Understanding the Impact of Immigration Enforcement on California Children in K-12 Schools

A Report of the
California Advisory Committee to the
U.S. Commission on Civil Rights

January 2021

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

California Advisory Committee to the
U.S. Commission on Civil Rights

The California Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding civil rights concerns in federal immigration enforcement and its impact on California K-12 students. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of California. The contents of this report are primarily based on testimony the Committee heard during two public meetings; one held in Los Angeles on October 16, 2019 at the Los Angeles Central Library; the other held in Chula Vista on March 4, 2020 at Southwestern College.

This report details civil rights concerns with federal immigration enforcement in California. The Committee sought to understand the following: the impact of ICE enforcement practices on access to public education for California K-12 students; access to equal protection under the law for individuals based on their perceived national origin; and the extent to which due process is afforded to K-12 students and their families. The executive summary offers findings and recommendations for your consideration.

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EXECUTIVE SUMMARY

Immigration has long been at the center of U.S. political debate for decades, as policy makers have weighed economic, national security, and humanitarian concerns. Congress has debated several immigration reforms over the last two decades, some considered comprehensive, while other proposed laws focused on incremental changes. The discussion surrounding comprehensive immigration, or omnibus legislation, attempts to address demand for high- and low-skilled labor, the legal status of millions of undocumented immigrants living in the United States, border security and interior enforcement.

Over the years, presidential administrations have implemented varying immigration enforcement actions affecting and targeting specific groups of the undocumented population, legal immigration system, border security, and interior enforcement. For instance, the Obama Administration set priorities on which populations to target for deportations and announced an executive order creating a 3-year deferred action (protection from deportation) program created for undocumented parents of U.S. citizen or permanent resident sons or daughters. Subsequently, the Trump Administration implemented a "zero-tolerance" approach that allows authorities to arrest and prosecute undocumented immigrants caught crossing the southern border and called for the construction of a physical wall between the U.S. and Mexico border to curb undocumented immigration into the U.S. These varying approaches have garnered support and opposition and even sparked legal challenges that are being litigated in court today.

Interior enforcement in the form of arrests throughout the major cities across the nation, including major California cities,[1] has drawn both criticism and praise from a range of stakeholders. In particular, these arrests have raised concern among educators; immigrant rights advocates, and state and local elected officials because some of these actions occurred near or at sensitive locations such as schools and courthouses.[2] Others support the removal of undocumented immigrants with criminal records from staying in the U.S.

California, like other states, has implemented so-called sanctuary laws. For example, in 2017, the California Legislature passed Senate Bill 54, also known as the California Values Act.[3] The law prohibits state and local law enforcement agencies from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.[4]

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[1] Hamed Aleaziz, "ICE confirms 150-plus arrests in California sweep, slams Schaaf's early warning." *SFGATE,* Feb. 28, 2018. Accessed on March 18, 2020, https://www.sfgate.com/bayarea/article/Reports-of-California-immigration-sweep-are-true-12714833.php; Elizabeth Chou. "ICE arrests more than 200 in weeklong immigration sweeps across Southern California." *The Sun, Feb. 16, 2018.* https://www.sbsun.com/2018/02/16/ice-arrests-more-than-200-in-weeklong-immigration-sweeps-across-southern-california/.

[2] Andrea Castillo, "Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood." *Los Angeles Times*, Mar. 3, 2017 https://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html; Mackenzie Mays. "After arrests near schools, Valley groups skeptical of ICE policies." Fresno Bee, Apr. 8, 2017. https://www.fresnobee.com/news/local/education-lab/article143462829.html.

[3] Cal. Gov't. Code § 7284 (West 2018).

[4] Cal. Gov't. Code § 7284.6 (West 2018).

The California Advisory Committee was concerned about media coverage and reports pertaining to perceived increased federal immigration enforcement actions occurring in public spaces such as courtrooms and schools. The Committee also recognized a letter drafted by Supreme Court Justice Tani G. Cantil-Sakauye who delivered a letter[5] to then-Attorney General Jeff Sessions and then-Secretary of Homeland Security John Kelly expressing her concern regarding the effects of ICE's activities on public trust and confidence in the state court system, including the potential chilling effect on crime victims, victims of sexual abuse and domestic violence, witnesses to crime who desire to cooperate with law enforcement, especially limited-English proficient speakers, unrepresented litigants, and children and families. In a joint response, then-Attorney General Jeff Sessions and then-Secretary Kelly stated that "[s]uch policies threaten public safety, rather than enhance it,"[6] and as a result, ICE requires to arrest these individuals in public places, rather than in jails.

