

SPECIAL REPORT

TRACKING THE BIDEN AGENDA ON IMMIGRATION ENFORCEMENT

by **Jorge Loweree** and **Aaron Reichlin-Melnick**



About the American Immigration Council

The American Immigration Council works to strengthen America by shaping how America thinks about and acts towards immigrants and immigration and by working toward a more fair and just immigration system that opens its doors to those in need of protection and unleashes the energy and skills that immigrants bring. Through its research and analysis, the American Immigration Council provides policymakers, the media, and the general public with information about how the immigration system works, the impact of policy proposals, and the crucial role that immigration plays in our communities and workplaces.

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Contents

About the American Immigration Council	2
About the Authors	2
Acknowledgments.....	2
Executive Summary	4
Immigration Enforcement in the Trump Era	4
President Biden’s Commitments and Accomplishments on Immigration Enforcement.....	5
Analysis and Recommendations	7
Introduction.....	9
Immigration Enforcement in the Trump Era	9
Arrests and Removals.....	9
Detention Numbers and Capacity	12
Challenges to Sanctuary Jurisdictions.....	14
Engagement with Local Law Enforcement	15
Worksite Enforcement	16
Funding for Interior Enforcement.....	16
Enforcement During the COVID-19 Pandemic.....	17
President Biden’s Commitments and Accomplishments on Immigration Enforcement.....	18
Enforcement Priorities	18
Expedited Removal	21
Immigration Court Issues.....	21
Detention Numbers and Capacity	21
Sanctuary Policies.....	23
Engagement with Local Law Enforcement	24
Agreements with Law Enforcement	24
Worksite Enforcement	24
Analysis and Recommendations.....	25
Arrests and Removals.....	25
Immigration Detention	26
Sanctuary Policies	26
Engagement with Local Law Enforcement	27
Funding for Interior Enforcement	27
Endnotes.....	28

Executive Summary

The Trump administration implemented a total of 363 policy changes to interior enforcement with the overarching goal of subjecting all undocumented immigrants to enforcement actions. President Biden assumed office following significant commitments to implement changes to immigration enforcement, to limit enforcement activities, and to reduce the hardship experienced by noncitizens and their families.

This report analyzes some of the most consequential changes to immigration enforcement implemented by the Trump administration, the changes that President Biden committed to making during his campaign and transition, and the progress that his administration has achieved in its first 100 days. The report concludes with recommendations for additional changes that the administration should prioritize in working to create a fairer and more humane system of immigration enforcement.

Immigration Enforcement in the Trump Era

Arrests and Removals

Trump issued executive orders in 2017 that eliminated existing enforcement priorities and redefined “all removable aliens” as targets for deportation by Immigration and Customs Enforcement (ICE). In addition, the administration extended the reach of “expedited removal”—the process by which an individual immigration enforcement official can order the immediate deportation of certain undocumented immigrants without going through immigration court proceedings. The administration also sought to implement a rule that would end the authority of immigration judges to administratively close cases. That rule is currently blocked by a preliminary injunction.

Despite these measures, removals of individuals apprehended by ICE never rose above 100,000 a year under the Trump administration—less than half the level of President Obama’s first term. The reasons for this include higher immigration court backlogs under Trump, increased attorney representation rates, and less cooperation from state and local jurisdictions.

Detention Numbers and Capacity

In one of his 2017 executive orders, Trump demanded increased detention along the southern border, an end to the so-called “catch-and release” policy for families, and a restriction on parole, thereby ensuring prolonged detention of immigrants and asylum seekers and inflating detention numbers. ICE also significantly increased its detention capacity in the South, opening several new facilities in Texas, Mississippi, and Louisiana. Trump’s policies were successful in increasing the number of detention book-ins and in significantly increasing the population of detained individuals over the administration’s first three years in office. Detention numbers reached an all-time high in the summer of 2019, before falling in 2020 due to policies intended to slow the spread of COVID-19.

Challenges to Sanctuary Jurisdictions

The Trump administration attacked sanctuary and safe city policies on multiple fronts, trying to discourage the adoption of sanctuary laws, punish jurisdictions that adopted them, and find ways to coopt existing laws to be used against sanctuary jurisdictions. The administration also sued sanctuary jurisdictions in attempts to force cooperation with ICE or to overturn state laws which limited information sharing with ICE. All of these lawsuits failed. Moreover, the administration undertook a strategic messaging campaign to decry sanctuary policies and encourage citizens to turn in their noncitizen neighbors.

Engagement with Local Law Enforcement

Trump reinstated the Secure Communities system, which had been replaced by the Priority Enforcement Program (PEP) in 2014. With the reimplementation of Secure Communities, the number of detainers issued by ICE increased in 2017 and 2018 but fell in 2020 because of curtailed enforcement during the pandemic, the growing number of jurisdictions refusing to cooperate with ICE, and court rulings limiting the use of detainers. The administration also increased the number of 287(g) agreements between ICE and local law enforcement agencies, which empower local law enforcement officials to enforce federal immigration law.

President Biden's Commitments and Accomplishments on Immigration Enforcement

The Biden administration has taken some steps toward implementing a more thoughtful approach to immigration enforcement, and some of these efforts have had a meaningful impact. But the administration has yet to pursue some of its core commitments on enforcement.

Enforcement Priorities

» Priorities for Arrest and Removal

During his campaign, Biden vowed that his administration would focus its enforcement efforts on public safety and national security threats—while also promoting due process in enforcement and removal proceedings. On Inauguration Day, President Biden issued an executive order which revoked one of Trump's executive orders and the enforcement priorities contained therein. DHS then took immediate action to implement the change in a memo which was aimed at updating agency enforcement priorities. The memo declared that ICE would temporarily only target individuals who had entered the United States since November 1, 2020, as well as those with certain felony convictions. The memo also called for a 100-day moratorium on the deportation of individuals in the United States prior to November 1, 2020. But the moratorium was blocked by a Texas U.S. District Judge and the Biden administration did not challenge the decision. As a result, the deportation moratorium was never implemented. Despite the failure of Biden's moratorium on deportations, ICE's fiscal year-to-date detention statistics data reveal that ICE removal numbers have fallen under Biden as compared to the final months of his predecessor.

On February 18, 2021, ICE issued a memo containing a second set of interim enforcement guidance. This memo expanded the pool of individuals subject to immigration enforcement to include anyone suspected of terrorism or espionage, anyone whom ICE determines should be targeted “in the national interest,” anyone who was not physically present in the United States before November 1, 2020, anyone who has been convicted of an “aggravated felony,” anyone convicted of a crime for which gang-related activity is an element of the crime, and anyone who ICE believes to have participated in a gang and is 16 years old or older. Implementation of the interim guidance has been inconsistent across jurisdictions. ICE announced on March 4, 2021, the creation of a case review process for individuals to request the review of their cases in light of these new enforcement priorities, but ICE has applied this process inconsistently across the country. Critically, the administration has only focused on enforcement priority categories to date, and they have failed to commit to implementing policies that would allow for the affirmative exercise of prosecutorial discretion by detailing the specific populations of individuals that should be shielded from enforcement actions.

» **Expanded Removal Activities**

In his campaign plan, Biden exempted “sensitive locations” such as hospitals, schools, and places of worship from enforcement and removal operations. On April 27, 2021, the Biden administration announced a new policy that explicitly prohibits ICE and Customs and Border Protection (CBP) officials from conducting enforcement actions at courthouses with exceptions based on ICE enforcement priorities. And in February 2021, the administration announced that ICE and CBP would not conduct arrests or engage in enforcement activity in or around any clinics providing COVID-19 vaccines.

Expedited Removal

On February 2, 2021, Biden issued an executive order that called for the Department of Homeland Security (DHS) to review its expedited removal procedures. At the time of publication this review was not complete.

Immigration Court Issues

As a candidate, Biden promised to promote access to counsel for immigration court cases. Upon his inauguration, President Biden sent a draft of a comprehensive immigration bill to Congress that includes measures to address backlogs, hire new immigration judges, and ensure counsel in all removal proceedings and bond hearings seeking release from detention. The bill was introduced in the House of Representatives on February 18, 2021, but it has yet to receive a vote. The administration has not yet taken action to restore access to administrative closure in immigration court.

