

REVVING UP THE DEPORTATION MACHINERY

Enforcement and Pushback under Trump

Report in Brief



By Randy Capps, Muzaffar Chishti, Doris Meissner,
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May 2018

This Report in Brief presents the key findings of a comprehensive Migration Policy Institute (MPI) study focused on interior immigration enforcement during the Trump administration and in particular the activities of U.S. Immigration and Customs Enforcement (ICE), the Department of Homeland Security agency responsible for interior enforcement. Over the course of six months in 2017, MPI researchers visited 15 jurisdictions in seven states, both in locations fully cooperative with ICE and those limiting their involvement, to assess the differences in enforcement and resulting impacts.

The full report provides significant detail on the policies in each of the study sites with regards to cooperation with ICE. It also offers a history of the rise of the interior immigration enforcement system that began in the mid-1990s, and explains how the system currently works and its intersection with state and local law enforcement. The report includes a detailed analysis of trends in arrests at the ICE field office level and detainers lodged and transfers to ICE from local custody for the largest counties in the United States and New York City.

To read the full report, visit:

www.migrationpolicy.org/research/deportation-machinery.

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Introduction

A centerpiece of Donald Trump's bid for the presidency was a promise to strictly enforce the nation's immigration laws, both at the border and within the country. Changes began within days of the inauguration and are reshaping the system by which removable noncitizens are arrested, detained, and deported—and could do so more dramatically in the years ahead.¹ This report in brief summarizes key findings of a year-long Migration Policy Institute (MPI) study of immigration enforcement in the U.S. interior by the Trump administration.

The report's findings reflect MPI fieldwork across the United States and analysis of U.S. Immigration and Customs Enforcement (ICE) administrative data. MPI researchers visited seven of ICE's 24 Enforcement and Removal Operations (ERO) field offices and 15 local jurisdictions, including the four largest U.S. cities (New York, Los Angeles, Chicago, and Houston). To assess differences in enforcement and resulting impacts, the research team visited locations fully cooperating with ICE as well as those limiting their involvement.² (See Table 1 for a list of study sites and policies.) The researchers also analyzed ICE data obtained via a *Freedom of Information Act* request on arrests during the first 135 days of the Trump administration and ICE detainees for the first 104 days.³

The broad picture that emerges is of a sea change in interior enforcement from the final years of the Obama administration, when ICE immigration activities were tightly focused on criminals, recent border crossers, and those with fresh removal orders. In a sharp reversal, Department of Homeland Security (DHS) policy under the Trump administration deems every unauthorized immigrant or otherwise deportable noncitizen a candidate for arrest and removal.

Who Was Interviewed?

The research team conducted 122 interviews, including meetings with ICE leadership in each study site and a combination of local police chiefs and/or sheriffs; state and local government officials; former immigration judges; immigration legal service providers; immigrant-serving community-based organizations; community organizers, advocates, and union leaders; and representatives from Mexican and Central American consular networks.

The broad picture that emerges is of a sea change in interior enforcement from the final years of the Obama administration.

Although the numbers deported during the Trump administration to date are well under peak levels set in earlier years, the context has changed dramatically. During the two most recent administrations, enforcement was implicitly or explicitly tied to the goal of broad immigration reform legislation—with heightened enforcement viewed as the necessary predicate to future congressional action. Today there is no such linkage. In fact, it is the opposite. The Trump administration characterizes immigrants, unauthorized and legal alike, as unwelcome and as threats to national security and to American jobs and workers. It has supported legislation that would significantly curtail legal immigration, drastically

- ¹ This report in brief summarizes the principal findings of the Migration Policy Institute (MPI) report by Randy Capps, Muzafar Chishti, Julia Gelatt, Jessica Bolter, and Ariel G. Ruiz Soto, *Revving Up the Deportation Machinery: Enforcement and Pushback under Trump* (Washington, DC: MPI, 2018), www.migrationpolicy.org/research/deportation-machinery. The study does not examine changing enforcement at the border or rules and procedures around legal immigration admissions.
- ² The jurisdictions studied are home to about 28 percent of the U.S. unauthorized population of 11 million. See MPI Data Hub, "Unauthorized Immigrant Population Profiles," accessed March 15, 2018, www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles.
- ³ The first 135 days of the Trump administration span the period from January 20 – June 3, 2017. The first 104 days span the January 20 - May 4 period. U.S. Immigration and Customs Enforcement (ICE) selected those periods in providing the data sought by MPI in its *Freedom of Information Act* (FOIA) request.



reduced refugee and other humanitarian admissions, and ended various protection programs such as Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) for certain populations. The administration’s enforcement narrative is muscular and combative, breeding a climate of fear as an enforcement tool, a deterrent to future migration, and a wedge between immigrants and the native-born population.

In ways big and small, the administration is pulling as many levers as it can to reorient the enforcement system. At the same time, there is growing pushback on many fronts: from congressional unwillingness to appropriate funding for the massive expansion of immigration enforcement the administration has requested, to grassroots mobilizing around “know-your-rights” campaigns that have emboldened immigrant households to refuse entry to ICE officers without warrants.

Perhaps the most damaging development has been the growing divide between state and local jurisdictions in their willingness to cooperate with federal enforcement. The rebirth of the “sanctuary” movement, which has triggered a backlash from the federal government, has resulted in a vicious cycle of countermeasures that shows no signs of abating. For example, California recently enacted three laws and the state Attorney General issued an opinion restricting ICE’s ability to identify and take custody of removable immigrants in state prisons and local jails—substantially shrinking the federal government’s enforcement net in the state with the largest unauthorized population. In response, the Trump administration has sued the state and threatened to withhold federal funding, and some California counties and cities have joined the lawsuit or otherwise protested the recent state laws.

The conflict is generating growing disparities in immigration enforcement across the country in a policy realm that is already hotly contested. As MPI’s findings demonstrate, the fortunes of an unauthorized immigrant are quite different in Texas, Tennessee, and Georgia, where the mere act of driving can result in arrest and deportation, than in California, Chicago, and New York, where immigrants can be arrested for a variety of crimes and still not be taken into ICE custody. Such unevenness in the enforcement landscape threatens a core principle of the U.S. constitutional system—federal pre-eminence in immigration—with severe implications for effective law enforcement relationships and public safety.

Perhaps the most damaging development has been the growing divide between state and local jurisdictions in their willingness to cooperate with federal enforcement.

I. The Evolution of the Interior Immigration Enforcement System

The era of contemporary immigration enforcement began in 1996 when Congress passed two laws that significantly increased the numbers and types of crimes that could lead to deportation, broadened the federal government’s detention and deportation powers, and established for the first time a mechanism to delegate authority for federal immigration enforcement functions to state and local police officers through what are known as 287(g) agreements.⁴

⁴ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)*, Division C of Public Law 104–208, *U.S. Statutes at Large* 110 (1996): 3009, www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf; *Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)*, Public No. 104-132, *U.S. Statutes at Large* 110 (1996): 1214, www.gpo.gov/fdsys/pkg/PLAW-104publ132/pdf/PLAW-104publ132.pdf.



A. Rising Enforcement in the Bush and Early Obama Administrations

In the aftermath of the September 11, 2001 terrorist attacks, Congress created the Department of Homeland Security and a new interior immigration enforcement agency within it, U.S. Immigration and Customs Enforcement.

During the Bush administration, ICE enforcement activity expanded greatly. Beyond the 287(g) agreements signed with 61 law enforcement agencies between 2002 and 2008, including those covering the major urban counties of Los Angeles, Harris (Houston), and Maricopa (Phoenix),⁵ ICE used its Criminal Alien Program (CAP) officers to screen inmates in state prisons and local jails for immigration violations that made them removable. The agency also conducted several high-profile operations at worksites and in the community. The Bush administration initiated Secure Communities—a link between FBI and DHS databases that identifies encounters with immigration authorities for anyone fingerprinted in a prison, jail, or police station—and developed plans to take the program nationwide. Secure Communities was expanded during the Obama administration to booking facilities in all 3,181 U.S. law enforcement jurisdictions.⁶ Together, these ICE operations and programs resulted in peak levels of removals from the U.S. interior (exceeding 200,000 annually) from fiscal years (FY) 2008-11.⁷

B. Narrowing Enforcement in the Late Obama Administration

As Secure Communities expanded nationwide, ICE issued an increasing number of detainers: requests for federal and state prisons and local jails to hold inmates for up to 48 hours after they have served their sentences or otherwise been released from custody. The purpose of the detainer is to allow ICE time to arrange transport of the detainee into ICE custody. In the Bush and early Obama administrations, ICE often issued detainers on individuals with criminal charges, not necessarily convictions, or for minor crimes such as traffic violations.

