Under the Radar:

The Trump Administration's Stealth Attack on the U.S. Immigration System

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Since the day that Donald Trump announced his presidential campaign in June 2015, he made plain the vitriol and animus towards immigrants that would mark his presidency. His now infamous quote vilifying Mexican immigrants — "They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people." — foreshadowed the anti-immigrant sentiment that pervades his administration.

As president, Donald Trump has enacted a series of high-profile policy changes that target immigrants and the communities in which they reside. His Muslim travel ban, retaliation against so-called sanctuary cities, decisions to terminate Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA) protections, threat to end birthright citizenship, the forcible family separations resulting from his zero tolerance policy, and most recently, his declaration of a national emergency to construct a wall on our southern border, all garnered widespread attention and shook the public's conscience.

But not all the Trump administration's attacks on immigrants have been so visible. In its first two years, the administration has enacted some of the most alarming and far-reaching actions to date without public awareness. Through a relentless barrage of executive orders, memoranda, guidance, rulemaking, and informal directives, President Trump has surreptitiously remade our immigration system. Though sometimes obscure, the policy shifts have upended the lives of immigrants. This report seeks to pull back the curtain and shed light on the sweeping changes that have been occurring without fanfare, but with destructive consequences.

Through a relentless barrage of executive orders, memoranda, guidance, rulemaking, and informal directives, President Trump has surreptitiously remade our immigration system.

By reviewing the near totality of the Trump administration's actions during the first two years of the president's term, we can see that these policy changes all function in concert with one another, seeking to fulfill a perverse vision that erases the existence of immigrants in the United States.

This report is divided into three sections. The first exposes the Trump administration's construction of an immigration system hostile to those it is intended to serve. In addition to the high-profile decisions to rescind protections for vast numbers of immigrants, President Trump has rewritten the rules to make it as difficult as possible for immigrants to obtain or retain legal status in the United States. Whether by preventing immigrants from obtaining humanitarian protections, eliminating pathways to legal immigration, or denying immigration benefits, this administration wants to shut the doors on those lawfully seeking entry to our country and imperil the legal status of those already here.

The second section details how immigrants have been subject to the relentless enforcement activities of the Trump administration. The Trump administration has been employing draconian enforcement policies and aggressive policing practices. In effect, the administration has empowered a merciless deportation force.

The closing off of longstanding avenues to relief for immigrants addressed in section one, and the expanded enforcement actions against them discussed in section two, reflect the Trump administration's twin aims of barricading the country from current and future migration and unabashedly targeting immigrants already here. In practice, President Trump has manufactured an unforgiving and ever-growing path to deportation, denial, and exclusion.

The final section covers policy changes affecting our immigration courts. The Department of Justice's Executive Office for Immigration Review (EOIR) is responsible for adjudicating immigration cases. Under the Trump administration, EOIR has drastically reshaped our immigration courts to hasten deportations and undermine immigrants' due process rights — brazenly citing the Trump-created surge of immigration cases as justification for hurrying cases to resolution and rolling back immigrants' rights.

At every opportunity, President Trump has embraced policies that upend the lives of those seeking promise and security in the United States. While many of those policies have been headline news, others reflect a stealth anti-immigration campaign. But no less than the high-profile measures, the Trump administration's quiet anti-immigrant actions chip away at our identity as a nation of immigrants.

Immigrants in America: A Snapshot of our Foreign-Born Population

There are many pathways to the United States, and immigrants hold differing statuses that confer varying benefits. Generally speaking, we can think of our foreign-born population within the context of four categories: noncitizens in the United States on a temporary basis (9 million visas issued in fiscal year 2018),[1] noncitizens in the United States on a permanent basis (1.13 million visas issued in fiscal year 2017),[2] naturalized citizens (986,851 petitions filed in fiscal year 2017),[3] and "undocumented" noncitizens (an estimated 10.7 million).[4]

Our government refers to noncitizens here on a temporary basis as nonimmigrants. Among other categories, nonimmigrants are tourists, diplomats, temporary workers, cultural exchange visitors, or foreign students.[5] Nonimmigrant visas have terms for lengths of stay in the United States and for permitted activities — namely whether the visa holder can work, enroll in school, or be a visitor for business or pleasure.[6] In fiscal year 2018, Department of State officers issued approximately nine million nonimmigrant visas.[7]

Foreign-born citizens who are here on a permanent basis, but who are not yet citizens, typically have an immigrant visa.[1] An immigrant visa is commonly known as a "green card" or lawful permanent resident status. The government may issue green cards to new arrivals or to those already residing in the United States—the latter of which is a process known as adjusting status.[8] Federal law limits permanent immigration to 675,000 persons annually; however, because certain categories of immigrants are exempt from numerical limits, this number is a permeable cap.[9] In fiscal year 2017, the year for which we have the most recent, complete data, the U.S. government issued nearly 1.13 million green cards.[10] The majority of green cards issued in any given year fall into four categories: family-based; employment-based; diversity lottery; and refugees and asylees. In fiscal year 2017, the U.S. government allocated green cards to 748,746 immigrants in the family-based category; 137,855 immigrants in the employment-based category; 51,592 immigrants through the diversity lottery; and 146,003 refugees and asylees.[11] Other smaller allocations include categories such as victims of trafficking, victims of crime, and individuals who worked with the U.S. military in Iraq or Afghanistan as a translator or interpreter.[12] Still, millions of immigrants are waiting for a green card to become available to them.[13] The wait for a green card varies drastically depending on a number of factors, including the immigrant's country of origin and relevant green card category.[14] Green card eligibility and availability often prevents immigrants from accessing the pathway to citizenship our country has established.

After five years of continuous residency in the United States with a green card, and provided that he or she meets other eligibility requirements, an immigrant may apply to naturalize (or become a citizen).[15] In fiscal year 2017, green card holders filed 986,851 petitions for naturalization, and 707,265 immigrants naturalized.[16] In total, there are more than 20 million naturalized citizens in the United States.[17]

Finally, there is a population of "undocumented" immigrants in the United States; the most recent estimates put the number at 10.7 million.[18] The federal government most often uses the term undocumented to refer to individuals who entered the United States without inspection or were admitted temporarily and stayed past their required departure date.[19] At times, the term undocumented may refer to individuals with conditional protections such as Temporary Protected Status or Deferred Action for Childhood Arrivals, who — depending on their status prior to receiving protections — may revert to undocumented status if the government were to rescind these protections.[20] Those with conditional protections account for more than one million members of the undocumented population.[21]

1. Some visas allow for "dual intent," whereby a person can intend to maintain nonimmigrant and immigrant status simultaneously. This implies an intention to pursue permanent residency in the future, while currently holding nonimmigrant status.