Detention Numbers and Capacity

Biden’s immigration platform contained a commitment to reduce prolonged detention in favor of community-based alternatives and case management programs. His plan also discussed ending contracts with private detention facilities. However, an executive order he issued on January 26, 2021, which instructed the Attorney General not to renew any Department of Justice (DOJ) contracts with private criminal detention facilities, did not mention private civil or immigration detention. Biden’s draft

immigration reform bill contains a section on expanding community-based alternatives to detention, which would help to reduce the number of noncitizens held in immigration detention and the length of their stays. Four months into his new administration, Biden was detaining considerably more noncitizens than were detained at the end of his predecessor's term in office.

Sanctuary Policies

On March 14, 2021, the DOJ asked the Supreme Court to dismiss three cases regarding whether the DOJ can withhold federal grant funds from sanctuary jurisdictions. On April 28, 2021, Reuters reported seeing an internal DOJ memo that formally repealed the requirement of cooperation with ICE as a prerequisite to receipt of DOJ grant funding.

Engagement with Local Law Enforcement

Although Biden was Vice President of the Obama administration when it first implemented Secure Communities, he sought to distance himself from that legacy in a debate on March 16, 2020, when he claimed that noncitizens arrested by local law enforcement should not be handed over to ICE. However, while the Biden administration has taken no official stance on the issuance of detainers, the administration has continued to defend their use in court. Biden's Agenda for the Latino Community mentioned that the overlap between law enforcement and immigration enforcement "undermine[s] trust and cooperation between local law enforcement and the communities they are charged to protect," and it includes a bullet point on voiding all 287(g) agreements executed under Trump. But, as of writing, the administration has taken no action to end 287(g) agreements. Biden vowed during his campaign to end workplace raids and, since taking office, no major workplace raids have occurred.

Analysis and Recommendations

Arrests and Removals

- » **Enforcement Priorities and Prosecutorial Discretion**—The Biden administration should implement affirmative prosecutorial discretion guidelines setting out the positive factors that DHS and ICE will consider in exercising discretion positively to shield individuals from enforcement action. Particular attention should be paid to maintaining family unity, protecting vulnerable populations, working to address racial disparities in immigration enforcement, and shielding from enforcement actions people with viable defenses to removal or the ability to obtain immigration status through other means.
- » **Expedited Removal**—The Biden administration should immediately rescind the Trump-era expansion of expedited removal across the entire country, while also considering whether to limit expedited removal even further.
- » **Administrative Closure**—Attorney General Garland should restore the widespread use of administrative closure across the immigration court system. The Biden administration should then explore the use of both administrative closure and termination as a tool of prosecutorial discretion to clear hundreds of thousands of low-priority cases from the court backlogs.

Immigration Detention

- » The Biden administration should commit to a permanent reduction in the use of detention, beginning with a commitment to lowering the average daily population in ICE detention by at least 75 percent from pre-pandemic levels. The administration could do this through terminating all existing contracts with private prison companies and state and county jails and placing a moratorium on the implementation of future contracts.
- » The Biden administration should commit to a policy of constant affirmative file review to identify cases that fall outside of priorities and those of individuals at heightened risk of serious illness due to COVID.
- » The Biden administration should adopt a presumption of release for those held in detention and a policy requiring release on the least restrictive methods, while simultaneously investing in and expanding the use of community-based case management programs.

Sanctuary Policies

- » The Biden administration should take steps to rebuild trust with sanctuary communities around the country and roll back all of President Trump's attacks on sanctuary cities.
- » The administration should codify into regulation certain restrictions on immigration enforcement in sensitive locations such as courthouses, rather than keeping them as policy memoranda which can be changed by subsequent administrations.

Engagement with Local Law Enforcement

- » The Biden administration should fully rescind the Secure Communities program again and take measures to prevent a future administration from restoring it.
- » The Biden administration should halt the issuance of detainers.
- » The Biden administration should end all 287(g) agreements.

Funding for Interior Enforcement

- » The President should request significantly reduced funding for ICE enforcement and immigration detention. His administration should work to further reduce current detention levels.
- » The administration and Congress should instead invest significant funding in community-based alternatives to detention and in providing noncitizens navigating the removal process with appointed counsel.

Introduction

Former President Trump made aggressive interior enforcement a key element of his immigration agenda from his first day in office. He implemented a total of 363 policy changes to interior enforcement with the overarching goals of subjecting all undocumented immigrants to enforcement actions and detaining and deporting as many noncitizens as possible. President Biden assumed office after making significant commitments to implement changes to immigration enforcement, to limit enforcement activities, and to reduce the hardship experienced by noncitizens and their families.

This report analyzes some of the most consequential changes to immigration enforcement implemented by the Trump administration, the changes that President Biden committed to making during his campaign and transition, and the progress that his administration has achieved in its first 100 days. The report concludes with recommendations for additional changes that the administration should prioritize in working to create a fairer and more humane system of immigration enforcement.

Immigration Enforcement in the Trump Era

On the campaign trail and in office, President Trump made aggressive immigration enforcement a core priority for his administration. From his first week in office, Trump pursued policies intended to increase the capacity of Immigration and Customs Enforcement (ICE) to deport and detain noncitizens in the United States, punish local governments that did not fully cooperate with ICE, and terrorize undocumented immigrants living here peacefully into leaving.

Arrests and Removals

Expanded Removal Activities

On January 25, 2017, President Trump issued Executive Order 13768, “Enhancing Public Safety in the Interior of the United States,” that broadly expanded immigration enforcement priorities, targeting all undocumented immigrants for enforcement with the goal of increasing ICE apprehensions and removals in the interior of the country.¹

Executive Order 13768 redefined ICE targets for deportation as “all removable aliens,” making all immigrants without valid visas in hand targets for immigration enforcement.² The Department of Homeland Security (DHS) then issued a memo in February 2017, operationalizing this universal priority for removal.³ ICE, as a DHS subsidiary, formally implemented procedures for enforcement under order 13768 the next day.⁴ In application of this policy, ICE employed new tactics for apprehension of noncitizens throughout the Trump presidency, including arresting and detaining

them at check-ins for immigration court proceedings,⁵ at courthouses,⁶ and at interviews with U.S. Citizenship and Immigration Services (USCIS) for visa applications.⁷

Expedited Removal

On January 25, 2017, President Trump also issued Executive Order 13767, “Border Security and Immigration Enforcement Improvements,” which called for the DHS Secretary to extend the reach of “expedited removal,” a process by which an individual immigration enforcement official can order the immediate deportation of undocumented noncitizens without going through immigration court proceedings.⁸ The executive order called for DHS to expand expedited removal to the full extent allowed by law, taking it from something that could only be used along the border against those who recently crossed to a procedure which could be used against any undocumented immigrant who had been in the United States for less than two years.⁹

More than two years after the executive order, DHS published a notice in July of 2019 fully extending expedited removal across the entire country.¹⁰ The American Immigration Council, the American Civil Liberties Union, and Simpson Thatcher & Bartlett LLP then filed suit in August 2019, resulting in a preliminary injunction in September suspending the implementation of the policy. An appeals court overturned the injunction in June 2020, allowing ICE to fully implement the expansion of expedited removal as of October 19, 2020.¹¹ The plaintiffs filed an appeal the next day, which is still pending. Democracy Forward, the National Immigrant Justice Center, and Latham & Watkins LLP also filed a lawsuit challenging the expansion of expedited removal in December 2020, which is also still ongoing.¹²

Ending Administrative Closure

Administrative closure is a management tool used by immigration judges for decades that allows them to temporarily take cases off of their docket.¹³ It can also be used as a form of prosecutorial discretion, and in the Obama era it was used aggressively to suspend the adjudication of cases involving individuals who were not deemed to be priorities for enforcement, those with viable paths to lawful status outside of immigration court proceedings, or due to other humanitarian considerations.¹⁴ On August 15, 2017, ICE issued a directive to ICE’s Office of the Principal Legal Advisor (OPLA) calling for the review of immigration court cases that were previously administratively closed and for their reconsideration in accordance with the priorities contained in Order 13768.¹⁵ Attorney General Jeff Sessions also targeted administrative closure, issuing a decision in 2018 using his authority as head of the immigration courts to stop immigration judges from administratively closing new cases.¹⁶

