



February 25, 2015

The Honorable Ron DeSantis, Subcommittee on National Security
The Honorable Stephen Lynch, Subcommittee on National Security
The Honorable Jim Jordan, Subcommittee on Health Care, Benefits, and Administrative Rules
The Honorable Matt Cartwright, Subcommittee on Health Care, Benefits, and Administrative Rules
U.S. House of Representatives, Committee on Oversight and Government Reform
2157 Rayburn House Office Building,
Washington, DC 20515

Dear Chairmen DeSantis and Jordan, and Ranking Members Lynch and Cartwright:

I am submitting this letter at the request of the Minority Staff of the House Oversight and Government Reform Committee in connection with the February 25 joint subcommittee hearing, “A Review of the Department of Homeland Security’s Policies and Procedures for the Apprehension, Detention, and Release of Non-Citizens Unlawfully Present in the United States.” I am the Deputy Director of the U.S. Immigration Policy Program at the Migration Policy Institute (MPI), an independent, non-partisan think tank in Washington, DC that analyzes U.S. and international migration trends and policies.

Some observers of U.S. immigration policy have argued that U.S. immigration enforcement has been inadequate under the Obama administration, while others contend that it has been overly muscular and has harmed immigrant families and communities. This letter summarizes the findings from two recent MPI reports that review publicly available Department of Homeland Security (DHS) data as well as administrative enforcement data obtained from U.S. Immigration and Customs Enforcement (ICE) through a Freedom of Information Act (FOIA) request.¹ As these reports document in detail, and as I also explained in recent testimony before the House Judiciary Committee,² the Obama administration’s overall record on immigration enforcement is characterized by unprecedented investments of enforcement resources provided by successive Congresses and by new enforcement programs at the border and within the interior, record-setting immigrant removals that have been increasingly focused over time on high-priority targets, falling border apprehensions, and, most importantly, a sustained drop in the size of the U.S. unauthorized population—the first such drop in decades (other than through a legalization program).

¹ See Marc R. Rosenblum and Doris Meissner with Claire Bergeron and Faye Hipsman, *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, 2014), www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement; and Marc R. Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Washington, DC: MPI, 2014), www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change.
² Marc R. Rosenblum, Testimony of Deputy Director, U.S. Immigration Policy Program, Migration Policy Institute before the House Judiciary Committee, *Examining the Adequacy and Enforcement of Our Nation’s Immigration Laws*. 114th Congress, 1st sess. February 3, 2015, http://judiciary.house.gov/index.cfm/hearings?id=04BC548D-5FAF-45CC-841D-22DF85672D6&Statement_id=CACA9A5E-9381-46D2-BB4A-4C28899B2170.

1) Overall Enforcement Spending

DHS's enforcement budget has averaged \$18.5 billion annually in the last five years and since the 9/11 attacks, the United States has spent \$208 billion on federal immigration enforcement. By comparison, the United States has spent an annual average in the last five years of \$15.2 billion on *all other federal criminal law enforcement agencies combined*.³

2) Border Enforcement

New Investments in Border Enforcement. Over the last decade, the Bush and Obama administrations and Congress have shown an especially strong commitment to border security, dedicating increasing appropriations to infrastructure, technology, and personnel to control the U.S.-Mexico border. Among these investments:

- Border Patrol staffing has nearly doubled from 10,819 agents in 2004 to 20,863 in 2014.⁴
- Fencing and vehicle barriers along strategically important sectors of the border have increased from 140 miles in 2006 to 651 miles today.⁵
- DHS has deployed record levels of roads, lighting, sensors, manned and unmanned aircraft, marine vessels, video and radar systems, night vision equipment, and thermal imaging technology along the Southwest border.⁶
- Since 2000, biometric technology has enabled the Border Patrol to collect fingerprint records from almost 100 percent of border crossers and use the records to identify and track repeat crossers and convicted criminals.