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Section One:
Corrupting Our Immigration System

Refugees

President Trump has removed a lifeline for those fleeing violence and persecution by dismantling our refugee resettlement program. ■ In the days following his inauguration, President Trump shocked the nation by announcing his Muslim travel ban, which, among other provisions, called for a 120-day suspension of our refugee admissions program.[22] The president's attack on resettlement efforts escalated in September 2017, when he announced that the cap for fiscal year 2018 refugee admissions would be a record-low 45,000.[23] President Obama had set the previous year's admissions cap at 110,000 — in line with the historic average of 95,000,[24] and justified by the approximately 25 million refugees across the globe.[25]

President Trump's unprecedented decision was a drastic departure from our longstanding commitment to vulnerable people around the world, and our understanding that the United States must be a leader in resettlement efforts. Yet the Trump administration failed to meet even its abysmally low admissions target.[26] Over the course of the fiscal year, the Trump administration erected obstacles — including repetitive, unnecessary vetting requirements — designed to grind our refugee program to a halt. In fiscal year 2018, we resettled only 22,491 refugees — less than half of the 45,000 cap.[27]

> The intent of the Trump administration is clear: strangle refugee admissions until it can dismantle our refugee resettlement program.

The following fiscal year, President Trump doubled down on his resolve to immobilize resettlement efforts. In September 2018, President Trump announced that the fiscal year 2019 refugee ceiling would be a mere 30,000.[28] The number of refugees who need help is larger than ever, but the Trump administration continues to slash refugee admittance levels without regard to the suffering it perpetuates by closing our doors.

But perhaps most shameless is the Trump administration using its deliberately manufactured slowdown of refugee admissions to justify the dismantling of our resettlement program. In December of both 2017 and 2018, the State Department ordered a reduction in the number of refugee resettlement offices.[29] The administration cited the self-inflicted problem of "excess capacity" as its rationale for shrinking resettlement infrastructure in locations with multiple resettlement agencies. Refugee resettlement agencies have built up their capacity and deep community ties over decades; slashing funding and forcing closures of offices will have detrimental impacts for years to come. The intent of the Trump administration is clear: strangle refugee admissions until it can dismantle our refugee resettlement program.

Asylum

The Trump administration has undertaken exhaustive efforts to turn away asylum seekers, potentially returning those with legitimate claims for protection to situations of deadly violence. ■ Asylum, like refugee status, is a form of protection available to those who have been persecuted or who have a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.[30] While refugees apply for protection from outside the United States, asylum seekers claim protection at our border or from within the United States.[31]

In February 2017, the Trump administration issued new guidance to asylum officers on how to determine whether an asylum applicant's fears of persecution or torture are credible.[32] The guidance included a number of changes, such as a heightened standard of proof, to stack the deck against the granting of asylum.[33] Almost a year later, the Department of Homeland Security announced another change — on an accelerated basis, adjudicators would process recent affirmative asylum claims before older ones.[34] Not only will this add years to the already prolonged wait for relief for asylum seekers with older applications, it will make denials more likely for new asylum applicants. To build a strong case, applicants must provide extensive documentation to prove both their identity and evidence of their

persecution. The hurried timeline for new applicants may lead to incomplete applications with partial evidence.

In accordance with President Trump's desire to restrict access to asylum protections, his Attorneys General have used their self-referral authority to issue sweeping judgments that limit claims for asylum. In one case, then-Attorney General Jeff Sessions reversed a years-long precedent that most asylum seekers are entitled to a hearing before a judge.[35] Months later, Sessions narrowed the grounds for asylum for victims of "private criminal activity" (as opposed to victims of harm perpetrated by a government).[36] In the decision, he instructed that claims pertaining to domestic violence or gang violence generally should not qualify for asylum.[37] The administration issued subsequent processing guidance for this decision that unilaterally rewrote asylum law and instructed asylum officers that few domestic violence and gang-related claims should merit relief.[38] Fortunately, in December 2018, a federal judge partly blocked this unlawful attempt to narrow grounds for asylum;[39] still, additional decisions on self-referred cases are forthcoming. Cases under review by the Attorney General include the consideration of whether immigrants who are coerced into committing crimes under duress can still be eligible for asylum,[40] and whether membership in a family can be considered a "particular social group" to qualify an applicant for asylum.[41]

The Trump administration is also trying to restrict asylum seekers from entering the country. In November 2018, the administration issued an interim final rule and presidential proclamation to bar many immigrants at our southern border from seeking asylum between ports of entry.[42] [43] Already, the Trump administration had been turning away immigrants from our ports of entry, with Customs and Border Protection (CBP) claiming it was "at capacity" and able to process only a limited number of immigrants each day.[44] The November rule and proclamation, in combination with these orchestrated processing restrictions, resulted in a de-facto asylum ban. A federal judge recognized that the asylum ban "irreconcilably conflicts" with our domestic and international legal obligations to allow individuals to seek asylum without prohibition or penalty, and blocked its implementation.[45] In the wake of this decision, the Trump administration announced another plan, to force asylum seekers at our southern border to remain in Mexico while it processes their asylum claims.[46] The Department of Homeland Security intends to institute this "remain in Mexico plan," also known as the Migration Protection Protocols, at the entirety of the southern border following an initial implementation at the San Ysidro port of entry.[47] Asylum seekers could remain in limbo for a year or more in a country that has offered few details on how it will ensure immigrants adequate protections.

It is clear that the Trump administration is using every tool at its disposal to send a message to asylum seekers that they should not look for refuge in the United States.

Over the course of its first two years, the Trump administration made every effort to overhaul and dismantle our asylum system, and since then, has announced new restrictions on asylum seekers. It is clear that the Trump administration is using every tool at its disposal to send a message to asylum seekers that they should not look for refuge in the United States.

Unaccompanied Alien Children

The Trump administration has rewritten rules and procedures to strip protections from children who enter the United States as unaccompanied minors. ■ As defined by statute, unaccompanied alien children (UACs) are children under age 18 who have no lawful immigration status and who have no parent or legal guardian in the United States, or have no parent or legal guardian in the United States available to provide care and physical custody.[48] The Department of Homeland Security (DHS) makes this designation when it apprehends the child. Because of their vulnerable status, the government affords UACs several procedural protections, including the opportunity to first have their asylum cases considered by U.S. Citizenship and Immigration Services (USCIS) in a non-adversarial setting.[49] In September 2017, the Department of Justice issued legal memoranda stating that previous UAC determinations are not binding, and immigration judges can deny or rescind relevant protections if they unilaterally determine an individual no longer meets the UAC definition.[50] This DOJ opinion opened up the unprecedented opportunity for immigration judges to strip protections from children already determined to be UACs.[51] Later in 2017, DOJ issued a memorandum with policies and procedures judges should follow in UAC cases.[52] The memo sought to reframe the manner in which immigration judges approach UAC cases, weakening guidelines on child-sensitive questioning and instructing judges to look out for potential fraud and abuse.[53]

Under the Trump administration, U.S. Immigration and Customs Enforcement (ICE) has also been targeting UACs. Within 72 hours of arrival into the United States, DHS must transfer UACs to the custody of the Office of Refugee Resettlement (ORR) at the Department of Health and Human Services.[54] ORR then identifies a placement for the child — typically with a family member or close family friend who acts as a sponsor and takes custody of the child.[55] ORR can retain custody over a child only until he or she turns 18. At that point, under federal law, ICE must consider releasing the youth to a sponsor or other less restrictive alternatives to immediate lock-up in detention.[56] But despite this statutory requirement, the Trump administration is transferring these children to ICE custody as soon they turn eighteen, in some cases, even on their eighteenth birthdays.[57] These new rules and procedures are a coordinated effort to strip protections from vulnerable children who have come to the United States seeking safety and refuge.