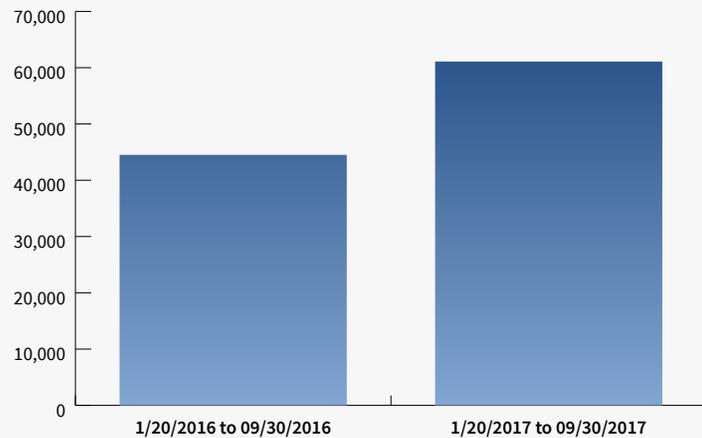
By ordering review of administrative closures, ICE intended to reopen cases for removal. Despite this policy, according to a report by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, out of 376,439 administratively closed cases dating back to 1983, 292,042 remained closed through July 2020.¹⁷

In late 2020, the Executive Office for Immigration Review (EOIR) published a rule which would end the authority of judges to administratively close cases.¹⁸ The rule went into effect on January 15, 2021. A lawsuit against the rule was filed on January 11, leading to a preliminary injunction on March 10, 2021, blocking the rule.¹⁹

The Impact of these Changes on ICE Removal Numbers

ICE aggressively implemented these changes, leading to an immediate increase in removal numbers. For example, Figure 1 compares removals occurring over the same time period (January 20 to September 30) in 2016 under Obama and in 2017 under Trump, illustrating a significant increase during that first six months under the new administration.²⁰

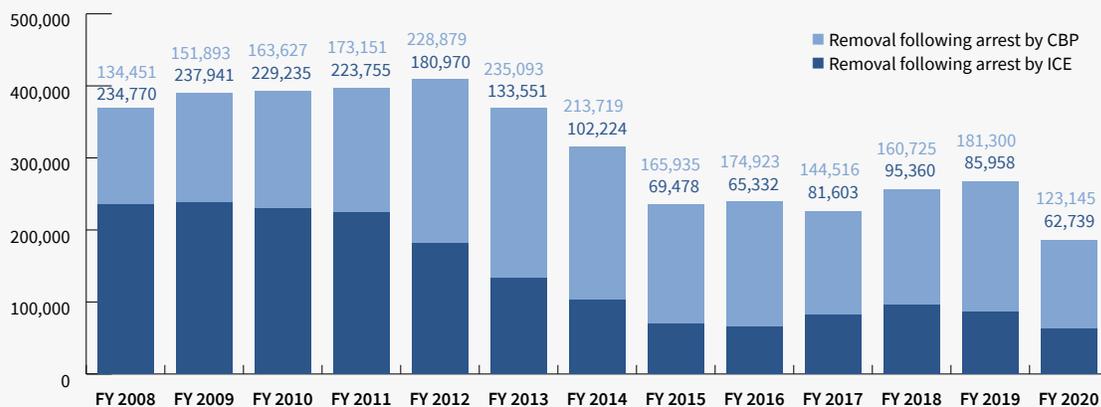
FIGURE 1: ICE Removals Between January 20 and September 30, FY 2016 and FY 2017



Source: U.S. Immigration and Customs Enforcement.²¹

However, while these policies contributed to an increase in removals over the final Obama years, they did not lead to greater numbers than the peaks seen earlier in the Obama presidency. Despite every measure taken by the Trump administration to increase enforcement, removals of individuals apprehended by ICE inside the United States never rose above 100,000 a year—less than half the level of Obama’s first term, as demonstrated in Figure 2 below. There are many reasons for this, including higher immigration court backlogs under Trump, increased representation rates, and less cooperation from state and local jurisdictions.

FIGURE 2: Total ICE Removals, FY 2008–2020



Source: U.S. Immigration and Customs Enforcement.²²

Detention Numbers and Capacity

Trump enacted a number of policies designed to increase the number of noncitizens held in immigration detention. In his Executive Order 13767, Trump demanded increased detention along the southern border, an end to the so-called “catch-and release” policy for families (a pejorative term often used to refer to the process of allowing families to seek asylum from outside of detention centers), and a restriction on parole (a statutory mechanism for discretionary release in humanitarian cases), ensuring prolonged detention of immigrants and asylum seekers and thereby inflating detention numbers.²³ In the enforcement of this order, DHS and ICE updated their operating procedures to limit conditions of release and restrict the use of parole.²⁴ ICE went so far as to eliminate a prior policy that included a presumption of release for pregnant women in December 2017.²⁵

Expansion of Bed Space and Addition of New Facilities

In a statement on its enforcement of Executive Order 13767 on February 21, 2017, DHS declared that ICE had added 1,100 beds to its detention capacity.²⁶ In 2018, ICE announced plans to add 15,000 beds to family detention centers, and the Trump administration transferred \$10 million to ICE from the Federal Emergency Management Agency (FEMA) for that purpose.²⁷

ICE also worked to open new detention facilities. In February 2017, Attorney General Sessions repealed an Obama-era order calling for the elimination of private prisons in the criminal justice context.²⁸ ICE’s efforts to expand detention capacity were challenged, however, by some states and local governments. For example, the state of California passed law AB-32 banning new contracts with private prisons.²⁹ In response, ICE requested four new contracts for detention facilities to be signed in December 2019, days before AB-32 went into effect on January 1, 2020.³⁰

ICE was successful in significantly increasing detention capacity in the South, opening several new facilities in Texas, Mississippi, and Louisiana. In 2018, there were two immigration detention facilities in Louisiana, but by July of 2019, the number had increased to 11.³¹ As of the date of publication of this report, there were a total of 14 facilities in the state, 10 of which are privately owned.³² This detention boom in Louisiana made the state the second in the country in overall immigration capacity in 2019.³³ The ICE New Orleans area of responsibility (AOR)—which covers ICE operations in Alabama, Arkansas, Louisiana, Mississippi, and Tennessee—also has the lowest parole rate of any AOR in the country, ensuring prolonged detention in these facilities.³⁴

In 2019, ICE had a total of 233 contracted facilities nationwide, with immigrants held in 185 of them. Despite this glut in capacity, ICE continued its effort to aggressively add new facilities without justification and, in some cases, without following its own procurement processes. ICE signed 40 new agreements for additional detention space between Fiscal Year (FY) 2017 and May 11, 2020.³⁵ According to a report by the U.S. Government Accountability Office (GAO), in some contracts ICE “[had] not documented its need for new space or followed other portions of its own process for obtaining it,” but executed the new contracts regardless. ICE announced plans to add four more facilities as recently as October 2020,³⁶ despite decreases in the detention population due to the COVID-19 pandemic.

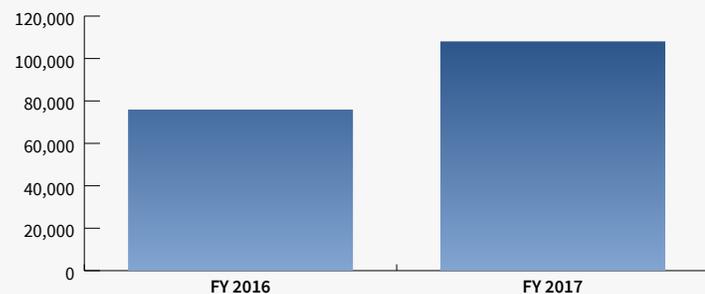
Detention Numbers

Trump’s policies were successful in increasing numbers of detention book-ins and in significantly increasing the population of detained individuals over the administration’s first three years in office. This trend began early in the Trump administration. As demonstrated in Figure 3, new book-ins increased significantly between Trump’s inauguration and the end of FY 2017.³⁷

The upward trend in ICE book-ins continued during Trump’s first three years in office, with significant increases in 2018 and 2019 (until the COVID-19 pandemic in 2020), as demonstrated in Figure 4.³⁹

Detention numbers reached an all-time high in the summer of 2019, before falling in 2020 due to policies intended to slow the spread of COVID-19. Figure 5 shows trends in monthly average daily population (ADP), from the start of fiscal year 2019 on.