Starting in 2011, states such as California and Connecticut and localities including New York City and Cook County, Illinois, enacted laws and ordinances limiting compliance with ICE detainers.⁸ Federal court action followed, with rulings that detainers are voluntary, not mandatory, and that holding noncitizens on detainers could violate their constitutional rights.⁹ As a result, many local jurisdictions stopped complying with detainers almost entirely, giving ICE less time to arrange transfer and potentially stopping the process entirely for noncitizens with minor violations, who spend a short time in local custody.

As growing numbers of states and localities failed to honor detainers and immigrant advocates mobilized against deportation measures, the Obama administration issued prosecutorial discretion memoranda

5 Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), 111, www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery.

6 ICE, “Secure Communities: Overview,” updated November 13, 2017, www.ice.gov/secure-communities.

7 ICE, “FY 2015 ICE Removals,” updated June 22, 2017, www.ice.gov/removal-statistics/2015.

8 State of California, *An Act to Add Chapter 17.1 (Commencing with Section 7282) to Division 7 of Title 1 of the Government Code, Relating to State Government*, AB4, 2013–14 Assembly session, Chapter 570, (2013), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB4; State of Connecticut, *An Act Concerning Civil Immigration Detainers*, HB6659, General Assembly Session Year 2013, Public Act No. 13-155, (2013), www.cga.ct.gov/2013/act/pa/2013PA-00155-R00HB-06659-PA.htm; New York City, *Persons Not to Be Detained*, Law Number 2011/062 (2011), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=967785&GUID=9F7C289B-A8D8-4A95-8882-BF044CBB5EE2>; Cook County, Illinois, *Policy for Responding to ICE Detainers*, Ordinance 11-0-73, (2011), [https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20\(enacted\).pdf](https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20(enacted).pdf).

9 *Galarza v. Szalczyk*, No. 12-3991 (Third U.S. Circuit Court of Appeals, March 4, 2014), www2.ca3.uscourts.gov/opinarch/123991p.pdf; *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST (U.S. District Court, District of Oregon, April 11, 2014), www.clearinghouse.net/chDocs/public/IM-OR-0004-0003.pdf.



in 2010, 2011, and 2014 that increasingly narrowed priorities for ICE arrest and deportation.¹⁰ The final 2014 memorandum focused on security threats; individuals with convictions for felonies, serious misdemeanors, or multiple misdemeanors; and recent arrivals or those with recent removal orders. It effectively protected 87 percent of unauthorized immigrants nationwide from deportation.¹¹

As a result, arrests and removals fell significantly during the latter Obama years from the historic highs established in the administration's first term. ICE officers around the country told MPI researchers that the discretion memos severely handicapped enforcement operations and prevented them from arresting noncitizens who were subject to deportation but not in the priority categories.

In addition, the Obama administration created the Deferred Action for Childhood Arrivals (DACA) program, exempting from enforcement certain unauthorized immigrants who entered the United States as children. The administration also replaced Secure Communities with the Priority Enforcement Program (PEP), which allowed states and localities to notify ICE when immigrants were released from custody, rather than requiring them to hold them an extra two days based on detainers. PEP also allowed jurisdictions to negotiate narrower or broader parameters for cooperation in immigration enforcement depending on state and local contexts.¹²

C. Widening Enforcement in the Trump Administration

Trump's interior enforcement executive order, issued in the first week of his administration and implemented almost immediately,¹³ represents a fundamental shift in thinking and strategies from the final Obama years. The order revoked the Obama administration's prosecutorial discretion policies, and it expanded enforcement priorities to include noncitizens convicted of any crime, arrested for a crime even if not convicted, committing a crime without being arrested, and being a public-safety threat in the eyes of an immigration officer. Subsequent implementing memos made all unauthorized immigrants and removable legal residents subject to deportation.¹⁴

The executive order also restored Secure Communities, requested states and localities to honor detainers and hold removable noncitizens an extra 48 hours, and encouraged more jurisdictions to sign 287(g) agreements to assist ICE in identifying and detaining deportable immigrants. Finally, the administration eliminated long-established practices for the exercise of prosecutorial discretion in arrest, detention,

10 Memorandum from John Morton, Homeland Security Assistant Secretary, to All ICE Employees, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, June 30, 2010, www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf; Memorandum from John Morton, ICE Director, to All Field Office Directors, All Special Agents in Charge, All Chief Counsel, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, June 17, 2011, www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.

11 Marc R. Rosenblum, *Understanding the Potential Impact of Executive Action on Immigration Enforcement* (Washington, DC: MPI, 2015), www.migrationpolicy.org/research/understanding-potential-impact-executive-action-immigration-enforcement.

12 ICE, "Priority Enforcement Program," updated June 22, 2017, www.ice.gov/pep.

13 Donald J. Trump, "Executive Order 13768 of January 25, 2017: Enhancing Public Safety in the Interior of the United States," *Federal Register* 82, no. 18 (January 30, 2017): 8799-803, www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02095.pdf.

14 *Ibid.*; Memorandum from John F. Kelly, Homeland Security Secretary, to Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection; Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement; Lori Scialabba, Acting Director, U.S. Citizenship and Immigration Services; Joseph B. Maher, Acting General Counsel; Dimple Shah, Acting Assistant Secretary for International Affairs; and Chip Fulghum, Acting Undersecretary for Management, *Enforcement of the Immigration Laws to Serve the National Interest*, February 20, 2017, www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf; Memorandum from Matthew T. Albence, ICE Executive Associate Director, to All ERO Employees, *Implementing the President's Border Security and Interior Immigration Enforcement Policies*, February 21, 2017, <https://assets.documentcloud.org/documents/3889695/doc00801320170630123624.pdf>.



and removal activities by revoking ICE and legacy Immigration and Naturalization Service (INS) memos dating to the 1970s.¹⁵

The new enforcement environment is perhaps best illustrated by a public warning by ICE Acting Director Thomas Homan:

"If you're in this country illegally, and you committed a crime by entering this country, you should be uncomfortable. You should look over your shoulder."¹⁶

The call for aggressive enforcement has been met with favor in some states and opposed in others. In 2017, California passed legislation further restricting ICE cooperation, and Illinois adopted legislation placing statewide limits on cooperation.¹⁷ Texas enacted a law requiring all counties to honor detainees and otherwise cooperate with ICE. Mississippi and Iowa followed Texas' lead.¹⁸

II. The First Year of Interior Enforcement under Trump

The changes in enforcement under the Trump administration have resulted in a sudden and substantial increase in arrests and deportations, as compared with the immediately preceding Obama years. At the same time, the numbers remain well below their peak at the end of the Bush period and early Obama years. This section outlines key research findings from MPI's year-long study.