Border Enforcement Programs. In addition to these investments, DHS has taken important steps to sharpen its overall border security strategies, aimed at raising the penalties for unlawful border crossing and deterring illegal immigration. DHS has significantly scaled back the use of low-stakes voluntary return deportations and time-consuming judicial removal proceedings for border crossers in favor of fast-tracked deportations through expedited removal and reinstatement of removal. Under a program known as the Consequence Delivery System (CDS) initiated by the Obama administration in 2010, the Border Patrol prioritizes criminals and repeat crossers for enhanced immigration penalties, including formal removal instead of informal return; immigration-related criminal charges through prosecution; and “remote repatriation,” in which migrants are deported hundreds of miles away from their point of apprehension.⁷ CDS has enabled the Border Patrol to virtually eliminate the use of voluntary return for border crossers. The proportion of

³ Other federal law enforcement agencies include the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); see Doris Meissner, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery.

⁴ U.S. Border Patrol, *Border Patrol Agent Staffing by Fiscal Year*, www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf.

⁵ Lisa Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*, CRS Report R42138 (Washington, DC: Congressional Research Service, 2014), <http://fas.org/sgp/crs/homesecc/R42138.pdf>; DHS, “Border Security Results,” November 1, 2013, www.dhs.gov/border-security-results.

⁶ Homeland Security Secretary Jeh Johnson, “Border Security in the 21st Century,” (remarks at Center for Strategic and International Studies, Washington, DC, October 9, 2014), www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century. Also see Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*.

⁷ For a fuller discussion, see Seghetti, *Border Security: Immigration Enforcement Between Points of Entry*; Rosenblum et al., *The Deportation Dilemma*.

border apprehensions subject to voluntary return fell from about 95 percent during the 1990s, to 82 percent in 2005, to less than 10 percent today.

The federal government has also expanded criminal prosecution of border crossers for the offenses of illegal entry and illegal re-entry, which carry prison sentences of up to six months and up to two years, respectively. As a result, the proportion of immigrants apprehended at the border subject to immigration-related criminal charges increased from 3 percent in 2005 to 22 percent in 2013.⁸

3) Interior Enforcement

New Interior Enforcement Programs. In addition to these changes at the border, the other significant development in the post-9/11 period—and mostly after 2005—is that Congress and DHS have initiated important programs aimed at identifying, detaining, and deporting unauthorized immigrants located in the U.S. interior.

During the last ten years, a series of programs aimed at identifying and removing noncitizens with criminal histories or previous immigration violations have been established, including the National Fugitive Operations Program (NFOP), the Criminal Alien Program (CAP), the 287(g) program, and the Secure Communities program.⁹ These four programs have substantially increased the number of noncitizens identified, apprehended, and deported from the U.S. interior. Prior to 2005, DHS typically apprehended about 100,000 migrants per year in the interior, and removed less than half that number. By 2008, apprehensions climbed to over 300,000 per year, and removals to more than 150,000. Under the Secure Communities program, instituted in 2008 and by 2013 deployed in 100 percent of law enforcement jurisdictions nationwide, the fingerprints of all arrested individuals are automatically checked against federal immigration databases. ICE may then request that a state or local law enforcement agency transfer deportable immigrants into ICE custody prior to their release.¹⁰

Enforcement Priorities. The most significant change since 2009 is that the Obama administration has taken a series of steps to focus its enforcement efforts on designated high-priority cases. Building on long-standing congressional priorities and policies undertaken by previous administrations, the administration published policy guidance memoranda in 2010 and 2011 formally identifying as enforcement priorities noncitizens convicted of a crime, people who obstruct immigration controls by disobeying immigration court orders or failing to show up for deportation and recent illegal entrants.¹¹ According to MPI's analysis of ICE enforcement data, 96 percent of DHS removals between 2009 and 2013 fell within these three categories.¹²

⁸ Rosenblum et al, *The Deportation Dilemma*, 20-2.