The California Advisory Committee (Committee) in 2018 voted to examine the impact of federal immigration enforcement and more narrowly focused on the impact on California K-12 students. Many students live in mixed immigration status households.[7] The Committee also sought to understand the following: the impact of ICE enforcement practices on access to public education for California K-12 students; access to equal protection under the law for individuals based on their perceived national origin; and the extent to which due process is afforded to K-12 students and their families.

The Committee held two public meetings: one held in Los Angeles on October 16, 2019 at the Los Angeles Central Library; the other held in Chula Vista on March 4, 2020 at Southwestern College. Various opinions were presented in testimony offering a wide array of perspectives in the areas of the possible impact of immigration enforcement on California children and otherwise; the role of immigration enforcement; federal immigration enforcement policy and its potential effects; the possible impact of California's sanctuary policies; due process and domestic violence reporting. Stakeholders, including the Customs and Border Protection, the California Department of Justice, academics, national and state advocacy organizations, legal experts, and individuals speaking on their own behalf or on behalf of interested organizations testified in person or provided written statements. In addition, the Committee convened a meeting with representatives from U.S. Immigration and Customs Enforcement on June 24, 2020 to obtain responses to specific questions posed by the Committee after receiving initial testimony at their meetings in Los Angeles and Chula Vista.

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[5] Letter from Chief Justice Cantil-Sakauye to Attorney General Sessions and Secretary Kelly, Mar. 16, 2017 https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses.

[6] "Response from Sessions and Kelly to California's Chief Judge on Immigration," Mar. 29, 2017, https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html.

[7] These are households with at least one undocumented immigrant parent.

This report begins with introduction and background on legal authority surrounding immigration enforcement and relevant laws and policies that apply to the Committee's inquiry such as federal and state laws and a court case. A summary of themes based on testimony received follows. The report concludes with findings and recommendations issued to the U.S. Commission on Civil Rights to forward to appropriate federal and state entities.

The findings and recommendations are also below:

Findings

1. Immigration enforcement impacts children in many ways. Of the 5.1 million children who have at least one undocumented parent, 4.5 million are U.S. citizens. The removal of undocumented parents of children who are U.S. citizens splits families and may negatively impact the growth and stability of millions of children.

2. In California alone, at least 750,000 children live with a parent who is undocumented, including 250,000 children who are undocumented themselves. The arrest and/or deportation of parents adversely affects their children as does the continual fear of arrest and deportation. Media reports and testimony regarding enforcement activity in and around schools also affects undocumented children and children of undocumented parents. Such effects may include an increase in absenteeism among students, a decline in parent participation in school events, an increase in bullying of students because of their perceived national origin and/or citizenship status, and a decline in school participation and willingness to seek higher education.

3. In 2011, ICE promulgated its Sensitive Locations policy that limits ICE enforcement actions at schools, hospitals, places of worship, public religious ceremonies and during public demonstrations. ICE also noted that:

    a. ICE has discretion in how it conducts enforcement actions pursuant to federal law; and if and when enforcement actions occur *near or around* schools, agents are required to ask for supervisory approval.

    b. The ICE Sensitive Locations policy does not prohibit ICE from conducting enforcement actions *near or around* schools or hospitals or places of worship; however, ICE attempts to avoid sensitive locations if possible.

    c. A lack of data collection and reporting by ICE limits a full review, examination and understanding of the efficacy and impact of the Department of Homeland Security's Sensitive Locations policy and limits a full understanding of the impact of ICE's practices and procedures on U.S. children.

4. The Sensitive Locations policy does not limit or restrict ICE from conducting enforcement actions in or around courthouses. On March 16, 2017, Tani Cantil-Sakauye, the Chief Justice of the California Supreme Court, notified the U.S. Attorney General and the U.S. Secretary of Homeland Security about her concern about reports from some California trial courts that immigration agents appeared to be stalking undocumented

immigrants in state courthouses to make arrests, that those tactics undermine the judiciary's ability to provide equal access to justice, and she requested that that ICE refrain from that sort of enforcement in California's courthouses. In a joint response, then-Attorney General Jeff Sessions and then-Secretary Kelly stated that Justice Cantil-Sakauye should direct her concerns to Governor Jerry Brown and to law enforcement officials who refuse to honor detainers as several California municipalities are "sanctuary cities" that limit police cooperation with ICE. They stated that "[s]uch policies threaten public safety, rather than enhance it,"[8] and as a result, ICE requires to arrest these individuals in public places, rather than in jails.