Public Charge

The Trump administration intends to deny critical lifesaving programs to families who are legally entitled to access them — including programs that ensure children have enough to eat. ■ In October 2018, the Department of Homeland Security (DHS) published a proposed rule to drastically expand the definition of a "public charge."[58] Under current law, immigration officials must determine whether certain immigrants seeking a green card or entry into the United States are likely to rely on government benefits as their primary source of support, also known as becoming a public charge.[59] Immigration officials can use a public charge determination to deny immigrants the ability to legally enter the United States, or to legally adjust their immigration status to that of a different legal status.[60] Under its proposed rule, the Trump administration intends to expand the benefits considered by immigration officials to include a vast range of programs that help participants meet their basic needs. Such benefits include food stamps, housing vouchers, and health and nutritional programs.[61] Worse still, the proposed rule abandons the "primarily dependent" standard for determining a public charge in favor of lowered threshold, and directs immigration officials to consider new, detailed negative factors. These new standards will make it harder for immigrants, especially low- and moderate-income families, to pass the public-charge test.[62] As a result, this new rule may deter immigrants who would otherwise seek out social services for which they are eligible. This "chilling effect" may impact an estimated 24 million people in the United States.[63]

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Already, the State Department has revised sections of its Foreign Affairs Manual (FAM) to make visa applicants more vulnerable to denials on public-charge grounds.[64] A sponsor of a visa applicant can submit an affidavit proving adequate means to financially support the applicant in question. Previously, an affidavit could overcome adverse factors in a public-charge determination.[65] Now, the State Department is no longer accepting these affidavits as sufficient on their own, giving officials greater discretion to make a public-charge determination and ultimately deny an applicant. Among additional changes, FAM also now instructs officials to evaluate whether an applicant or an applicant's family member has received "public assistance of any type."[66] This drastically expands the services the government can consider when making a public-charge determination. These changes to public charge rules are a blatant attempt to create further grounds under which the government can exclude lawful immigrants or bar them from obtaining status in the United States. The changes force an impossible choice on working class immigrants: either forego your future in this country or forego your and your family's basic needs.

Caseworker Surveillance

Under President Trump, U.S. Citizenship and Immigration Services will surveil its civil service immigration caseworkers to discourage them from granting immigration benefits. ■ In July 2018, U.S. Citizenship and Immigration Services (USCIS) established an internal oversight division, the Office of Investigations, tasked with policing its caseworkers.[67] USCIS caseworkers process applications for legal immigration benefits, including applications for citizenship, humanitarian protections, and petitions filed by American citizens to sponsor their spouses or families.[68] This oversight division may target caseworkers the agency deems to be too lenient towards immigrants applying for benefits. Although USCIS has denied that this is the intention of the Office of Investigations, it acknowledged that, among other objectives, the division will focus on preventing abuse and ensuring the agency "is not vulnerable to exploitation."[69] Because there are already established review processes in place to root out fraud or exploitation, these stated objectives raise serious concerns that administration officials are characterizing as "abuse" or "exploitation" caseworker discretion in adjudicating immigration benefits.[70] The Trump administration is evidently incentivizing caseworkers to unilaterally deny immigration benefits for fear of retribution.

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Request for Evidence and Notice of Intent to Deny

U.S. Citizenship and Immigration Services is making it easier for adjudicators to reject immigrants' applications and petitions to remain in the United States. ■ In July 2018, the U.S. Citizenship and Immigration Services (USCIS) issued a new policy memorandum expanding the circumstances in which immigration adjudicators have the authority to deny applications, petitions, or requests.[71] Under longstanding practice, adjudicators must generally issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID) before they outright deny applications. An adjudicator typically issues an RFE when he or she believes there is missing or incomplete documentation, but that additional information may warrant an approval of an application, petition, or request. RFEs provide a list of additional types of evidence required. An adjudicator issues an NOID when a denial is likely to occur and provides a list of reasons, which, if not addressed, will result in a denial. Previously, USCIS instructed adjudicators not to deny a case without first issuing an RFE or NOID unless there was "no possibility" of approval.[72] This new guidance grants adjudicators sweeping discretionary authority to deny an application, petition, or request without giving noncitizens the opportunity to submit additional evidence to establish their eligibility for an immigration benefit, or correct what may be a simple mistake.[73] This seemingly insignificant policy change will result in widespread denials of immigration benefits, which, when coupled with a policy change discussed later in this report, will force immigrants into the deportation pipeline.[74] *(See Notice to Appear.)*

Special Immigrant Juvenile Status

The Department of Homeland Security is revising a longstanding interpretation of federal law to justify its denial of protections to abused, neglected, and abandoned children. ■ Special Immigrant Juvenile (SIJ) Status is a form of legal relief available to undocumented children under the age of 21 who cannot reunify with one or both parents due to abuse, neglect, or abandonment, and for whom return to their home country is not in their best interests.[75] In order to qualify for SIJ status, an immigrant must be either dependent on a juvenile court or committed to the custody of an agency or caretaker.[76] Over the past few months, administration officials have been reinterpreting eligibility requirements to issue denials to applicants over the age of 18 and rescind prior approvals.[77] Despite the longstanding precedent of issuing SIJ status up until age 21 — including under a settlement agreement known as *Perez-Olano* —,[78] the Trump administration is now arguing that those over 18 no longer qualify because some state courts lose jurisdiction over custody at age 18.[79] U.S. Citizenship and Immigration Services is using this flimsy justification to deny SIJ status to a population that, until this administration, officials unanimously understood to be eligible for humanitarian protection.

Central American Minors

President Trump has turned his back on Central American children fleeing violence by shutting down a critical pathway to protection. ■ In November 2017, the administration announced that it would terminate the Central American Minors (CAM) program.[80] Established in 2014 by President Obama, the CAM program allowed parents who were lawfully present in the United States to request refugee status for their children and other eligible family members residing in Guatemala, El Salvador, and Honduras. The program sought to provide protections for, and in-country refugee processing of, children and families facing grave violence and threats to their lives in Central America.[81] The Trump administration had already drastically scaled back the program in the months leading up to the announcement, but the termination exposed the administration's willingness to shut down pathways to legal immigration and completely abandon those desperately seeking survival, especially children.