⁹ For a fuller discussion, see Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, CRS Report R42057 (Washington, DC: Congressional Research Service, 2012), <http://fas.org/sgp/crs/homesec/R42057.pdf>; Randy Capps, Marc R. Rosenblum, Cristina Rodríguez, and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* (Washington, DC: MPI, 2011), <http://migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

¹⁰ Under the Secure Communities program, U.S. Immigration and Customs Enforcement (ICE) issued immigration detainers to request that arresting jurisdictions hold deportable immigrants for up to two days following completion of their criminal justice proceeding. In November 2014, Secretary Johnson announced that Secure Communities would be replaced by a new Priorities Enforcement Program (PEP). PEP will continue to check the fingerprints of 100 percent of arrested individuals against DHS databases, but ICE will now request that arresting jurisdictions notify ICE prior to releasing certain deportable immigrants, rather than issuing immigration detainers in most cases. PEP will also focus exclusively on deportable immigrants who have been convicted of relatively serious criminal offenses, rather than all deportable immigrants.

¹¹ Memorandum from ICE Assistant Secretary John Morton to all ICE employees, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (memorandum, June 30, 2010),

The Obama administration's focus on its stated enforcement priorities mostly resulted in a continuation of Bush administration trends with respect to border enforcement, but substantial changes with respect to interior enforcement. At the border—where all unauthorized immigrants are treated as enforcement priorities—the great majority (77 percent) of removals are of noncriminals or people convicted only of immigration or traffic crimes (11 percent). These percentages are almost unchanged between 2003-2008 and 2009-2013.

In the interior, half of all deportations under the Bush administration were of noncriminals or people convicted only of immigration or traffic crimes. Under the Obama administration priorities, the share of noncriminals among interior removals fell to 13 percent in 2013, while the proportion convicted of serious crimes (i.e., crimes other than immigration and traffic offenses) grew to 62 percent. Overall, criminal removals more than doubled, from an average of 98,000 per year under the Bush administration to 184,000 per year under Obama.

4) Enforcement Outcomes

How has immigration enforcement evolved under the Obama administration? The administration has maintained key programs initiated under President Bush, including the high level of criminal prosecutions and expanded use of formal removals at the border, and expansion of interior enforcement. As a result, overall removals and criminal removals have reached record highs under the Obama administration, which has carried out more removals than any of its predecessors. For example:

- **Overall removals have increased steadily during the Obama administration** and in 2013 reached a record high of 438,421.
- **Interior removals reached an all-time high of 188,000 in 2011;** and even after falling back to 102,000 in 2014 they remain twice as high as pre-2006 levels.
- Criminal interior removals have decreased since 2011, but **the share of criminals among interior removals has increased from 53 percent in 2008 to 74 percent in 2011 to 87 percent in 2013.**

More broadly, available evidence suggests that enforcement efforts since 2005 have resulted in falling illegal inflows and an unprecedented drop in the U.S. unauthorized population.

- **Southwest border apprehensions fell to 328,000 in 2011, the lowest level since 1972.** While apprehensions rebounded somewhat between 2012 and 2014, the 2014 total of 487,000 apprehensions was still less than one-third the 1.68 million apprehensions recorded in the peak year of 2000.
- **Apprehensions of Mexicans have continued to fall since 2011, reaching a low point of 227,000 in 2014.** This number is significant because Mexicans have traditionally accounted for about 97 percent of unauthorized immigrant apprehensions.

www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf; Memorandum from ICE Director John Morton to all ICE Field Office Directors, Special Agents in Charge, and Chief Counsel, "Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (memorandum, June 17, 2011), www.ice.gov/doclib/foia/prosecutorial-discretion/pd_cnstnt_w_civil_imm_enforce_ice_priorities.pdf.