5. Many local law enforcement agencies allow limited access to ICE to undocumented persons in local custody. This limited access may reduce the ability for ICE to deport undocumented individuals who committed crimes and who may pose the highest risk to public safety. As a result, many undocumented individuals convicted of crimes are released into communities resulting in ICE agents seeking the arrest and deportation of these same individuals in communities rather than in a controlled custodial environment. The transfer of ICE enforcement activity from the local jails/prisons to the communities increases the risk to agents, the undocumented individuals being sought as well as to community members at large. The enforcement in communities also increases the negative perception of ICE in those communities and creates greater fear for undocumented individuals and their children living in those communities. Although the sanctuary laws were intended to protect undocumented immigrants, they may be doing more harm than good and primarily protecting undocumented immigrants who commit crimes.

6. California schools are required to uphold federal laws that: protect students' personal information; prohibit discrimination in public education on the basis of race, color, or national origin; and prohibit discrimination based on immigration status in access to basic public education. While these laws remain in place, and efforts were put forth by California school districts to address concerns about immigration enforcement potentially occurring in and around schools, and ICE's Sensitive Locations policy explicitly indicating that schools are off-limits to conduct enforcement actions, families still express anxiety and fear of deportation. The effect is that students in mixed-status households choose to stay home because of that fear. Such fear, whether real or not, has a chilling effect on education for undocumented children and children of undocumented parents. It also affects school funding that is intended to support all students because funding is largely tied to attendance and impacts student achievement.

7. Testimony indicated that executive orders impact immigrant communities' perception of safety and feel targeted because of their presumed national origin and immigration status.

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[8] "Response from Sessions and Kelly to California's Chief Judge on Immigration," Mar. 29, 2017, https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html.

8. California's sanctuary laws continue to be a point of tension between federal, state, and local authorities. In particular, the California Values Act made a dent in decreasing immigrant arrests in the state reinforcing the notion supported by previous research and testimony that implementation of deportation procedures would not be as extensive if local officials declined to participate. ICE asserts that a consequence of the California Values Act is that federal immigration enforcement actions are more likely to be conducted in public rather than in local law enforcement custody. In addition, the law fosters a precarious relationship between immigrant communities and local law enforcement.

9. Testimony indicated concerns with immigration courts fulfilling procedural due process requirements. At this time, immigration courts have limited resources, are experiencing a large and growing caseload that sometimes goes beyond the 180-day adjudication period for asylum cases, and are subject to fluctuations in enforcement policy changes. Testimony indicated that these examples may impede due process because they can cause long wait times before cases can be heard, and over-detention of undocumented immigrants.

10. According to U.S. law, undocumented immigrants have a right to due process; however, they do not have a right to counsel provided by the government in civil proceedings. ICE provides undocumented immigrants resources such as contact information for consulates and the American Immigration Lawyers Association to obtain legal representation; however, some individuals are unable to access representation due to understaffed and underfunded nonprofit law firms, who often provide this service. This is notable because children are more likely to receive the relief they are seeking if counsel represents them.

11. Testimony before this Committee indicates a concern with due process and consistency with immigration courts and judges. Undocumented immigrants appearing in immigration court face obstacles to due process and fair adjudication of claims for relief. Testimony indicated inconsistency among immigration judges and highly disparate grant rates as well as hostility and contempt toward immigrants and their attorneys. In contrast, additional testimony indicated favoritism and leniency towards immigrants by some immigration judges. Based on testimony, it appears that outcomes may depend on which court or judge is deciding the case rather than established principles and rules of law.

12. Immigration enforcement may impact the reporting of crimes in immigrant communities. There are several possible reasons that affect a victim's inclination to report crimes. For instance, immigrants, who may be undocumented, and are victims may not report crimes because of shame, fear of deportation, and a lack of faith in law enforcement in taking their report seriously. Fear of reporting crime may result in continual victimization of undocumented immigrants. Such crimes may include domestic violence and child abuse and many other crimes. Failing to report a crime also means that the nation's crime statistics may be grossly inaccurate and potentially misleading. This has significant consequences for policymaking and budgeting because, without proper reporting, resources could be allocated to the wrong place. On the other hand, Department of Justice statistics estimate that approximately 50 percent of all crimes nationwide go unreported.