Denaturalization Task Force

The Trump administration has created a task force to strip naturalized citizens of their citizenship. ■ In June 2018, U.S. Citizenship and Immigration Services (USCIS) announced the launch of a task force to identify naturalized Americans that it believes the government should strip of citizenship.[82] USCIS Director Lee Francis Cissna has stated that the agency intends to review a few thousand cases, including cases that are decades old.[83] Should the task force identify U.S. citizens whom it believes the government should not have naturalized, the task force will refer their cases to the Department of Justice (DOJ).[84] Notably, the Immigration and Customs Enforcement's (ICE) Fiscal Year 2019 budget request reveals the intention to denaturalize Americans at a rapid pace — requesting the transfer of more than $200 million from USCIS fees collected for processing benefits requests to fund ICE investigations and the review of 700,000 cases of naturalized Americans.[85] By launching this task force within USCIS, the Trump administration is turning the immigration benefits agency into an investigatory agency that seeks out reasons to denaturalize Americans.

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Citizenship is one of the most sacred and valued rights in our nation. That is why the process of becoming a citizen is so rigorous and the possibility of losing that right is so severe. Denaturalization is a drastic measure that the government should only take in the most extraordinary circumstances. Between 1990 and 2017, there were only 305 cases of denaturalization, averaging 11 cases per year.[86] However, the current administration is filing denaturalization cases at a much higher rate than previous administrations, discarding longstanding legal norms and processes. Citizenship no longer provides a sense of security and permanence. Years and even decades after becoming citizens, individuals are second-guessing whether they made a mistake on their paperwork that will cause USCIS to target them.

Work Authorizations

Under President Trump, the Department of Homeland Security plans to strip some immigrants of the means to provide for themselves by limiting or eliminating their ability to obtain work authorization. ■ The Department of Homeland Security is proposing two regulations intended to restrict immigrants' ability to obtain work authorizations. The first would rescind a 2015 regulation allowing some H-4 visa holders to seek work permits.[87] H-4 visa holders are the spouses of highly-skilled foreigners who are working in the United States under the H-1B visa program, which allows U.S. employers to temporarily employ foreign workers in specialty occupations. This decision will force thousands of spouses of skilled workers, primarily women, to give up their jobs, and will create tremendous uncertainty for families who struggle to subsist on a single income.

The second regulation would eliminate a timeline to process work authorization requests from asylum seekers.[88] Under existing rules, U.S. Citizenship and Immigration Services (USCIS) must approve or deny an asylum seeker's work authorization request within 30 days — provided that it is at least 180 days after the date the asylum application was filed.[89] By removing this timeline, USCIS will be able to leave asylum seekers in a state of perpetual limbo without any means of providing for themselves.

Backlogs

Under President Trump, U.S. Citizenship and Immigration Services has slowed its processing times to a near standstill, drastically prolonging the period immigrants must wait to receive legal status, work authorization, or humanitarian protections. ■ As discussed previously, U.S. Citizenship and Immigration Services (USCIS) is responsible for processing applications and petitions for immigration benefits, such as green cards, work authorizations, and humanitarian protections.[90] USCIS has historically endeavored to be a service-oriented agency, one that fairly and efficiently processes immigration applications, and helps individuals navigate a complex and daunting immigration system.[91] Under the Trump administration, USCIS seems to be intentionally subverting this mandate. Processing delays of applications and petitions have reached catastrophic levels. The overall processing time has increased by 46 percent since the last full fiscal year of the Obama administration, resulting in a net backlog of more than 2.3 million cases.[92] Severe processing delays have affected nearly every type of application or petition, regardless of the vulnerability of the applicant or petitioner. In fiscal year 2015, the visa processing time for an immigrant victim of a crime was 11.4 months.[93] The processing time for the same visa in fiscal year 2018 was 40.5 months.[94] Such delays have extreme consequences. They impede the ability of U.S. companies to hire and retain workers, prolong the duration of family separation, and perpetuate the trauma and uncertainty felt by vulnerable populations.[95]

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Noncitizen Service Members

President Trump's Department of Defense is turning its back on immigrants willing to serve our country by making it harder for them to obtain citizenship. ■ In October 2017, the Department of Defense (DoD) announced new policies relating to noncitizen service members.[96] Under federal law, the U.S. government grants noncitizen military recruits expedited citizenship after they complete basic training. In times of peace, green card holders can apply for naturalization after a year of military service.[97] In times of hostility — a designation that has been in effect since September 11, 2001 — green card holders can naturalize as soon as the DoD issues a certification of honorable service.[98] The certification historically required only one day of qualifying service.[99] The October 2017 memorandum mandated new, additional requirements for naturalization, including added background and security checks and a longer period of required service.[100] In addition to preventing enlisted noncitizens from beginning basic training, these new standards have unexpectedly added barriers to the naturalization of those already serving. Three months after the issuance of this memorandum, the U.S. Citizenship and Immigration Services announced that it was ending the Naturalization at Basic Training Initiative and closed its naturalization centers at three basic combat training sites.[101] Under the Naturalization at Basic Training Initiative, recruits could work with naturalization coordinators to obtain citizenship before being deployed. Thankfully, a nationwide court injunction has blunted some of the stringent screening requirements imposed on immigrants wanting to serve.[102] But these decisions by the Trump administration shamefully neglect the thousands of brave men and women who have volunteered to defend our nation. We have long recognized that those who are willing to give their lives for this country are deserving of expedited citizenship. The Trump administration is failing to honor this promise by engineering new bureaucratic roadblocks to naturalization.

> [T]hese decisions by the Trump administration shamefully neglect the thousands of brave men and women who have volunteered to defend our nation.

Extreme Vetting

By creating a false narrative that immigrants are a threat to our country, President Trump has enacted a series of "extreme vetting" polices to slow and restrict entry into the United States. ■ During his campaign, then-candidate Donald Trump made fictitious claims about immigrants to suggest that they posed a danger to our security and used these falsehoods to call for "extreme vetting" in our immigration system. Notwithstanding that our country's security screening protocols were already amongst the most arduous and comprehensive in the world, President Trump has used his fabricated narrative to implement measures aimed at delaying and impeding legal immigration into our country. Mere weeks into his presidency, President Trump suspended the Interview Waiver Program.[103] The government used this program to waive the interview requirement for nonimmigrant visa applicants in certain circumstances. For instance, it allowed previously vetted individuals who pose no security threat to renew their visas without in-person interviews. In an effort to hinder immigration, President Trump's suspension of the program has backlogged the process and created unnecessary delays for applicants.

Later in 2017, in keeping with President Trump's calls for heightened screening standards, the State Department established a new form — form DS-5535 — to be given to applicants whom the agency unilaterally determines warrant additional vetting.[104] Among other demands, the form requires that applicants provide their social media accounts from the previous five years.[105] The use of social media vetting is subjective; the State Department did not provide any parameters or guidance regarding when, how, and to whom these questions will apply. The Trump administration has since expanded its social media surveillance efforts to include nearly all visa applicants.[106] Moreover, the Department of Homeland Security has announced that it will be retaining all social media information in immigrants' Alien Files, which includes the official record of an individual's immigration history.[107] This invasive level of surveillance is likely to result in discriminatory profiling and allows government officials tremendous discretion in interpreting postings and online activity.

