D. Cal. June 21, 2018), <https://www.justice.gov/opa/page/file/1074096/download>.

<sup>88</sup> *Jenny L. Flores v. Jefferson B. Sessions, III* CV 85-4544-DMG (C.D. Cal. July 9, 2018), <https://www.aila.org/File/Related/14111359ac.pdf>.

<sup>89</sup> *Ms. L. v. U.S. Immigration and Customs Enforcement*, “Order Granting Plaintiffs’ Motion for “Classwide Preliminary Injunction,” U.S. District Court, Southern District of California, No. 18-00428, <https://docs.justia.com/cases/federal/district-courts/california/casdce/3:2018cv00428/564097/83>.

<sup>90</sup> U.S. Department of Homeland Security, U.S. Department of Health and Human Services, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” *Federal Register*, 174th ed., vol. 83 (2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf>.

After the new rules were proposed and published in September, the public was given until November 6 to comment on them under the provisions of the Administrative Procedure Act. The original parties of the *Flores* agreement then had 45 days to evaluate the federal government's actions before a judge on the Ninth Circuit.<sup>91</sup> More than 95,000 comments were submitted by the public.<sup>92</sup> On November 2, advocacy groups filed for an injunction arguing that the proposed rules violated the terms of the *Flores* agreement.

The Trump administration's failure to keep track of children it separated from parents when implementing the zero-tolerance policy led to slow and incomplete reunification of migrant families. The government could not meet Judge Sabraw's initial reunification deadline for nearly half of the children. As of December 7, 2018, out of approximately 2,634 migrant children who were separated from their parents, 2,494 had been reunited with parents or sponsors, 132 had been deemed ineligible to be returned to family, and 8 were still waiting to be reunited.<sup>93</sup>

### **Conditions for minors in detention**

As of June 25, 2018, about 100 shelters across the United States housed around 12,000 unaccompanied minors, including 2,500 who were separated from their parents following the zero-tolerance policy.<sup>94</sup> Shelters are usually divided by gender. Children 13 years or younger are kept in separate facilities. Children spend an average of 57 days at the shelters before placement in a foster home or with a relative.<sup>95</sup>

Among the civil rights issues raised by conditions of detention, the operators of the shelters have been accused of overmedicating and/or forcibly medicating the children. The Center for Human Rights & Constitutional Law filed a lawsuit against then-attorney general Sessions in April 2018 claiming that Shiloh Residential Treatment Center, a government-contracted facility in Manvel, Texas, routinely and forcibly gave immigrant children a range of psychotropic drugs without their parents' or legal guardians' consent, and regardless of their condition and wishes. Among the drugs administered to the children were antidepressant, anti-anxiety, and antipsychotic medications. Some children were given as many as 18 pills a day. The children medicated at the Texas facility,

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<sup>91</sup> Nicholas Wu, "What is the Flores Agreement, and What Happens If the Trump Administration Withdraws from It?" Just Security, October 18, 2018, <https://www.justsecurity.org/61144/flores-agreement-trump-administrationwithdraws-it/>.

<sup>92</sup> Laura C., Morel, "Government could hold migrant families indefinitely in unlicensed detention centers under new plan," *Reveal*, November 19, 2018, <https://www.revealnews.org/article/government-could-hold-migrantfamilies-indefinitely-in-unlicensed-detention-centers-under-new-plan/>.

<sup>93</sup> Anne Flaherty, "8 kids left: The lingering aftermath of Trump's 'zero-tolerance' policy at the border," ABC News, December 7, 2018, <https://abcnews.go.com/Politics/number-migrant-children-us-custody-nearing-15ktrump/story?id=59894450>.

<sup>94</sup> Ann Gerhart et al., "Where Are the Migrant Child Facilities? Scattered across America," *The Washington Post*, June 25, 2018, [https://www.washingtonpost.com/graphics/2018/national/migrant-childshelters/?utm\\_term=.eb485a2c5c94](https://www.washingtonpost.com/graphics/2018/national/migrant-childshelters/?utm_term=.eb485a2c5c94).

<sup>95</sup> Decca Muldowney et al. "The Immigrant Children's Shelters Near You," ProPublica, June 27, 2018, <https://projects.propublica.org/graphics/migrant-shelters-near-you>; Adam Isacson, Maureen Meyer and Adeline Hite, "A National Shame: The Trump Administration's Separation and Detention of Migrant Families," WOLA, August 28, 2018, <https://www.wola.org/analysis/national-shame-trump-administrations-separation-detentionmigrant-families/>.

the lawsuit claimed, reported “negative side effects, including nausea, dizziness, somnolence, depression, and grotesque weight gain.”<sup>96</sup>

In court filings, children testified that the ORR staff would not tell them what drugs they were being given and why. The children said they feared that if they refused to take the drugs, their detention time would be lengthened, privileges denied, and staff would forcibly administer the medication. “The staff threatened to throw me on the ground and force me to take the medication. I also saw staff throw another youth to the ground, pry his mouth open and force him to take the medicine...” one boy held at Shiloh said. “They told me that if I did not take the medicine I could not leave, that the only way I could get out of Shiloh was if I took the pills.” Another girl added, “I witnessed staff members forcefully give medication four times...two staff members pinned down the girl...and a doctor gave her one or two injections.” Allegations of forced medication include incidents that span the Obama and Trump administrations.<sup>97</sup>

On July 30, Judge Dolly Gee ruled that a consent or a court order must be obtained before administering any psychotropic drugs to migrant children, except in cases of emergencies. The judge also ruled that the Shiloh Residential Treatment Center violated a long-standing *Flores* settlement that set strict standards for detaining immigrant children, including UAC. Forced medication raises the possibility of violations of numerous civil and human rights, including constitutional rights to due process and the human rights to personal integrity, freedom from torture, and freedom from violence, exploitation, and abuse in the Convention on the Rights of Persons with Disabilities (effective 2008) that was signed but not ratified by the United States.<sup>98</sup>

There have also been allegations against some shelter staffers regarding child molestation. In August 2017, Levian D. Pacheco, a former worker at a Southwest Key shelter in Arizona called Casa Kokopelli, was indicted for molesting eight immigrant boys over almost a year at the facility.<sup>99</sup> In a separate case, a federal contractor was arrested in August 2018 on suspicion of sexually abusing a 14-year-old girl at a facility in Phoenix, also operated by Southwest Key.<sup>100</sup>

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<sup>96</sup> *Jenny L. Flores v. Jefferson B. Sessions, III* CV 85-4544-DMG (C.D. Cal. May 18, 2018), [https://www.centerforhumanrights.org/PDFs/ORR\\_MTE2\\_Brief%5BDkt409-1%5D041618.pdf](https://www.centerforhumanrights.org/PDFs/ORR_MTE2_Brief%5BDkt409-1%5D041618.pdf).

<sup>97</sup> William Cummings, “Migrant Children Describe Abuse, Being Forcibly Medicated at Youth Shelters: Lawsuit,” *USA Today*, June 21, 2018, <https://www.usatoday.com/story/news/politics/2018/06/21/lawsuit-allegesabuse-migrant-children/723476002/>.

<sup>98</sup> UN “Convention on the Rights of Persons with Disabilities,” *Treaty Series* 2515 (2006): 3.

<sup>99</sup> Topher Sanders and Michael Grabell, “Worker Charged With Sexually Molesting Eight Children at Immigrant Shelter,” *ProPublica*, August 2, 2018, <https://www.propublica.org/article/worker-charged-with-sexually-molesting-eight-children-at-immigrant-shelter>.

<sup>100</sup> Meagan Flynn, “Employee at Phoenix Migrant Children’s Shelter Charged with Sexual Abuse of 14-year-old Girl,” *The Washington Post*, August 2, 2018, [https://www.washingtonpost.com/news/morningmix/wp/2018/08/02/phoenix-migrant-childrens-shelter-charged-with-sexual-abuse-of-a-14-year-old-girl/?utm\\_term=.96f80c42062a](https://www.washingtonpost.com/news/morningmix/wp/2018/08/02/phoenix-migrant-childrens-shelter-charged-with-sexual-abuse-of-a-14-year-old-girl/?utm_term=.96f80c42062a).

ProPublica published an extensive report in July 2018 documenting at least 125 calls to police to report sex offenses at shelters primarily detaining immigrant children in the previous five years.<sup>101</sup> It is unclear whether any of the children mentioned as victims in the calls were separated from their parents at the border, but they included several children as young as six years old. The reports include incidents of sexual harassment by shelter employees, inappropriate relationships between staff and children, as well as “dozens of incidents of unwanted groping and indecent exposure among children and teenagers at the facilities.”

On July 16, the Center for Human Rights and Constitutional Law filed a brief in the U.S. District Court Central District of California as part of a lawsuit alleging that the federal government is not properly taking care of detained migrants, including minors in custody. The report, which exhibits over 200 accounts of testimonies by migrant parents and children held in custody in California, Texas, and other states paints a lurid picture of conditions in immigrant detention centers.<sup>102</sup>

The migrant interviewees reported their cold, dirty, and cramped cells – which were often referred to as a “dog cage” (*la perrera*) or “ice box” (*la hielera*) – where they were given insufficient food, inadequate bedding, no medical attention, inadequate toilet facilities, and no access to showers or basic hygiene products like toothbrushes, toothpaste, soap, or towels. According to a report by the Washington Office on Latin America (WOLA), these detention centers look like a “dog kennel,” composed of warehouse-like pens separated by chain link fencing. WOLA reported that these conditions were established during the Obama administration.<sup>103</sup>

A 2018 report by the American Civil Liberties Union based on Freedom of Information Act requests documented multiple instances of physical, sexual, and verbal abuse of minors by CBP officers.<sup>120</sup>

Detention in these conditions can be a devastating experience for any migrant and is especially harmful for children. Numerous academic and professional reports suggest the wellbeing of detained minors is at risk for negative mental and physical outcomes (see Table 1).

**TABLE 1 Potential effects of family border separation on migrant children’s health**

Mental / Intellectual	Physical / Biological
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<sup>101</sup> Michael Grabell and Topher Sanders, “Immigrant Youth Shelters: ‘If You’re a Predator, It’s a Gold Mine,’” ProPublica, July 27, 2018, <https://www.propublica.org/article/immigrant-youth-shelters-sexual-abuse-fightsmissing-children>.

<sup>102</sup> *Jenny L. Flores v. Jefferson B. Sessions, III* CV 85-4544-DMG (C.D. Cal. July 16, 2018), “Exhibits in Support of Plaintiffs’ Response to Defendants’ First Juvenile Coordinator Reports Volume 3 of 12,” Document 459-4.

<sup>103</sup> Adam Isacson, Maureen Meyer and Adeline Hite 2018. <sup>120</sup> “Neglect & Abuse of Unaccompanied Children by U.S. Customs and Border Protection,” ACLU, May 23, 2018, <https://www.aclusandiego.org/civil-rights-civil-liberties/>.

- Anxiety
- Depression
- Post-traumatic stress disorder
- Developmental delays

- Increased heart rate and blood pressure
- Elevated hormone levels
- Strain on cardiovascular system
- Resistance to insulin that could lead to risk of diabetes

**Source:** Michael Dudley, Zachary Steele, Sarah Mares and Louise Newman, "Children and Young People in Immigration Detention," *Current Opinion in Psychiatry* 25, no. 4 (July 2012): pp. 285-92. 

The American Psychological Association released a statement in May 2018 denouncing the policy of prosecuting and separating families, saying it “is not only cruel, it threatens the mental and physical health of both the children and their caregivers.” The association added, “The longer that children and parents are separated, the greater the reported symptoms of anxiety and depression for the children.”<sup>104</sup> The negative effects of children’s detention experiences in some cases may last a lifetime.

### **Challenges based on international law**

Advocates have challenged policies of family separation for violating civil and human rights provisions in numerous international laws. These laws are a mix of binding and nonbinding instruments, and treaties which the United States has ratified and others which it has not. Regardless of their status under U.S. law, they provide an independent international benchmark for measuring rights violations.

Three years before the Trump administration instituted its family separation policy, the UN’s Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued a report in 2015 arguing that separation of immigrant families may violate international law. “Within the context of administrative immigration enforcement ... the deprivation of liberty of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children,” the report argued.<sup>105</sup> The United States is a party to the Convention against Torture.<sup>123</sup>

After the Trump administration put its family separation policy into effect in 2018, Amnesty International argued that the harms were intentional, caused severe mental suffering, and constituted a form of torture that is illegal according to both international and U.S. law.<sup>106</sup>

<sup>104</sup> “Statement of APA President Regarding the Traumatic Effects of Separating Immigrant Families,” American Psychological Association, May 29, 2018, <http://www.apa.org/news/press/releases/2018/05/separating-immigrantfamilies.aspx>.

<sup>105</sup> “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Mendez,” UN Human Rights Council, March 5, 2015, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_68\\_E.doc](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_E.doc).<sup>123</sup> “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” December 10, 1984, *United Nations Treaty Series*, vol. 1465, p. 85.

<sup>106</sup> “USA: Policy of separating children from parents is nothing short of torture,” Amnesty International, June 18, 2018, <https://www.amnesty.org/en/latest/news/2018/06/usa-family-separation-torture/>.



The UN High Commissioner for Human Rights office condemned the separation policy in 2018 as “arbitrary and unlawful interference in family life” and “a serious violation of the rights of the child.”<sup>107</sup> The United States signed the 1990 UN Convention of the Rights of the Child, but it is the only country in the world not to have ratified the treaty.<sup>108</sup> According to Article 9, “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” However, the United States is a party to the International Covenant on Civil and Political Rights, which includes a provision that “No one shall be subjected to arbitrary or unlawful interference with his ... family...”<sup>109</sup>

The Inter-American Commission on Human Rights, an autonomous agency within the Organization of American States, issued a resolution on August 16, 2018. The Commission did not rule whether the family separation policy violated the nonbinding American Declaration of the Rights and Duties of Man, but its analysis found multiple serious risks to violations of children’s rights. The Commission requested that the U.S. government reunify children with their biological families in support of their best interests, guarantee regular and free communication between separated children and their parents in the interim, suspend further procedures resulting in separation, and take immediate steps to reunify families.<sup>110</sup> A similar resolution issued on the same day supported the same measure based on the serious risk that separation posed to the right of family life, specifically the rights of the parents of separated children.<sup>111</sup>

## **IMMIGRATION ENFORCEMENT IN THE 100-MILE ZONE**

There is no clean distinction between immigration enforcement at the border and in the U.S. interior. The Border Patrol is part of Customs and Border Protection (CBP) within the Department of Homeland Security. Most Border Patrol agents are deployed along the border line with Mexico, but they can range far inland with serious consequences for civil rights.

Just what constitutes the “interior” of the United States is not as obvious as it may appear. Since 1953, the Border Patrol has had the authority to conduct operations in places and ways that would

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<sup>107</sup> “Children ‘as young as one’ involved in US separation of migrant families – UN rights office,” UN News, June 5, 2018, <https://news.un.org/en/story/2018/06/1011391>.

<sup>108</sup> “Convention on the Rights of the Child,” November 20, 1989, *United Nations Treaty Series*, vol. 1577, p. 3.; “Ratification of 18 International Human Rights Treaties,” United Nations Human Rights Office of the High Commissioner, <http://indicators.ohchr.org/>.

<sup>109</sup> “International Covenant on Civil and Political Rights,” 1976, Art. 17.

<sup>110</sup> “American Declaration of the Rights and Duties of Man,” Inter-American Commission on Human Rights, Organization of American States, 1948, <https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm>.