Under reporting of crime is an issue that goes well beyond immigrant communities, and hence is broader than immigration enforcement.

13. Testimony indicated concerns with the treatment by federal immigration authorities and/or federal detention conditions that are in violation of the Customs and Border Patrol's National Standards on Transport, Escort, Detention, and Search. Asylum seekers reported mistreatment by immigration officers through verbal abuse and threats; denied adequate food; clean drinking water and bedding. In addition, testimony indicated medical personnel did not screen children while detained and some did not receive medical attention. Lastly, families continue to be separated while in federal custody.

14. ICE no longer exempt groups of removable undocumented immigrants from enforcement. As a result, all undocumented immigrants are likely targets even if they have lived in the United States for many years and have U.S. born children. As seen in the Administration's January 25, 2017 Executive Order, the shift in enforcement philosophy has translated to more arrests and deportations of undocumented immigrants.

Recommendations

The U.S. Commission on Civil Rights should study the impact of sanctuary laws and their effectiveness.

The U.S. Commission on Civil Rights should send this report and issue recommendations to the Department of Homeland Security, Immigrations and Customs Enforcement Agency to:

- Track and release detailed information on enforcement operations including information on who is targeted, arrested, and deported especially those operations conducted near or around sensitive locations, and at courthouses. In addition, track and release information on the detention of U.S. children and those who are legal residents.

- Examine the availability of legal representation for detainees provided by legal aid organizations and develop solutions to ensure detainees have sufficient and proper access to legal representation.

- Comply with the Sensitive Location policy and communicate its importance to the public

- Comply with the Federal Educational Rights and Privacy Act.

- Conduct outreach to immigrant communities to educate them on the core functions of its agencies.

- Expedite the removal of deportable gang members.

- Amend its October 24, 2011, Sensitive Locations policy memorandum to add courthouses to the list of sensitive locations that are subject to certain limitations on immigration enforcement actions.

The U.S. Commission on Civil Rights should send this report and issue a recommendation to the Department of Homeland Security to investigate and/or review ICE and CBP policing activities and actions at and in proximity to schools and courthouses and other sensitive locations.

The U.S. Commission on Civil Rights should send this report and issue recommendations to the Department of Homeland Security, Customs and Border Protection Agency to:

- Comply with the National Standards on Transport, Escort, Detention, and Search.
- Do not separate undocumented immigrant families who have been apprehended at the border and during detainment, especially those with young children.
- Provide detainees with the contact information of immigration lawyers and create better access to detention facilities by either moving detention facilities to higher populated areas, implementing transportation systems, or expanding video conferencing.
- Provide adequate translation services in detention facilities for indigenous languages so that migrants who do not speak English or Spanish have the ability to communicate with detention staff and have equal access to legal information and representation.

The U.S. Commission on Civil Rights should send this report and issue a recommendation to the Department of Justice, Executive Office for Immigration Review to abide by the 180-day period to adjudicate asylum cases.

The U.S. Commission on Civil Rights should send this report and issue recommendations to the U.S. Congress to:

- Pass legislation that streamlines the legal immigration process to ensure civil rights protections for children.
- Provide appropriate funding to support anti-gang operations.
- Consider legislation to make the immigration court system independent, separate from the Department of Justice, to ensure impartiality and to insulate the system from policy changes. Congress should also consider creating trial and appellate divisions to create judicial independence.
- Provide adequate funding to support the Department of Justice, Executive Office for Immigration Review to adjudicate cases.
- Authorize and fund additional studies examining the impact of sanctuary laws and its relationship to crime rates, reporting crime, removals, and recidivism rates.
- Hold federal agencies accountable for treatment of asylum seekers by reexamining policies and practices for how asylum petitions are received, reviewed, and decided.
- Hold the Department of Homeland Security accountable for compliance with its policies such as the National Standards on Transport, Escort, Detention, and Search.

- Consider legislation codifying the Department of Homeland Security's Sensitive Locations policy to ensure that the Constitutional rights of U.S. children are protected, including access to education, criminal justice, and social services without fear of family separation or detention.