In February 2018, President Trump announced the creation of a National Vetting Center (NVC).[108] The NVC will expand upon an already rigorous vetting process, potentially opening the door to new restrictions. The directives on extreme vetting have not been limited to overseas processing. The Trump administration has added a new hoop through which employment-based green card applicants must jump. Despite having already passed exhaustive background and security checks, these applicants now must complete an in-person interview.[109] Previously, the government commonly waived this requirement unless it had a reason to be concerned about the application. Now, employment-based green card applicants — many of whom have lived and worked here legally for years — face another delay in their efforts to become naturalized citizens. No identifiable deficiencies in our immigration system justify these policies. They simply expose the President's desire to obstruct legal immigration.

Section Two:
Ramping Up Enforcement

Enforcement Priorities and Prosecutorial Discretion

The Trump administration has instructed immigration authorities to subject all undocumented immigrants to enforcement actions — regardless of their criminal history or ties to the United States. ■ In his first week of office, President Trump issued an executive order demanding an overhaul of existing policies on enforcement priorities and prosecutorial discretion.[110] Under the Obama administration, under provisions of the Homeland Security Act of 2002 requiring the Secretary of Homeland Security to establish "national immigration enforcement…priorities,"[111] Immigration and Customs Enforcement (ICE) set narrow priorities for whom to arrest, detain, or deport.[112] These priorities directed immigration officials to focus their resources on those who presented a public safety threat — namely those with serious criminal convictions — and those who had recently crossed the border.[113] In accordance with these priorities, the Obama administration instructed ICE officers and prosecutors to use discretion in arresting, detaining, and deporting people who were not enforcement priorities. Among other factors, authorities considered the length of time the immigrant had been in the United States, and whether the individual had close family, educational, or military ties to the country.[114] President Trump's executive order and the subsequent implementation memorandum expanded enforcement priorities so broadly that they essentially made everyone a priority. The Trump administration has rendered the term "priorities" in the Homeland Security Act meaningless and has effectively rescinded all previous standards for the exercise of prosecutorial discretion.[115] In effect, this administration has made all undocumented people targets for enforcement actions.

Interior Arrest Targets

Immigration authorities are going after immigrants who were once off-limits, including those who are vulnerable, law-abiding, and pose no public safety threat. ■ The absence of meaningful enforcement priorities and prosecutorial discretion gives immigration authorities wide latitude over arrests. As a result, arrest patterns have changed dramatically under the Trump administration. Immigration and Customs Enforcement (ICE) increased arrests of noncitizens without criminal convictions by 147 percent between fiscal year 2016 and fiscal year 2017.[116] ICE also resumed arrests of bystanders during targeted enforcement operations.[117] Bystander arrests, also known as collateral arrests, refer to those who immigration officials sweep up in enforcement activities, but who were not targets of any operation. These may be undocumented immigrants who lived in the same residence as a targeted offender, were employed at the same worksite, or were just in the wrong place at the wrong time. ICE has also been arresting immigrants who present themselves for check-ins or interviews with the government.[118] Previously, immigrants with old removal orders who pose no public safety threat would check in regularly with the government under orders of supervision. Now, immigration authorities are refusing to renew longstanding stays of removal and are using these check-ins as an opportunity to make easy arrests.[119] Worse still, immigration authorities have been proactively setting traps for immigrants who are legitimately seeking legal status. In several cases, the agency tasked with processing legal immigration requests coordinated with ICE officials to schedule and facilitate arrests of immigrants coming in for interviews to obtain legal status.[120]

But beyond simply failing to make a distinction between law-abiding unauthorized immigrants and criminals, ICE is actually intentionally targeting vulnerable populations and those who would support them.

But beyond simply failing to make a distinction between law-abiding unauthorized immigrants and criminals, ICE is actually intentionally targeting vulnerable populations and those who would support them. Most notably, ICE has been targeting sponsors of unaccompanied children. As discussed previously, in cases of unaccompanied children,

the Office of Refugee Resettlement (ORR) must try to identify a sponsor to whom it can release the child. Sponsors are typically a parent, legal guardian, relative, or close family friend. In 2017, ICE began targeting these sponsors for deportation,[121] and in April 2018, ORR began sharing with ICE sponsor information that ICE may use for enforcement purposes.[122] As a result, from late July to late November 2018, ICE arrested 170 potential sponsors of unaccompanied children, 64 percent of whom had no criminal record.[123] Not only have these practices subjected countless sponsors to enforcement actions, they have deterred potential sponsors from coming forward. As a result, vulnerable children find themselves without a caregiver and face prolonged stays in ORR custody.[124] Just recently, Congress made efforts to curb the Trump administration's damaging actions by prohibiting ICE from using funds to detain or remove UAC sponsors based on information it received from ORR.[125] Other targeted, vulnerable populations include asylum seekers whose petitions USCIS did not approve but who have no criminal history;[126] immigrant victims of crime who are awaiting the adjudication of their visa applications;[127] and young, undocumented children who have recently aged out of the foster system and are applying for a Special Immigrant Juvenile Visa on the basis of abuse, neglect, or abandonment.[128] These arrest patterns are vindictive, and further demonstrate the Trump administration's intent to terrorize immigrant communities.

Interior Arrest Locations

Under the Trump administration, formerly safe locations are now targets for enforcement. ■ Immigration and Customs Enforcement (ICE) has drastically expanded the locations in which it conducts enforcement operations. Under longstanding ICE policy, enforcement activities are not to occur in sensitive locations.[129] Such locations include, but are not limited to, schools, hospitals, places of worship, religious or civil ceremonies, and public demonstrations.[130] Although ICE purports to adhere to this policy, arrests at or immediately outside the parameters of these locations have reportedly been taking place.[131] Beyond those locations traditionally considered "sensitive," courthouses have also become a primary target in the Trump era.[132] Heightened enforcement activity at courthouses has discouraged immigrants from accessing justice or even seeking help from law enforcement, eroding the safety of immigrants and entire communities. [133]

ICE has also escalated the frequency of at-large arrests — raids carried out at residences and in neighborhoods and communities — and worksite enforcement operations. At-large arrests increased from 30,348 in fiscal year 2016 to 40,536 in fiscal year 2018, [134] and the number of worksite investigations more than quadrupled over the past fiscal year.[135] In addition, I9 audits — audits in which ICE scrutinizes the hiring records of businesses — have increased dramatically under the Trump administration. Such audits increased by more than 300 percent over the previous fiscal year, reaching an all-time high of 5,981.[136]

Even beyond these checkpoints, CBP officers are boarding buses and trains on domestic routes to interrogate passengers about their immigration status.