<sup>111</sup> “Inter-American Commission on Human Rights Resolution 63/2018,” Inter-American Commission on Human Rights, Organization of American States, August 16, 2018, <http://www.oas.org/en/iachr/decisions/pdf/2018/6318MC505-18-US-en.pdf>.

be illegal if conducted further inland.<sup>112</sup> CBP agents without a warrant can enter private property, except for dwellings, within 25 miles of the border. CBP agents without a warrant can stop and search trains, aircraft, and vehicles at checkpoints within “a reasonable distance from any external boundary of the United States,” interpreted in federal regulations to mean within 100 miles of a U.S. land or sea border. The agency has installed approximately 170 checkpoints throughout the border region with Mexico, including along freeway arteries between major cities like San Diego and Los Angeles, to check the papers of passengers and conduct searches. By law, within the 100-mile zone, agents must have a “reasonable suspicion” of an immigration violation or crime to stop a vehicle.<sup>113</sup>

However, the American Civil Liberties Union has documented extensive evidence of illegal searches that violate 4<sup>th</sup> Amendment civil rights protections against unreasonable searches. In practice, immigration agents routinely conduct roving patrols and invasive activities at checkpoints that exceed their statutory authority.<sup>114</sup>

Sixty-five percent of the U.S. population lives within the 100-mile zone, including the residents of nine of its ten largest metropolitan areas. California is especially affected. Of its 40 largest cities, all but one, Fresno, are in the 100-mile zone, including Los Angeles, San Diego, San Jose, San Francisco, and Sacramento. Warrantless searches disproportionately affect Latinos. Seventyfive percent of the Latino population of the United States lives in the 100-mile zone.<sup>133</sup>

Latinos have been subjected to illegal racial profiling in Border Patrol stops. Even what courts consider legal comes extremely close to constituting racial profiling, if not crossing the line. In *United States v. Brignoni-Ponce* (1975), the Supreme Court heard a case brought by a Puerto Rican man whose vehicle carrying two passengers was stopped by the Border Patrol in San Clemente, California. Officers said their only reason for the stop was the men’s Mexican appearance. The court ruled the Border Patrol could not stop vehicles “when the only ground for suspicion is that the occupants appear to be of Mexican ancestry.” However, it allowed officers to stop vehicles near the border if they had a reasonable suspicion that the vehicle contained “aliens,” including someone in the country illegally. The basis for such a reasonable suspicion could include such “factors as the mode of dress and haircut” by which trained officers could “recognize the

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<sup>112</sup> “Customs and Border Protection’s (CBP’s) 100-mile Rule,” ACLU, <https://www.aclu.org/other/aclu-factsheetcustoms-and-border-protections-100-mile-zone?redirect=immigrants-rights/aclu-fact-sheet-customs-and-borderprotections-100-mile-zone>.

<sup>113</sup> U.S.C. § 1357(a)(3); 8 CFR 287.1(a); Federal Register: 22 Fed. Reg. 9739 (Dec. 6, 1957).

<sup>114</sup> *Jose Sanchez v. United States Border Patrol* CV12-5378-RJB (U.S.D.C. W.D. Wash. September 20, 2013), <https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/2013-09-23--Fully%20Executed%20Settlement%20Agreement.pdf>; *ACLU Found. Of Ariz. v. U.S. Department of Homeland Security* 14-2052 (D. Ariz. April 14, 2015),

[https://www.acluaz.org/sites/default/files/documents/April\\_14\\_2015\\_CBP\\_1327\\_1511\\_1.pdf](https://www.acluaz.org/sites/default/files/documents/April_14_2015_CBP_1327_1511_1.pdf); “The Constitution in the 100-mile Border Zone,” ACLU, December 19, 2018, <https://www.aclu.org/other/constitution-100-mile-borderzone>. <sup>133</sup> Tanvi Misra, “Inside the Massive U.S. ‘Border Zone,’” CityLab, May 14, 2018, <https://www.citylab.com/equity/2018/05/who-lives-in-border-patrols-100-mile-zone-probably-you-mapped/558275/>.

<sup>134</sup> *United States v. Brignoni-Ponce* 422 U.S. 873 (1975).

characteristic appearance of persons who live in Mexico.”<sup>134</sup> The Supreme Court has never revisited its decision in the *Brignoni-Ponce* case.<sup>115</sup>

A 2000 decision by the Ninth Circuit Court of Appeals rejected “any reliance upon the Hispanic appearance or ethnicity of the defendants” as grounds for a stop. The case was based on an incident in El Centro, California, a border town in which 73% of the population is Latino.<sup>116</sup> However, the same circuit court ruled in 2006 that Hispanic appearance was a legitimate, though insufficient, factor in a CBP stop of a group of Latinos in Havre, Montana, near the Canadian border. The court justified its 2006 ruling by citing the fact that only 1.5% of the population of Havre was Hispanic, whereas in the 2000 case in El Centro, the region was “heavily populated by Hispanics” and thus “an individual’s apparent Hispanic ethnicity is not a relevant factor in the reasonable suspicion calculus.”<sup>117</sup>

It is difficult to establish the precise extent of racial profiling at interior checkpoints. However, there is evidence of extensive profiling that violates the equal protection standard that is a core concept in civil rights. For example, an NGO-led monitoring effort at the CBP checkpoint in Arivaca, Arizona, south of Tucson recorded CBP interactions with motorists at 2,379 stops over 100 hours of observation over two months in 2014. They found that the occupants of vehicles in which people appeared to be Latino were 26 times more likely to be asked to show their identification than occupants of vehicles in which people appeared to be white/Anglo.<sup>118</sup> Further research should seek to establish the rate at which Latinos are stopped relative to other ethnic groups in the area.

## INTERIOR ENFORCEMENT

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 laid the groundwork for cooperation between federal immigration authorities and police in local and state jurisdictions. The same law made lawful permanent residents vulnerable to deportation for an expanded list of crimes, even after they have served their criminal sentences. The standard for an immigration judge to waive deportation was raised to cases in which the deportation would cause “extreme hardship” for a U.S. citizen or permanent resident spouse or child.<sup>119</sup>

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<sup>115</sup> Christian Briggs, “The Reasonableness of a Race-Based Suspicion: The Fourth Amendment and the Costs and Benefits of Racial Profiling in Immigration Enforcement,” *Southern California Law Review* 88, no. 2 (January 2015): pp. 379-412.

<sup>116</sup> *United States v. Montero-Camargo* 208 F.3d 1222 (9th Cir. 2000). See the CPB guidelines on racial profiling at “CBP Policy on Nondiscrimination in Law Enforcement Activities and All Other Administered Programs,” U.S. Customs and Border Protection, August 10, 2017, <https://www.cbp.gov/about/eeodiversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>.

<sup>117</sup> *United States v. Manzo-Jurado* 457 F.3d 928, 935 n.6 (9th Cir. 2006).

<sup>118</sup> “Checkpoint Monitoring Report: Arivaca Road Border Patrol Checkpoint, Amado, Arizona,” People Helping People in the Border Zone, October 26, 2014, [http://phparivaca.org/?page\\_id=1174](http://phparivaca.org/?page_id=1174).

<sup>119</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L 104-208, 110 Stat. 3009-546; Tanya Golash-Boza and Pierrette Hondagneu-Sotelo, “Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program,” *Latino Studies* 11, no. 3 (2013): 271-92.

Enforcement of the 1996 act and other immigration laws in the U.S. interior affects a population that tends to be deeply rooted in the United States. Among unauthorized Mexican immigrants, 78% have lived in the United States for at least 10 years.<sup>120</sup> Detentions and deportations in the interior have extensive collateral consequences for the families of immigrants and the communities where they live.<sup>121</sup>

Enforcement of U.S. immigration laws in the interior typically is carried out by Immigration and Customs Enforcement (ICE). Local law enforcement agents do not inherently have the authority to perform immigration arrests. In its 2012 *Arizona v. United States* decision, the Supreme Court struck down much of Arizona's controversial SB1070 law. The court ruled that local police could only perform immigration arrests under limited, specific conditions. "As a general rule, it is not a crime for a removable alien to remain present in the United States." Therefore, if "the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent."<sup>122</sup>

The precise conditions for cooperation between federal immigration authorities and police in subnational jurisdictions raises fundamental questions about the civil rights of immigrants. The 14<sup>th</sup> amendment and the Civil Rights Act broadly prohibit differential treatment or discrimination due to someone's "protected class," including race.<sup>143</sup> Legal scholar Christopher Lasch and his colleagues argue that law enforcement agents treat immigrant communities differently based on race when they use phenotype or language ability as grounds to investigate someone's immigration status.<sup>123124</sup>

When local police disproportionately target Latinos for everyday law enforcement and then turn over people with immigration violations to federal authorities, Latino immigrants disproportionately suffer. The consequences of deportation are often much more severe than the consequences of the original infraction or crime for which immigrants were arrested. Nowhere is this truer than in the realm of driving. Numerous studies in Florida, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Texas have found that police officers stop Latinos for traffic violations more frequently than whites.<sup>125</sup> The practice is so common that it has given rise to the pop culture acronym DWM – "Driving While Mexican."<sup>126</sup>

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<sup>120</sup> Ana Gonzalez-Barrera and Jens Manuel Krogstad, "What we know about illegal immigration from Mexico," Pew Research Center, December 3, 2018, <http://www.pewresearch.org/fact-tank/2017/03/02/what-we-know-about-illegal-immigration-from-mexico/>.

<sup>121</sup> Cecilia Menjivar and Leisy Abrego, "Legal Violence: Immigration Law and the Lives of Central American Immigrants," *American Journal of Sociology* 117, no. 5 (2012): pp. 1380-421.; Joanna Dreby, *Everyday Illegal: When Policies Undermine Immigrant Families* (California: University of California Press, 2015).

<sup>122</sup> *Arizona v. United States* 567 U.S. 387 (2012).<sup>143</sup>  
Civil Rights Act, 42 USCS § 2000e (1964).

<sup>123</sup> Christopher N. Lasch et al., "Understanding 'Sanctuary Cities,'" *Boston College Law Review* 59, no. 5 (2018): p. 124

<sup>125</sup> Anthony E. Mucchetti, "Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities," *Harvard Latino Law Review* 8, (2005): p. 13.

<sup>126</sup> "DWM," Urban Dictionary, January 15, 2007, <https://www.urbandictionary.com/define.php?term=DWM>.

Drivers who commit common infractions that for anyone else would result in a small fine are uprooted from their families, work, schools, and communities and deported.<sup>127</sup>

Wholesale cooperation of local police with federal immigration authorities has also created a chilling effect in which Latinos have become more fearful of reporting crimes they have witnessed or experienced as victims. The effect is probably especially intense among unauthorized Latino immigrants, though it has repercussions in the broader community. In 2018, 55% of Latinos said they worried about the deportation of themselves, a family member, or close friend, up from a low of 46% in 2013 and just higher than the 53% reporting such a worry in 2007 and 2008 at the end of the Bush administration during the initial wave of mass deportation.<sup>128</sup> Among immigrant Latinos in the 2018 survey, 66% said they worried about deportation.

As detailed below, the evidence suggests that the indirect effect of local police closely cooperating with federal authorities to enforce federal immigration laws weakens Latino residents' access to the government's equal protection from criminal activity.

### **The 287(g) program**

In 1996, Congress included a provision in the Illegal Immigration Reform and Immigrant Responsibility Act that delegated the ability to enforce immigration law to state and local law enforcement agencies. This provision, known as Section 287(g), gives local law enforcement agents the ability to enforce some aspects of immigration law. They can identify unauthorized immigrants after they have been arrested, issue ICE “detainers” ordering that locally jailed immigrants be held until they are turned over to federal immigration agents, and issue documents to initiate deportation proceedings. Jurisdictions may voluntarily participate in the program by creating agreements with the Department of Homeland Security. Although the program was adopted in 1996, the first agreement between local law enforcement agencies and ICE was not made until 2002 in the state of Florida.<sup>129</sup> The program was given new urgency after the terrorist attacks of September 11, 2001, after which the Department of Justice issued an opinion arguing that state police had the authority to enforce immigration laws.<sup>130131</sup>

The 287(g) program was designed to capitalize on the thousands of local police officers in the interior of the United States as “force multipliers” for federal authorities.<sup>132</sup> The twenty-year program helped drive up the number of deportations from some 70,000 in 1996 to a record 435,000 at its peak in 2014.<sup>133</sup>

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<sup>127</sup> Amada Armenta, *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement* (California: University of California Press, 2017).

<sup>128</sup> Ana Gonzalez-Barrera and Jens Manuel Krogstad 2018, p. 30.

<sup>129</sup> Michael Coon, “Local Immigration Enforcement and Arrests of the Hispanic Population,” *Journal on Migration and Human Security* 5, no. 3 (2017): 645-66.

<sup>130</sup> Christopher N. Lasch et al., “Understanding ‘Sanctuary Cities’,” *Boston College Law Review* 59, no. 5 (2018): p. 131.

<sup>132</sup> Kris W. Kobach, “The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests,” *Albany Law Review*, 69 (2005): 179.

<sup>133</sup> Ana Gonzalez-Barrera and Mark Hugo Lopez, “U.S. immigrant deportations fall to lowest level since 2007,” Pew

Section 287(g) created two models: a “task force model” in which deputized officers on the street could inquire about someone’s immigration status after they had been arrested, and a “jail model” in which officers identified the status of unauthorized immigrants held in local jails and then transferred them to immigration detention centers. A hybrid model combined both structures. The Obama administration ended the task force and hybrid models in 2012.

In 2017 President Trump expanded the program to the largest size in its history.<sup>134</sup> By 2018, it had 78 active partnerships across 20 states. More than half of the jurisdictions joined the program after Trump’s election. A third of all partnerships were in Texas—home to the nation’s secondlargest population of Mexican immigrants. Fifteen of the twenty states that included jurisdictions with 287(g) programs have Republican governors.<sup>135</sup>

A report from the nonpartisan Migration Policy Institute identified several major problems with the program. The report found that it did not target individuals with serious criminal offenses. It mostly swept up people who had committed minor traffic offenses or misdemeanors. The authors postulated that state and local officials ran the 287(g) program as a response to local political pressures. For example, sheriffs and local officials in the Southeast opted into the 287(g) program as a response to local backlash over the growing Latino and immigrant population.<sup>136</sup> The implementation of the 287(g) program has been plagued by evidence of discrimination against Latinos that violates constitutional rights of equal protection, due process, and freedom from unlawful searches. For example, in Maricopa County (metro Phoenix), Sheriff Joseph Arpaio sent out 287(g) patrols in which deputies were explicitly instructed to consider “Mexican ancestry” to identify unauthorized immigrants.<sup>137</sup> A 2011 investigation by the DOJ Civil Rights Division found that the Maricopa County Sheriff’s Office (MCSO) systemically violated civil rights of Latinos.

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Research Center, December 16, 2016, <http://www.pewresearch.org/fact-tank/2016/12/16/u-s-immigrantdeportations-fall-to-lowest-level-since-2007/>; “MPI Report Assesses Current-Era Deportation System and Record Removals; Outlines Sharply Different Enforcement Pictures that Have Emerged Over Past Two Decades at Border and in U.S. Interior,” Migration Policy Institute, April 29, 2014, <https://www.migrationpolicy.org/news/mpi-reportassesses-current-era-deportation-system-and-record-removals-outlines-sharply>.

<sup>134</sup> “The 287(g) Program: An Overview,” American Immigration Council, March 15, 2017, <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>.

<sup>135</sup> “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” U.S. Immigration and Customs Enforcement, August 10, 2018, <https://www.ice.gov/287g>.

<sup>136</sup> Randy Capps et al., “Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement,” Migration Policy Institute, January 2011, <https://www.migrationpolicy.org/research/delegation-and-divergence287g-state-and-local-immigration-enforcement>, p. 22.; Renee Stepler and Mark Hugo Lopez, “U.S. Latino Population Growth and Dispersion Has Slowed Since Onset of the Great Recession,” Pew Research Center: Hispanic Trends, September 8, 2016, <http://www.pewhispanic.org/2016/09/08/latino-population-growth-anddispersion-has-slowed-since-the-onset-of-the-great-recession/>.

<sup>137</sup> *Melendres v. Arpaio* 989 F. Supp. 2d 822,846 (D. Ariz. 2009); Richard Ruelas, “He violated a judge’s order, but what exactly did Joe Arpaio do wrong?,” *azcentral.*, September 1, 2017, <https://www.azcentral.com/story/news/local/phoenix-best-reads/2017/09/01/convicted-violating-judicial-order-butwhat-did-former-sheriff-joe-arpaio-do-wrong/619207001/>; Mary Romero, “Are Your Papers in Order: Racial Profiling, Vigilantes, and America’s Toughest Sheriff,” *Harvard Latino Law Review*, 14 (2011): 337.