FIGURE 3: ICE Book-Ins Between January 20 and September 30, FY 2016 and FY 2017³⁸



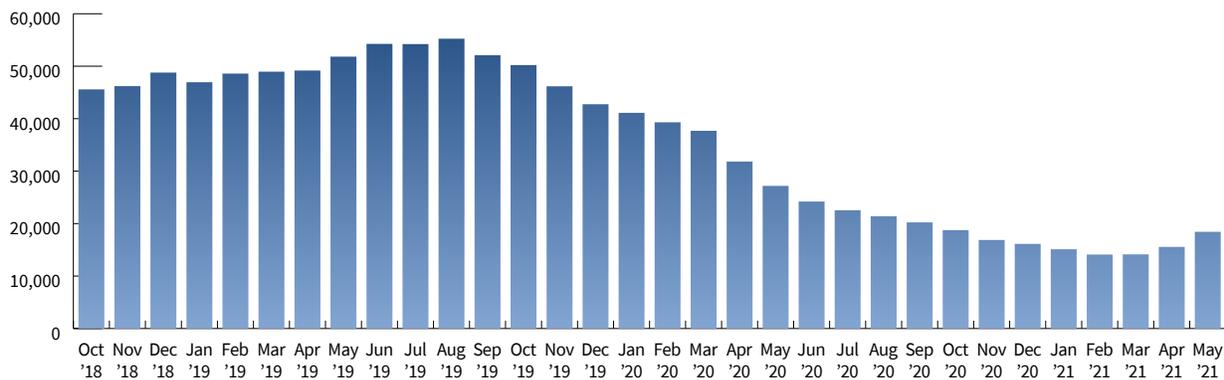
Source: U.S. Immigration and Customs Enforcement.

FIGURE 4: Initial Book-Ins into ICE Detention, FY 2015–2020



Source: U.S. Immigration and Customs Enforcement.⁴⁰

FIGURE 5: Monthly ADP in ICE Detention, FY 2019–April 2021 (as of May 8)



Source: U.S. Immigration and Customs Enforcement.⁴¹

These high numbers, including the record-breaking spike in 2019, were a result of the Trump administration's decision to detain more asylum seekers as a deterrent and release fewer on parole. Beginning in 2017, the Trump administration began refusing to follow an Obama-era policy which authorized the agency to release asylum seekers who were found to have a "credible fear" of persecution, leading some offices to deny parole in 100 percent of cases—despite the policy remaining on the books.⁴²

Challenges to Sanctuary Jurisdictions

The rise of "sanctuary cities," or jurisdictions that limit cooperation with ICE,⁴³ posed a threat to Trump's vision of strict interior immigration enforcement. As such, his administration attacked sanctuary and safe city policies on multiple fronts, trying to discourage the adoption of sanctuary laws, punishing jurisdictions that adopted them anyway, and finding ways to coopt existing laws to be used against sanctuary jurisdictions. The Trump administration also used its war on "sanctuary cities" as a cudgel against his political opponents, characterizing those who supported sanctuary policies as supporting "open borders" and endangering Americans—even though studies show that sanctuary jurisdictions generally have crime rates that are similar to or lower than non-sanctuary jurisdictions.⁴⁴

Punishment of Sanctuary Jurisdictions

Trump specifically mentioned sanctuary cities in Executive Order 13768, demanding that federal agencies deny them federal funding and that DHS publish a listing of uncooperative jurisdictions.⁴⁵ Accordingly, Attorney General Sessions issued a memorandum in May 2017 barring sanctuary jurisdictions from receiving federal grants from DHS or the Department of Justice (DOJ).⁴⁶ The DOJ then announced in August 2017 that it would no longer provide Public Safety Partnership funds to sanctuary jurisdictions.⁴⁷ DHS undertook other retaliatory actions targeting sanctuary jurisdictions, including temporarily barring New York residents from the Trusted Traveler Program.⁴⁸ Nearly all of these actions were eventually blocked in court.

ICE also threatened sanctuary jurisdictions with increased enforcement operations to counteract their lack of cooperation. In September 2017, ICE undertook operation "Safe City," making 498 arrests in sanctuary cities Baltimore, Boston, Chicago, Los Angeles, New York, Philadelphia, San Jose, Seattle, and Washington, D.C.⁴⁹ The next month, ICE threatened to increase arrests in California after it implemented statewide policies intended to limit cooperation with federal immigration enforcement, with the ICE Acting Director promising to detain immigrants out of state and "far away" from their families.⁵⁰ In March 2020, ICE requested the deployment of 500 DHS agents to sanctuary cities,⁵¹ and in October 2020 announced the conclusion of another extended operation targeting areas "where sanctuary policies have largely prohibited the cooperation of law enforcement agencies in the arrest of criminal aliens," which resulted in 170 arrests.⁵²

Litigation Challenging Sanctuary Jurisdictions

When intimidation and increased arrests failed to eliminate sanctuary policies, the Trump administration sued sanctuary jurisdictions and their representatives in attempts to force cooperation with ICE or to

overturn state laws which limited information sharing with ICE, beginning with *U.S. v. California* in 2018,⁵³ and followed in 2020 by *U.S. v. Newson*;⁵⁴ *U.S. v. King County, Washington*;⁵⁵ and *U.S. v. the State of New Jersey*.⁵⁶ Each of these lawsuits failed.

Strategic Messaging and Public Perception Campaigns

In an effort to weaponize the public in the fight against sanctuary jurisdictions, the Trump administration undertook a strategic messaging campaign to decry sanctuary policies and encourage citizens to turn in their noncitizen neighbors. President Trump even declared November 1, 2020, the “National Day of Remembrance for Americans Killed by Illegal Aliens” in an effort to foster public sympathy for immigration enforcement.⁵⁷ DHS also created a new Victims of Immigration Crime Enforcement Office (VOICE) in April 2017, to which citizens could submit requests for assistance.⁵⁸ In FY 2020, VOICE received about 700 calls from “victims.”⁵⁹ USCIS also implemented an online tip function for the public to report alleged immigration benefit fraud.⁶⁰

ICE placed billboards in Pennsylvania and North Carolina in October and November 2020, respectively, listing the names of “at-large immigration violators” and encouraging the public to be on the alert for these offenders.⁶¹ ICE also launched a targeted public relations effort, publishing statements and holding press conferences on the dangers of sanctuary policies.⁶² These actions coincided with the Trump campaign’s messaging and were often carried out in swing states, suggesting that the leadership of ICE was carrying out thinly-veiled political messaging.