But ICE is not the only agency that has been emboldened to expand its enforcement presence to new locations. Under the Trump administration, U.S. Customs and Border Protection (CBP) has been using its authority to operate within 100 miles of any land or sea border to establish immigration checkpoints deep into the interior.[137] At these checkpoints, CBP officers have been pushing the bounds of their legal authority to search vehicles and question citizens and immigrants alike.[138] Even beyond these checkpoints, CBP officers are boarding buses and trains on domestic routes to interrogate passengers about their immigration status.[139] ICE and CBP's combined changes in arrest locations have contributed to a sense within immigrant communities that America is a police state, and that no location is a safe haven.

Partnerships with State and Local Law Enforcement

President Trump has reinstated controversial, aggressive policing methods that compel local law enforcement officials to take on a greater role in the federal government's deportation force. ■ One of President Trump's first actions in office was to restore and expand partnerships with state and local law enforcement agencies to identify, detain, and remove undocumented immigrants and other removable noncitizens — most notably, the Secure Communities program and so-called "Section 287(g)" agreements.[140]

Under the Secure Communities program, state and local law enforcement officials share with federal immigration authorities the digital fingerprints of any individual booked into jail. This allows Immigration and Customs Enforcement (ICE) to identify noncitizens, issue a detainer, and initiate deportation proceedings for those subject to removal. Legal scholars have raised serious constitutional concerns about ICE's use of detainers[141] — a practice in which ICE requests to hold removable noncitizens up to 48 hours on administrative immigration charges alone. In fact, over the last several years, multiple state and federal courts have ruled ICE's detainer system unconstitutional, contrary to federal statute, or beyond the authority of law enforcement.[142] The Obama administration renamed Secure Communities the Priority Enforcement Program and narrowed detainer issuance to noncitizens that had committed serious criminal violations or had only recently arrived in the United States.[143] Under the Priority Enforcement Program, states and localities were able to further narrow the scope of detainers.[144] The Trump administration restored full-scope Secure Communities, issuing 105 percent more detainers in fiscal year 2018 than in fiscal year 2016.[145]

The Trump administration has also vastly expanded the use of 287(g) agreements. Through the 287(g) program, the Department of Homeland Security enters into agreements with local jurisdictions and trains and deputizes selected state and local law enforcement officers to perform the functions of federal immigration agents.[146] The number of 287(g) partnerships had fallen to less than 30 at the end of the Obama administration, but has more than doubled under the Trump administration with little oversight or accountability[147] — despite a long track record of civil rights abuses in jurisdictions with such agreements.[148] During President Obama's second term, the government narrowed the scope of these programs following widespread recognition that the programs were highly problematic.[149] Among other failings, these programs led to racial profiling, unconstitutional detention, and distrust between communities and law enforcement.[150] None of these documented transgressions stopped President Trump from reviving these programs to expand the reach of his deportation force.

Detention

In its pursuit of mass detention, the Trump administration is refusing to release immigrants on bond and is attempting to rescind longstanding agreements, regulations, and programs meant to protect vulnerable populations from prolonged detention. ■ Except in limited circumstances, Immigration and Customs Enforcement (ICE) has the authority to release noncitizens from detention while they await immigration court proceedings.[151] In lieu of mass detention, previous administrations employed a wide range of mechanisms — also known as alternatives to detention (ATD) — to ensure compliance with immigration court proceedings while still allowing for the conditional release of immigrants. One of the most effective and least costly ATD programs was the Family Case Management Program (FCMP). Under FCMP, caseworkers referred immigrants to support services and helped them meet their legal and judicial obligations. FCMP was an undisputed success. It resulted in a 99 percent compliance rate for ICE check-ins, and a 100 percent attendance rate at immigration court hearings.[152] FCMP cost the government less than $40 per day for one family.[153] By comparison, family detention costs approximately $320 per day per individual.[154] Yet in June 2017, the Trump administration shuttered FCMP.[155] In response, Congress allocated more than $30 million dollars for FCMP in its most recent funding agreement, but the Trump administration still has not indicated plans to resume the program.[156] In previous administrations, immigrants deemed not to be flight risks and not dangerous were also sometimes released on their own recognizance or on bond. Now, immigration officials have been engaging in a widespread practice of detaining immigrants for indefinite periods without allowing them the opportunity to obtain bail.[157] Until a federal court intervened, the Trump administration even applied a blanket detention policy to asylum seekers, which was manifestly intended to deter immigrants from seeking refuge in the United States.[158] The administration has since made efforts to revive the policy.

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This pursuit of mass detention has begun to chip away at protections for other vulnerable populations, such as pregnant women and young children. In December 2017, ICE ended its policy of generally releasing pregnant women from immigration detention.[159] Prior to this directive, officials only detained pregnant women throughout their immigration court proceedings if they had a serious criminal history or in extraordinary circumstances.[160] By eliminating the presumption of release, ICE will subject increased numbers of pregnant women to prolonged periods of detention in facilities that often lack adequate medical care and support.[161]

In February 2019, ICE held nearly 50,000 immigrants in detention.

The administration is pursuing the mass detention of children by attempting to narrow the scope or completely terminate an important legal settlement known as the *Flores* Settlement Agreement.[162] The 1997 *Flores* Settlement Agreement set national standards for the detention, release, and treatment of all children in immigration detention — standards that were established following legal challenges to the horrific detention policies of the preceding decades.[163] Courts have held that *Flores* applies to both accompanied and unaccompanied children, and that the government may not hold children for prolonged periods in secure, unlicensed family detention facilities. The administration hopes to roll back these fundamental protections for children and hold families in detention indefinitely.

By the end of 2018, ICE reported a daily average population of over 44,000 people.[164] This number is a 25 percent increase over the daily average population for the final fiscal year of the Obama administration, and 4,000 higher than the number for which Congress has allocated funding.[165] ICE continues to increase its detention numbers. In February 2019, ICE held nearly 50,000 immigrants in detention.[166] There is no public safety justification for expanded detention, only a willfulness to inflict punitive measures on immigrants to deter future migration.