Specifically, we find that MCSO, through the actions of its deputies, supervisory staff, and command staff, engages in racial profiling of Latinos; unlawfully stops, detains, and arrests Latinos; and unlawfully retaliates against individuals who complain about or criticize MCSO's policies or practices...<sup>138</sup>

The investigation also found “a number of troubling incidents involving deputies using excessive force against Latinos” and punishments of Latino inmates held in the county jail who had limited English proficiency but were punished for not following commands in English that they did not understand. The county's discriminatory implementation of the 287(g) program created “a wall of distrust that has significantly compromised MCSO's ability to provide police protection to Maricopa County's Latino residents.”<sup>139</sup>

In 2012, the DOJ investigated the 287(g) program in Alamance County, North Carolina, for allegedly using race to inquire about residents' immigration status. The investigation found that the county sheriff had explicitly instructed deputies to “go out there and get me some of those taco eaters” by targeting Latinos through traffic stops and other enforcement activities. Their investigation concluded that the county demonstrated an “egregious pattern of racial profiling” through its traffic checkpoints. The DOJ argued that these discriminatory practices violated the 4<sup>th</sup> and 14<sup>th</sup> amendments.<sup>140</sup>

### **Secure Communities**

The Bush administration created the Secure Communities program in 2008 to identify deportable immigrants in local jurisdictions that participated in the program. When arrested people were brought to a participating jail, their fingerprints were shared with federal law enforcement agencies, including the FBI and ICE, to check their criminal and immigration history. If an arrestee was found to be in the country unlawfully, ICE could issue a detainer. An immigration detainer is a voluntary request from ICE to a local jail to hold an allegedly deportable immigrant for an additional 48 business hours until ICE can take custody.<sup>160</sup> ICE issues these nonbinding requests to aid in identifying, and eventually deporting, unauthorized immigrants.

By January 2013, participation in the program was required if jurisdictions wished to continue using federal databases to conduct checks for criminal records and outstanding warrants. As a

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<sup>138</sup> “United States' Investigation of the Maricopa County Sheriff's Office, Civil Rights Division, U.S. Department of Justice, Dec. 15, 2011, [https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso\\_findletter\\_12-1511.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-1511.pdf).

<sup>139</sup> *Ibid.*

<sup>140</sup> “Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff's Office [Press Release],” Department of Justice Office of Public Affairs, September 18, 2012, <https://www.justice.gov/opa/pr/justice-department-releases-investigative-findings-alamance-county-nc-sheriff-soffice.>; Christian Briggs, “The Reasonableness of a Race-Based Suspicion: The Fourth Amendment and the Costs and Benefits of Racial Profiling in Immigration Enforcement,” *Southern California Law Review* 88, no. 2 (January 2015): p. 380.; Mexicans made up 8% of the population of Alamance County in 2012 (“2008-2012 American Community Survey 5-Year Estimates,” U.S. Census Bureau, 2012, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>). <sup>160</sup> “Immigration Detainers: An Overview,” American Immigration Council, March 21, 2017, [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration\\_detainers\\_an\\_overview\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detainers_an_overview_0.pdf)

consequence, jurisdictions that had initially resisted joining the program signed on to be able to conduct routine jail bookings. Secure Communities spread to all of the more than 3,000 jurisdictions in 50 states and the District of Columbia. Approximately 320,000 people were deported under the first Secure Communities Program during the George W. Bush and early Obama administrations.<sup>141</sup>

The Obama administration shut down Secure Communities in 2014 amid concerns that the program was targeting low-level offenders, such as people who only committed traffic violations. Advocates also feared that the program facilitated racial profiling of Latino immigrants by creating a system where officers could arrest someone who had not committed a crime, simply to run the arrested person's fingerprints through the immigration database to see if that person was out of proper status.

The Trump administration reinstated the Secure Communities program in January 2017.<sup>142</sup> In the first nine months of the program, it was used to deport about 6,200 people per month.<sup>143</sup>

Empirical studies of the Secure Communities found that it has disproportionately affected Latinos, and probably Mexicans in particular, given their historic concentration near the Southwest border. While counties along the U.S. border constituted only 1% of all U.S. counties, they were 27% of the counties activated in the first year of the program.<sup>144</sup> According to a 2011 Warren Institute report, 93% of those arrested under the program were Latino, at a time when Latinos only represented 77% of the estimated unauthorized immigrant population. Citizens as well as unauthorized immigrants were affected. The 2011 report found that around 3,600 U.S. citizens were arrested by ICE due to errors in their biometric system.<sup>145</sup>

The Secure Communities program has also been shown to depress the number of people who apply for public benefits like food stamps and health care, even if they were eligible for those benefits and not at risk of deportation themselves. Researchers found that the Secure Communities program was linked to a significant decline in the number of Latino households signing up for public, means-tested benefit programs. Conversely, there was little to no change in the number of enrollments for Latino U.S. citizens living in sanctuary jurisdictions that did not participate in the

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<sup>141</sup> "Secure Communities," U.S. Immigration and Customs Enforcement, March 20, 2018, <https://www.ice.gov/secure-communities>.

<sup>142</sup> "Executive Order: Enhancing Public Safety in the Interior of the United States," The White House, January 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-unitedstates/>.

<sup>143</sup> "Deportations Under ICE's Secure Communities Program," TRAC Immigration, April 25, 2018, <http://trac.syr.edu/immigration/reports/509/>.

<sup>144</sup> Adam B Cox and Thomas J. Miles, "Policing Immigration," *University of Chicago Law Review* 80, Iss. 1, Article 5 (2013).

<sup>145</sup> Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, "Secure Communities by the Numbers," Chief Justice Earl Warren Institute on Law and Social Policy, Berkeley Law School (2011), [https://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).



initial years of the program. Their findings suggest a spillover effect of the fear of deportations under the Secure Communities program that could leave lasting health and economic damage.<sup>146</sup>

### **Sanctuary jurisdictions**

State, county, and local governments have sometimes limited their collaboration with federal immigration authorities. The purpose of these limits is to protect immigrant rights, strengthen community/police relations, and maintain local control over budgets and law enforcement priorities. Many of these policies are described under the concept of “sanctuary.” The term is not used universally or accepted by all jurisdictions with such policies. There is no standard legal or academic definition of a sanctuary jurisdiction.<sup>147</sup> In practice, these policies can range from a non-binding declaration of a jurisdiction’s welcoming stance towards immigrants to a measure expressly limiting cooperation with ICE on particular aspects of immigration enforcement.<sup>148</sup>

California cities led the way in sanctuary policies beginning in 1979, when the Los Angeles Police Department under Chief Daryl Gates and the city council adopted Special Order No. 40. The order directed its police officers not to initiate action to discover the immigration status of people they encountered and not to arrest people for violating the improper entry provision in federal immigration law. Only unauthorized immigrants who were booked and whose criminal and arrest record met specific requirements would be reported to federal immigration authorities. The policy was meant to encourage undocumented immigrants to cooperate with police by promising them equal protection under the law and to ensure “a safe and tranquil environment.”<sup>149</sup>

Berkeley, California, adopted a resolution in 1985 declaring itself a “city of refuge” and prohibiting city officials from assisting in the arrests or investigations of violations of immigration laws.<sup>150</sup> San Francisco’s 1989 “Sanctuary Ordinance” prohibited the “use of City funds or resources to assist in the enforcement of federal immigration law or to gather information regarding the immigration status of individuals in the City and County of San Francisco, unless such assistance is required by federal or state statute, regulation or court decision.”<sup>151</sup> Its 2013 “Due Process for All” ordinance barred local law enforcement from complying with detainers if a subject is eligible for release, unless he or she has been convicted of a violent felony within the last seven years, is currently charged with a violent felony, or may pose a public-safety risk.<sup>152</sup> The San Francisco

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<sup>146</sup> Marcella Alsan and Crystal Yang, “Fear and the Safety Net: Evidence from Secure Communities,” National Bureau of Economic Research Working Paper 24731 (June 2018).

<sup>147</sup> Jasmine C. Lee, Rudy Omri and Julia Preston, “What Are Sanctuary Cities?,” *The New York Times*, February 6, 2017, <https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html>.

<sup>148</sup> William A. Kandel, “Sanctuary Jurisdictions and Criminal Aliens: In Brief,” Jan. 10, 2017, Congressional Research Service, <https://fas.org/sgp/crs/homesecc/R44118.pdf>.

<sup>149</sup> “Special Order No. 40,” Los Angeles Office of the Chief of Police, November 27, 1979, [http://assets.lapdonline.org/assets/pdf/SO\\_40.pdf](http://assets.lapdonline.org/assets/pdf/SO_40.pdf).

<sup>150</sup> “Declaring Berkeley a City of Refuge,” Council of the City of Berkeley, 1985, [http://libguides.law.du.edu/ld.php?content\\_id=35160626](http://libguides.law.du.edu/ld.php?content_id=35160626).

<sup>151</sup> “Sanctuary City Ordinance,” Office of Civic Engagement and Immigrant Affairs, City and County of San Francisco, July 2016, <https://sfgov.org/oceia/sanctuary-city-ordinance-0>.

<sup>152</sup> “Administrative Code - Due Process Ordinance for All on Civil Immigration Detainers,” Board of Supervisors, City and County of San Francisco, <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances13/o0204-13.pdf>.<sup>173</sup>

policy was further tightened with a 2014 guidance that the sheriff's office would no longer honor immigration detainees "unless they are supported by judicial determinations of probable cause or with a warrant of arrest."<sup>173</sup>

More than 300 jurisdictions (and at least 5 states) have adopted some type of sanctuary policy in the last few decades.<sup>153</sup> Many of these policies were created after 2011 as a response to the rise in deportation of immigrants who had minor or no criminal records.

There are five broad categories of sanctuary policies.<sup>154</sup> First, some jurisdictions prohibit their local law enforcement agencies from investigating someone for an immigration violation.

California's 2017 law prohibits "state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes."<sup>155</sup> The California "sanctuary" state law is especially significant because the state has the largest immigrant population in the country.<sup>156</sup>

The second sanctuary policy type limits cooperation with ICE on detainer requests and administrative warrants that are not signed by a judge. The state of California passed legislation in 2013 that prohibited jurisdictions from honoring ICE detainer requests unless the immigrants in question had been convicted of serious or violent crimes.<sup>157</sup> A 2017 California law prevents local and state police from holding, questioning, or sharing information about an individual with ICE unless he or she has been convicted of one of 800 serious crimes. The 2017 law allows ICE to enter county jails, but in questioning immigrants, ICE has limited access to personal information. The 2017 law also requires law enforcement agencies to report to the state annually on their transfers of immigrants to ICE.<sup>179</sup> The Immigrant Legal Resource Center, a non-profit research and advocacy group, estimates that more than 760 counties (about a quarter of all U.S. counties) actively refuse to honor at least some kinds of ICE holds on immigrants that have been arrested by their local law enforcement agencies.<sup>180</sup>

Some jurisdictions have also adopted policies that refuse ICE access to their local jails. These localities prevent jail access because it is a primary way for federal authorities to interview

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"San Francisco Sheriff's Department: No Immigration and Customs Enforcement Detainers," Office of the Sheriff, City and Council of San Francisco, May 29, 2014, [http://www.sfsheriff.com/files/SFSD\\_PR\\_RM\\_05\\_29.pdf](http://www.sfsheriff.com/files/SFSD_PR_RM_05_29.pdf).

<sup>153</sup> Lazaro Zamora, "Sanctuary Cities and Immigration Detainers: A Primer," Bipartisan Policy Center, April 25, 2017, <https://bipartisanpolicy.org/blog/sanctuary-cities-and-immigration-detainers-a-primer/>.

<sup>154</sup> Lasch et al. 2018.

<sup>155</sup> "SB-54 Law Enforcement: Sharing Data," California Legislative Information, October 5, 2017, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB54](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54).

<sup>156</sup> "2012-2016 American Community Survey 5-Year Estimates," U.S. Census Bureau, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_16\\_5YR\\_B05006&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_B05006&prodType=table).

<sup>157</sup> "AB-4 State Government: Federal Immigration Policy Enforcement," California Legislative Information, October 5, 2013, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB4](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB4).

<sup>179</sup> "SB-54 Law Enforcement: Sharing Data," California Legislative Information, October 5, 2017, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB54](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54).

<sup>180</sup> "The Rise of Sanctuary," Immigrant Legal Resource Center, Jan. 2018, [https://www.ilrc.org/sites/default/files/resources/rise\\_of\\_sanctuary-lg-20180201.pdf](https://www.ilrc.org/sites/default/files/resources/rise_of_sanctuary-lg-20180201.pdf).

detainees about their immigrant status under the Secure Communities and Criminal Alien Program, which targets immigrants who have committed crimes inside the United States. Cook County, Illinois, for example, prevents ICE agents from entering their jails without a criminal warrant or some other legitimate reason that is not related to immigration enforcement.<sup>158</sup>

To encourage residents to feel safer interacting with police, some localities have passed ordinances that regulate the disclosure of sensitive and private information. This can refer to an individual's immigration status, or the time and place that someone is released from a local jail. New York City, for instance, requires a judicial warrant for its local law enforcement agencies to release data about someone's release date from its jails. Some localities have sought to protect their resident's information even further by focusing on "digital sanctuary" policies, which broadly block ICE and other federal agencies from accessing their local databases.<sup>159</sup>

A final type of sanctuary policy limits participation in collaborative programs with federal immigration authorities, like the 287(g) program. Numerous cities throughout the country have adopted laws or policies that limit signing a 287(g) agreement. The city of Santa Cruz, California, for example, passed a resolution in 2007 that prohibited using any city funds to enforce national immigration law.<sup>183</sup> Many jurisdictions that have adopted a sanctuary policy argue that they should have control of their law enforcement resources and how they ought to be allocated.

County governments are especially important actors in sanctuary policies because county jails typically hold all prisoners in the county, including people arrested by city police.<sup>160</sup> A 2018 report from the Immigrant Legal Resource Center measured the level of a county's involvement with federal immigration enforcement. The report found that three-quarters of counties cooperate with ICE willingly. However, immigrants are concentrated in large urban areas, and nearly a quarter of U.S. immigrants (9 million) live in a county with "strong protections" such as Los Angeles, Miami-Dade, and Cook County.<sup>161</sup>

### ***The case for sanctuary policies***

Supporters of sanctuary jurisdictions argue that these policies are needed to protect the rights of immigrants, improve relations between police and immigrant communities, and to maintain local law enforcement priorities. Undocumented immigrant populations may feel at risk in interacting with police to report a crime, even if they are the victims, for fear of arrest or deportation. Given the high prevalence of families in which individuals have different legal statuses, the chilling effects extend to a broad population that includes U.S. citizens and lawful permanent residents

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<sup>158</sup> "Policy for Responding to ICE Detainers," Board of Commissioners, Cook County, Illinois, September 7, 2011, [http://libguides.law.du.edu/ld.php?content\\_id=34434520](http://libguides.law.du.edu/ld.php?content_id=34434520).

<sup>159</sup> Tanvi Misra, "The New 'Digital' Sanctuaries," CityLab, November 14, 2017, <https://www.citylab.com/equity/2017/11/new-digital-sanctuary-cities/541008/>.<sup>183</sup>  
"Ordinance No. 2017-06," City Council of Santa Cruz, California, <http://www.cityofsantacruz.com/home/showdocument?id=58897>.

<sup>160</sup> Armenta, *Protect, Serve, and Deport*, 2017; Monica Varsanyi, ed., *Taking Local Control: Immigration Policy Activism in U.S. Cities and States* (Stanford University Press, 2010).

<sup>161</sup> Krsna Avila et al., "The Rise of Sanctuary," Immigrant Legal Resource Center, January 2018, [https://www.ilrc.org/sites/default/files/resources/rise\\_of\\_sanctuary-lg-20180201.pdf](https://www.ilrc.org/sites/default/files/resources/rise_of_sanctuary-lg-20180201.pdf), p. 26.

who fear for the deportation of their family members.<sup>162</sup> An estimated 5.1 million children in the United States, 79% of whom are U.S. citizens, have at least one unauthorized parent. In California, more than 1.4 million of the state's children have at least one unauthorized immigrant parent, representing 17% of the entire population of children in the state.<sup>187</sup> When so many families include people of mixed immigration statuses, rigidly focusing on the enforcement of immigration violations threatens to deny fearful residents equal protection in more vital and urgent areas of the law. Ordinances that prohibit local police from enforcing immigration laws may lead to greater trust between police and migrant communities.<sup>163</sup>

In a 2018 survey of unauthorized Mexican immigrants living in San Diego County, respondents were asked a battery of questions regarding their use of municipal services, including contact with police. Political scientist Tom Wong's survey found that "if local law enforcement officials were working together with ICE, 60.8 percent said they are less likely to report a crime they witnessed, and 42.9 percent said they are less likely to report being a victim of a crime." On the other hand, if local police were *not* working with ICE, only 3.4% said they were less likely to report a crime they witnessed, and only 3% said they were less likely to report being a crime victim.<sup>189</sup>

Several analyses of filed police reports suggest that Latinos are becoming more fearful of reporting crimes to police. In the first three months after President Trump took office, the Los Angeles Police Department reported a drop in crime reporting among Latinos compared to the same period in 2016. Latino residents' reports of being raped declined 25%, while they increased 3% for all other groups in the city. Latino reports of spousal abuse declined 9.8% while they increased 4.5% for all other groups. Los Angeles Police Chief Charlie Beck concluded, "the Department believes deportation fears may be preventing Hispanic members of the community from reporting when they are victimized."<sup>164</sup>

In Houston, where Mexicans make up about 40% of the total 1.5 million immigrant population of the metropolitan area, the police chief reported in April 2017 that the number of Latinos reporting rape had fallen 42.8%, even as the number of non-Latinos reporting rape rose 8.2%. The number of Latinos reporting violent crimes fell 13%, while the number of non-Latinos rose 11.7%.<sup>165</sup> By

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<sup>162</sup> Lauren E. Gulbas and Luis H. Zayas, "Exploring the Effects of US Immigration Enforcement on the Well-Being of Citizen Children in Mexican Immigrant Families," *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 3(4): 53–69. <sup>187</sup> Randy Capps, Michael Fix, and Jie Zong, "A Profile of U.S. Children with Unauthorized Immigrant Parents," Migration Policy Institute, Jan. 2016, <https://www.migrationpolicy.org/research/profile-us-children-unauthorizedimmigrant-parents>.