- 15 Opinion from Sam Bernsen, Immigration and Naturalization Service (INS) General Counsel, to the INS Commissioner, *Legal Opinion Regarding Service Exercise of Prosecutorial Discretion*, July 15, 1976, www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf; Memorandum from William J. Howard, ICE Principal Legal Advisor, for the Chief Counsels, *Exercising Prosecutorial Discretion to Dismiss Adjustment Cases*, October 6, 2005, www.ice.gov/doclib/foia/prosecutorial-discretion/pd-dismiss-adjustment-cases.pdf; Memorandum from William J. Howard, ICE Principal Legal Advisor, for All Office of the Principal Legal Advisor (OPLA) Chief Counsel, *Prosecutorial Discretion*, October 24, 2005, www.asistahelp.org/documents/resources/DHS_NTA_discretion_7076BC4F57842.pdf; Memorandum from Julie L. Myers, Homeland Security Assistant Secretary, for All Field Office Directors and All Special Agents in Charge, *Prosecutorial and Custody Discretion*, November 7, 2007, www.ice.gov/doclib/foia/prosecutorial-discretion/custody-pd.pdf; Memorandum from Doris Meissner, INS Commissioner, to Regional Directors, District Directors, Chief Patrol Agents, and Regional and District Counsel, *Exercising Prosecutorial Discretion*, November 17, 2000, www.shusterman.com/pdf/prosecutorialdiscretionimmigration1100.pdf.
- 16 Maria Sacchetti, "ICE Chief Tells Lawmakers Agency Needs Much More Money for Immigration Arrests," *Washington Post*, June 13, 2017, www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98_story.html?utm_term=.5fbc548d563a.
- 17 State of California, *An Act to Amend Sections 7282 and 7282.5 of, and to add Chapter 17.25 (Commencing with Section 7284) to Division 7 of Title 1 of, the Government Code, and to Repeal Section 11369 of the Health and Safety Code, Relating to Law Enforcement*, SB54, 2017-18 Senate session, Chapter 495 (2017), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB54; State of Illinois, *The Illinois TRUST Act*, SB31, Public Act 100-0463 (2017), www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0463.
- 18 State of Texas, *An Act Relating to the Enforcement by Campus Police Departments and Certain Local Governmental Entities of State and Federal Laws Governing Immigration and to Related Duties and Liability of Certain Persons in the Criminal Justice System; Providing a Civil Penalty; Creating a Criminal Offense, General and Special Laws of Texas*, Chapter 4 (2017), www.lrl.state.tx.us/scanned/signedBills/85-0/sb4.pdf; State of Mississippi, *An Act to Prohibit a State Agency, Department, Political Subdivision of This State, County, Municipality, University, College, Community College or Junior College, or Any Agent, Employee or Officer Thereof from Creating, Planning, Implementing, Assisting, Participating In, or Enabling a Sanctuary Policy; to Provide that Any Sanctuary Policy Adopted in Violation of This Act Shall Be Invalid and Void from the Date of Its Adoption or Enactment; and for Related Purposes*, SB2710, 2017 regular sess., Public Chapter 383 (2017), <http://billstatus.ls.state.ms.us/documents/2017/pdf/SB/2700-2799/SB2710SG.pdf>; State of Iowa, *An Act Relating to the Enforcement of Immigration Laws and Providing Penalties and Remedies, Including the Denial of State Funds to Certain Entities*, SF 481, 87th General Assembly (2018), www.legis.iowa.gov/legislation/BillBook?ga=87&ba=sf481.

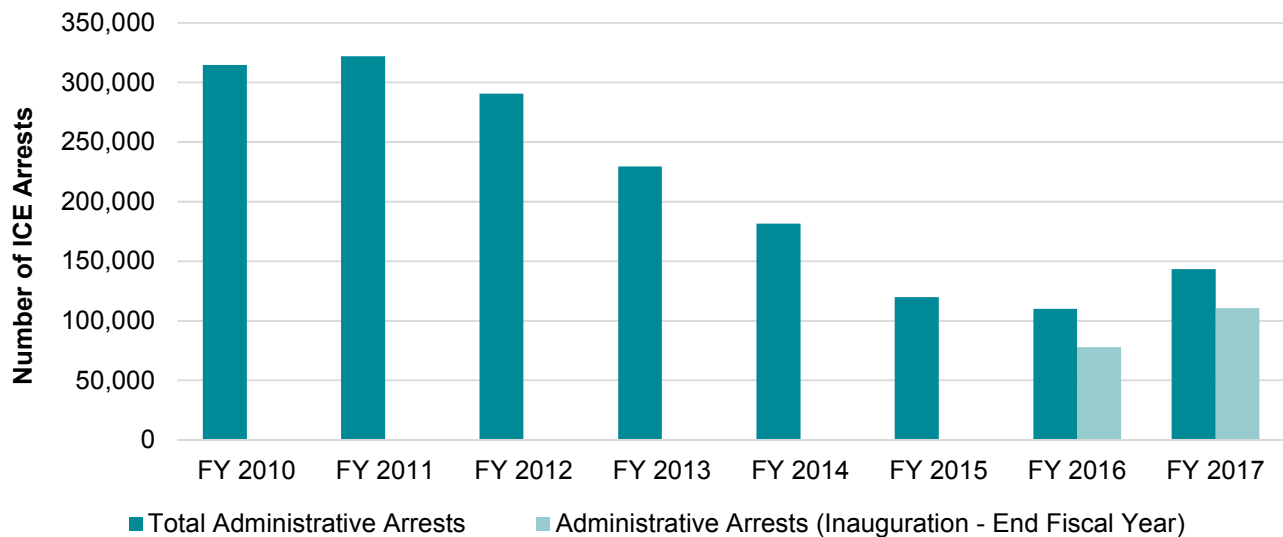


A. Expanded Priorities Result in More Arrests and Deportations

During the eight months between the inauguration and the September 30 end of the fiscal year, ICE made 110,568 arrests, up 42 percent from the 77,806 recorded during the same period in FY 2016. The number of removals (i.e., formal deportations) from the U.S. interior rose by 37 percent: to 61,094 from 44,512.¹⁹ The jump in arrests and removals represents a sharp change from the late Obama administration, when ICE arrests fell by about two-thirds: from 322,093 in FY 2011 to 110,104 in FY 2016.²⁰ Interior removals during the same period dropped by a similar proportion, from 223,755 to 69,478, the result of narrowed enforcement priorities and reduced state and local detainer compliance.²¹

However, even with the rising arrests and deportations under Trump, the numbers are far from the peak enforcement years. There were more than 300,000 arrests annually in FY 2010 and FY 2011 (data are unavailable before 2010)—about twice the 2017 level. Interior deportations from FY 2008-11 were also twice the 2017 level: more than 200,000 annually.

Figure 1. ICE ERO Administrative Arrests in U.S. Interior, FY 2010-17



Sources: U.S. Immigration and Customs Enforcement (ICE), “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” December 13, 2017, 2-3, www.ice.gov/removal-statistics/2017; Bryan Baker, *Immigration Enforcement Actions: 2016* (Washington, DC: Department of Homeland Security, Office of Immigration Statistics, 2017), 4, www.dhs.gov/sites/default/files/publications/Enforcement_Actions_2016.pdf.

Even with the rising arrests and deportations under Trump, the numbers are far from the peak enforcement years.

¹⁹ ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” updated December 13, 2017, 3, www.ice.gov/removal-statistics/2017.

²⁰ Bryan Baker, *Immigration Enforcement Actions: 2016* (Washington, DC: DHS, Office of Immigration Statistics, 2017), 4, 11, www.dhs.gov/sites/default/files/publications/Enforcement_Actions_2016.pdf.

²¹ ICE, “FY 2015 ICE Immigration Removals.”



Thus, while the Trump administration is achieving enforcement results well beyond those of the final years of the Obama administration, arrests in the current resource climate may not again return to their prior peak.²² This is because growing numbers of jurisdictions limit their law enforcement cooperation with ICE. Arrests made directly by ICE officers during operations at residences and in the community have risen to about 40,000 annually, which is near earlier peaks. But transfers into ICE custody from state and local law enforcement agencies, after initial arrest by those agencies, lag historic highs substantially, especially in California and other places with sizeable foreign-born populations that limit cooperation with federal immigration enforcement.

B. “Sanctuary” Policies Curb Enforcement

ICE relies heavily on state and local law enforcement agencies to help identify and arrest noncitizens for removal. During the first 135 days of the Trump administration, according to MPI’s analysis, 69 percent of ICE arrests nationwide were based on transfers from the criminal justice system, mostly state prisons or local jails.²³

States and localities vary widely in their cooperation with ICE in prisons and jails under their jurisdiction. Many large states and major cities limit cooperation, thereby reducing the number of noncitizens ICE can take into custody. Others encourage ICE cooperation, enabling substantial increases in arrests. Although these differences mostly date to the prior administration, many states and localities have doubled down on their unwillingness to cooperate by adopting new or more restrictive policies. Others have moved farther in the other direction, promoting and formalizing greater cooperation with ICE.

In full-cooperation jurisdictions, those arrested and booked into local jails are screened for immigration status and deportability through a combination of Secure Communities database checks and interviews by ICE or local 287(g) officers. For individuals who are subject to deportation, ICE issues a detainer, the jail complies with the detainer, and the immigrant is taken into ICE custody given sufficient detention capacity. Most of the nation’s law enforcement jurisdictions fully cooperate with ICE. (For levels of cooperation among MPI study sites see Table 1. See the full report’s Appendix B for a detailed description of policies governing ICE cooperation in the study sites.)

While the Trump administration is achieving enforcement results well beyond those of the final years of the Obama administration, arrests in the current resource climate may not again return to their prior peak.

22 An omnibus budget agreement enacted in March 2018 provided \$7.1 billion for ICE, up \$641 million from the previous year. The budget included salaries for 75 more ICE Homeland Security Investigations officers, but no additional Enforcement and Removal Operations (ERO) officers—the officers charged with arresting, detaining, and deporting removable noncitizens. The budget also funded an additional 1,196 detention beds, far fewer than the several thousand the Trump administration had requested. See House Appropriations Committee, *Fiscal Year 2018 Homeland Security Bill*, March 21, 2018, https://appropriations.house.gov/uploadedfiles/03.21.18_fy18_omnibus_-_homeland_security_-_summary.pdf.