The U.S. Commission on Civil Rights should send this report and issue a recommendation to the California Legislature to conduct an in-depth study on the impact of sanctuary laws and their effectiveness in obtaining their stated goal. In addition, consider examining their relationship to crime rates, reporting crime, removals, and recidivism rates.

The U.S. Commission on Civil Rights should send this report and issue a recommendation to the California Attorney General's Office to continue enforcing the Educational Equity: Immigration and Citizenship Status Act so that schools educate families on students' right to a safe and free education and the impacts of bullying, and develop anti-bullying policies and information concerning bullying based on immigration status.

The U.S. Commission on Civil Rights should send this report and issue recommendations to the California Department of Education to:

- Ensure all school districts are in compliance with the Family Educational Rights Privacy Act.

- Track and monitor the implementation of the Educational Equity: Immigration and Citizenship Status Act in public schools, including but not limited to the tracking of complaints of discrimination by students and school employees on the basis of immigration status.

- Implement measures to ensure that public schools are not collecting information or documents regarding citizenship or immigration status of pupils or their family members.

- Implement measures to ensure that all school districts are in compliance with the Family Educational Rights Privacy Act and state laws protecting the privacy of student records.

- Require all school districts to annually notify students and parents about the Federal Educational Rights Privacy Act, Educational Equity: Immigration and Citizenship Status Act, and any policies and procedures regarding immigration enforcement on school property.

INTRODUCTION

Immigration has long been at the center of U.S. political debate for decades, as policy makers have weighed economic, national security, and humanitarian concerns. Congress has debated several immigration reforms over the last two decades, some considered comprehensive, while other proposed laws focused on incremental changes.[9] The executive and judicial branches, in the meantime, have weighed in on administrative changes to immigration enforcement.[10] The discussion surrounding comprehensive immigration legislation, or omnibus legislation, attempts to address demand for labor, the legal status of millions of undocumented immigrants[11] living in the United States, border security and interior enforcement.[12]

Immigration actions varied throughout the history of presidential administrations, focusing on different priority areas. For instance, the Obama Administration, issued memos to the Department of Homeland Security, U.S. Citizenship and Immigration Services, and the Department of Labor, announcing broad changes that affect the undocumented population, legal immigration system, border security and interior enforcement.[13] Some of the changes included:

- A 3-year deferred action (protection from deportation) program created for undocumented parents of U.S. citizen or permanent resident sons or daughters (of any age, not just children). Deferred Action for Childhood Arrivals extended to DREAMers of any age (eliminates previous max age of 30).[14]
- Parole-in-place for undocumented family of persons seeking to serve in the military.[15]
- The expansion of the provisional waiver program to undocumented spouses and children of lawful permanent residents already in line for a green card.[16]

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[9] Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005); Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006); A Bill to Provide for Comprehensive Immigration Reform and for Other Purposes, S. 1639, 110th Cong. (2007).

[10] *See Arizona v. U.S.*, 567 U.S. 387 (2012).

[11] In the immigration debate, there are several terms, some explicitly noted in U.S. statutes, used to describe noncitizens such as unauthorized individuals, illegal aliens, undocumented immigrants, etc. For the purpose of uniformity, this report will use the term undocumented immigrants.

[12] Ruth Essen Wasem, Cong. Research Serv., R42980, Brief History of Comprehensive Immigration Reform Efforts in the 109th and 110th Congresses to Inform Policy Discussions in the 113th Congress (Feb. 27, 2013), https://fas.org/sgp/crs/homesec/R42980.pdf.

[13] Lazaro Zamora, "Obama's Executive Action on Immigration Explained." *Bipartisan Policy Center*, Nov. 25. 2014, https://bipartisanpolicy.org/blog/obamas-executive-action-on-immigration-explained/.

[14] U.S. Department of Homeland Security, Citizenship and Immigration Services, *What Is DACA*, https://www.uscis.gov/archive/consideration-of-deferred-action-for-childhood-arrivals-daca (accessed Dec. 10, 2020).

[15] U.S. Department of Homeland Security, Citizenship and Immigration Services, *Discretionary Options for Military Members, Enlistees and Their Families*, https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families (accessed Dec. 10, 2020).