<sup>163</sup> Daniel E. Martínez, Ricardo D. Martínez-Schuldt and Guillermo Cantor, "Providing Sanctuary or Fostering Crime? A Review of the Research on 'Sanctuary Cities' and Crime," *Sociology Compass* 12, no. 1 (2017). <sup>189</sup> Tom K. Wong, "Sanctuary cities don't 'breed crime.' They encourage people to report crime," *The Washington Post*, April 24, 2018, [https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dontbreed-crime-they-encourage-people-to-report-crime/?utm\\_term=.57a4f2ec5eca](https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dontbreed-crime-they-encourage-people-to-report-crime/?utm_term=.57a4f2ec5eca).

<sup>164</sup> Calculated from "Decline in Reporting of Crime Among Hispanic Population [Press Release]," LAPD, March 21, 2017, [http://www.lapdonline.org/home/news\\_view/61998](http://www.lapdonline.org/home/news_view/61998).

<sup>165</sup> Brooke A. Lewis, "HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year," *Houston Chronicle*, April 6, 2017, <https://www.chron.com/news/houston-texas/houston/article/HPDchief-announces-decrease-in-Hispanics-11053829.php>.

the end of 2017, the number of Latinos reporting domestic violence to police had fallen 15.9% from 2016, even as a nongovernmental domestic violence hotline recorded an increase in calls from Latinas asking for help.<sup>166</sup>

A similar pattern of Latinos reporting fewer crimes while other groups reported more crimes was observed in cities with smaller Mexican populations such as Denver and Philadelphia.<sup>167</sup> All of this evidence is consistent with the proposition that immigrants are less willing to report crimes to local police or cooperate with prosecutors when they fear that doing so would make them or unauthorized family members vulnerable to arrest and deportation for immigration violations.

Some localities adopted a sanctuary policy based on the argument that compliance with detainers constitutes a constitutionally unlawful arrest that violates the 4<sup>th</sup> amendment. ICE detainer requests or administrative warrants are not issued by a judge exercising independent oversight.

They are not actual warrants and they “lack judicial and constitutional safeguards...and reliance on them is constitutionally suspect.”<sup>168</sup> State and federal courts have reigned in certain aspects of ICE detainer policies. The Third Circuit has ruled that ICE detainers are voluntary for counties to enforce,<sup>169</sup> though the Fifth Circuit upheld the Texas state law compelling local police to comply with ICE detainers.<sup>170</sup> Several federal cases have also found that detaining someone under an ICE detainer violated the 4<sup>th</sup> amendment’s protection against unreasonable searches and seizures. Holding an immigrant on a detainer is considered a new arrest and must be based on probable cause of a crime.<sup>171</sup> The ICE detainer itself is insufficient to establish probable cause,<sup>198</sup> and ICE detainers based on allegations of violations of administrative immigration law alone do not give local police the authority to hold an immigrant.<sup>172</sup>

### ***The case against sanctuary policies***

Critics of sanctuary jurisdictions argue that these policies protect criminals and criminal activities, undermine federal authority, and potentially attract more unauthorized immigration. Moreover, those opposing sanctuary policies state that these ordinances violate 8 U.S.C. § 1373. This section of the federal code forbids state and local governments from adopting policies that limit

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<sup>166</sup> Cora Engelbrecht, “Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation,” *The New York Times*, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domesticviolence.html>.

<sup>167</sup> Rob Arthur, “Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office,” *FiveThirtyEight*, May 18, 2017, <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-ofdeportation/>.

<sup>168</sup> Lasch et al. 2018, p. 1743.

<sup>169</sup> *Galarza v. Szalczyk* 745 F.3d 634, 645 (3d Cir. 2014); see also *Santa Clara v. Trump* 3:17-cv-00574 (N.D. Cal. Apr. 25, 2017).

<sup>170</sup> *City of El Cenizo v. Texas* 890 F.3d 164, (5th Cir. 2018).

<sup>171</sup> *Lopez-Aguilar v. Marion County Sheriff's Department* 1:16-cv-02457-SEB-TAB (S.D. Ind. November 7, 2017).

<sup>198</sup> *Miranda-Olivares v. Clackamas County* 3:12-cv-02317 (D.Or. April 11, 2014).

<sup>172</sup> *Lunn v. Commonwealth* 78 N.E.3d 1143 (Mass., 2017). See the discussion in “Immigration Detainers Legal Update,” Immigrant Legal Resource Center, July 2018, [https://www.ilrc.org/sites/default/files/resources/immig\\_detainer\\_legal\\_update-20180724.pdf](https://www.ilrc.org/sites/default/files/resources/immig_detainer_legal_update-20180724.pdf).

information sharing with the federal government about someone's citizenship or immigration status.<sup>173</sup>

Opponents of sanctuary policies often cite the case of a woman who was killed in San Francisco by an undocumented Mexican immigrant as an example of the failure of such policies. In 2015, José Ines García Zárate was accused of killing Kate Steinle as she walked along the San Francisco pier. The case drew intense attention to the issue of sanctuary policies. García Zárate had been deported five times and had multiple felony convictions. In March 2015, he was arrested and taken to the San Francisco County Jail for an outstanding warrant on drug charges. ICE issued a detainer request to hold him for deportation. The request was rejected due to San Francisco's sanctuary ordinance. Then-candidate Donald Trump repeatedly used Steinle's death to call for increased deportations of undocumented immigrants.<sup>174</sup> In November 2017, a jury acquitted García Zárate of the murder of Kate Steinle, while finding him guilty of being a felon in possession of a firearm. His defense was that he had found a weapon on the pier and accidentally discharged it. Forensic evidence showed the bullet had first hit the pier 78 feet from Steinle and that she was accidentally killed by the ricochet. Regardless of the facts, Trump used the case to mobilize his base against sanctuary cities.<sup>175</sup>

Since the 2016 presidential campaign, Trump and his administration have asserted that sanctuary cities are "hotbeds of crime" and have suggested links between Mexican immigrants and criminal activity. Empirically, however, crime rates (including violent crimes and property crimes) are lower in sanctuary jurisdictions than in non-sanctuary jurisdictions.<sup>176</sup> On average, 35.5 fewer crimes were committed per 10,000 people in sanctuary counties than in counties without sanctuary policies. In a similar study, researchers compared crime rates in cities before and after they adopted a sanctuary policy to see if these policies influenced reports of violent crime, property crime, and rape rates.<sup>177</sup> They found no significant difference in crime rates in those selected cities between 2000 and 2014. There was no correlation between adopting a sanctuary policy and increased crime. Although these studies cannot prove that sanctuary jurisdictions reduce

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<sup>173</sup> Jessica M. Vaughan and Bryan Griffith, "Immigration Brief: Sanctuary Cities," Center for Immigration Studies, November 5, 2017, <https://cis.org/Vaughan/Immigration-Brief-Sanctuary-Cities>.

<sup>174</sup> Cassandra Vinograd, "Republicans Fear Trump Might Poison the Party's Brand," NBC News, July 4, 2015, <https://www.nbcnews.com/news/us-news/donald-trump-kathryn-steinle-death-pier-14-shows-need-border-n386646>.

<sup>175</sup> Alex Emslie, "Bullet Trajectory and Ricochet Shot Central to Steinle Murder Trial," KQED News, October 30, 2017, <https://www.kqed.org/news/11626987/bullet-trajectory-and-ricochet-shot-central-to-steinle-murder-trial>; Alex Dobuzinkis, "Illegal Immigrant Acquitted of Murder in San Francisco, Trump Slams Verdict," *U.S. News*, November 30, 2017, <https://www.usnews.com/news/us/articles/2017-11-30/mexican-immigrant-acquitted-inshooting-death-of-woman-in-san-francisco-local-media>.

<sup>176</sup> Tom K. Wong, "The Effects of Sanctuary Policies on Crime and the Economy," Center for American Progress, January 26, 2017, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

<sup>177</sup> Benjamin Gonzalez O'Brien, Loren Collingwood and Stephen Omar El-Khatib, "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration," *Urban Affairs Review* 55, no. 1 (2017): pp. 3-40. <sup>205</sup> "Executive Order: Enhancing Public Safety in the Interior of the United States," The White House, January 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-unitedstates/>.

crime, they do contradict the claims from the Trump administration and others that sanctuary jurisdictions are more dangerous.

Within days of taking office, Trump issued an executive order that targeted sanctuary jurisdictions by threatening to withhold federal grant funds from cities that violated 8 U.S.C. § 1373. According to the order, “sanctuary jurisdictions across the United States willfully violate Federal law...have caused immeasurable harm to the American people and to the very fabric of our Republic.”<sup>205</sup> The provision that promised to defund the listed sanctuary cities was challenged by several cities, including San Francisco, and was ultimately ruled unconstitutional by a U.S. District Court in the Northern District of California,<sup>178179</sup> whose decision was upheld on appeal to the Ninth Circuit.<sup>207</sup>

The Republican-controlled Texas legislature passed an “anti-sanctuary” law in September 2017 that discourages counties or cities from passing their own sanctuary policies by imposing fines on those that do. Most of its provisions were upheld by the Fifth Circuit.<sup>180</sup> The states of Mississippi and Iowa passed similar legislation in 2017 and 2018, respectively.<sup>181</sup>

## **FEDERAL IMMIGRATION ARRESTS**

Immigration arrests and deportations peaked during the Obama administration (see Figure 9), but since President Trump took office, the number of immigrants detained and removed without criminal records has risen sharply. Increased enforcement against unauthorized immigrants – whether they have a prior criminal background or not – has led to some reports of violations of civil and human rights. Advocates and legal experts have expressed concerns about violations of due process rights, limiting access to justice and healthcare for vulnerable populations, racial profiling, and abuses in detention.

In February 2017, then-Press Secretary Sean Spicer stated that the Trump administration had “taken the shackles off ICE,” marking the beginning of increased interior enforcement and the targeting of non-criminal immigrants.<sup>182</sup> Stepped-up enforcement has led to high-profile cases of arrests of immigrants at or en route to hospitals, schools, and courts – leading to concern of widespread violations of due-process rights and an environment where immigrants are afraid to report crimes and seek medical care.

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<sup>178</sup> *City and County of San Francisco v. Trump*, 250 F.Supp.3d 497 (2017), <https://www.clearinghouse.net/chDocs/public/IM-CA-0085-0040.pdf>.

<sup>179</sup> F.3d 1225 (2018), <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/08/01/17-17478.pdf>.

<sup>180</sup> “Texas SB-4”, LegiScan, May 7, 2017, <https://legiscan.com/TX/text/SB4/id/1608435>; <http://www.ca5.uscourts.gov/opinions/pub/17/17-50762-CV0.pdf>.

<sup>181</sup> Mississippi SB2710 “Prohibits Local Sanctuary Policies” (2017), <http://billstatus.ls.state.ms.us/2017/pdf/history/SB/SB2710.xml>; Iowa SF481, <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF481>.

<sup>182</sup> “Press Briefing by Press Secretary Sean Spicer,” The White House, February 21, 2017, <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-022117/>.

Increased and targeted arrests of non-criminal immigrants can be traced to changes in enforcement policies during the Obama and Trump administrations. During the last two years of the Obama administration, immigrants who had committed serious crimes, were suspected gang members, were suspected of terrorism, or were recent border crossers were prioritized for deportation. In a 2014 national address focused on immigration, Obama outlined his Priority Enforcement Program. Obama stated that enforcement would focus on “felons, not families. Criminals, not children. Gang members, not a mom who’s working to provide for her kids.”<sup>183</sup> Prosecutors have discretion to decide whether and when to file charges, and what kinds of charges to file. Priority Enforcement policies were formalized in a DHS memorandum.<sup>212</sup> By fiscal year 2016, almost all (92%) immigrants removed from the interior were people with prior criminal convictions.<sup>184</sup>

However, these enforcement priorities were largely eliminated at the beginning of 2017 when President Trump signed two executive orders just days after taking office.<sup>185</sup> Trump’s directive rescinded the Priority Enforcement Program. Prosecutorial discretion to suspend the deportation of some unauthorized immigrants who checked in regularly with ICE and did not break any laws was all but terminated. The detention and deportation of bystanders swept up as the “collateral consequence” of targeted raids returned to the broader policy exercised during the George W. Bush and early Obama administrations.<sup>215</sup> Trump’s new priorities cover a greater number of unauthorized immigrants, including not just felons and serious misdemeanants as before, but the following categories as well. Targets include those who:

- Have been charged with, but not necessarily convicted of, a criminal offense;
- Engaged in behavior an immigration officer believes could result in a chargeable offense;
- Fraudulently accessed public benefits or committed fraud in an immigration application;
- Could be considered a public safety threat, in the eyes of an immigration officer; or
- Are non-citizens subject to a final order of removal, however old that order may be.<sup>186</sup>

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<sup>183</sup> “Remarks by the President in Address to the Nation on Immigration,” The White House, November 20, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

<sup>212</sup> “Memorandum: Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” U.S. Department of Homeland Security, November 20, 2014, [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

<sup>184</sup> “Fiscal Year 2016 ICE Enforcement and Removal Operations Report,” ICE, p. 6, <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf>

<sup>185</sup> “Executive Order: Enhancing Public Safety in the Interior of the United States” Jan. 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.<sup>215</sup> Daniel E. Martínez, Jeremy Slack, and Ricardo Martínez-Schuldt, “The Rise of Mass Deportation in the United States,” *The Handbook of Race, Ethnicity, Crime, and Justice* (2018): 173-201.

<sup>186</sup> “Executive Order: Enhancing Public Safety in the Interior of the United States,” Jan. 25, 2017.



Expanded enforcement also allows for ICE agents to arrest immigrants in and around sensitive spaces, including hospitals, schools and courthouses, in ways that raise serious questions of civil rights violations.

### **Sensitive spaces**

For years, ICE and CBP had informal policies to avoid entering public spaces frequented by immigrants that were deemed as sensitive. Under Obama, formal policies were adopted that restricted immigration arrests in schools, hospitals, churches, funerals, weddings, or other religious ceremonies, as well as at public protests.<sup>187</sup> The federal government sought to maintain a positive relationship with immigrant communities by staying away from these “safe” spaces. During the Trump administration, however, immigration arrests have been increasingly reported at some of these locations, raising concerns of civil rights abuses among immigrant communities.

In 2018, the Trump administration issued new policies allowing agents to make arrests in courthouses. According to ICE, the increasing number of sanctuary jurisdictions that limit local cooperation with ICE has pushed them to conduct “at-large arrests” in public spaces such as courthouses. The agency has also claimed that it is safer to conduct arrests at courthouses because people have been screened for weapons – ensuring the safety of the public and the arresting officer.<sup>188</sup> ICE’s current policy towards courthouse arrests suggests that agents avoid arrests at non-criminal proceedings and arresting family members or potential witnesses, barring special circumstances. The American Civil Liberties Union (ACLU) argues, however, that the directives limiting courthouse arrests are largely ambiguous and not very meaningful, especially considering that in many jurisdictions, civil and criminal cases are tried in the same location.<sup>189</sup>

Current data on arrests at sensitive spaces is sparse, but a report from the Immigrant Defense Project estimates that the number of immigration-related arrests at courthouses in the state of New York sharply increased in 2017. According to the report, there were 144 reports of arrests or arrest attempts at courthouses, up from 11 arrests the year before.<sup>190</sup>

These arrests have received considerable media attention, especially in cases involving people in vulnerable situations. For example, an undocumented Mexican woman was arrested at a Texas courthouse in February 2017. The woman was asking the El Paso court for a protective order in a domestic violence case. She alleged that her ex-boyfriend, whom she sought protection from, tipped off the ICE agents who were waiting to arrest her as she left the courtroom.<sup>191</sup>

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<sup>187</sup> “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens,” U.S. Immigration and Customs Enforcement, June 17, 2011.