23 MPI analysis of ICE ERO administrative arrest data received June 28, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-27751.

**Table 1. ICE ERO Field Offices and Local Jurisdictions Visited, with Cooperation Status and Month Visited**

ICE Field Office	Jurisdiction	Level of Cooperation with ICE	Month Visited by MPI Study Team
Houston	Harris County	Fully cooperating	March 2017
Chicago	Cook County	Limited cooperation / sanctuary	April 2017
Chicago	DuPage, Lake, and McHenry counties (Chicago suburbs)	Fully cooperating	April 2017
Atlanta	Fulton and DeKalb counties in Georgia (Atlanta and suburbs)	Fully cooperating	May 2017
Atlanta	Gwinnett and Hall counties (Atlanta suburbs)	Fully cooperating / 287(g) agreements	May 2017
Los Angeles	Los Angeles County	Limited cooperation / sanctuary	June 2017
Los Angeles	Orange County (suburban Los Angeles)	Limited cooperation / 287(g) agreement	June 2017
Arlington, VA	Prince William County, Virginia (suburban Washington, DC)	Fully cooperating / 287(g) agreement	July 2017
New Orleans	Nashville/Davidson County Memphis/Shelby County	Fully cooperating	July 2017
New York	New York City	Limited cooperation / sanctuary	August 2017

Note: Sorted by date visited.

As many as 300 jurisdictions have “sanctuary” policies that either limit cooperation or symbolically oppose ICE cooperation, and about 200 of these do not honor ICE detainers.²⁴ Sanctuary jurisdictions restrict cooperation by not: (1) holding people for extra time on ICE detainers; (2) notifying ICE when someone is released; or (3) permitting ICE screening of those arrested for immigration status. The largest group of jurisdictions restrict cooperation by not honoring detainers, and some federal and state courts have lent support to these policies by declaring that holding noncitizens on detainers could violate their constitutional rights.

The administration is taking aim at noncompliant jurisdictions in a number of ways. Justice Department officials, who have repeatedly criticized the sanctuary jurisdictions that do not cooperate fully with ICE, have threatened to withhold federal funding.²⁵ In March 2018, U.S. Attorney General Jeff Sessions sued

24 There is no single, consistent definition of “sanctuary.” Sanctuary jurisdictions have varying levels of cooperation with ICE, and some have largely symbolic policies that do not directly affect ICE cooperation. See Tal Kopan, “What Are Sanctuary Cities and Can They Be Defunded?” CNN, March 26, 2018, www.cnn.com/2017/01/25/politics/sanctuary-cities-explained/index.html.

25 Kate Mather, “L.A. Asked for \$3 Million for Community Policing. The DOJ Said No. Some Fear It’s a Sign of What’s Ahead,” *Los Angeles Times*, December 5, 2017, www.latimes.com/local/lanow/la-me-ln-lapd-funding-20171205-story.html.



California, charging that provisions of the state's sanctuary laws violate federal law.²⁶ Orange County—the only California county that had a 287(g) program before the latest state law banned it—joined the Justice Department lawsuit.²⁷

Growing variations in levels of cooperation with ICE have given rise to different trends in the national picture of ICE arrests.

The California share of overall ICE arrests fell after the state enacted policies limiting cooperation.

The national share of ICE arrests made by California's three ICE ERO field offices (Los Angeles, San Francisco, and San Diego) dropped from 23 percent in FY 2013 to 14 percent in FY 2017. The number of arrests in both the Los Angeles and San Francisco offices dropped by about two-thirds over this period, and by 37 percent in San Diego. Arrests fell most sharply between FY 2013 and FY 2015, as the California TRUST Act and narrower national enforcement priorities went into effect, and when California counties stopped complying with most ICE detainers.²⁸ Arrests rose by just 9 percent in each of the San Francisco and Los Angeles offices from FY 2016 to 2017, as compared to a national increase of 30 percent.²⁹

By contrast, the Texas share of overall ICE arrests rose amid enactment of a state law mandating full cooperation and expansion of 287(g) cooperative agreements across the state.

The four Texas ICE offices (Dallas, Houston, San Antonio, and El Paso) saw their share of overall ICE arrests increase from 25 percent to 28 percent between FY 2013 and FY 2017. During 2017, Texas enacted SB 4, which withholds state funding from and threatens criminal penalties against officials in counties not fully cooperating with ICE.³⁰ At the beginning of 2017, just one Texas county had a 287(g) agreement with ICE to assist in screening noncitizens in jails for removability; by early 2018, 25 Texas counties had such agreements.³¹

The share of ICE arrests originating in prisons and jails is falling, due in part to declining state and local cooperation.

During the peak of arrests in FY 2008-11, before most states and localities began limiting their cooperation, prisons and jails were the origin for more than 85 percent of ICE arrests. During FY 2013 and FY 2014, as the Obama administration implemented its narrower enforcement priorities, the ratio fell to just over 75 percent. During the first 135 days of the Trump administration in FY 2017, the ratio dropped further, to 69 percent.³²

Even as ICE is issuing significantly more detainers, book-in rates are not keeping pace because of policies limiting cooperation, including in California, New York City, and Chicago.

ICE issued 70 percent more detainers nationwide during the first 104 days of the Trump administration than during the same period in 2016, but the number of people booked into ICE custody through detainers rose just

26 *United States v. State of California et al.*, No. 18-264 (U.S. District Court for the Eastern District of California, March 6, 2018), www.justice.gov/opa/press-release/file/1041431/download.

27 Christine Mai-Duc, "Orange County 'Sanctuary State' Vote Cheered by Republicans in Most Competitive Congressional Races," *Los Angeles Times*, March 29, 2018, www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-immigration-schools-guidelines-1522354331-htlmlstory.html.

28 The TRUST Act prohibits state and local jails from holding individuals for ICE after completion of criminal sentences, unless convicted of certain crimes, mostly felonies and serious misdemeanors. See State of California, *An Act to Add Chapter 17.1 (Commencing with Section 7282) to Division 7 of Title 1 of the Government Code, Relating to State Government*.

29 MPI analysis of ICE ERO administrative arrest data received June 28, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-27751; Kristen Bialik, "ICE Arrests Went Up in 2017, with Biggest Increases in Florida, Northern Texas, Oklahoma," Pew Research Center Fact Tank blog, February 8, 2018, www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/.

30 State of Texas, *An Act Relating to the Enforcement by Campus Police Departments and Certain Local Governmental Entities of State and Federal Laws Governing Immigration and to Related Duties and Liability of Certain Persons in the Criminal Justice System; Providing a Civil Penalty; Creating a Criminal Offense*.

31 ICE, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," updated March 26, 2018, www.ice.gov/287g.

32 Marc R. Rosenblum and William Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens* (Washington, DC: Congressional Research Service, 2012), 25, <https://fas.org/sgp/crs/homesec/R42057.pdf>; MPI analysis of ICE ERO administrative arrest data received June 28, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-27751.



20 percent.³³ (Only about one-third of noncitizens with detainers issued on them were booked into ICE custody during the first 104 days of the administration, but some may later have been booked in after they completed their prison sentences.) The number of detainers that state or local law enforcement agencies officially declined more than quadrupled. During FY 2017, just 6 percent of those released from state or local custody after a detainer was declined were later rearrested by ICE officers.

In California, the numbers transferred to ICE fell in Los Angeles, Orange, Ventura, Riverside, Alameda, and Kern counties, even though the number of detainers issued increased in all of them. In the early Trump period, just 29 noncitizens in New York City and ten in Cook County were taken into ICE custody using detainers, and most of these reportedly served time in state prisons for serious crimes. With custody transfers from the nation's three most populous cities and jurisdictions across the largest state so low, it will be extremely difficult for ICE to match the arrest and deportation peaks of the late Bush and early Obama years.

Full-cooperation policies have led to more transfers to ICE from local custody in some jurisdictions, however, including the MPI study sites of Harris, Gwinnett, and Prince William counties. ICE arrests following detainers issued for people in county jails increased significantly in the two largest study sites that fully cooperate with ICE. From January 20 through May 4, 2017, the number of people booked into ICE custody from local jails was 60 percent higher in Harris County than the same period in the prior year, and 248 percent higher in Gwinnett County (one of the greatest increases for any of the large counties analyzed). No detainers were declined in the study sites of Harris, Gwinnett, or Prince William Counties.