Engagement with Local Law Enforcement

Immigration Detainers

A detainer is a nonbinding request from ICE that a state or local law enforcement agency maintain custody of an individual for up to 48 hours beyond the time the individual otherwise would have been released so that ICE can assume custody. The total number of detainers issued by ICE to law enforcement agencies increased by 65 percent in 2017,⁶³ and by another 24 percent in 2018.⁶⁴ Numbers dropped 6 percent in 2019,⁶⁵ before falling 26 percent in 2020.⁶⁶ ICE attributed this decline in detainers issued to “decreased numbers of individuals in state and local custody nationwide, ICE’s own temporary reduction in enforcement activity early in the pandemic, an increasing number of jurisdictions that do not cooperate with immigration enforcement activities, and court rulings limiting ICE’s ability to lodge detainers.”⁶⁷

Reimplementation of Secure Communities

In Executive Order 13768, Trump reinstated the Secure Communities system in place of the Priority Enforcement Program (PEP).⁶⁸ Secure Communities had first been implemented in 2008, before being replaced with PEP in 2014.⁶⁹ Through the program, DHS receives all biometric information submitted to the FBI by state and local law enforcement agencies, and uses it to identify noncitizens ICE believes should be subject to immigration enforcement, including undocumented immigrants and lawful permanent residents who have experienced even minimal contact with the criminal legal system that resulted in fingerprinting (but not necessarily the levying of charges or a conviction). ICE will then issue a detainer requesting that local law enforcement hold the noncitizen for up to 48 hours after they

would otherwise be released from state or local custody.⁷⁰ Under the PEP program, which the Obama administration put in place following new enforcement priorities, the same system largely remained in place, but ICE claimed to prioritize violent offenders and so-called public safety threats.⁷¹

287(g) Agreements with Law Enforcement Agencies

287(g) agreements between ICE and local law enforcement agencies enable local law enforcement officials to enforce federal immigration law.⁷² Given their role as force-multipliers for interior immigration enforcement, Trump mandated in both Executive Order 13767 and 13768 that DHS increase its use of 287(g) agreements.⁷³ Prior to the Trump presidency, 22 jurisdictions had 287(g) agreements under the Jail Enforcement Model (JEM). During the administration's four years in office, 126 jurisdictions signed JEM agreements.⁷⁴ Under JEM contracts, local sheriffs and police officers receive training and certification to conduct immigration enforcement actions.⁷⁵

In addition to expanding use of JEM agreements, ICE entered into similar contracts known as Basic Ordering Agreements with several Florida sheriffs in January 2018 to imbue them liability protection to hold arrested noncitizens.⁷⁶ In May 2019, ICE also introduced a new Warrant Service Office (WSO) program, allowing individual law enforcement officers to perform immigration enforcement functions within the jails in which they work. The WSO program was framed as an effort to allow rural jurisdictions without the resources to enter into 287(g) JEM agreements, but they also allow individual law enforcement officers to circumvent some sanctuary policies.⁷⁷ The program became popular in Florida, which easily leads other states in WSO agreements.⁷⁸

At the end of FY 2020, ICE had 150 agreements with law enforcement agencies (LEAs) under the 287(g) program.⁷⁹ As of 2021, ICE has 146 contracts with LEAs: 74 under the WSO model and 72 of the JEM variety.⁸⁰ During the Trump years, 28 jurisdictions ended 287(g) agreements, while 198 signed new ones under either the WSO or JEM models.⁸¹

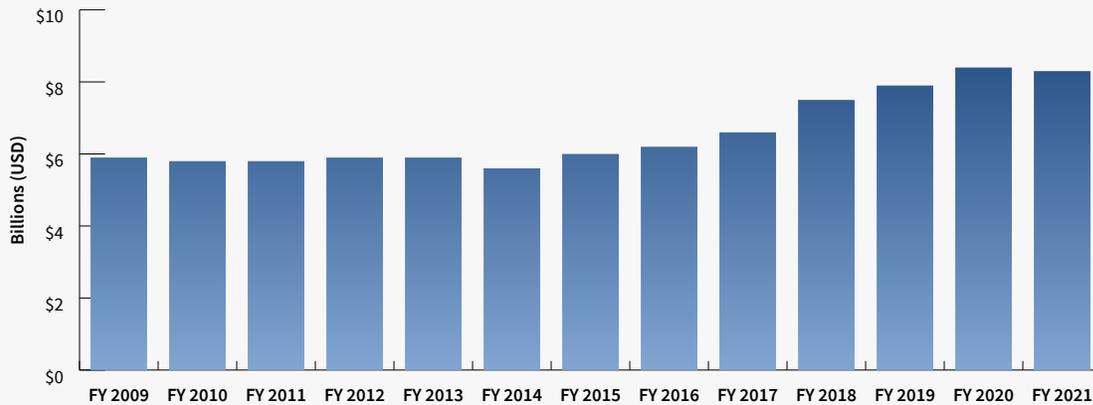
Worksite Enforcement

ICE significantly increased worksite investigations and arrests during Trump's tenure. In 2017, ICE demanded that DHS investigators quadruple time spent on worksite investigations,⁸² contributing to record-breaking workplace raids. In April 2018, a raid at a meat processing facility in Tennessee led to the arrest of 104 workers.⁸³ In April 2019, 284 were arrested at a cellphone repair company in Texas in the largest raid at a single employer under Trump.⁸⁴ 2019 also saw the largest single-state workplace enforcement operation in ICE history, with 680 individuals arrested in raids across Mississippi.⁸⁵

Funding for Interior Enforcement

ICE's annual budget increased by almost a billion dollars in FY 2018, during Trump's first full fiscal year in office.⁸⁶ Figure 6 below demonstrates how it continued to balloon throughout the Trump years, growing from \$6.6 billion in 2017 to \$8.3 billion in 2021.⁸⁷

FIGURE 6: Annual ICE Budget, FY 2009–2021⁸⁸



Source: American Immigration Council.

This 2021 budget includes approximately \$3 billion for immigration detention.⁸⁹

Enforcement During the COVID-19 Pandemic

The onset of the COVID-19 pandemic forced ICE to significantly alter its approach to enforcement. In March 2020, ICE announced that it would focus its removal efforts on public safety risks and stop making arrests in the community.⁹⁰ As the pandemic continued into April and outbreaks spread in detention centers, the overall number of people held in immigration detention began to decline.⁹¹ This decrease is largely attributable to a sharp reduction in the number of people sent into ICE detention from the southern border following the implementation of a policy of expelling asylum seekers across the border.⁹² It was also the result of a series of court victories across the country that forced ICE to release many people who were vulnerable to COVID-19 and limit the capacity of detention centers.⁹³

ICE largely resumed its regular enforcement actions in September 2020, following the reported firing of the Acting ICE Director over a refusal to increase at-large arrests in immigrant communities during the COVID-19 pandemic.⁹⁴ ICE’s handling of the pandemic has been widely viewed negatively, resulting in multiple federal courts finding that the agency had been “deliberately indifferent” to the dangers posed by COVID-19,⁹⁵ two DHS Office of Inspector General reports finding that the agency had violated safety standards,⁹⁶ and a study finding that ICE’s continued transfers of people between detention centers sparked outbreaks in communities around the country.⁹⁷

President Biden's Commitments and Accomplishments on Immigration Enforcement

President Biden promised a new and more thoughtful approach to immigration enforcement in the United States. Throughout his campaign, he noted the positive contributions of immigrants to the United States and the harms of overly aggressive enforcement, and he made significant commitments to implement changes to reduce the harm to noncitizens in the United States. His administration has taken some steps toward this end, and some of his efforts have had a meaningful impact. Nevertheless, the administration has yet to pursue some of its core commitments on enforcement, thereby limiting the overall impact in the day-to-day lives of many immigrants.

Enforcement Priorities

Priorities for Arrest and Removal

In his immigration platform, “The Biden Plan for Securing Our Values as a Nation of Immigrants,” Biden promised to “restore sensible enforcement priorities” in office. He condemned the targeting of all immigrants, including those without criminal records and those who have lived in the United States for years, as “the definition of counterproductive.” He vowed that his administration would focus its enforcement efforts on public safety and national security threats, while also promoting due process in enforcement and removal proceedings.⁹⁸

As President-Elect, Biden nominated Alejandro Mayorkas, a Hispanic-American son of refugees, to be Secretary of Homeland Security.⁹⁹ As the *Washington Post* reported at the time, “[h]is nomination was a sign that Biden seeks a Homeland Security chief familiar with the intense partisan politics of immigration enforcement but also someone who views immigrants as a benefit to the nation—the complete opposite of Trump’s view.”¹⁰⁰ This move suggested that, under the new administration, DHS would use a lighter touch on immigration enforcement.