<sup>188</sup> “FAQ on Sensitive Locations and Courthouse Arrests,” U.S. Immigration and Customs Enforcement, September 25, 2018, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

<sup>189</sup> “Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system,” ACLU, 2018, <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/freezing-out-justice>.

<sup>190</sup> “IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017,” Immigrant Defense Project, December 31, 2017, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-CourthouseArrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

<sup>191</sup> Marty Schladen, “ICE detains alleged domestic violence victim,” *El Paso Times*, February 15, 2017, <https://www.elpasotimes.com/story/news/2017/02/15/ice-detains-domestic-violence-victim-court/97965624/>;

In July 2018 an unauthorized Colombian woman and her son were arrested in Mecklenburg County, North Carolina, while attending a hearing on a domestic violence case.<sup>192</sup> According to news reports, the woman was scheduled to first appear at court for a misdemeanor case and later her son would testify in a domestic violence hearing.

In the fall of 2017, ICE carried out “Operation Safe City” – an operation targeting sanctuary cities that have refused to honor ICE detainers and other requests for information sharing.<sup>223</sup> In that sweep, ICE arrested nearly 500 immigrants across the United States.

Fear of being arrested or deported has sowed collective fear in immigrant communities across the country. In March 2017, four women seeking justice for violent assault in Denver decided to drop their cases due to fear of being deported.<sup>193</sup> A video was released earlier that year showing ICE agents waiting outside the local courthouse.

Some members of the public, media, and judiciary have criticized the new ICE policy. During the spring of 2017, when many of these arrests were highly publicized, California Supreme Court Chief Justice Tani Cantil-Sakauye issued a letter challenging federal policies allowing ICE agents to make arrests at courthouses. The letter – addressed to then-attorney general Sessions and then-DHS secretary Kelly – argued that by arresting immigrants in courthouses, ICE was limiting “equal access to justice” for victims of crimes, regardless of legal status. The chief justice also asserted that arresting immigrants at courthouses undermined public trust in the justice system.<sup>194</sup>

Sessions rebuked the judge for her comments and reiterated that arresting immigrants in public spaces was legal.<sup>195</sup>

In April 2017, the U.S. Commission on Civil Rights issued a letter expressing concerns that ICE arrests at courthouses and other public spaces were limiting access to justice for immigrants. The letter claimed that “stationing ICE agents in local courthouses instills needless additional fear and

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“Video: Agents detain domestic violence victim inside courthouse,” *El Paso Times*, February 16, 2017, <http://www.elpasotimes.com/videos/news/immigration/2017/02/16/video-agents-detain-domestic-violence-victiminside-courthouse/98009768/>.

<sup>192</sup> Michael Gordon, “A mother and her son turned up for a domestic violence case. Then ICE arrested them,” *The Charlotte Observer*, July 20, 2018, <https://www.charlotteobserver.com/news/local/crime/article215232500.html>.<sup>223</sup> “ICE arrests over 450 on federal immigration charges during operation ‘Safe City,’” U.S. Immigration and Customs Enforcement, September 28, 2017, <https://www.ice.gov/news/releases/ice-arrests-over-450-federalimmigration-charges-during-operation-safe-city>.

<sup>193</sup> Heidi Glenn, “Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver,” *NPR*, March 21, 2017, <https://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abusecases-in-denver>.

<sup>194</sup> Letter from Chief Justice of California Tani Cantil-Sakauye to Attorney General Jeff Sessions and DHS Secretary John Kelly, March 16, 2017, [https://newsroom.courts.ca.gov/internal\\_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20172/Chief%20Justice%20Cantil-Sakauye%20Letter\\_AG%20Sessions-Secretary%20Kelly\\_3-16-17.pdf](https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20172/Chief%20Justice%20Cantil-Sakauye%20Letter_AG%20Sessions-Secretary%20Kelly_3-16-17.pdf).

<sup>195</sup> “Response From Sessions and Kelly to California’s Chief Judge on Immigration,” *The New York Times*, March 31, 2017, <https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html>.

anxiety within immigrant communities, discourages interacting with the judicial system, and endangers the safety of entire communities.”<sup>196</sup>

Advocates are similarly concerned with immigration arrests in other public spaces such as hospitals and schools. Although ICE’s standing policy on sensitive spaces prohibits arrests from taking place *in* schools or hospitals, ICE has made arrests of people while in transit to these sensitive locations. In August 2018, for example, ICE detained a Mexican migrant as he drove his pregnant wife to a hospital.<sup>197</sup> According to ICE officials, the man was detained due to an outstanding arrest warrant in Mexico. Similarly, a ten-year-old Mexican girl was detained by ICE in 2017 as she was rushed to the hospital for an urgent surgery.<sup>198</sup> ICE allowed her to enter the hospital and undergo the procedure but then took her to detention at a nearby shelter.

These cases drew intense media attention and criticism from advocates and civil right leaders. There is concern that making immigration arrests in or around hospitals will prevent people from seeking medical attention out of fear of deportation.

In April 2017, Democratic legislators in the House introduced the “Protecting Sensitive Locations Act.”<sup>199</sup> The bill proposed codifying DHS’s sensitive locations policies into law – which would deter immigration arrests at “safe zones” like hospitals and schools – and proposed adding courthouses and other medical facilities to the list. The bill would require immigration agents to receive special training and to report any arrests in sensitive spaces. It is unlikely, however, that the bill will pass the Republican-controlled Senate even if it passes the House that fell to Democratic control in the 2018 midterm election.

A survey of police officers, judges, court staff, prosecutors, and other legal service providers conducted in 2017 by the National Immigrant Women’s Advocacy Project (NIWAP) found that some immigrants were less likely to report crimes or cooperate with local law enforcement.<sup>200</sup> Among the police officers that were surveyed, 22% reported that immigrants in 2017 were less likely to report a crime to the police compared to the year before. Approximately 21% said that immigrants who were crime victims were less likely to help with investigations at crime scenes and 20% said victims were less likely to help with post-crime investigations in 2017 compared with 2016.

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<sup>196</sup> “U.S. Commission on Civil Rights Expresses Concern with Immigrants’ Access to Justice,” U.S. Commission on Civil Rights, April 24, 2017, [https://www.usccr.gov/press/2017/Statement\\_04-24-2017-Immigrant-AccessJustice.pdf](https://www.usccr.gov/press/2017/Statement_04-24-2017-Immigrant-AccessJustice.pdf).

<sup>197</sup> Wynne Davis, “ICE Detains Man Driving His Wife to Hospital For Planned C-Section,” *NPR*, August 19, 2018, <https://www.npr.org/2018/08/19/640022683/ice-detains-man-driving-his-wife-to-hospital-for-planned-c-section>.

<sup>198</sup> Marwa Eltagouri, “A 10-year-old immigrant was rushed to the hospital in an ambulance. She was detained on the way,” *The Washington Post*, October 27, 2017, [https://www.washingtonpost.com/news/postnation/wp/2017/10/26/a-10-year-old-immigrant-was-rushed-to-the-hospital-in-an-ambulance-she-was-detained-on-the-way/?utm\\_term=.6ab4ae8025e9](https://www.washingtonpost.com/news/postnation/wp/2017/10/26/a-10-year-old-immigrant-was-rushed-to-the-hospital-in-an-ambulance-she-was-detained-on-the-way/?utm_term=.6ab4ae8025e9).

<sup>199</sup> “Protecting Sensitive Locations Act” (H.R. 1815), 115<sup>th</sup> Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/1815>.

<sup>200</sup> “Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey,” NIWAP, American University Washington College of Law, May 3, 2018, <http://library.niwap.org/wp-content/uploads/Immigrant-Access-toJustice-National-Report.pdf>.

The NIWAP survey also asked questions of legal services providers and advocates working with survivors of domestic violence, sexual assault, and other crimes. The survey found that among those surveyed, there was a reported 40% decrease in the number of cases their respective offices saw in 2017 compared to the year before. The report suggested that public arrests at courthouses had a strong chilling effect on migrants, especially those who had been victims of a crime.

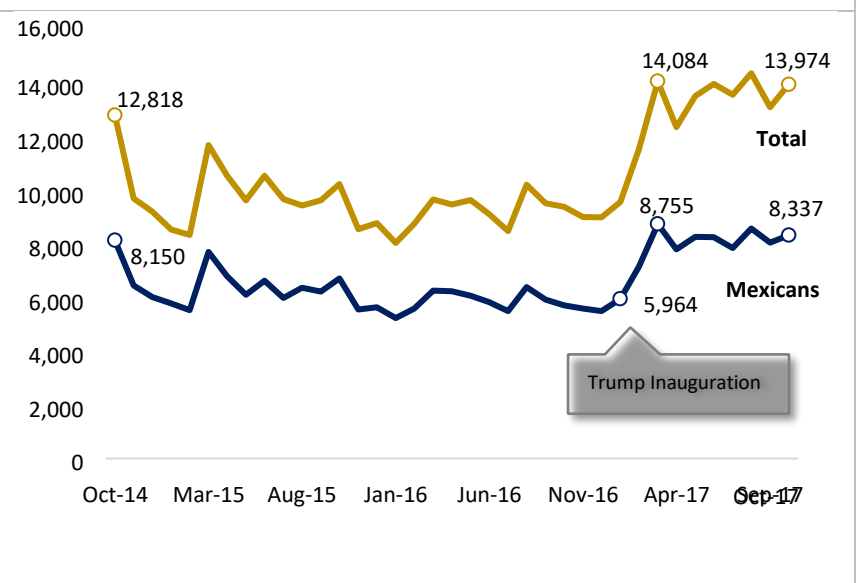
A report from the ACLU based on the NIWAP survey argues that increased enforcement actions in courthouses are a violation of migrants’ fundamental rights. According to their analysis, access to courts and tribunals is a backbone of core rights like due process and equal protection under the law. The ACLU asserts that “courts can’t operate fairly or effectively when people don’t feel safe coming forward.”<sup>201</sup> Immigration arrests at courthouses – they argue – violate these rights.

### Who is arrested by ICE?

Around two-thirds (65%) of immigrants arrested by ICE are Mexican nationals. The number of Mexicans arrested by ICE remained relatively constant across the last two years of the Obama administration (Figure 9). However, there was a noticeable spike in immigration arrests at the beginning of the Trump administration. ICE arrests of Mexicans increased by 47% from January 1, 2017, to March 1, 2017.

Mexican immigrants are arrested in every U.S. state, but most arrests occur in the two most populous states of California and Texas, followed by Arizona and Georgia.

**FIGURE 9 Immigrants arrested by ICE, by nationality, FY 2014-2017**



Note: Data shown are only for interior arrests.

Source: ICE arrest data accessed through TRAC at Syracuse University.



**FIGURE 10 Mexicans arrested by ICE in FY 2017 (in thousands)**

<sup>201</sup> “Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system,” ACLU, 2018, <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/freezing-out-justice>.

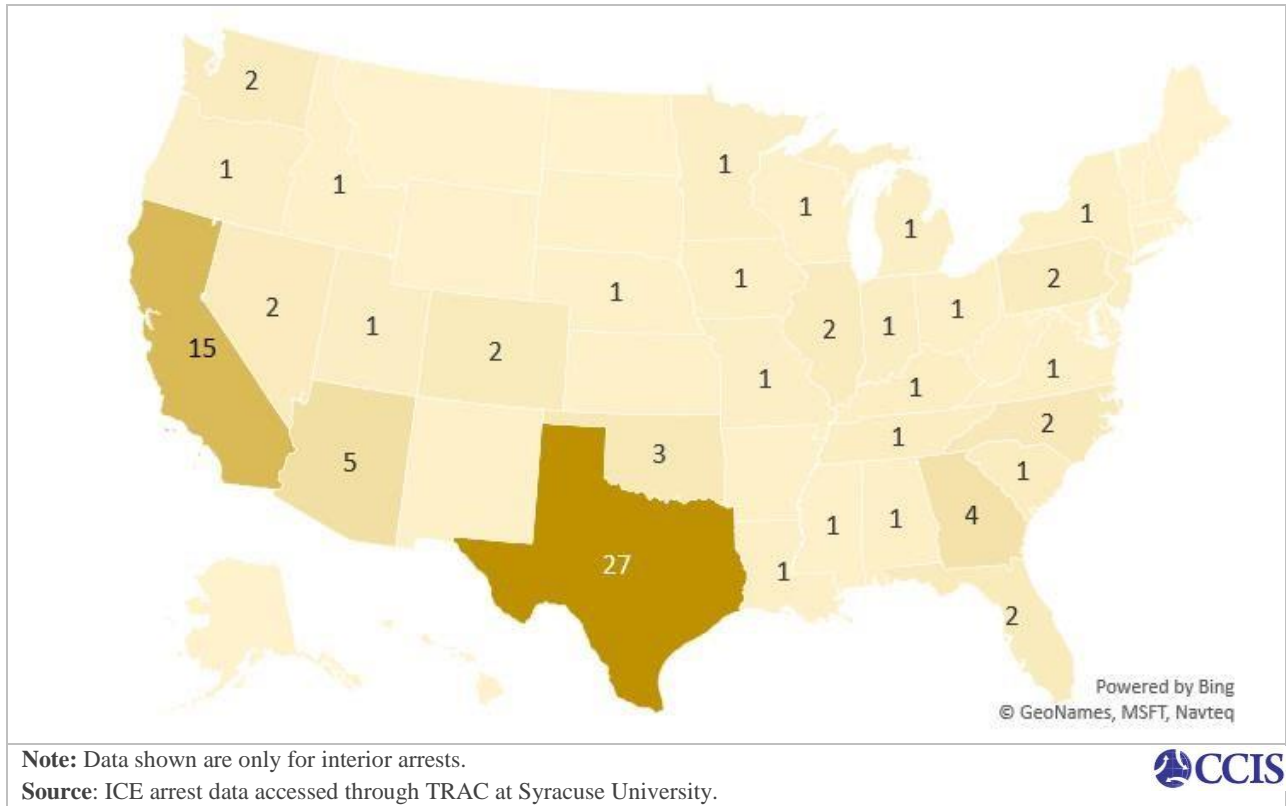
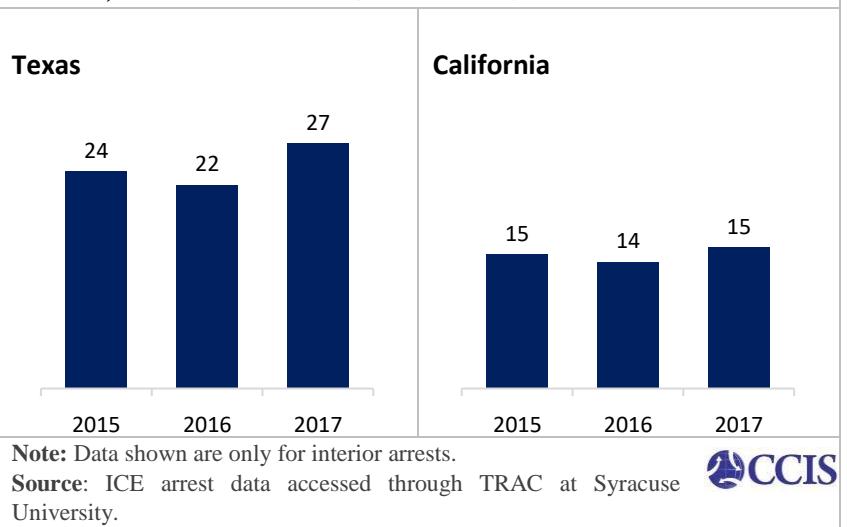


Figure 11 shows the increase in arrests between 2016 and 2017 in Texas and California. While many Texas cities have Democratic mayors, the state legislature and governor’s office is controlled by Republicans. The sanctions on local sanctuary jurisdictions in Texas SB4 were passed in September 2017. Texas also has the highest number of 287(g) jurisdictions of any state. With the country’s second largest population of Mexican immigrants (2.6 million), it is the site of most arrests. California has the largest Mexican immigrant population in the United States (4.2 million), but with Democrats in control of statewide offices and the legislature, its policies have been less collaborative with ICE. While there was an increase in arrests between 2016 and 2017, overall arrests were far lower in California (15,000) than Texas (27,000).