Criminal Prosecutions

The Trump administration is expanding the use of federal criminal prosecution for misdemeanor illegal entry as a mechanism for punishment and deterrence — even against those seeking asylum. ■ In April 2018, then-Attorney General Jeff Sessions issued a memorandum to all U.S. Attorneys' Offices announcing the implementation of a new "zero-tolerance" policy.[167] The zero tolerance policy instructs each U.S. Attorney's Office along the Southwest Border to criminally prosecute all cases of illegal entry referred to them by the Department of Homeland Security (DHS).[168] Soon after, DHS declared its intention to refer all adult arrests for illegal entry to federal prosecutors at the Department of Justice (DOJ).[169] As many are now aware, this policy resulted in the forcible separation of thousands of children from their parents as DHS transferred adults to the custody of the U.S. Marshals Service to await criminal proceedings.[170]

In response to widespread public backlash, the Department of Homeland Security generally ceased referring parents with children to DOJ for prosecution as a matter of course. But the zero tolerance policy remains in effect for adults apprehended without children.[171] Already, those who enter the country illegally without a claim to remain here are subject to deportation proceedings. This policy ramps up punitive criminal penalties as a means of deterrence. This includes prosecutions against those fleeing violence, poverty, and persecution who are seeking asylum in our country.[172] The decision to prosecute asylum seekers is not only morally repugnant, it also violates international legal obligations to protect persons fleeing persecution and violence.[173]

The Trump administration justifies these prosecutions by claiming that asylum seekers should enter the United States the "right way" — at a port of entry.[174] As previously noted, the cruel irony is that many of these asylum seekers *did* present themselves legally at a port of entry, but were turned away indefinitely by Customs and Border Protection officials who alleged that they do not have the capacity to process asylum claims.[175] Now, the Trump administration's "remain in Mexico" plan is forcing asylum seekers to face the impossible choice of weathering prolonged uncertainty and potential danger in Mexico[176] or entering improperly. In effect, the Trump administration has created a catch-22; it blocks asylum seekers from seeking refuge through the "proper" channels at ports of entry and then punishes them for not going those channels denied to them.

Troop Deployment to the Border

President Trump is sending thousands of troops to the border to assist U.S. Customs and Border Patrol in turning away women and children fleeing violence, poverty, and persecution. ■ In October 2018, President Trump ordered the deployment of thousands of active-duty troops to the border in an effort to impede women and children from seeking asylum here.[177] This deployment was in addition to the over 2,000 National Guard troops already stationed at the border at President Trump's direction.[178] When announcing his October decision, President Trump treated these asylum seekers like enemies of the state, characterizing them as "invaders," and issuing a warning that "our military is waiting."[179] Initially, the Trump administration claimed that deployment orders would end in December, and that the mission would be limited in scope. Rather than conducting law enforcement activities, active-duty troops were to provide Customs and Border Protection agents with logistical help, such as installing barbed wire and transporting agents. These assertions were false. Mere weeks after his initial announcement, President Trump instructed then-Chief of Staff John Kelly to sign an order granting troops the right to use lethal force, and expanding their law enforcement authorities.[180] This mission creep has since continued. In January 2019, the Pentagon announced that it would extend the mission through September — equating to a nearly yearlong deployment — and that it would deploy an additional 3,750 troops[181] whose permitted duties would be further expanded to include surveillance and detection.[182] The Trump administration is incrementally moving our country towards a fully militarized border — not in response to any security threat, but to intimidate immigrants seeking refuge in our country

The Trump administration is incrementally moving our country towards a fully militarized border.

Notice to Appear

U.S. Citizenship and Immigration Services, the agency that has long focused on objectively adjudicating immigration applications and petitions, has made the extraordinary decision to embrace a new enforcement role in President Trump's deportation machine. ■ In July 2018, U.S. Citizenship and Immigration Services (USCIS) publicly released updated policy guidance on the issuance of Notices to Appear (NTAs).[183] A NTA is a document that initiates immigration removal proceedings by directing a noncitizen to appear before an immigration judge. Under the new guidance, USCIS mandates that a NTA be issued in a broad set of circumstances — most alarmingly, to every person who is "not lawfully present" in the United States at the time an application, petition, or request for an immigration benefit is denied.[184] Although in certain limited circumstances USCIS previously exercised its authority to issue NTAs, it primarily left that function to Immigration and Customs Enforcement (ICE). USCIS's longstanding practice was to notify the individual of the denial and of the obligation to depart the United States, and to leave any necessary subsequent enforcement activities to ICE.[185] Now, USCIS is expanding its enforcement role — a move that will undoubtedly have a chilling effect on those who might otherwise seek immigration benefits.

Noncitizens who have been here legally, and to whom USCIS denies an extension of status or change of status, will be thrust into our deportation machinery, complicating many cases that could be easily rectified outside of immigration court.[186] Even incorrect or arbitrary denials will sweep noncitizens into removal proceedings. Appallingly, this guidance applies even to immigrant victims of human trafficking and other crimes.[187] This will cause victims to be reluctant to come forward with evidence against criminal perpetrators.[188] The consequences of receiving a NTA can be extreme. Noncitizens who self-deport and fail to appear for removal proceedings will face a bar on re-entry.[189] Those who stay and await proceedings in an overburdened immigration court system will begin to accrue unlawful presence, which similarly triggers a re-entry bar.[190] This guidance injects fear and uncertainty into the legal immigration process by needlessly pushing thousands more noncitizens into deportation proceedings — even those who have followed all the rules.

Section Three:
Reshaping our Immigration Courts

Legal Assistance

The Department of Justice has sought to further erode what little due process exists in our immigration courts by stripping immigrants of access to information about their rights. ■ In June 2017, the Executive Office for Immigration Review (EOIR) announced that it would be phasing out its justice AmeriCorps program.[191] The program functioned as a partnership between EOIR and the Corporation for National and Community Service; it enrolled legal fellows and paralegals as AmeriCorps members to provide unaccompanied children with legal representation during removal proceedings.[192] Less than a year later, in April 2018, EOIR announced its intention to suspend the Legal Orientation Program (LOP) and Immigration Court Helpdesk (ICH).[193] Since 2003 and 2016 respectively, the LOP and ICH have provided detained immigrants with basic legal assistance and information about immigration court procedures.[194] These programs not only provide immigrants with a basic understanding of the immigration court, they increase court efficiency, which, in turn, results in cost-savings for the government.[195]

In immigration courts, immigrants facing deportation are not entitled to legal representation, and roughly 85 percent of detainees have no legal counsel.[196] Without LOP and ICH, immigrants would be forced to navigate a complex immigration system lacking an understanding of their rights or of how the process works. These complexities are even more daunting for the children left to fend for themselves in immigration court due to the elimination of the AmeriCorps program. Although former Attorney General Sessions reversed the suspension of LOP and ICH, the Justice Department continues to conduct an "efficiency" review of these programs,[197] indicating that the LOP and ICH may be in danger of elimination in the future. These decisions demonstrate the lack of regard this administration has for a fair judicial process and for whether immigrants understand the protections for which they may legally qualify.

Roughly **85%** of detainees have no legal counsel.

Self-Referrals

The Attorney General is exploiting a seldom-used tool to exert an unprecedented level of control over immigration policy, and in some cases, completely rewrite immigration law. ■ In accordance with federal regulations, the Attorney General is able to review and overturn decisions on immigration cases by self-referring them.[198] Since these decisions can change immigration precedent — which guides the decisions immigration judges make and has the potential to affect hundreds of thousands of immigrants — previous Attorneys General have wielded this power with great caution. Under the Obama administration, Attorneys General reviewed only four cases, and the Clinton and George W. Bush administrations averaged fewer than two reviews and referrals a year.[199] In contrast, former Attorney General Sessions referred more than half a dozen cases to himself in less than two years.[200] The Trump administration's motivations are unmistakable: use the authority of the Attorney General to restrict the discretion of immigration judges; advance partisan political objectives; and unilaterally reinterpret immigration law, often without basis in any statute.