- Allowance of H-1B spouses to work if the principal has an approved green card petition.[17]
- Extended optional practical training for foreign students studying science, technology, engineering, and math; and a new parole status for entrepreneurs to remain in the country.[18]
- Expanded avenues for inventors and entrepreneurs to apply for green cards without employer petition.[19]
- Calls for significant modernization of immigrant visa processing, including making sure all authorized visas are issued.[20]
- New strategic border security planning, revamped deportation priorities and clarification of exercising prosecutorial discretion.[21]
- Replacement of the Secure Communities program[22] of information sharing on arrestees with a more targeting program aligned with the new enforcement priorities.

In addition, they outlined three civil immigration enforcement priority areas targeting specific populations: those who are threats to national security, border security and public safety;

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[16] Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 Fed. Reg. 535 (Jan. 3, 2013) https://www.federalregister.gov/documents/2013/01/03/2012-31268/provisional-unlawful-presence-waivers-of-inadmissibility-for-certain-immediate-relatives.

[17] U.S. Department of Homeland Security, Citizenship and Immigration Services, *DHS Extends Eligibility for Employment Authorization to Certain H-4 Dependent Spouses of H-1B Nonimmigrants Seeking Employment-Based Lawful Permanent Residence*, https://www.uscis.gov/archive/dhs-extends-eligibility-for-employment-authorization-to-certain-h-4-dependent-spouses-of-h-1b (accessed Dec. 10, 2020).

[18] Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, 81 Fed. Reg. 13039, (March 11, 2016) https://www.federalregister.gov/documents/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and.

[19] U.S. Department of Homeland Security, Immigration and Citizenship Services, *2014 Executive Actions on Immigration: Modernize, Improve And Clarify Immigrant And Nonimmigrant Visa Programs To Grow Our Economy And Create Jobs*, https://www.uscis.gov/archive/2014-executive-actions-on-immigration#4 (accessed Dec. 10, 2020).

[20] The White House Archives, *Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century*, https://obamawhitehouse.archives.gov/the-press-office/2014/11/21/presidential-memorandum-modernizing-and-streamlining-us-immigrant-visa-s (accessed Nov. 21, 2014),

[21] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, Jun. 17, 2011, https://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.

[22] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Secure Communities*, https://www.ice.gov/secure-communities (last updated Mar. 20, 2018) (noting the Secure Communities program uses federal-information sharing between DHS and FBI that helps to identify in-custody undocumented immigrants without imposing new or additional requirements on state and local law enforcement) (hereinafter *Secure Communities*).

misdemeanants and new immigration violators; and those who have been issued a final order of removal.[23]

More recently, the Trump Administration issued several executive orders affecting immigration policy. One such executive order[24] and the subsequent Department of Homeland Security memo[25] called to rescind all previous policy related to the Obama Administration's target priorities for removal. The new priorities call on the Department of Homeland Security to prioritize individuals for removal based on criminal, security, and fraud grounds that make foreign nationals inadmissible or deportable under the Immigration Nationality Act. Unauthorized immigrants noted in Executive Order 13768 who are targeted have: (i) been convicted of any criminal offense, (ii) been charged with any criminal offense, (iii) committed acts that constitute a chargeable criminal offense, (iv) willfully committed fraud in any official matter before a government agency, (v) abused public benefits, (vi) final orders of removal, and (vii) are otherwise considered a public safety or national security risk by an immigration officer.[26]

Other Executive Orders and policy changes focus on the following areas:

- Increasing border security and instruction for federal agencies to construct a physical wall between the U.S. and Mexico. Additionally, it called for an end to "catch and release" practices, in which certain undocumented immigrants who were captured at the border would be allowed into the United States while they await court hearings.[27]
- Banning nationals from Iran, Iraq, Libya, Somalia, Sudan, and Yemen from entering the United States for at least ninety days; blocked nationals from Syria indefinitely; and suspended the U.S. refugee program for 120 days.[28]
- Decreasing the annual cap of refugees admitted to the U.S. and more stringent measures to allow for individuals to seek asylum.[29]

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[23] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, Mar. 02, 2011, https://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf

[24] Enhancing Public Safety in the Interior of the United States, Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017), https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states (herein cited as Exec. Order No. 13768).

[25] U.S. Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, Feb. 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

[26] Exec. Order No. 13768.

[27] Border Security and Immigration Enforcement Improvements, Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 30, 2017).