**FIGURE 11 ICE arrests of Mexicans in California and Texas, FY 2015-2017 (in thousands)**



As explained earlier, the Trump administration has expanded the categories of unauthorized immigrants it is pursuing as a replacement for the 2014 Obama administration policy of Priority Enforcement. Figure 12 shows the percentage of immigrants arrested without a criminal conviction rose between the late Obama and early Trump administrations. Among all nationalities, the percent without a conviction rose from 15% in 2016 to 26% in 2017. Among Mexican nationals, the percent doubled from 10% to 20%.

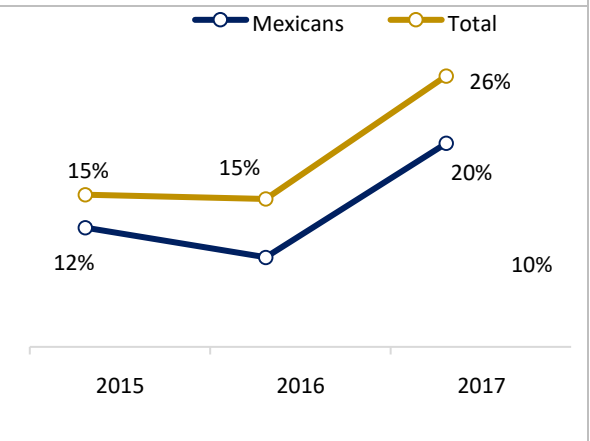
Table 2 shows the most common offenses committed by people arrested by ICE in 2017. They include a mix of serious and minor charges, such as 8% convicted of illegal entry or reentry. More than a fifth of the offenses are related to driving, highlighting the serious consequences of “Driving While Mexican” racial profiling by local police, who then turn over many unauthorized immigrants to federal authorities.<sup>202</sup>

Not all ICE arrests violate immigrants’ civil rights. However, deportations that are the result of racial profiling in everyday policing suggest systemic civil rights violations.


Abuses also take place in ICE detention. A 2018 report based on complaints filed against ICE between 2010 and September 2017 and obtained via a Freedom of Information Act request concluded that “sexual assault and harassment in immigration detention are not only widespread but systemic, and enabled by an agency that regularly fails to hold itself accountable.” Few of the allegations were ever investigated by ICE.<sup>203</sup>

Twelve people died in ICE detention in 2017, compared to an average of nine per year during the Obama administration. An investigation by rights organizations found that in 15 of the 16 deaths they could investigate between December 2015 and April 2017, “substandard medical care

**FIGURE 12 Immigrants arrested by ICE without a criminal conviction, FY 2015-2017 (%)**



**Note:** Years are fiscal years. Data shown are only for interior arrests.

**Source:** ICE arrest data accessed through TRAC at Syracuse University. 

**TABLE 2 Ten most common ‘criminal offenses’ of Mexicans arrested by ICE, FY2017**

Driving Under the Influence	15%
Assault	6%
Traffic Offense	6%
Illegal Entry <sup>1</sup>	4%
Drug Trafficking	4%
Illegal Re-Entry <sup>2</sup>	4%
Domestic Violence	3%
Burglary	3%
Larceny	2%
Marijuana - Possession	2%

**Note:** <sup>1</sup> 8 U.S. Code § 1325 only. <sup>2</sup> 8 U.S. Code § 1326 only. Percentages were calculated among arrestees with a criminal conviction.

**Source:** ICE arrest data accessed through TRAC at Syracuse University. 

<sup>202</sup> Mucchetti 2005, p. 13.

<sup>203</sup> Alice Speri, “Detained, Then Violated,” *The Intercept*, April 11, 2018, <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

contributed or led to eight of the 15 deaths.”<sup>204</sup> Failure to provide adequate medical care for detainees may constitute a violation of the 8<sup>th</sup> Amendment’s protections against “cruel and unusual punishment” and the Convention Against Torture’s ban on “cruel, inhuman or degrading treatment.”<sup>205</sup>

## DEPORTATIONS

The United States is in an unprecedented phase of sustained mass deportation. Although there are historic precursors in the mass repatriations of an estimated more than half-a-million Mexicans during the Great Depression, few then were formally deported.<sup>206</sup> The other major episode of deportation took place in 1954, when immigration authorities claimed to have deported around one million Mexican nationals during “Operation Wetback.”<sup>207</sup> Half of the 7.7 million deportations between 1892 and 2016 have been carried out since 2006. Mass deportation began during the latter part of the George W. Bush administration and continued through the Obama and Trump administrations.<sup>239</sup>

Immigrants in deportation proceedings have limited rights relative to someone in a criminal proceeding. Even though the Supreme Court recognized in 1889 that deportation “may result...in loss of both property and life; or of all that makes life worth living,” deportation is not legally considered a punishment.<sup>208</sup> Deportation proceedings are administrative proceedings that are civil in nature, so foreigners facing removal do not have some of the strict due process rights afforded to criminal defendants. Defendants do not have the right to a jury trial or a lawyer at government expense if they cannot afford one, and the government has to meet a lower burden of proof than in criminal trials. Formal deportation, or “removal” in the euphemistic language used in the law since 1996, leads to a five-year ban on legal reentry and felony criminal sanctions if the individual reenters illegally.

Most deportations are of unauthorized immigrants, though note that the Supreme Court ruled in 1952 that legal permanent residents have no substantive constitutional right to remain in the United States, regardless of the strength of their ties to the United States or how minor the justification for

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<sup>204</sup> “Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention,” Human Rights Watch, ACLU, National Immigrant Justice Center, and Detention Watch Network, 2018, pp.9, 39, [https://www.aclu.org/sites/default/files/field\\_document/coderedreportdeathsicedetention.pdf](https://www.aclu.org/sites/default/files/field_document/coderedreportdeathsicedetention.pdf).

<sup>205</sup> “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” December 10, 1984.

<sup>206</sup> Francisco E. Balderrama and Raymond Rodriguez, *Decade of Betrayal: Mexican Repatriation in the 1930s* (Albuquerque: University of New Mexico Press, 1995).; Fernando S. Alanís Enciso, *Que Se Queden Allá: El Gobierno de México y la Repatriación de Mexicanos en Estados Unidos (1934-1940)* (Tijuana: El Colegio de la Frontera Norte, 2007).

<sup>207</sup> Kelly Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010). <sup>239</sup> Calculated from “Yearbook of Immigration Statistics,” Department of Homeland Security, Various Years, <https://www.dhs.gov/immigration-statistics/yearbook>.; “Annual Report of the Immigration and Naturalization Service,” Immigration and Naturalization Service, Various Years, <https://www.uscis.gov/history-and-genealogy/historical-library/our-collection/general-collection>.

<sup>208</sup> *Fong Yue Ting v. United States* 149 U.S. 698 (1893); *Chae Chan Ping v. United States* 130 U.S. 581 (1889). <sup>241</sup> *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952).

their deportation.<sup>241</sup> Since 1996, a retroactive application of the law allowed deportation even of lawful permanent residents who had served their sentence for an expanded list of crimes. Changes in the law in 1996 also raised the bar for relief from deportation.<sup>242</sup> The new standard was that relief would only be granted under a narrow range of conditions, including a situation in which deportation “would result in exceptional and extremely unusual hardship to the alien’s spouse, parent, or child,” where that family member was a U.S. citizen or lawful permanent resident.<sup>243</sup> In 2016, one percent of deportations were of lawful permanent residents.<sup>209</sup>

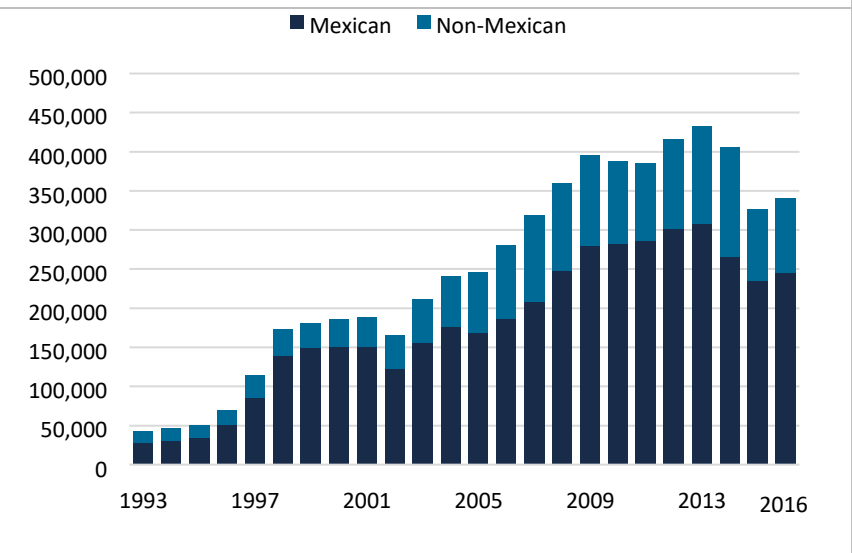
In June 2018, President Trump publicly advocated stripping undocumented immigrants of dueprocess rights, stating that people who were caught at the border should not have the right to a trial and should instead be immediately deported.<sup>210</sup> However, U.S. courts have consistently ruled that immigrants, including those without proper documentation, have due-process rights, including the right to appeal a deportation order before a judge.<sup>211</sup>

### Who is deported?

The majority of deportees from 1993 to 2016 have been Mexican nationals. Deportations in 2016 reached a high of 433,000, of whom more than 308,000 were Mexican.<sup>214</sup>

Before the reorganization of the Immigration and Naturalization Service (INS) into DHS in 2002, it is difficult to distinguish deportations of migrants apprehended at the border and migrants apprehended in the U.S. interior. Consequently, it is difficult to establish whether deportations of people

FIGURE 1 <sup>212213</sup> 3 **Deportations by nationality, FY 1993-2016**



Note: Years are fiscal years. Data includes both ICE and CBP removals.

Source: Department of Homeland Security’s Yearbook of Immigration statistics 2001, 2010 and 2016.



<sup>209</sup> “Immigration and Customs Enforcement Removals,” Transactional Records Access Clearing House, Syracuse University, October 2017, <http://trac.syr.edu/phptools/immigration/remove/>.

<sup>210</sup> Philip Rucker and David Weigel, “Trump advocates depriving undocumented immigrants of due-process rights,” *The Washington Post*, June 25, 2018, [https://www.washingtonpost.com/powerpost/trump-advocates-deprivingundocumented-immigrants-of-due-process-rights/2018/06/24/dfa45d36-77bd-11e8-93cc6d3beccdd7a3\\_story.html?noredirect=on&utm\\_term=.6f9de68243a7](https://www.washingtonpost.com/powerpost/trump-advocates-deprivingundocumented-immigrants-of-due-process-rights/2018/06/24/dfa45d36-77bd-11e8-93cc6d3beccdd7a3_story.html?noredirect=on&utm_term=.6f9de68243a7).

<sup>211</sup> Motomura, “The Rights of Others: Legal Claims and Immigration Outside the Law,” 2009.

<sup>212</sup> Illegal Immigration Reform & Immigrant Responsibility Act, H.R. 3610; Pub.L. 104-208; 110 Stat. 3009546.

<sup>213</sup> U.S.C. § 1229b(b).

<sup>214</sup> Refers to both interior and border removals.

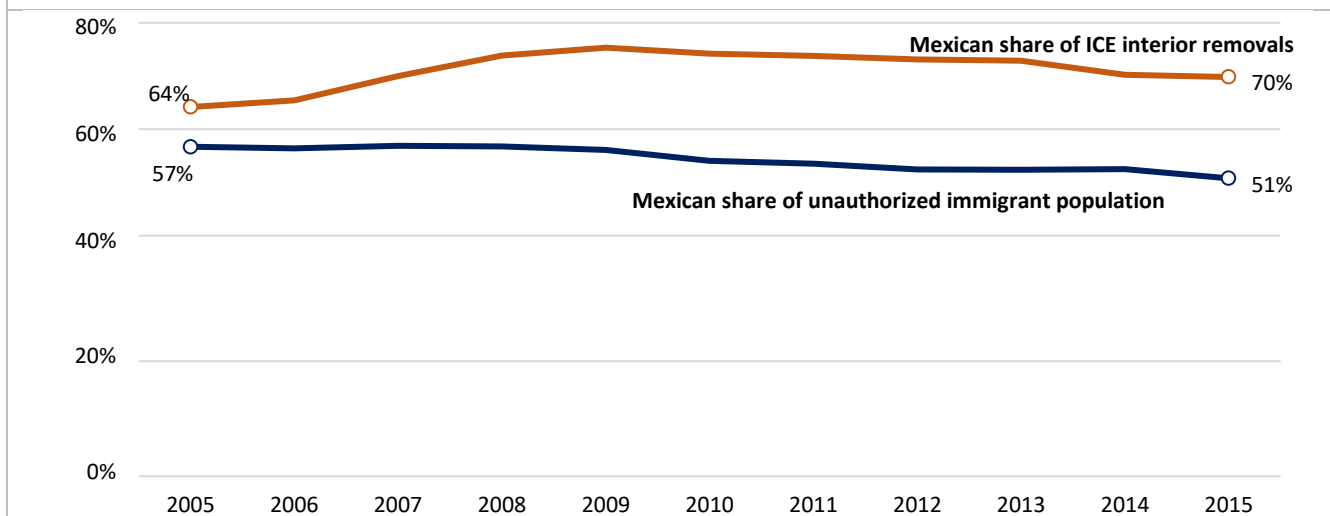


living in the United States disproportionately targeted Mexicans.

Since the separation of ICE from CBP, it is possible to see that the Mexican share of removals from the interior exceeds the estimated Mexican share of the total unauthorized population of the United States. Figure 14 shows the disproportionate targeting of Mexican nationals began during the intensification of deportation policy in the last two years of the George W. Bush administration and continued throughout the Obama administration. In 2015, Mexicans constituted an estimated 51% of the unauthorized population but 70% of ICE interior removals. More recent deportation statistics by nationality are unavailable as of this writing.

Removals by ICE, including those with and without convictions, disproportionately target men as well. Among all immigrants deported by ICE in FY2016, 90.3% were men. Among Mexican nationals, 92.4% were men. It is not surprising that men are more likely than women to be removed among those with criminal convictions, given the higher propensity for men to commit crimes than women,<sup>215</sup> but men are sharply overrepresented even among ICE deportations of people without criminal convictions. From 2016 to 2018, 95% of ICE deportees with criminal convictions were men, and among those without criminal convictions, 84% to 85% were men.<sup>216</sup>

**FIGURE 14 Mexicans overrepresented in deportations from the interior, FY 2005-2015**



**Note:** Data for ICE removals are for fiscal years; data for the unauthorized immigrant population are based on calendar years. ICE removals include only interior removals.

**Source:** ICE arrest data accessed through TRAC at Syracuse University; estimates of the unauthorized immigrant population (2005-2015) were provided by the Pew Research Center.



<sup>215</sup> Candace Kruttschnitt, “Gender and Crime,” *Annual Review of Sociology* 39 (2013): pp. 291-308.

<sup>216</sup> Figures are for fiscal years. 2018 includes removals until August 5, 2018.

## Experiences of Mexican deportees

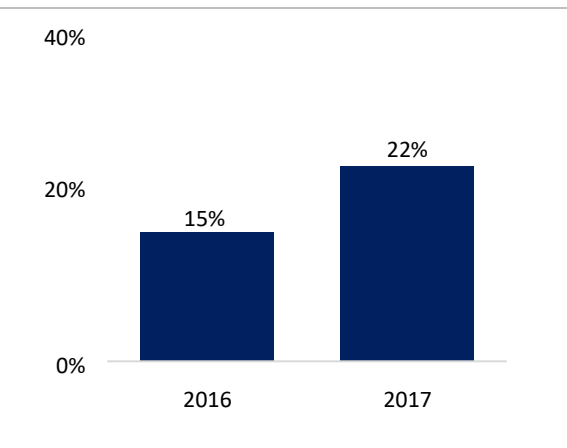
Mexicans make up a majority of people deported from the United States. Using the Survey of Migration at Mexico's Northern Border (EMIF Norte), we analyzed the experiences of deportees while they resided in the United States and as they went through deportation proceedings. We find that a significant share of Mexicans who have been deported have experienced some instance of discrimination, ranging from verbal to physical abuse.