In Gwinnett County, which operates one of the largest 287(g) programs in the country, there was a resurgence in arrests of people with traffic violations during 2017. Prior MPI research in 2010 found that local police in Gwinnett County arrested large numbers of unauthorized immigrants based on traffic violations, particularly driving without a license.³⁴ When the Obama administration narrowed priorities to exclude most traffic crimes, these arrests declined, but by the time of MPI visits in 2017, such arrests were common again.³⁵ Traffic-based arrests followed a similar pattern in Prince William County, another site with a 287(g) agreement.

The number of 287(g) cooperative agreements between ICE and local law enforcement agencies has increased. Between January 2017 and February 2018, the number of 287(g) agreements more than doubled from 30 to 76—the highest in the history of the program.³⁶ Most of the 46 jurisdictions that signed up in 2017 and 2018 are in small cities and suburban or rural areas. The large cities that used to have 287(g) agreements—Los Angeles, Houston, Phoenix, and Nashville—are unlikely to return to the program. The *California Values Act*, which went into effect at the beginning of 2018, banned 287(g) agreements in the state.³⁷

33 MPI analysis of ICE ERO detainers received August 3, 2017 via FOIA request from ERO LESA Statistical Tracking Unit, FOIA Tasking 2017-ICFO-26209.

34 Randy Capps, Marc R. Rosenblum, Muzaffar Chishti, and Cristina Rodríguez, *Delegation and Divergence: 287(g) State and Local Immigration Enforcement* (Washington, DC: MPI, 2010), www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement.

35 Vivian Yee, "Please, God, Don't Let Me Get Stopped": Around Atlanta, No Sanctuary for Immigrants," *The New York Times*, November 25, 2017, www.nytimes.com/2017/11/25/us/atlanta-immigration-arrests.html?_r=0.

36 Mica Rosenberg and Reade Levinson, "Police in Trump-Supporting Towns Aid Immigration Officials in Crackdown," Reuters, November 27, 2017, www.reuters.com/article/us-trump-effect-immigration-police/police-in-trump-supporting-towns-aid-immigration-officials-in-crackdown-idUSKBN1DR169; ICE, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act."

37 The *Values Act* also prohibits holding noncitizens on ICE detainers without judicial warrants, sharing nonpublic information about them with ICE, transferring into ICE custody individuals who have not been convicted of certain enumerated crimes—a list narrower than that in the earlier TRUST Act—and notifications to ICE of release dates for such individuals, unless those release dates are also publicly available. See State of California, *An Act to Amend Sections 7282 and 7282.5 of, and to add Chapter 17.25 (Commencing with Section 7284) to Division 7 of Title 1 of, the Government Code, and to Repeal Section 11369 of the Health and Safety Code, Relating to Law Enforcement*.



C. From ‘Collaterals’ to Courthouses: Enforcement Has Expanded and Become Unpredictable

Amid growing pushback in some locations, ICE has adjusted some of its enforcement activities, conducting more operations in limited-cooperation jurisdictions, arresting people in courthouses and near sensitive locations such as schools, carrying out more arrests in the community and bringing in immigrants who were not targets, and taking in a growing share of noncriminals. As tactics have changed, anxiety has mounted in immigrant communities. The message coming from DHS officials is clear: Any unauthorized immigrant or removable legal immigrant encountered by an ICE agent can be arrested.

What has been especially noteworthy is ICE’s stepped-up enforcement in jurisdictions that limit cooperation. During Operation Safe City, in September 2017, ICE made more than 500 arrests in Baltimore, Boston, Chicago, Los Angeles, New York, Philadelphia, San Jose, Seattle, and Washington, DC.³⁸ All are jurisdictions that have limited-cooperation policies. ICE leadership has stated several times that such operations would continue as long as jurisdictions do not fully cooperate.³⁹

ICE officers told MPI researchers that to the extent jurisdictions do not cooperate by granting ICE access to controlled settings, such as local jails, their agency has little choice but to carry out enforcement activities in neighborhoods and other community locations, even though it is not as efficient a use of their time or resources, nor does such enforcement yield the numbers that can be identified by screening cases in local jails. Changes in the policies and strategies ICE is now implementing have altered the character and predictability of immigration enforcement in significant ways.

Nationwide, the number of “at-large” arrests by ICE agents at homes and in the community rose more rapidly than arrests originating in prisons and jails. During the first 135 days of the Trump administration, there were 13,601 such arrests—up 55 percent from the same period in 2016; a much greater increase than the 24 percent rise in arrests from prisons and jails. Moreover, there were 40,066 at-large arrests during all of FY 2017—a level similar to the peaks during FY 2009-11.⁴⁰ These arrests are not subject to cooperation with state and local authorities, who cannot prevent them.

The majority of those ICE arrested had criminal records, but this share is falling. In FY 2017, two-thirds of noncitizens picked up in at-large arrests had criminal convictions.⁴¹ ICE press releases during early 2018 highlighted arrests of a number of noncitizens convicted of serious crimes such as involuntary manslaughter, rape, sexual assault, spousal abuse, assault with force, grand theft, and discharge of a firearm.⁴²

Between FY 2016 and FY 2017, however, ICE arrests of noncitizens without criminal convictions rose by 147 percent, while arrests of those with such convictions rose by only 7 percent.⁴³ The President’s interior

38 ICE, “ICE Arrests Over 450 on Federal Immigration Charges During Operation ‘Safe City’” (news release, September 28, 2017), www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city.

39 ICE, “Statement from ICE Acting Director Tom Homan on California Sanctuary Law” (news release, October 6, 2017), www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law.

40 ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 6.

41 Ibid, 7.

42 ICE, “ICE Arrests 89 in North Texas and Oklahoma Areas During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives” (news release, March 27, 2018), www.ice.gov/news/releases/ice-arrests-89-north-texas-and-oklahoma-areas-during-3-day-operation-targeting; ICE, “ICE Operation in San Diego/Imperial Counties Results in 115 Arrests” (news release, March 16, 2018), www.ice.gov/news/releases/ice-operation-san-diegoimperial-counties-results-115-arrests; ICE, “232 Illegal Aliens Arrested During ICE Operation in Northern California” (news release, March 1, 2018), www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california; ICE, “ICE Arrests 86 in North Texas and Oklahoma Areas During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives” (news release, January 26, 2018), www.ice.gov/news/releases/ice-arrests-86-north-texas-and-oklahoma-areas-during-3-day-operation-targeting; ICE, “ICE Arrests 22 in Chicago Area During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives” (news release, January 10, 2018), www.ice.gov/news/releases/ice-arrests-22-chicago-area-during-3-day-operation-targeting-criminal-aliens-and.

43 ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 6.



enforcement executive order expanded enforcement priorities greatly beyond noncitizens with criminal convictions.⁴⁴ In addition, the agency's press releases have stated that anyone who has re-entered the country illegally after being removed is a high priority.⁴⁵

ICE arrested more bystanders during targeted enforcement operations. Known as “collateral arrests,” bystanders include unauthorized immigrants living in the same house or apartment, riding in the same car, or walking with someone who is an ICE target. ICE had stopped making collateral arrests midway through the Obama administration, but resumed them after Trump took office. In one nationwide ICE operation in June 2017 fewer than 200 of the 650 arrested were initial targets, and just 130 had criminal convictions.⁴⁶ During Operation Safe City, nearly 40 percent of the 498 immigrants arrested did not have criminal convictions, even though the operation targeted offenders who had been released from local jails.⁴⁷ In both operations, many of those arrested were simply nearby when the targeted arrests took place.

ICE arrested more immigrants whose prior removal orders had been deferred during the Obama administration. As reported in every site MPI visited, ICE arrested a substantial number of people with old removal orders who had been checking in with the agency on a regular basis for years. Historically, ICE released small numbers of removable individuals on orders of supervision for specific reasons such as an illness, a child in school, or difficulty obtaining travel documents. At the end of the Obama administration, there were about 90,000 noncitizens checking in regularly with orders of supervision.⁴⁸ Most of those arrested at check-ins during 2017 had been low priorities for the Obama administration because they had little or no criminal history or had old removal orders. The Trump administration is not making such exceptions, and has been picking people up during check-ins.