¹² Rosenblum and McCabe, *Deportation and Discretion*. In 2014, Secretary Johnson announced new DHS enforcement priorities, focusing on aliens convicted of serious criminal offenses and people apprehended while crossing the border, people convicted of multiple misdemeanors or serious misdemeanors, and people subject to orders of removal issued after January 1, 2014.

- Alongside apprehensions, **recidivism rates** (the percentage of migrants who are re-apprehended) **have fallen from 29 percent in 2007 to a record low of 14 percent in 2014.**
- Data show that **smuggling fees** (which provide an additional indicator of border enforcement effectiveness, as the costs to smugglers of bringing migrants across the border and the value of their services should be reflected in higher fees¹³) **have steady increased over the course of the last 25 years**, reaching about \$3,000 per crossing in 2012.¹⁴

The most important indicator of the overall effectiveness of immigration enforcement is the size of the U.S. unauthorized population. By this basic metric, immigration enforcement has been broadly effective over the last seven years, **as the unauthorized population has fallen from 12.2 million people in 2007 to about 11.2 million people in 2012-2013—a drop of 8 percent in seven years.**¹⁵ While a share of this drop is related to the U.S. recession of 2007-2009 along with economic and demographic changes in Mexico, the sustained drop in illegal immigration over such a long period—along with data described above on Border Patrol effectiveness, recidivism, border deterrence, smuggling fees, and the expansion of interior enforcement programs—strongly suggest that enforcement resource infusions and tough new enforcement measures put in place after 2005 have discouraged new illegal immigration to the United States and re-entry attempts among deportees. Other scholars have reached similar conclusions.¹⁶

With apprehensions of Mexicans at historic lows, the growth in apprehensions since 2011 consists almost entirely of Central Americans, about half of whom are families and children presenting themselves at the border. While these flows are clearly a cause for concern, they represent a different phenomenon from traditional illegal immigration across the Southwest border. Most women and children from Central America surrender to the first Border Patrol agent they encounter rather than attempting to evade apprehension. Thus, the rapid rise in these flows should not be interpreted as an indicator of ineffective border controls, but rather as evidence of a broader shock within the region.

The Obama administration has come under criticism for releasing child and family migrants after they come into contact with the Border Patrol. However, under a law passed by Congress in 2008 called the Trafficking Victims Protection Reauthorization Act (TVPRA), the federal government is required to place unaccompanied children from countries other than Mexico and Canada into the care of a relative in the United States or similar situation pending immigration court proceedings. Furthermore, since the surge of family unit arrivals in spring-summer 2014, an increasing number

¹³ See Bryan Roberts, Gordon Hanson, and Derekh Cornwell, et al., *An Analysis of Migrant Smuggling Costs along the Southwest Border* (Washington, DC: DHS Office of Immigration Statistics, 2010), www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf.

¹⁴ Mexican Migration Project, “Graph 1: Border Crossing Costs,” accessed January 30, 2015, <http://mmp.opr.princeton.edu/results/001costs-en.aspx>.

¹⁵ Pew Research Center, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14* (Washington, DC: Pew Research Center Hispanic Trends Project, 2014), www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/. DHS estimates that the unauthorized population dropped from 11.8 – 12.0 million in 2007 to 11.4 million in 2012; Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012* (Washington, DC: DHS Office of Immigration Statistics, 2013), www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.

¹⁶ See for example, Jeffrey Passel, D’Vera Cohn, and Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero—and Perhaps Less* (Washington, DC: Pew Hispanic Center, 2012), www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/; Manuela Angelucci, “U.S. Border Enforcement and the Net Flow of Mexican Illegal Migration,” *Economic Development and Cultural Change* 60 no. 2 (2012): 311-57; Scott Borger, Gordon Hanson, and Bryan Roberts, “The Decision to Emigrate From Mexico,” (presentation at the Society of Government Economists annual conference, Washington, DC, November 6, 2012).

of family units apprehended at the border have been subject to detention and are being quickly repatriated.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Rosenblum', is positioned above the typed name.

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