Biden also announced a commitment to immediately instituting a pause on deportations if elected.¹⁰¹ On Inauguration Day, President Biden issued Executive Order 13993, “Revision of Civil Immigration Enforcement Policies and Priorities,” which revoked Trump’s Executive Order 13768 and the enforcement priorities contained therein and directed relevant government agencies to review and revise any agency policies developed thereunder.¹⁰²

Following the executive order, DHS took immediate action to implement the change in a memo, “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities,” which was aimed at updating agency enforcement priorities to align with Biden’s executive order.¹⁰³ The memo contained several key provisions. First, the agency committed to a 100-day review on all immigration enforcement policies across the government. Second, the memo stated that “DHS’s

civil immigration enforcement priorities are protecting national security, border security, and public safety,” and declared that ICE would temporarily only target individuals who had entered the United States since November 1, 2020, as well as certain individuals with “aggravated felony”¹⁰⁴ convictions.¹⁰⁵ The memorandum also revoked a number of policies of the Trump administration, including one that required applicants for certain immigration benefits to be placed in removal proceedings if those applications were denied.

Finally, the memo implemented a 100-day moratorium on deportations of individuals in the United States prior to November 1, 2020, thus following through on what Biden had pledged on the campaign trail.¹⁰⁶ However, this policy was challenged by the state of Texas and blocked by a Texas U.S. District Judge.¹⁰⁷ The Biden administration elected to avoid challenging this decision, and the deportation moratorium was therefore never implemented.

ICE issued a second set of interim enforcement guidance on February 18, 2021, which expanded the pool of individuals subject to immigration enforcement beyond those described in the January 20, 2021, memo, declaring a broader list of people as targets.¹⁰⁸ Under the terms of the new memo, ICE will prioritize enforcement against anyone suspected of terrorism or espionage, anyone who ICE determines should be targeted “in the national interest,” anyone who was not physically present in the United States before November 1, 2020, anyone who has been convicted of an “aggravated felony,” anyone convicted of a crime for which gang-related activity is an element of the crime, and anyone who ICE believes to have participated in a gang and is 16 years old or older.¹⁰⁹ This final category is of particular concern for advocates, as it does not require a conviction for any offense, is likely to disproportionately impact Black and Latinx immigrants, and may rely on unreliable domestic and international databases. Significantly, because the interim guidance remains in place, anyone who is newly arrived in the United States since November 1, 2020, is considered an enforcement priority, regardless of any other “risk” presented to the public or national interest.

ICE’s February 18 memo further clarifies that preapproval is not a requirement for enforcement actions taken against those presumed to be a priority case. However, written approval by a superior is required to undertake enforcement actions against an individual not presumed to belong in a priority category.¹¹⁰ Advocates have expressed concerns that ICE’s enforcement priorities perpetuate racial injustice, and that field offices and individual officers retain a great deal of discretion in conducting enforcement action against individuals who fall outside of these stated priorities.¹¹¹ As of the date of publication, another round of enforcement guidance is expected in the coming weeks. Critically, the administration has only focused on enforcement priority categories to date, and they have failed to commit to implementing policies that would allow for the affirmative exercise of prosecutorial discretion by detailing the specific populations of individuals that should be shielded from enforcement actions. Given the challenges experienced by the Obama administration in redirecting ICE enforcement activities in a consistent and systematic manner, meaningfully shielding specific populations of non-citizens from immigration enforcement in the Biden era will prove difficult, if not impossible, unless the administration explicitly describes the population of non-citizens against whom enforcement actions should be avoided. Affirmative prosecutorial discretion regimes have been implemented in the past, including when Biden served as Vice President.¹¹²

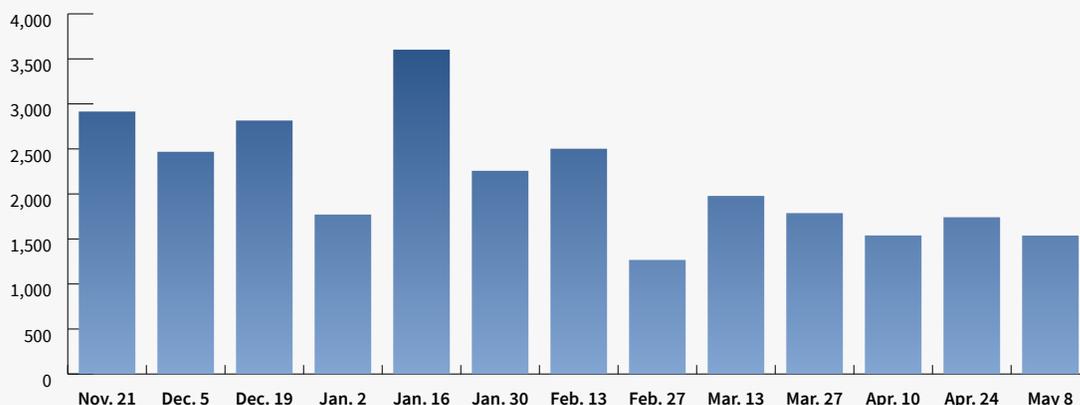
The Implementation of ICE’s Priorities for Arrest and Removal

Implementation of the interim guidance has been inconsistent. Advocates and practitioners report in multiple jurisdictions that local Field Offices make decisions regarding whether someone is an enforcement priority without providing a formal written explanation, even in cases where the person does not appear to be a priority. In other instances, ICE has also decided to continue the detention of someone who is not an enforcement priority, also without explanation. And as of the date of publication, ICE has largely taken the position that the enforcement priorities memo does not apply to the actions of the Office of Principal Legal Advisor and the hundreds of attorneys who pursue removal cases in immigration court.

ICE announced on March 4, 2021, the creation of a process for individuals to request the review of their cases in light of these new enforcement priorities.¹¹³ Advocates report that the case review process has been applied inconsistently across the country and have called for the agency to carry out its own review that doesn’t place the burden on the immigrant to make the request. The new case review process also implemented a mechanism for requesting review of the decisions of local Field Offices by other ICE officials. This mechanism has also produced mixed results. Advocates report that they receive boilerplate responses without explanation for a determination to either maintain the Field Office’s decision to continue detention or, more rarely, to suggest release. This mechanism for review is also only accessible via email, making it essentially inaccessible to the more than 80 percent of detained immigrants who do not have legal counsel.

Despite the failure of Biden’s moratorium on deportations, ICE’s fiscal year-to-date detention statistics data illustrate that ICE removal numbers have fallen under Biden as compared to the final months of his predecessor, likely as a result of the new enforcement priorities. The figure below shows new removals, biweekly from November 21, 2020, to April 24, 2021.¹¹⁴ However, these figures do not take into account the tens of thousands of people who are expelled to Mexico or other countries under the “Title 42” authority that Biden has continued to invoke at the border to turn people away.¹¹⁵

FIGURE 7: New Biweekly ICE Removals, November 21, 2020 to May 8, 2021¹¹⁶



Source: U.S. Immigration and Customs Enforcement.

Limits on Removal Activities

Biden's campaign plan called for strengthening protections against enforcement operations being carried out in "sensitive locations" such as hospitals, schools, and places of worship.¹¹⁷ After taking office, the Biden administration announced on April 27, 2021, a new policy that explicitly prohibits ICE and CBP officials from conducting enforcement actions at courthouses, unless the enforcement action met narrow public safety exceptions.¹¹⁸

Relatedly, in February 2021 DHS announced that ICE and CBP would not conduct arrests or engage in enforcement activity in or around any clinics providing COVID-19 vaccines.¹¹⁹

Expedited Removal

On February 2, 2021, Biden issued the "Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border." In it, he called for DHS to review the memo "Designating Aliens for Expedited Removal" and all expedited removal procedures implemented under these policies.¹²⁰ At the time of publication this review was not complete.