ICE arrested more refugees and others with humanitarian protection claims. In 2017, ICE arrested significant numbers of Somalis, Iraqis, Indonesians, and Cambodians—all groups that include refugees and asylum seekers. Deportations of Somalis more than doubled from 198 in FY 2016 to 521 the following year.⁴⁹ Many of those arrested had not been priorities during the Obama administration; some had been checking in with ICE for years.

Applications for U visas and other humanitarian visas can often take years to adjudicate, and historically ICE has not deported unauthorized immigrants during the application process. In 2017, ICE began arresting people while their applications were still pending, stating that they could complete their applications at U.S. consulates in their home countries.

ICE has increased arrests in courthouses but mostly avoided schools, churches, and hospitals. ICE retains its “sensitive locations” policy, decreeing that arrests should not be conducted in schools, churches, or hospitals. But there have been some well-publicized arrests near such locations, for example parents dropping off their children at school and homeless men leaving a church shelter.⁵⁰ The study team did not hear any examples of arrests inside sensitive locations.

44 Trump, “Executive Order: Enhancing Public Safety in the Interior of the United States.”

45 See for example, ICE, “ICE Arrests 89 in North Texas and Oklahoma Areas During 3-Day Operation Targeting Criminal Aliens and Immigration Fugitives.”

46 ICE, “ICE Announces Results of Operation Border Guardian/Border Resolve” (news release, August 1, 2017), www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve.

47 ICE, “ICE Arrests Over 450 on Federal Immigration Charges During Operation ‘Safe City.’”

48 Tal Kopan, “How Trump Changed the Rules to Arrest More Non-Criminal Immigrants,” CNN, March 2, 2018, www.cnn.com/2018/03/02/politics/ice-immigration-deportations/index.html.

49 ICE, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” 15.

50 Andrea Castillo, “L.A. Father Detained by ICE After Dropping Daughter at School May Be Deported,” *Los Angeles Times*, July 31, 2017, www.latimes.com/local/lanow/la-me-romulo-avelica-deportation-20170731-story.html; Julie Carey, “ICE Agents Arrest Men Leaving Fairfax County Church Shelter,” WRC TV, February 15, 2017, www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter-413889013.html.



Courthouses have not historically been subject to the sensitive locations policy. However, ICE has increased arrests in local courthouses, stating that such actions are necessary in jurisdictions that do not cooperate in transferring noncitizens to ICE from jails.⁵¹ In New York State there were 53 courthouse arrests during the first eight months of the Trump administration, compared to 11 arrests for all of 2016 and 14 in 2015.⁵² District attorneys and judges in New York, California, and elsewhere have issued statements condemning courthouse arrests, claiming they deter crime victims and witnesses from testifying.

From ICE's point of view, arrests in courthouses are a safe alternative when state and local authorities refuse to notify ICE or fail to transfer individuals into the agency's custody. Courthouses are safe because people cannot carry weapons there, minimizing the risk of violent confrontations between officers and the public. According to DHS officials, arrests near schools, hospitals, and other public locations may be necessary when individuals refuse to open their doors, making it impossible for ICE to conduct arrests in homes.⁵³

D. Expanding Detention, Reducing Discretion after Arrest

As the administration has widened the scope of ICE arrests, it has narrowed the discretion of ICE officers and trial attorneys to release individuals after they are arrested or to postpone deportation. The administration is also speeding up deportation hearings in immigration courts. In July 2017, immigration judges were given instructions to limit the use of continuances that could lengthen or delay the completion of cases.⁵⁴ And in January 2018, over the objections of the judges' representatives, the Justice Department issued performance metrics with limits on how long judges can take to adjudicate cases.⁵⁵

At the same time, DHS has curtailed avenues for reviewing local-level ICE enforcement decisions by DHS headquarters or congressional intervention. DHS closed an email box the Obama administration had created so that lawyers, advocates, and others could petition DHS for prosecutorial discretion in individual cases. In May 2017, ICE notified Congress it would no longer delay a deportation when the individual was the subject of a private bill.⁵⁶ Such delays have been a longstanding executive-branch courtesy extended to individual members of Congress; they now require a written request from the Chair of the House or Senate Judiciary Committee. In January 2018, ICE deported someone even after such a request was made by the entire House Judiciary Committee.⁵⁷

51 ICE, "Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses," January 10, 2018, www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf.

52 Azi Paybarah, "Law Enforcement, Court Officials Differ on Impact of ICE Courthouse Arrests," Politico, August 3, 2017, www.politico.com/states/new-york/city-hall/story/2017/08/03/law-enforcement-court-officials-differ-on-impact-of-ice-courthouse-arrests-113781; California Courts, "Chief Justice Cantil-Sakauye Objects to Immigration Enforcement Tactics at California Courthouses" (news release, March 16, 2017), <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

53 Presentation by Thomas Homan, Acting ICE Director, to the Heritage Foundation, *Enforcing U.S. Immigration Laws: A Top Priority for the Trump Administration*, October 17, 2017, www.heritage.org/immigration/event/enforcing-us-immigration-laws-top-priority-the-trump-administration.

54 Memorandum from Mary Beth Keller, Chief Immigration Judge, to All Immigration Court Judges, All Court Administrators, All Attorney Advisors and Judicial Law Clerks, and All Immigration Court Staff, *Operating Policies and Procedures Memorandum 17-01: Continuances*, July 31, 2017, www.justice.gov/eoir/file/oppm17-01/download.

55 Memorandum from James McHenry, Director, Office of the Chief Immigration Judge, to Office of the Chief Immigration Judge, All Immigration Judges, All Court Administrators, and All Immigration Court Staff, *Case Priorities and Immigration Court Performance Measures*, January 17, 2018, www.aila.org/infonet/eoir-updates-its-case-priorities-and-immigration; Kate Morrissey, "Immigration Judges Getting New Performance Metrics," *San Diego Union-Tribune*, January 1, 2018, www.sandiegouniontribune.com/news/immigration/sd-me-immigration-judges-20171228-story.html.

56 Kate Morrissey, "ICE Will No Longer Delay Deportations for Those with 'Private Bills' Pending," *San Diego Union-Tribune*, May 9, 2017, www.sandiegouniontribune.com/news/immigration/sd-me-private-bills-20170509-story.html.

57 Willa Frej, "ICE Deports Palestinian Man Living in the U.S. for Almost 40 Years Despite Outcry," *Huffington Post*, January 30, 2018, www.huffingtonpost.com/entry/ice-deports-palestinian-man_us_5a70259de4b05836a255fe36.



ICE is routinely detaining noncitizens instead of releasing them pending immigration court hearings. In 2017 ICE rarely released individuals on their own recognizance or with bonds. Instead, the agency detained more people, including those without criminal convictions and with longstanding ties to their communities. Detained individuals are on a priority docket for immigration hearings, as compared with those not detained, whose hearings can be years away, due to severe backlogs in the immigration court system.

In most offices MPI visited, ICE only released people with medical conditions or those with dependents with medical conditions. In a sharp departure from Obama administration policy, ICE detained 506 pregnant women between January 1 and March 20, 2018.⁵⁸ Immigration judges continued to release people on bond, but at levels—up to \$25,000 or \$35,000—that detainees had difficulty paying. Many ICE detention facilities are in remote, rural areas where detainees have difficulty finding legal representation, reducing their chances of successfully contesting their deportation.

ICE has stopped administratively closing cases. Early in 2017 ICE informed representatives of the immigration bar that ICE attorneys would stop administratively closing cases and would instead pursue them through to deportation. ICE administratively closed 100 cases during each of the first five months of the Trump administration, compared to a monthly average of 2,400 during the same five months of 2016.⁵⁹ (Immigration judges can also administratively close cases.) In FY 2017, ICE reopened 9,400 cases that had been closed during the Obama administration and put them back on judges' calendars; this was a 74 percent increase over the number of cases reopened in FY 2016.⁶⁰

III. Responses by States, Localities, Consulates, and Immigrant Communities

The rapidly changing enforcement landscape set the stage for state and local governments and other actors to become more active in fashioning their own responses to increasingly muscular federal enforcement.

A. Local Criminal Justice Policies that Limit Exposure to Arrest

Some state and local governments, in efforts that began in some cases during heightened enforcement in the early Obama years, changed policing and criminal prosecution practices so that fewer noncitizens would be arrested. Some changes were the result of general criminal justice reforms, while others were designed to protect noncitizens from arrest and deportation. If noncitizens are not arrested in the first place, they will not be taken to jail and at risk of being taken into ICE custody. However, the recent focus on arresting gang members has brought many noncitizen youth into ICE custody, even if they were not arrested for committing a crime.