The survey includes a sample of Mexican nationals formally deported between January 2016 and December 2017, thus allowing for a comparison of levels of reported abuse across the last year of the Obama administration and first year of the Trump administration. This analysis includes Mexican nationals who claimed to have been residents of the United States or lived in the United States for at least 12 months before their deportation.

Reports of discrimination or abuse by Mexican deportees rose by 7 percentage points from 2016 to 2017. In 2016, 15% of Mexicans who had been deported after living in the United States for at least one year claimed to have been the victims of some sort of discrimination while they were in the United States, such as being verbally abused or being prohibited from speaking Spanish.<sup>217</sup> The share rose to 22% in 2017 – meaning that roughly one in five Mexican immigrants who was deported experienced some type of discrimination.

Analyzing the demographics of Mexican deportees also reveal how instances of discrimination affect different groups. Overall, women who were deported were more likely to have reported experiencing a type of discrimination while in the United States (28%) compared to men (18%). Three-in-ten indigenous Mexicans (30%) experienced abuse – 12 points higher than nonindigenous Mexicans (18%). There were no significant differences by age or education level.

**FIGURE 15 Share of Mexican deportees saying they experienced discrimination increased in 2017**



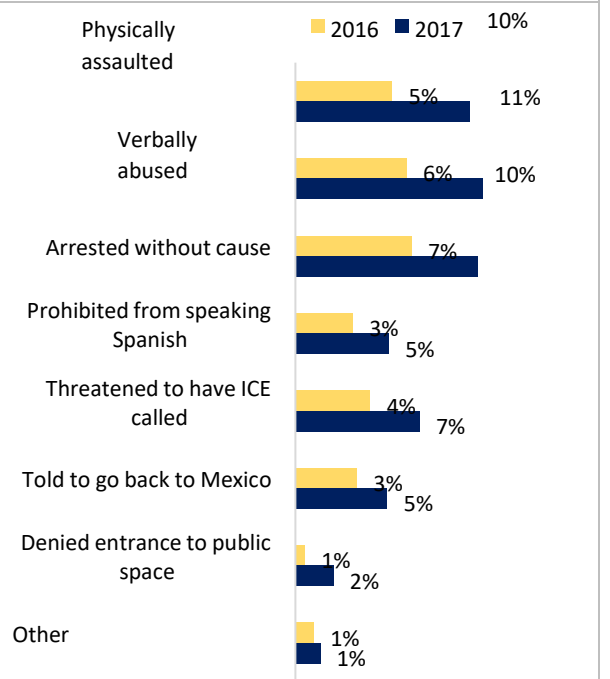
**Note:** Based on Mexicans who stated they lived in the U.S. or had lived there for at least 12 months before their deportations. Percent experiencing discrimination or other abuses is based on a combined measure of a respondent saying yes to at least 1 of 8 questions on discrimination (Q. 45.2) **Source:** Analysis of EMIF Norte 'Devueltos'  2016-2017 data.

<sup>217</sup> Respondents were asked: "While you were in the U.S., were you ever... 1) physically assaulted 2) insulted or shouted at 3) detained without justification 4) prohibited from speaking Spanish or pressured to speak English 5) threatened to have immigration authorities called 6) verbally abused and told to go back to Mexico 7) denied entrance to a public space (restaurant, a mall, etc.) 8) suffered some other type of abuse. If they said yes to at least one of the questions above, they were coded as having experienced discrimination in some form.

In 2017, the most common type of abuse reported was verbal abuse – 11% reported being insulted or shouted at, followed by being physically assaulted (10%) and being detained without cause (10%). Some 7% of Mexican deportees also reported being threatened with having ICE or other immigration authorities called on them while they were in the United States. The patterns for 2016 look broadly the same – with instances of verbal or physical abuse being the most common instances of a discriminatory experience.

**FIGURE 16 Types of abuses experienced by Mexican deportees while in the U.S., 2016-2017**

*% saying that while they were in the U.S., they experienced being...*



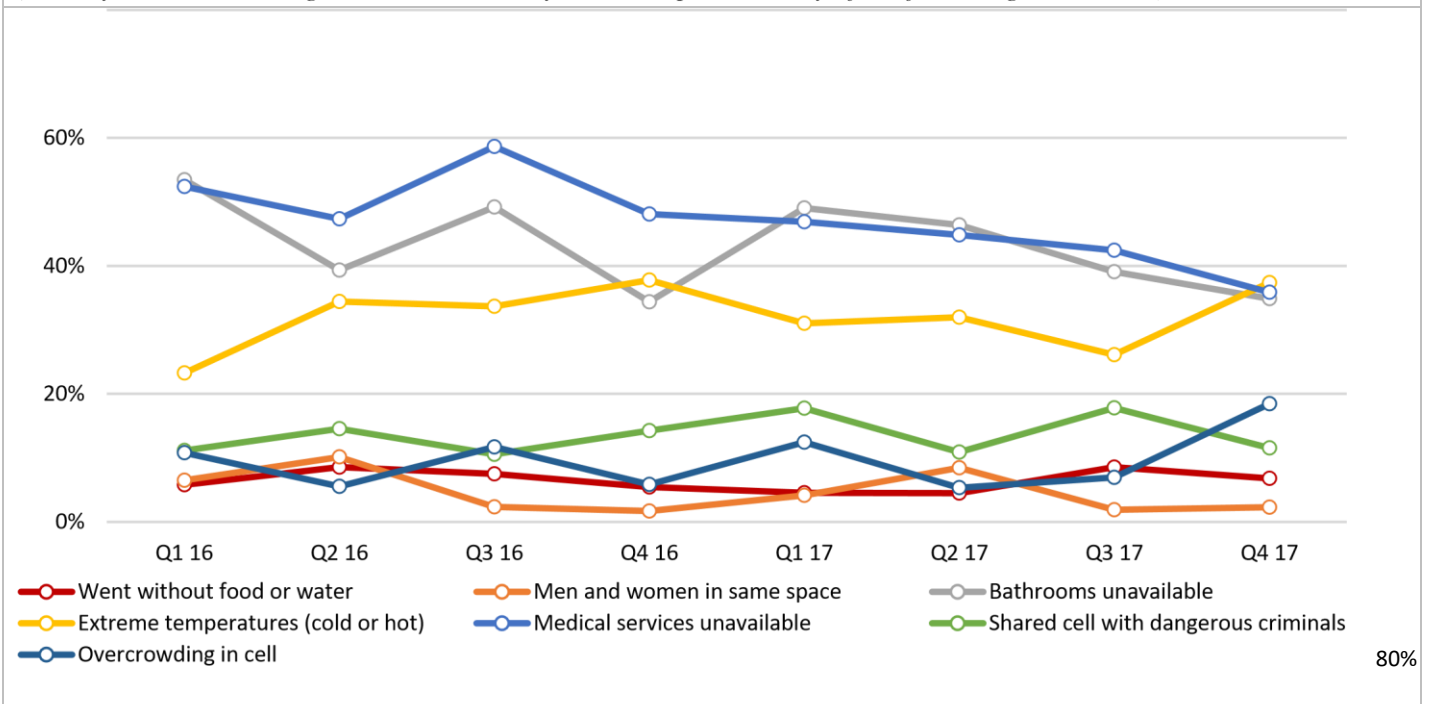
**Note:** Based on Mexicans who stated they resided in the U.S. or had lived there for at least 12 months before their deportations.

**Source:** Analysis of EMIF Norte ‘Devueltos’ 2016-2017 data. 

The survey also asked respondents if they had experienced abuses while they were in an immigrant detention center. Figure 17 shows high levels of reported violations related to the physical conditions of their detention. On average, in 2016 and 2017 almost half (47%) of detained Mexicans reported having no access to medical services and 52% said there were no bathrooms available. A third (32%) reported experiencing extreme hot or cold temperatures. There were no significant changes from the end of the Obama administration to the beginning of the Trump administration, but it is clear that conditions of detention for migrants are often inhumane and inadequate.

**FIGURE 17 Experiences of Mexicans in detention facilities, 2016-2017**

*(While you were in immigrant detention, did you ever experience any of the following situations?)*



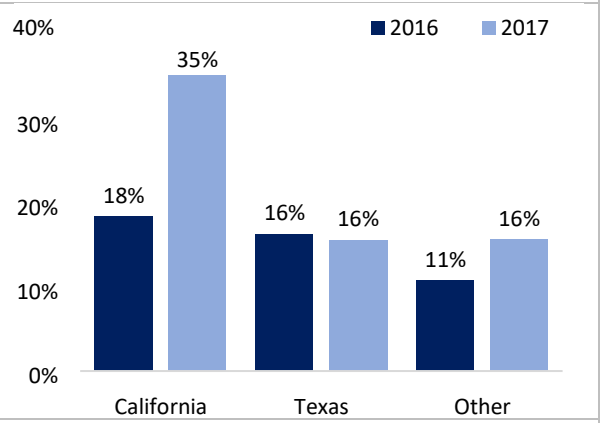
**Note:** Based on Mexicans who stated they resided in the U.S. or had lived there for at least 12 months before their deportations. (Q. 51.8.1) **Source:** Analysis of EMIF Norte 'Devueltos' 2016-2017 data. 


### Experiences of discrimination in California

California has the largest population of Mexican immigrants in the entire country. Since the 2000s, the Golden State has emerged as a champion for immigrant rights by enacting immigrant-friendly policies and expanding protections against arrests and deportations. However, an analysis of survey data of Mexican immigrants who resided in California before being deported shows that many experienced discrimination or abuses, and the rate increased from 2016 to 2017.

In 2016, 18% of Mexicans who lived in California reported being discriminated against or abused – compared to 16% of Mexicans from Texas and 11% from those from other states. This share shot up to 35% for California in 2017.

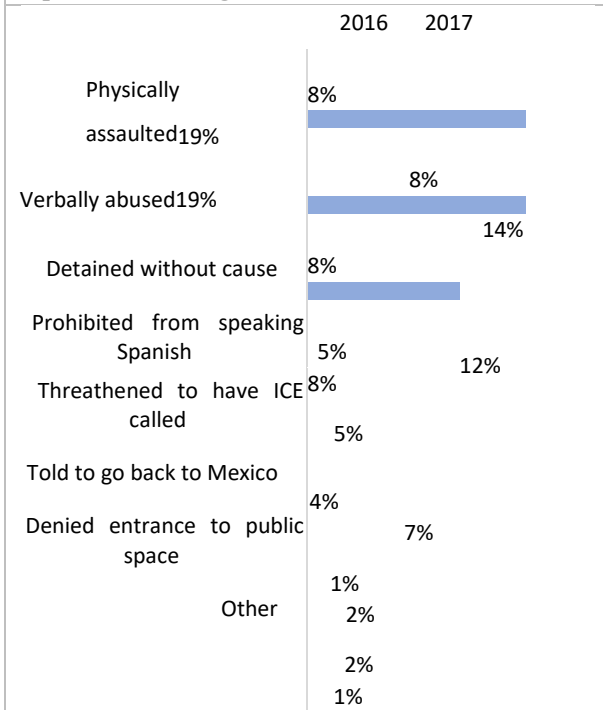
**FIGURE 18 Mexicans deported from California experienced greater discrimination, 2016-2017**



**Note:** Based on Mexicans who stated they resided in the U.S. or had lived there for at least 12 months before their deportations. Percent experiencing discrimination is based on a combined measure of a respondent saying yes to at least 1 of 8 questions on discrimination (Q. 45.2) **Source:** Analysis of EMIF Norte ‘Devueltos’ 2016-2017 data. 

**FIGURE 19 Discrimination reported by Mexican deportees from California**

*% saying that while they were in the U.S., they experienced being...*



**Note:** Based on Mexicans who stated they resided in the U.S. or had lived there for at least 12 months before their deportations.

**Source:** Analysis of EMIF Norte ‘Devueltos’ 2016-2017 data.



Most individual measures of discrimination increased from 2016 to 2017 for Mexicans deported from California. Some

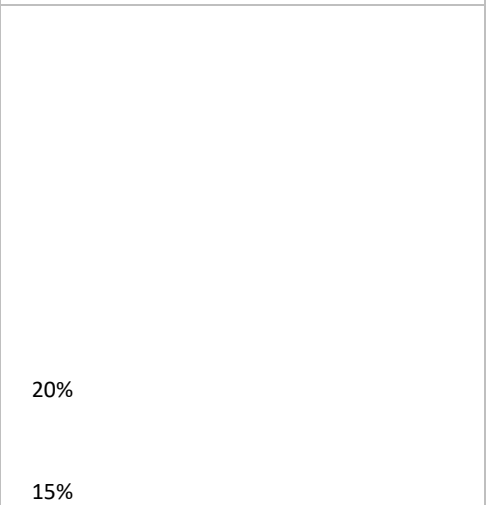
8% of Mexicans that lived in California reported being physically assaulted in some way in 2016. This share more than doubled to 19% the following year.

Similarly, 8% of Mexican immigrants reported experiencing some type of verbal abuse while they were in the United States in 2016 and 19% in 2017. In 2017, 14% of respondents reported being detained without justification and 12% noted an experience where they were threatened with having immigration authorities called on them.

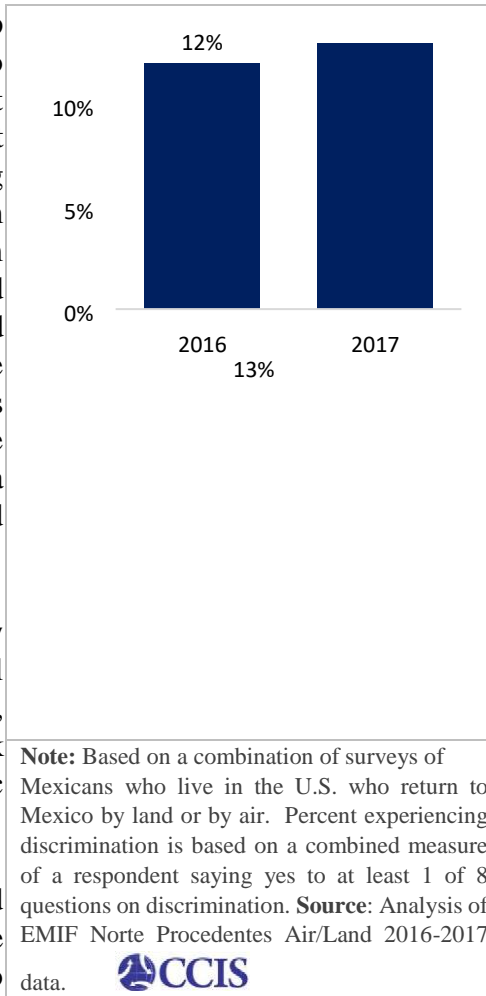
These reports, as captured by the EMIF survey, show that a significant portion of Mexican deportees experience a hostile or unfriendly environment even in what is often painted as the friendliest of states towards immigrants. California stands out as reports of discriminatory experiences or abuse are higher than in other states.

## EXPERIENCES OF HOSTILITY AFTER THE 2016 ELECTION

**FIGURE 20 Share of Mexicans living in the U.S. that experienced some type of discrimination, 2016-2017**



What are the effects of the relentless efforts in the Trump presidential campaign and administration to portray Latino immigrants as dangerous criminals? Establishing a direct cause and effect is impossible, but one source of data that can provide insight as to whether Mexicans are facing increased social hostility in the United States comes from the EMIF Norte, which every quarter surveys a random sample of Mexican migrants returning from the United States by land and air.<sup>218</sup> In 2016, 12% of returnees reported experiencing at least one type of discrimination or abuse during their most recent stay in the United States. This percent increased by 1% in 2017. While the overall increase from 2016 to 2017 is not statistically significant, the data shows that more than one in ten Mexicans surveyed experience hostility of some kind.



The types of hostility include unjustified detention by law enforcement, threats to call immigration authorities, verbal abuses, physical abuses, being told to go back to Mexico, being prohibited from speaking Spanish or forced to speak English, and denial of entrance to or ejection from public spaces like restaurants or malls.