Immigration Court Issues

As a candidate, Biden promised to promote access to counsel for immigration court cases, indicating interest in a fairly adjudicated process instead of a pipeline to deportation.¹²¹ Upon his inauguration, President Biden sent a draft of a comprehensive immigration bill to Congress, the U.S. Citizenship Act. The bill discusses immigration court with measures to address backlogs, hire new immigration judges, and ensure counsel in all removal proceedings and bond hearings seeking release from detention.¹²² The bill was introduced in the House of Representatives on February 18, 2021, but it has yet to receive a vote.¹²³ However, the administration has not taken action in the immigration court system to restore access to administrative closure, and as of the time of publication Attorney General Garland has not reversed any negative precedents set by his predecessors. The Biden administration has also not halted or reviewed the hiring of immigration judges who began the hiring process under the previous administration.¹²⁴

Detention Numbers and Capacity

Biden's immigration platform contained a commitment to reduce prolonged detention in favor of community-based alternatives and case management programs, which would significantly promote release and parole options and reduce the number of immigrant detainees held at a given time.¹²⁵ His plan also discussed ending contracts with private detention facilities, which make up the majority of ICE detention centers.¹²⁶ Stays in private detention centers are generally longer than those in public ones, suggesting that the average stay in detention could be shorter without private facilities in the picture.¹²⁷

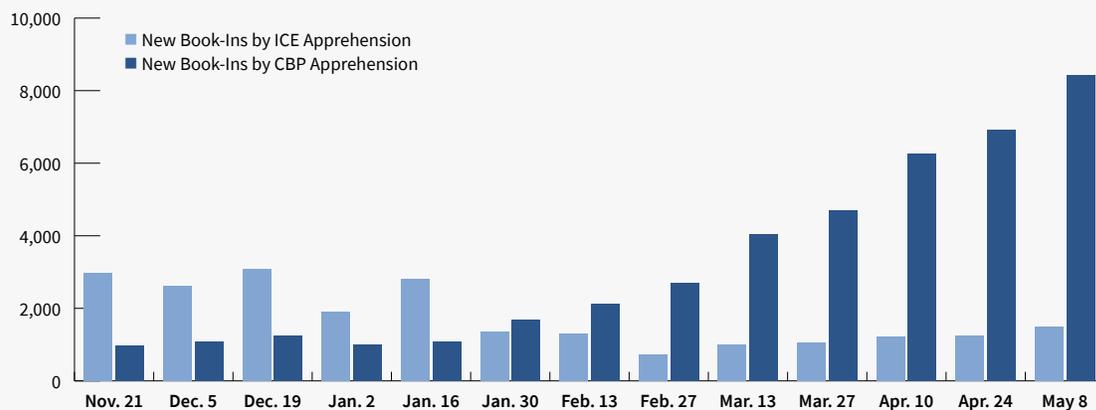
Advocates have argued that the private prison industry incentivizes prolonged detention.¹²⁸ This is because companies are often paid in accordance with per-bed minimums,¹²⁹ make millions of dollars per year off immigration detention,¹³⁰ and funnel huge sums of money into lobbying and the campaigns of friendly candidates to protect their existence.¹³¹ Eliminating for-profit facilities would likely promote release of detainees since private companies would no longer profit off of increased and prolonged detention of immigrants.

Biden issued an executive order on January 26, 2021, instructing the Attorney General not to renew any DOJ contracts with private criminal detention facilities. However, this order did not mention private civil or immigration detention.¹³² At an event on April 29, 2021, Biden declared in response to protestors calling for an end to ICE detention that “[t]here should be no private prisons, period... none, period. That’s what they’re talking about, private detention centers. They should not exist and we are working to close all of them... I promise you.”¹³³

Biden’s draft of the U.S. Citizenship Act contains a section on expanding community-based alternatives to detention, which would help to reduce the number of immigrant detainees and the length of their stays in detention.¹³⁴ Again, the bill has not yet seen a vote.¹³⁵ President Biden’s request for FY 2022 discretionary funding includes language on expanding case management programs and alternatives to detention.¹³⁶

ICE data also indicate significantly fewer arrests inside the United States, with the number of people booked into detention falling by more than half since President Biden took office.¹³⁷ Despite fewer people sent to detention from inside the United States, ICE detention numbers have increased due to the significant transfer of noncitizens encountered along the southern border by CBP, as reflected in Figure 8 below.¹³⁸ As of May 14, 2021, there were 20,430 people held in ICE detention, up 39 percent from 14,715 on January 15, 2021.¹³⁹

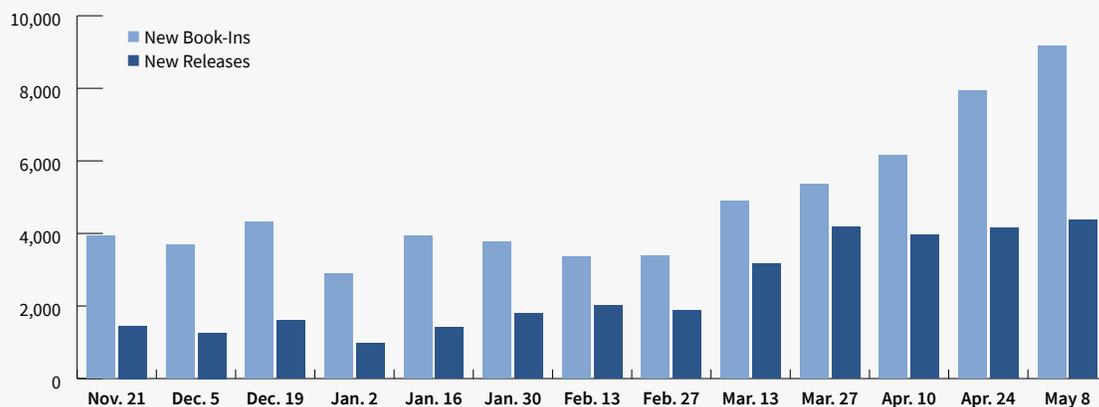
FIGURE 8: New Biweekly Book-Ins to ICE Detention by Arresting Agency, November 21, 2020, to May 8, 2021¹⁴⁰



Source: U.S. Immigration and Customs Enforcement.

Figure 9 contrasts the total number of noncitizens booked into ICE custody with those released from ICE detention on a biweekly basis. The data confirm that the numbers of people released and booked into ICE custody have increased since inauguration day. While releases from detention have increased since inauguration, the proportion of book-ins has increased at a greater rate, thereby increasing overall detention numbers. As of the date of publication, the Biden administration had increased the population of people in immigration detention by nearly 40 percent compared to the numbers when Trump left office.¹⁴¹

FIGURE 9: Biweekly Book-Ins and Releases into Adult ICE Detention Centers, November 21, 2020, to May 8, 2021¹⁴²



Source: U.S. Immigration and Customs Enforcement.

Sanctuary Policies

Biden’s 51-bullet point immigration plan did not include a section on sanctuary cities,¹⁴³ and he has historically been opposed to sanctuary policies. When first running for President in 2007, Biden said in a debate that he would not support sanctuary policies, and as Vice President he was closely associated with the Obama administration’s enforcement and removal policies which spawned the rise of sanctuary laws. However, in light of Trump’s attacks on sanctuary jurisdictions, Biden released a statement in 2019 criticizing the President’s stance, with Biden’s spokesperson then insisting that he “believes that the Trump Administration’s approach to immigration, including its crackdown on sanctuary cities... is contrary to our values as a nation.”¹⁴⁴ At the time, the extent to which Biden would address enforcement efforts in sanctuary jurisdictions was unclear.¹⁴⁵

On March 14, 2021, the DOJ asked the Supreme Court to dismiss three cases regarding whether the DOJ can withhold federal grant funds from sanctuary jurisdictions.¹⁴⁶ Then, on April 28, 2021, Reuters reported seeing an internal memo from DOJ acting head of the Office of Justice Programs Maureen Henneberg that formally repealed the requirement of cooperation with ICE as a prerequisite to receipt of DOJ grant funding. Any pending solicitations of funds that employ conditions relevant to immigration will now be taken down, revised, and re-posted to start the application process anew.¹⁴⁷ These developments have ended the practice of withholding federal funding based on sanctuary policies.

Engagement with Local Law Enforcement

Secure Communities

Although Biden was Vice President of the Obama administration when it first implemented Secure Communities, he sought to distance himself from that legacy in a debate on March 16, 2020, when he claimed that noncitizens arrested by local law enforcement should not be handed over to ICE,¹⁴⁸ showing further intent to untangle the ties between ICE and police. The Biden administration has not yet taken any steps to abandon Secure Communities.