Some jurisdictions have decriminalized driving without a license, minor drug offenses, and other misdemeanors. Driving without a license is one of the most common charges leading to arrest of unauthorized immigrants. By 2017, unauthorized immigrants were eligible for driver's licenses in 12 states and the District of Columbia to insure greater highway safety for all travelers and to protect

58 Tal Kopan, "ICE Paves Way to Detain More Pregnant Immigrants," CNN, March 29, 2018, www.cnn.com/2018/03/29/politics/ice-immigration-pregnant-women/index.html.

59 Transactional Records Access Clearinghouse (TRAC), "Immigration Court Dispositions Drop 9.3 Percent Under Trump," July 17, 2017, <http://trac.syr.edu/immigration/reports/474/>.

60 Beth Fertig, "Trump Administration Reviewing Thousands of Deportation Cases Once Put on Pause," WNYC, March 7, 2018, www.wnyc.org/story/trump-administration-reviewing-thousands-deportation-cases-once-put-pause/.



drivers who are unauthorized from being subject to deportation.⁶¹ Among the study sites, unauthorized immigrants are eligible for licenses in California and Illinois, where it is unusual for noncitizens to be taken into custody based on traffic offenses. Even though Memphis, Nashville, and Houston are in counties that fully cooperate with ICE and in states that bar licenses for unauthorized immigrants, these three cities allow the use of alternate identification when stopped for a traffic violation and appearing in court instead of being arrested. During 2017, these policies prevented unauthorized immigrants from getting booked into the Shelby, Davidson, and Harris County jails, where every noncitizen was screened for legal status and potentially taken into ICE custody, including for a traffic violation.

Policies about arrest and conviction for drug possession and other misdemeanors can also influence who gets taken into custody. For example, in February 2017, the Harris County District Attorney created a precharge diversion program for low-level marijuana offenses,⁶² and in October 2017, the Atlanta City Council voted to decriminalize minor marijuana possession.⁶³ In August 2017, the district attorneys in Brooklyn, the Bronx, Manhattan, and Queens in New York City dismissed 644,000 outstanding warrants for minor crimes dating back to “broken-windows” policies in the 1990s.⁶⁴

MPI study sites generally cooperated with ICE in arresting immigrants with gang affiliations.

Allegations of gang affiliation are another pipeline into ICE custody, with gang members a top priority for enforcement.⁶⁵ Police-ICE cooperation around gangs took place in most of the study sites, particularly Houston, Chicago, and Los Angeles. Chicago has a gang database with more than 130,000 names,⁶⁶ and California’s database tops 150,000 names.⁶⁷ Both databases have been criticized for including people based on factors such as tattoos, choice of clothing, and neighborhood of residence rather than criminal activity.

New York City is an exception in police-ICE activity around gangs: a 2014 ordinance restricting ICE cooperation also prohibits enforcement against alleged gang members,⁶⁸ and study respondents there did not report cooperation between city police and ICE in arresting gang members. In October 2017, after MPI’s visit to Los Angeles, California passed legislation prohibiting state and local officers from sharing gang-database information directly with ICE, though such information may still be shared indirectly through mechanisms such as the FBI’s National Crime Information Center.⁶⁹

B. Civil-Society Responses

Recent immigration enforcement activities have engendered strong responses from immigrant communities and the institutions and organizations that serve them. Across the study sites, state and local governments, attorneys, advocates, community leaders, and Mexican and other consulates have been engaged in increased activism and mobilization to monitor ICE activities, develop response plans to protect immigrants during ICE operations, and provide legal defense to those in deportation proceedings.

61 National Immigration Law Center (NILC), “State Laws Providing Access to Driver’s Licenses or Cards, Regardless of Immigration Status,” May 2017, www.nilc.org/wp-content/uploads/2015/11/drivers-license-access-table.pdf.

62 Kim Ogg, Office of District Attorney, Harris County, Texas, “Misdemeanor Marijuana Diversion Program,” effective March 1, 2017, <https://app.dao.hctx.net/MMDP>.

63 Grace Donnelly, “Atlanta Is the Latest U.S. City to Decriminalize Marijuana. Here’s What That Means,” *Fortune*, October 3, 2017, <http://fortune.com/2017/10/03/list-of-cities-that-decriminalized-marijuana/>.

64 James C. McKinley Jr., “644,000 Old Warrants Scrapped for Crimes Like Public Drinking,” *The New York Times*, August 9, 2017, www.nytimes.com/2017/08/09/nyregion/644000-old-warrants-scrapped-for-crimes-like-public-drinking.html.

65 Homan, Heritage Foundation presentation, *Enforcing U.S. Immigration Laws*.

66 Griselda Flores, “Chicago Police Admission Exposes Loophole in the City’s Sanctuary Protection,” CityLab, December 27, 2017, www.citylab.com/equity/2017/12/chicago-gang-database/549149/.

67 Richard Wilson, “California Gang Database Plagued with Errors, Unsubstantiated Entries, State Auditor Finds,” *Los Angeles Times*, August 11, 2016, www.latimes.com/local/lanow/la-me-ln-calgangs-audit-20160811-snap-story.html.

68 Noah Hurowitz, “NYPD’s Secret Gang Database Filled with ‘Garbage,’ Advocates Say,” DNAinfo, October 19, 2017, www.dnainfo.com/new-york/2017/10/19/civic-center/nypd-gang-database-legal-aid-brooklyn-defenders-foil-request.

69 NILC, “AB90: More Welcome Fixes to California’s Gang Databases,” November 2017, www.nilc.org/issues/immigration-enforcement/ab90-fixes-to-calif-gang-databases/.



The Mexican consular network and other consulates expanded their services and protections for nationals in ICE custody. During 2017, Mexican consulates across the country greatly expanded services such as issuing passports and other documentation, assisting with naturalization and DACA applications, monitoring those in ICE detention, providing representation to those in deportation proceedings, and preparing for the possible return of their nationals to Mexico. In March 2017, the Mexican government announced \$54 million to hire more than 300 workers in consular legal defense centers in the United States.⁷⁰ Through these centers, the consular network assisted 370,000 Mexicans, provided more than 2,000 “know-your-rights” workshops and nearly 900 workshops on immigration screenings, and hosted almost 1,000 events with attorneys during March-July 2017.⁷¹

Though Mexico has by far the largest consular network, other countries also expanded their consular services. In February 2017, the Salvadoran government created a fund to support legal representation for deportation cases at its major consulates in New York City, Long Island, San Francisco, Los Angeles, and Silver Spring, Maryland. In March, Honduras opened a new, centralized consular protection center in Houston. The center was created to monitor all deportation cases of Hondurans nationwide and explore possible avenues for deportation relief.⁷²

Several states and cities provided new financial resources for legal services to immigrants in deportation proceedings. In 2017, California increased its deportation defense funding from \$30 million to \$45 million annually,⁷³ and an additional \$10 million was raised from public and private sources in Los Angeles.⁷⁴ Also, in 2017, New York City increased its funding for defense of low-income immigrants in deportation proceedings to \$26 million each year.⁷⁵

Coalitions of advocates and legal service providers expanded their activities to protect immigrants from deportation. Legal service providers that had focused on DACA, naturalization, and other benefits applications in the latter years of the Obama administration shifted their attention to know-your-rights trainings and deportation defense and litigation challenging Trump administration policies. In Atlanta, Houston, New York, and Northern Virginia, lawyers and advocates representing Latino immigrants joined those representing immigrants from Africa and the Middle East. These coalitions formed as immigrants from these regions of the world increasingly found themselves the focus of enforcement or restrictive immigration policies (such as the travel ban executive orders) alongside immigrants from Latin America, who have historically comprised the bulk of ICE arrests.

Community leaders across the study sites established response teams to monitor ICE activity, confirm rumors of ICE operations, and organize possible civil disobedience. These activities have reportedly been effective in convincing people not to open their doors to ICE officers without a warrant. ICE officers reported significantly reduced community cooperation in their work, which they say has forced them to conduct operations in other locations at greater expense, as well as what they say is greater risk to community members and law enforcement personnel alike. United We Dream, a national immigrants-rights advocacy group, launched a mobile app, Notifica, that generates alerts

70 Marilia Brocchetto, “Mexico Opens Immigrant Defense Centers at its US Consulates,” CNN, March 5, 2017, www.cnn.com/2017/03/04/americas/mexico-us-consulates-legal-services-immigrants/index.html.

71 Mexican Foreign Affairs Secretariat, “5to Informe de Labores, 2016-2017,” accessed January 18, 2018, www.gob.mx/cms/uploads/attachment/file/255693/5o_INFORME_SRE.pdf.