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Quotas

In an effort to speed up deportations, the Department of Justice has established case quota requirements for immigration judges. ■ In March 2018, the Department of Justice notified immigration judges across the country that beginning on October 1, 2018, it would tie case completion quotas to judges' annual performance reviews.[201] In order to receive a satisfactory rating on their evaluations, judges are now required to clear at least 700 cases a year and have fewer than 15 percent of their decisions overturned on appeal.[202] The National Association of Immigration Judges warned that these performance metrics will erode the due process rights of immigrants and threaten judicial independence.[203] Judges will face pressure to decide cases in a manner their supervisors find favorable, or rush through cases without allowing sufficient time for a full and fair proceeding. These decisions have great impact, and can mean life or death for many immigrants. But under this administration's quota system, immigrants' futures will be subjected to assembly line justice.

Judges are now required to clear at least **700 cases a year** and have fewer than 15% of their decisions overturned on appeal.

Continuances

The Trump administration is limiting immigrants' access to justice by discouraging judges from allowing immigrants adequate time to find an attorney, prepare for their case, or gather evidence. ■ In July 2017, the Executive Office for Immigration Review (EOIR) issued a memorandum to all immigration judges urging them to grant fewer continuances.[204] In immigration cases, a judge may grant a continuance, or a delay in court proceedings, to ensure justice and fairness in a proceeding. A party may request a continuance for a variety of reasons. Oftentimes, immigrant respondents request a continuance to be given adequate time to find an attorney, prepare for their case, or gather evidence.[205] Continuances also allow U.S. Citizenship and Immigration Services (USCIS) the time necessary to adjudicate claims pending before it. For example, an immigrant who is a human trafficking victim may be waiting for USCIS to adjudicate his or her application for a T visa — a visa granted to trafficking victims who are willing to assist law enforcement with its investigation.

In the July guidance, EOIR alleged, without clear evidence, that there is a "strong incentive by respondents in immigration proceedings to abuse continuances."[206] Former Attorney General Sessions reiterated this erroneous charge in a precedent-setting decision issued the following year. The case, *Matter of L-A-B-R*, addressed the circumstances under which an immigration judge can grant continuances.[207] Sessions used his self-referral authority to unilaterally restrict the use of continuances by creating a heightened standard for allowable circumstances.[208] In his decision, the former Attorney General alleged that frequent continuances pose a "recurring problem" and described the decision as necessary to "protect against abuse."[209] Continuances are an effective tool to conserve limited court resources, relieve overburdened judges, and protect immigrants' due process rights. By characterizing requests for continuances as a form of fraud on the system and by asking judges to "root out" such requests, the Justice Department has launched a campaign against one of the few existing procedural mechanisms that serve both judicial efficiency and fairness.

Motions to Change Venue

The Trump administration is making immigration court proceedings unnecessarily burdensome by encouraging judges to deny immigrants' requests to move proceedings closer to their families or attorney. ■ In January 2018, the Executive Office for Immigration Review (EOIR) released guidance to immigration judges discouraging change of venue orders.[210] Immigrants or their representatives may request a venue change to have their case heard in another immigration court. Oftentimes, immigrants request a motion to change venue to allow their proceedings to occur closer to family already in the United States or to counsel they have retained. EOIR's January guidance stated that changes of venue create "operational inefficiencies."[211] EOIR now favors accelerated proceedings without regard to the complications and hardships this may create for immigrant respondents who will have an even more challenging time finding or retaining counsel, which in turn creates additional burdens for immigration judges.

Administrative Closure

Despite massive backlogs in our immigration courts, the Trump administration is choosing to pursue all cases to deportation — even those that the government closed long ago. ■ In August 2017, Immigration and Customs Enforcement (ICE) announced that it would soon change its practices relating to the administrative closure of immigration cases.[212] It also instructed its prosecutors to review administratively closed cases to determine whether the basis for their closure was appropriate.[213] Administrative closure removes a case from the active court docket. Although administrative closure does not provide an immigrant with any legal status, it does halt deportation proceedings. Immigration judges frequently use this practice to temporarily close cases against people who are not a priority for deportation — for instance, parents of U.S. citizen children who have been in the country for decades and have no criminal record. Shortly after ICE's announcement, the Trump administration began to revisit thousands of cases that the Obama administration had administratively closed, asking judges to place them back on their calendars. In fiscal year 2017, ICE revisited over 8,000 previously closed cases;[214] a July 2018 ICE memorandum leaked to the public discussed ICE's intent to revisit all 355,000 administratively closed cases.[215]

The Justice Department is also severely restricting immigration judges' ability to use administrative closure in future cases. In 2018, then-Attorney General Sessions self-referred a case for review on the question whether judges possess the authority to close a pending removal proceeding.[216] The Attorney General issued an opinion at odds with the Board of Immigration Appeals and the National Association of Immigration Judges, ruling that immigration judges "do not have the general authority to suspend indefinitely immigration proceedings by administrative closure."[217] This sweeping judgment will effectively end the use of administrative closure and have harmful, far-reaching consequences for those in removal proceedings.

Terminations

The Trump administration wants to facilitate a maximum number of deportations by drastically limiting immigration judges' ability to terminate removal proceedings. ■ In September 2018, then-Attorney General Sessions issued a decision in *Matter of S-O-G & F-D-B*, a case he had referred to himself concerning the circumstances under which an immigration judge can terminate removal proceedings.[218] Historically, immigration judges have had discretion to terminate cases. In his decision, the former Attorney General restricted immigration judges' ability to terminate cases to a set of exceptionally narrow circumstances.[219]

Conclusion

Through both the high-profile and under-the-radar changes to U.S. immigration policy, the Trump administration has profoundly distorted our immigration system. As a nation, we have long recognized that the immigrant story is the story of America. Immigrants founded and built this country. But President Trump is trying to expunge immigrants from the American narrative.

> [T]he Trump administration's anti-immigrant agenda will leave a stain on this nation and forever upend the very foundations of democracy in the United States.

The enormity of this administration's actions is all too often lost when policy changes trickle out and are overshadowed by other news. But when viewed in totality, these changes expose a systematic effort to pit immigrants against a hostile and unforgiving immigration system. The Trump administration engineered each of these policy changes to fundamentally overhaul our immigration system — to target immigrants, to shut the door on them, and to strip away their protections, rights, and avenues to relief. Each of these policy changes deserves scrutiny and demands accountability of its architects. This unrelenting assault on immigrants will impact our economy, our social fabric, and America's standing in the world. Unless unwound, or at least, ameliorated, the Trump administration's anti-immigrant agenda will leave a stain on this nation and forever upend the very foundations of democracy in the United States.

Endnotes

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