Detainers

The Biden administration has taken no official stance on the issuance of detainers. However, a lawsuit against the Biden administration by the State of Florida alleges that ICE is now issuing fewer detainers as a result of the new enforcement priorities.¹⁴⁹

Despite no official policy changes, the Biden administration has continued to defend the use of detainers in court. The U.S. Court of Appeals for the Tenth Circuit will soon hear the appeal of Angel Aguayo, who was arrested and held on a detainer in Utah in 2019,¹⁵⁰ despite an order in the 2014 case *Utah Coal. of La Raza v. Herbert* prohibiting Utah law enforcement from arresting noncitizens based on a detainer or suspicion of civil immigration violations.¹⁵¹ An amicus brief filed by the American Immigration Council and the National Immigrant Justice Center noted that ICE continues to issue detainers in states where they are prohibited by federal court order or state law, with 1,169 in Utah, 16,716 in California, 1,425 in Colorado, and 869 in Massachusetts in FY 2020 through June. The brief further argues that use of detainers to conduct civil immigration arrests violates the Immigration and Nationality Act (INA). The case raises questions about the legality of ICE detainers.¹⁵²

Agreements with Law Enforcement

Biden's Agenda for the Latino Community mentioned how the overlap between law enforcement and immigration enforcement "undermine[s] trust and cooperation between local law enforcement and the communities they are charged to protect."¹⁵³ It includes a bullet point on voiding all 287(g) agreements executed under Trump, and minimizing the role of previous 287(g) agreements and all similar programs that enable or require law enforcement officials to carry out the duties of immigration officers.¹⁵⁴ As of writing, no action on 287(g) agreements has taken place.

Worksite Enforcement

In the section of his immigration platform on enforcement priorities, Biden vowed to end workplace raids. He also included this promise in his Latino agenda, emphasizing how he would protect the rights of all workers regardless of immigration status.¹⁵⁵ Since taking office, no major workplace raids have occurred.

Analysis and Recommendations

The Biden administration inherited an immigration enforcement system that became increasingly politicized in the Trump era. Over the last four years, ICE enforced immigration law without meaningful priorities, and with little oversight or accountability. And the agency has, with few exceptions, received record funding year-over-year from Congress. Biden made considerable commitments to reform immigration enforcement within the interior of the United States while on the campaign trail. His administration has made some progress in signaling a new way forward on enforcement issues and has implemented some initial policy changes that have had an impact on enforcement trends. However, a great deal of work remains to create meaningful and lasting reforms that will reduce the hardship experienced by noncitizens and families who could potentially be subjected to immigration enforcement within the United States, and to rein in an agency with a history of challenging changes that limit the scope of its activities and authority.

Arrests and Removals

- » **Enforcement Priorities and Prosecutorial Discretion**—While the current interim enforcement priorities implemented by the Biden administration have helped to reduce the enforcement dragnet created by the Trump administration, work remains to address the flaws in the national security and public safety designations that rely on overly-broad definitions of what constitutes a threat to public safety and/or national security, and also import the failings of the criminal legal system into immigration enforcement. The Biden administration should instead implement affirmative prosecutorial discretion guidelines setting out the factors that DHS and ICE will consider in exercising discretion positively to shield individuals from enforcement action. Particular attention should be paid to maintaining family unity, protecting vulnerable populations, working to address racial disparities in immigration enforcement, and shielding from enforcement actions people with viable defenses to removal or the ability to obtain immigration status through other means. The Biden administration should also affirmatively review all pending cases—including those of people who are not detained—to identify instances where a positive exercise of discretion may be warranted.
- » **Expedited Removal**—The Biden administration should immediately rescind the Trump-era expansion of expedited removal across the entire country, while also considering whether to limit expedited removal even further or eliminate it altogether. Two decades of expedited removal has shown that its current use is fundamentally incompatible with due process and produces unjust results that heighten the risk of erroneous removal. As a result, the Biden administration should undertake a full review of expedited removal and consider not only reducing its use at the border and inside the country, but also imposing additional safeguards.

- » **Administrative Closure**—Attorney General Garland should vacate Attorney General Sessions’ decision ending administration closure, restoring its use across the immigration court system. The Biden administration should then explore the use of both administrative closure and termination as a tool of prosecutorial discretion to clear hundreds of thousands of low-priority cases off the immigration court backlogs. EOIR should also formally repeal the prior administration’s regulation—currently blocked in court—which eliminated administrative closure.

Immigration Detention

- » When President Biden took office, the number of people in ICE detention was at the lowest level in a generation and many ICE detention centers sat nearly vacant. This natural experiment of reduced immigration detention has shown that there is no need to keep tens of thousands of asylum seekers and immigrants in detention. However, the Biden administration is still using detention as a tool to process asylum seekers arriving from the border, and the number of people held in detention has increased steadily for months. This is movement in the wrong direction. The Biden administration should commit to a permanent reduction in the use of detention, beginning with a commitment to lowering the average daily population in ICE detention by at least 75 percent from pre-pandemic levels. The administration could do this through terminating all existing contracts with private prison companies and state and county jails and placing a moratorium on the implementation of future contracts. The administration should also commit to a policy of constant affirmative file review to identify cases that fall outside of priorities and those of individuals at heightened risk of serious illness due to COVID. In addition, the Biden administration should adopt a presumption of release for those held in detention and a policy requiring release on the least restrictive methods, while simultaneously investing in and expanding the use of community-based case management programs. Finally, the Biden administration should take further steps to end family detention by committing to shutting down Karnes and Dilley and making it more difficult for a future administration to begin detaining families once again.
- » Detention is not only harmful to immigrants and to due process; it is expensive. Current detention contracts cost taxpayers hundreds of millions of dollars a year for empty bedspace across the country, including contracts which pay out at 100 percent occupancy rates even if a detention center is empty. The Biden administration should move to terminate those contracts and use the additional funding to increase availability of case management-based alternatives to detention, as well as funding for appointed counsel for those facing removal.

Sanctuary Policies

- » The Biden administration should take steps to rebuild trust with sanctuary communities around the country and roll back all of President Trump’s attacks on sanctuary cities. Local law enforcement has long recognized that building trust with a community helps keep

everyone safer than when immigrants are afraid to come forward and report crimes because of a fear of immigration enforcement. The administration should also codify into regulation certain restrictions on immigration enforcement in sensitive locations such as courthouses, rather than keeping them as policy memoranda which can be changed by subsequent administrations.

Engagement with Local Law Enforcement

- » **Secure Communities**—The Biden administration should fully rescind the Secure Communities program again and take measures to prevent a future administration from restoring it.
- » **Immigration Detainers**—The Biden administration should halt the issuance of detainers, which often request government agencies to carry out an unlawful act: detaining an immigrant for civil immigration enforcement without authority under federal or state law. In addition, detainers are often based on databases which contain erroneous information, leading to multiple incidents over the last decade where ICE has issued detainers for individuals who are U.S. citizens.
- » **287(g)**—The Biden administration should end all 287(g) agreements, which give the authority to carry out immigration enforcement to inadequately trained local police through agreements that incentivize racial profiling. Watchdogs have long documented abuses carried out under these programs, which often cost local law enforcement far more than ICE promises, reduce trust in local immigrant communities, and expose law enforcement to increased liability.

Funding for Interior Enforcement

- » The United States now spends more on immigration enforcement than all other federal law enforcement combined. This funding has been used in large part to implement policies intended to create harsh consequences for noncitizens in the United States and to deter people from coming here. These deterrence-based policies have created considerable hardship for immigrants and their families, while also failing to meaningfully impact immigration trends. The Biden administration should work to aggressively pursue a new way forward, using the budgeting and appropriations processes to restructure the nature of immigration enforcement in the United States. The President should request significantly reduced funding for ICE and immigration detention. His administration should work to further reduce current detention levels. The administration and Congress should instead invest significant funding in community-based alternatives to detention and in providing noncitizens navigating the removal process with appointed counsel.

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