72 According to MPI’s analysis of ICE administrative data, Mexicans and Central Americans comprised 85-87 percent of all those arrested by ICE during FY 2013-17.

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about immigration enforcement.⁷⁶ Such mobilizing also allowed local community leaders to monitor ICE activities and to distinguish real operations from rumors.

C. A Heightened Climate of Fear

Broader enforcement and narrowed prosecutorial discretion have generated a climate of fear that is changing the behavior of immigrants and their families and communities. In the MPI study sites, local businesses, public safety, and the use of education, health and social services for which immigrants are eligible all report being affected.

Economic activity has declined in immigrant neighborhoods. In suburban Atlanta, where ICE in 2017 took custody of a large number of people based on arrests for traffic violations, many immigrants stopped driving except when necessary, curtailing their patronage of local businesses and their participation in school, church, and community activities.⁷⁷ In Chicago, after ICE arrested several people in an immigrant gateway neighborhood, activity at nearby restaurants, shops, and other businesses declined substantially.⁷⁸ A *Houston Chronicle* survey of more than 30 immigrant-owned businesses in the city reported revenue declines of up to 70 percent from January to September 2017.⁷⁹

Police chiefs of several major cities are expressing concern that ICE arrests have made immigrants fearful of law enforcement and less likely to report crimes. In Houston, reports of rape dropped 43 percent among Hispanics but just 8 percent among non-Hispanics in the first three months of 2017 compared to the same three months a year earlier; violent crime reports fell 13 percent among Hispanics but rose 12 percent among non-Hispanics.⁸⁰ In Los Angeles, Latinos' reports of domestic violence fell 10 percent and their reports of sexual assault fell 25 percent from 2016 to 2017.⁸¹ Domestic violence service providers in Atlanta, Chicago, Los Angeles, and New York reported declines in service calls, participation in counseling services, and willingness to pursue charges against their abusers.

There were also reports of declines in use of health services and public benefits by immigrant families. At two major nonprofit health agencies in Houston, the number of unauthorized immigrant patients dropped by about half at times in 2017,⁸² while a children's hospital there saw fewer low-income Latino patients.⁸³ In Los Angeles, a community-based health provider noted a 20 percent decline in visits by unauthorized immigrants. A community-based organization in Atlanta reported 15 percent fewer food stamp applications during January-March 2017 compared to the same period a year earlier, and half as many in April.⁸⁴ Such participation drops often mean that low-income children in immigrant families—most of whom are U.S. citizens and therefore eligible for these programs—cannot get needed health care or food assistance.

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IV. Conclusion

The machinery of interior enforcement that had been dialed down during the final Obama years has been revved back up by the Trump administration. ICE officers say that widening enforcement and dropping prosecutorial discretion requirements have given ICE the leeway necessary to properly do its job and more faithfully execute the nation's immigration laws. Advocates and others decry what they see as unshackled enforcement that makes no distinction between otherwise law-abiding unauthorized immigrants and those with serious criminal offenses.

Nonetheless, the pace of arrests and removals during 2017 was only half that achieved at earlier peaks. It is unlikely that arrests and removals can substantially rise again, given the significant constraints the Trump administration faces in implementing its enforcement agenda. Beyond resource limitations that Congress has declined to lift, the most important constraint lies in the limits on ICE cooperation imposed by growing numbers of states and localities that have large foreign-born populations.

The machinery of interior enforcement that had been dialed down during the final Obama years has been revved back up by the Trump administration.

At the same time, arrests and removals are increasing significantly in cooperating jurisdictions, and arrests in community settings are rising as the share of those with criminal convictions falls. Because any unauthorized immigrant or removable legal immigrant encountered by ICE can now be arrested, the character and unpredictability of ICE enforcement have generated an overarching climate of fear, which is itself serving as an enforcement tool. Across all the MPI study sites, thickening networks of community-based actors are responding and successfully providing legal services, know-your-rights counsel, monitoring, rapid-response assistance, and political advocacy in opposition to ICE enforcement.

As the war of words, legislation, and litigation escalate, growing enforcement disparities and uneven treatment across levels of government threaten federal pre-eminence in immigration and undermine effective law enforcement relationships and the ability to ensure public safety and security.



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About the Authors

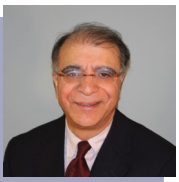


Randy Capps is Director of Research for U.S. Programs at the Migration Policy Institute. His areas of expertise include immigration trends, the unauthorized population, immigrants in the U.S. labor force, the children of immigrants and their well-being, and immigrant health-care and public benefits access and use.

Dr. Capps, a demographer, has published widely on immigrant integration at the state and local level, including profiles of immigrant populations in Arkansas, Connecticut, and Maryland, as well as Los Angeles, Washington, DC, Louisville, KY, and Napa County, CA. He also has examined the impact of the detention and deportation of immigrant parents on children.

Prior to joining MPI, Dr. Capps was a researcher in the Immigration Studies Program at the Urban Institute (1993-96, and 2000-08).

He received his PhD in sociology from the University of Texas in 1999 and his master of public affairs degree, also from the University of Texas, in 1992.

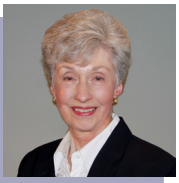


Muzaffar Chishti, a lawyer, is Director of MPI's office at New York University School of Law. His work focuses on U.S. immigration policy at the federal, state, and local levels; the intersection of labor and immigration law; immigration enforcement; civil liberties; and immigrant integration.

Prior to joining MPI, Mr. Chishti was Director of the Immigration Project of the Union of Needletrades, Industrial & Textile Employees (UNITE). He has testified extensively on immigration policy issues before Congress and is frequently quoted in the media.

In 1992, as part of a U.S. team, he assisted the Russian Parliament in drafting its legislation on forced migrants and refugees. He is a 1994 recipient of the New York State Governor's Award for Outstanding Asian Americans and a 1995 recipient of the Ellis Island Medal of Honor.

Mr. Chishti was educated at St. Stephen's College, Delhi; the University of Delhi; Cornell Law School; and the Columbia School of International Affairs.



Doris Meissner, former Commissioner of the U.S. Immigration and Naturalization Service (INS), is a Senior Fellow at MPI, where she directs the Institute's U.S. immigration policy work.

Her responsibilities focus in particular on the role of immigration in America's future and on administering the nation's immigration laws, systems, and government agencies. Her work and expertise also include immigration and politics, immigration enforcement, border control, cooperation with other countries, and immigration and national security. She has authored and coauthored numerous reports, articles, and op-eds and is frequently quoted in the media.

From 1993-2000, she served in the Clinton administration as Commissioner of the INS, then a bureau in the U.S. Department of Justice. Her accomplishments included reforming the nation's asylum system; creating new strategies for managing U.S. borders; improving naturalization and other services for immigrants; shaping new responses to migration and humanitarian emergencies; strengthening cooperation and joint initiatives with Mexico, Canada, and other countries; and managing growth that doubled the agency's personnel and tripled its budget.



She first joined the Justice Department in 1973 as a White House Fellow and Special Assistant to the Attorney General. She served in various senior policy posts until 1981, when she became Acting Commissioner of the INS and then Executive Associate Commissioner, the third-ranking post in the agency. In 1986, she joined the Carnegie Endowment for International Peace as a Senior Associate. Ms. Meissner created the Endowment's Immigration Policy Project, which evolved into the Migration Policy Institute in 2001.



Michelle Mittelstadt is MPI's Director of Communications and Public Affairs and is responsible for developing and implementing the Institute's strategic communications, coordinating public and media outreach and events, managing the editing and publishing process, and overseeing the Institute's websites, social media platforms, and publication of its online journal, the Migration Information Source. She is also Director of Communications for MPI Europe.

A veteran journalist, she joined MPI after covering immigration policy, Congress, and border-related issues in the Washington bureaus of The Associated Press, The Dallas Morning News, and the Houston Chronicle. She has written hundreds of articles examining U.S. immigration policy, border and interior enforcement, and the post-9/11 legislative and executive branch changes that have altered the immigration landscape. She also covered the Departments of Justice and Homeland Security.

Prior to coming to Washington, Ms. Mittelstadt was an editor with The Associated Press in Dallas and managing editor of The Courier Herald in Dublin, Ga.

She holds a bachelor's degree in journalism with a concentration in global studies from the University of Georgia.



The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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