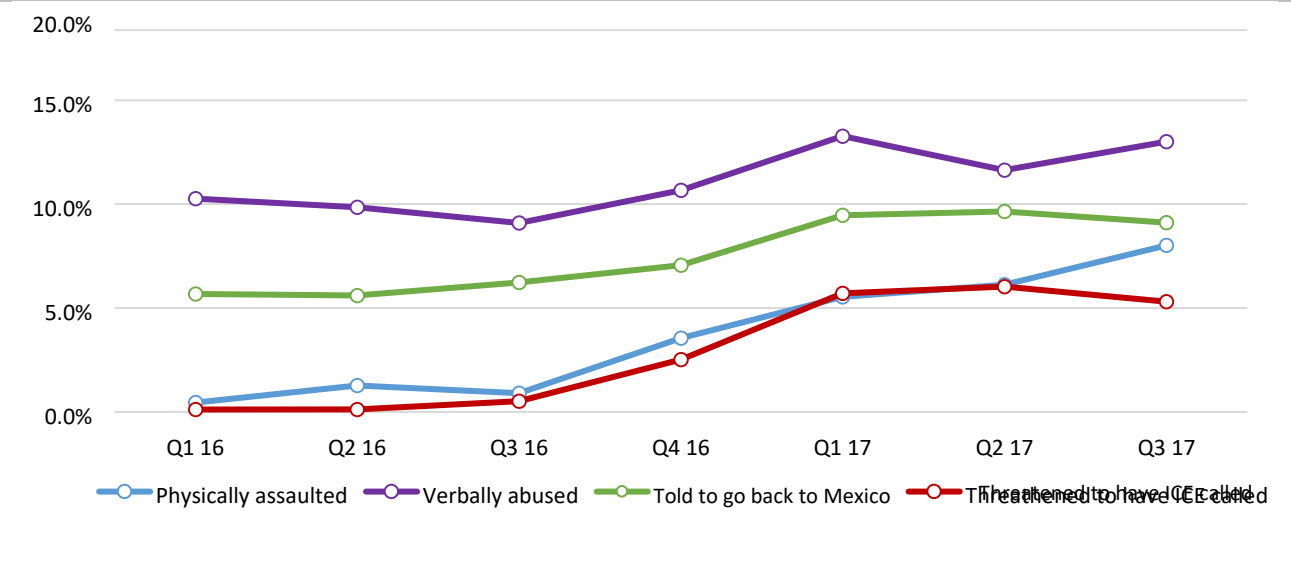
Figure 21 shows there are four categories of reported hostility that increased between 2016 and 2017. The percentage of returnees reporting being told to go back to Mexico increased from 6.2% to 7.4%. The percentage reporting physical assault increased from 1.7% to 5.5%. Finally, the percent reporting that someone threatened to report them to ICE increased from 0.9% to 4.7%.

A detailed demographic analysis (see Table A3 in the Annex) shows that the types of Mexican nationals more likely to report some form of abuse in 2016-2017 were younger, more highly educated, less proficient in English, in a temporary legal status, and those who returned to Mexico by air rather than traveling by land. It is impossible to know which groups were actually subjected to higher levels of abuse, since surveys collect self-reports of perceived abuse or discrimination.

<sup>218</sup> The EMIF Norte survey covers Mexicans 15 years or older who live or reside in the U.S. They are surveyed as they return to Mexico at cities where they do not usually reside. This analysis is limited to only those respondents who indicated they live or reside in the United States. People returning to Mexico may be returning temporarily, such as for a trip, or permanently. For more details on EMIF’s methodology, see “Research Methodology,” EMIF | El Colegio de la Frontera Norte, [https://www.colef.mx/emif/eng/bases\\_metodologicas.php](https://www.colef.mx/emif/eng/bases_metodologicas.php). For a detailed questionnaire, see “EMIF Norte Questionnaires,” EMIF | El Colegio de la Frontera Norte, <https://www.colef.mx/emif/eng/cuestionariosnte.php>.

**FIGURE 21 Discrimination experienced by Mexicans in the U.S., 2016-2017**

(% saying that while they were in the U.S., they experienced being...)



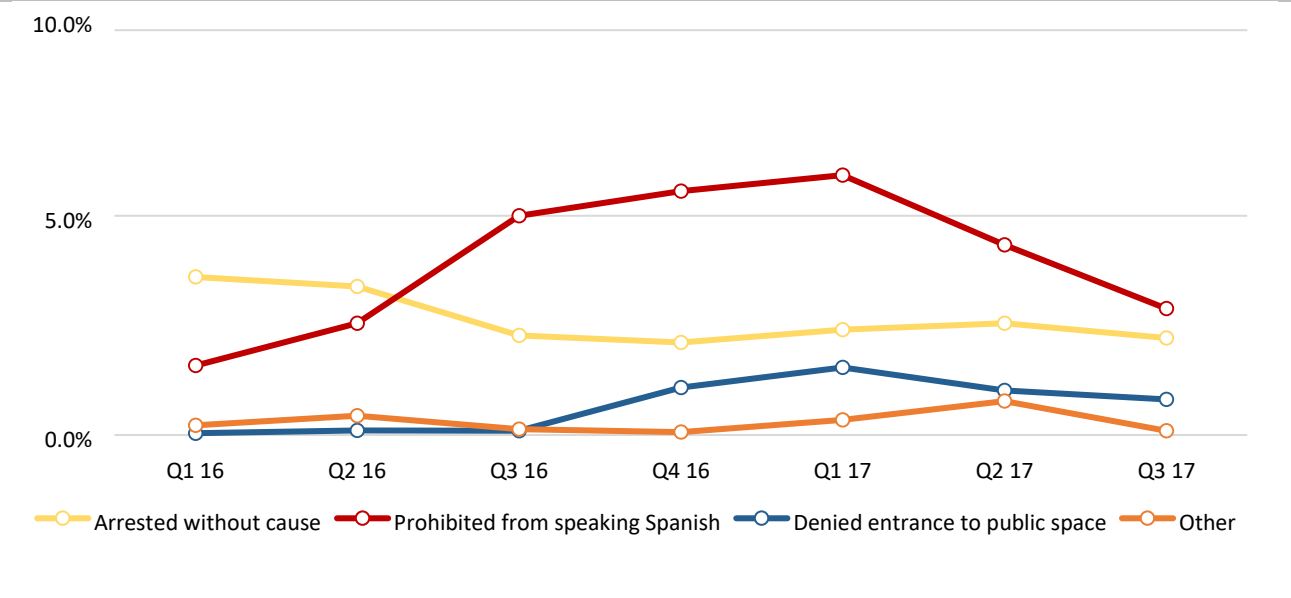
**Note:** Based on a combination of surveys of Mexicans who live in the U.S. who return to Mexico by land or by airport.

**Source:** Analysis of EMIF Norte ‘Devueltos’ 2016-2017 data.



**FIGURE 22 Discrimination experienced by Mexicans in the U.S., 2016-2017**

(% saying that while they were in the U.S., they experienced being...)



**Note:** Based on a combination of surveys of Mexicans who live in the U.S. who return to Mexico by land or by airport.

**Source:** Analysis of EMIF Norte ‘Devueltos’ 2016-2017 data.





With the exception of the category of unlawful detentions, the reports of hostile experiences are not evidence of civil rights violations per se, as the type of perpetrator is unstated in the survey question and may or may not include government agents. To the extent that social hostility against Mexican immigrants is promoted by a relaxing of social norms against discrimination caused by the Trump administration's relentless and aggressively negative characterization of Mexican immigrants, there is evidence of the indirect harms of state policies. Still, this analysis looks at only a fraction of the Obama and Trump administrations. A more complete analysis will require comparing more years of data to fully compare and measure whether self-reported instances of discrimination have changed at the same time as immigration policies and the political climate in the United States. Data for the 2018 EMIF Norte survey are not available as of this writing.

National survey data from the Pew Hispanic Center suggests even higher levels of hostile experiences reported by Hispanics in 2018. Among the foreign-born, 41% reported at least one of four kinds of negative incidents in the previous 12 months, including 26% reporting experiencing discrimination or unfair treatment, 22% being criticized for speaking Spanish in public, 22% being told to go back to their own country, and 16% called offensive names. There are no comparable data from 2016, and the report does not break out respondents by nationality for the hostile experiences question. Two-thirds of Hispanics said that the Trump administration's policies were harmful to Hispanics.<sup>219</sup>

### **Hate crimes**

Hate crime data collected by the Federal Bureau of Investigation show a 24% increase in hate crime incidents against Latinos between 2016 and 2017. The overall increase in reported hate crime incidents was 17%.<sup>220</sup> The levels of hate crimes are notoriously underreported for several reasons, including the sometimes difficult question of establishing what constitutes a hate crime and the specific animus that motivated it, a lack of reporting to any police agency, and incomplete or nonexistent reporting of known incidents by local police to the FBI.<sup>254</sup>

Nevertheless, the sharp increase in FBI-reported hate crimes against Latinos in 2017, during the first year of the Trump administration, is consistent with the argument that the campaign and administration's hate speech directed against Mexicans has indirectly incited hate crimes against Mexicans and other Latinos.

Reports of hate crimes increased in California as well. Anti-Hispanic hate crimes rose from 83 in 2016 to 126 in 2017, an increase of 52 percent.<sup>221</sup> Despite the friendlier political environment for Latinos and immigrants in state politics, the California experience is also shaped by national trends and contains a great degree of local variation in how immigrants are treated.

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<sup>219</sup> Mark Hugo Lopez, Ana Gonzales-Barrera and Jens Manuel Krogstad, "More Latinos Have Serious Concerns About Their Place in America Under Trump," Pew Research Center, October 25, 2018, [http://www.pewhispanic.org/wp-content/uploads/sites/5/2018/10/Pew-Research-Center\\_Latinos-have-SeriousConcerns-About-Their-Place-in-America\\_2018-10-25.pdf](http://www.pewhispanic.org/wp-content/uploads/sites/5/2018/10/Pew-Research-Center_Latinos-have-SeriousConcerns-About-Their-Place-in-America_2018-10-25.pdf), pp. 23, 39.

<sup>220</sup> Calculated from "2016 Hate Crime Statistics," FBI: UCR, 2016, <https://ucr.fbi.gov/hate-crime/2016/tables/table1> and "2017 Hate Crime Statistics," FBI: UCR, 2017, <https://ucr.fbi.gov/hate-crime/2017/tables/table-1.xls>. <sup>254</sup> Ken Schwencke, "Why America Fails at Gathering Hate Crime Statistics," ProPublica, December 4, 2017, <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>.

<sup>221</sup> "Crime Data," State of California Department of Justice Office of the Attorney General, <https://oag.ca.gov/crime>.

## CONCLUSION

Efforts to create a comprehensive immigration reform that combine increased immigration and border enforcement in return for some form of legalization have eluded U.S. policymakers since the last grand bargain in 1986. The growing partisan divide on immigration policy since the 2000s, with Republicans favoring more restrictionist policies and Democrats favoring more accommodating policies, have made the prospects for reform ever dimmer. The election of Donald Trump in November 2016 on an explicitly anti-immigration platform, which his administration has turned into policy since January 2017, has further polarized the politics of U.S. immigration.

How have the civil rights of Mexican immigrants fared in this policy context? There is evidence of direct violations of some Mexican immigrants' rights in the implementation of U.S. border enforcement policy. The exact extent is difficult to measure. Documented instances of use of force, including cross-border shootings and killings, often take place in ambiguous circumstances. Relatively few complaints of abuse are filed with the Border Patrol or other agencies of the DHS through a process that rarely results in serious responses or reparations.

The most nefarious consequences of U.S. policy extending back to the Clinton administration and currently being ratcheted up under Trump is rechanneling migration routes to dangerous wilderness areas. This has dramatically increased the number of deaths of migrants trying to enter the United States clandestinely. Most of these deaths were of Mexican nationals, though the share of Central Americans and others is rising. A death toll that is certainly much higher than the 7,216 reported in Border Patrol figures from FY1998 to FY2017 has continued at high levels.<sup>222</sup> Intensifying a policy that is known to have pervasive lethal effects that are disproportionate to any harm avoided is arguably a human rights violation, and at minimum, the toleration of a humanitarian calamity.

The most direct civil rights violations on the border at every level of policy design and implementation was the summer 2018 policy of forced family separation. The goal of using the terror of separating children from their parents to deter immigration is a clear violation of rights standards instantiated in constitutional rights of due process and international rights protecting the rights of the child, the rights of family life, and the right against cruel, degrading, and inhumane treatment. The conditions under which children were held, the failures to allow children to communicate regularly with their parents, and the government's failure to systematically collect the information needed to ensure family reunification are further rights violations.

Immigration enforcement in the U.S. interior does not inherently violate civil rights, but there are aspects of the policies that do. First, racial profiling appears to be pervasive, both in direct immigration enforcement by the Border Patrol in the 100-mile zone around U.S. borders, and local policing that then turns over immigrants to ICE through the 287(g) and Secure Communities programs. Mexicans are not simply a majority of those deported by ICE because of the large numbers of unauthorized Mexican immigrants. Since the intensification of deportations around 2006, interior removals have disproportionately affected Mexicans (see Figure 14).

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<sup>222</sup> "Southwest Border Deaths by Fiscal Year" 2017.

Second, surveys of deportees suggest they experience abuses of their civil rights in detention at levels far higher than those suggested by the limited ICE reports of formal complaints, which rarely led to serious remedial action. Reports of abuse during deportation increased sharply during the first year of the Trump administration, from 15% of detainees in 2016 to 22% in 2017 (see Figure 15).

Third, the policy under the Trump administration of making arrests in sensitive spaces like courthouses creates a chilling atmosphere that impedes residents’ ability to seek protection by the state when reporting crimes, and reduced access to social rights even for those who are eligible because of fears of vulnerability to arrest on federal immigration charges or harassment. These indirect effects are deeply harmful to a population that is much larger than those directly affected by enforcement policies. Treatment in detention and targeting of sensitive spaces has worsened during the Trump administration compared to the Obama years, particularly compared to the last two years of the Obama administration under the Priority Enforcement program.

Finally, state-sponsored hate speech during the Trump administration has worsened the hostile environment faced by Latino immigrants and other targeted groups. Survey evidence suggests that the rhetoric is not just talk. It has legitimized xenophobia and racism directed at Latinos, immigrants, and Muslims. Analysis of survey data shows that between 2016 and 2017, voluntary returnees to Mexico reported experiencing increased verbal abuse, physical assault, and threats to be reported to ICE. Deportees without legal status reported sharp increases in abuse and discrimination at the beginning of the Trump administration. The steady drumbeat of such talk and images may also be responsible for the 24% increase in hate crimes against Latinos in 2017 compared to 2016.<sup>223</sup> Even California, which has become a more welcoming state for Mexican immigrants in the 2000s and 2010s, experienced a 52% increase in hate crimes directed against Latinos between 2016 and 2017.<sup>258</sup>

The initial evidence suggests that the civil rights threats to Mexican immigrants in the United States, and their experiences of social hostility, worsened after the 2016 presidential election.

	<b>2016</b>	<b>2017</b>	<b>Total</b>
<b>Sex</b>			
Male	13%	12%	12%
Female	11%	14%	12%
<b>Age</b>			
15-17	44%	37%	40%

<sup>223</sup> Calculated from “2016 Hate Crime Statistics” and “2017 Hate Crime Statistics.” <sup>258</sup> “Crime Data,” State of California Department of Justice Office of the Attorney General.

18-29	22%	21%	21%
30-49	12%	14%	13%
50-64	8%	8%	8%
65+	9%	8%	9%
<b>Education</b>			
None	4%	5%	5%
Primary	11%	10%	11%
Middle School	14%	12%	13%
High School	9%	12%	11%
College+	3%	19%	14%
Other	3%	7%	5%
<b>Belongs to an Indigenous community</b>			
Yes	10%	12%	11%
No	12%	13%	12%
<b>Lawful Status</b>			
Citizen	13%	13%	13%
Resident	11%	12%	12%
Tourist/Student Visa	0%	9%	5%
Temporary H Work Visa	8%	2%	5%
<b>Level of English ability</b>			
Very Good	13%	16%	14%
Good	15%	19%	17%
Regular	9%	8%	8%
Bad	25%	25%	25%
Very Bad	18%	15%	17%
<b>Survey Mode</b>			
Airport	19%	23%	21%
Land entry	5%	7%	6%
<i>Unweighted n=</i>	<i>n=8,117</i>	<i>n=6,850</i>	<i>n=14,967</i>

**Note:** Based on a combination of surveys of Mexicans who live in the U.S. who return to Mexico by land or by airport. Percent experiencing discrimination is based on a combined measure of a respondent saying yes to at least 1 of 8 questions on discrimination. See report for details.

**Source:** Analysis of EMIF Norte Procedentes Air/Land 2016-2017 data.