[28] Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); These actions drew widespread protests and legal challenges from jurisdictions across the country. The Trump Administration revised the travel band twice, and it eventually made its way to the Supreme Court, where justices ruled it to stand based on its third iteration. In 2020, the ban included additional countries.

- Ending Temporary Protected Status for Haitians, Nicaraguans, and Sudanese. Hondurans, Nepalis, and Salvadorans were later added to this list in 2018.[30]
- Phasing out Deferred Action on Childhood Arrival (DACA) program.[31]
- Implementing a "zero-tolerance" policy, which allows authorities to arrest and prosecute undocumented immigrants caught crossing the southern border.[32]
- Accepting a limited number of asylum applicants each day and instructing others to remain in Mexico.[33]
- Mitigating the influx of Central American migrants through "safe third country" agreements with El Salvador, Guatemala, and Honduras. The deal require asylum seekers traveling through these countries to apply for protection there first and allow U.S. officials to deport migrants to the Northern Triangle without considering them for asylum.[34]
- Implementing "public charge" rule that establishes a test to determine whether an immigrant applying to enter the U.S., extend their visa, or convert their temporary immigration status into a green card is likely to rely on public benefits in the future.[35]

In 2015, the Commission issued a seminal report that addressed civil rights and constitutional concerns in connection with the immigration detention of families and children, including conditions of detention centers, "With Liberty and Justice for All: The State of Civil Rights at Detention Facilities"[36] as part of its annual statutory enforcement reporting. Four years later, the

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[29] Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

[30] *See*, *e.g.*, Jill H. Wilson, Cong. Research Serv., RS20844, Temporary Protected Status: Overview and Current Issues (Oct. 26, 2020) https://fas.org/sgp/crs/homesec/RS20844.pdf; Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan, 84 Fed. Reg. 59403 (November 4, 2019) https://www.federalregister.gov/documents/2019/03/01/2019-03783/continuation-of-documentation-for-beneficiaries-of-temporary-protected-status-designations-for-sudan.

[31] U.S. Department of Homeland Security, *Memorandum from Kirstjen M. Nielsen*, Jun. 22, 2018, https://www.dhs.gov/sites/default/files/publications/18_0622_S1_Memorandum_DACA.pdf.

[32] Cong. Research Serv., R45266, The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy (Feb. 26, 2019) https://fas.org/sgp/crs/homesec/R45266.pdf.

[33] U.S. Department of Homeland Security, *Policy Guidance for Implementation of the Migrant Protection Protocols*, Jan. 25, 2019, https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf. The Trump Administration expanded these practices in 2019 under its Migrant Protection Protocols, which require asylum seekers to stay in Mexico while their cases are pending.

[34] Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829 (July 16, 2019) https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications.

[35] Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52357 (October 2, 2019) https://www.uscis.gov/greencard/public-charge.

[36] U.S. Commission on Civil Rights, *With Liberty and Justice for All: The State of Civil Rights at Detention Facilities*, September 2015, https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2015.pdf.

Commission issued a related report, "Trauma at the Border: The Human Cost of Inhumane Immigration Policies"[37] primarily focused on increased enforcement activity at the U.S./Mexican border and the separation of migrant children from their parents.

In 2017, Supreme Court Justice Tani G. Cantil-Sakauye delivered a letter[38] to then-Attorney General Jeff Sessions and then-Secretary of Homeland Security John Kelly expressing her concern regarding the effects of ICE's activities on public trust and confidence in the state court system, including the potential chilling effect on crime victims, victims of sexual abuse and domestic violence, witnesses to crime who desire to cooperate with law enforcement, especially limited-English proficient speakers, unrepresented litigants, and children and families. In a joint response, then-Attorney General Jeff Sessions and then-Secretary Kelly stated that "[s]uch policies threaten public safety, rather than enhance it,"[39] and as a result, ICE requires to arrest these individuals in public places, rather than in jails.

In acknowledgement of these events, the California Advisory Committee also recognized media coverage and reports pertaining to accounts of immigration officers conducting arrests throughout major California cities[40] and enforcement activity around schools. This influenced the Committee to examine the impact of federal immigration enforcement on California K-12 students. Among potential related concerns, the Committee sought to examine: (a) the impact of ICE enforcement practices on access to public education for California K-12 students; (b) access to equal protection under the law for individuals based on their perceived national origin; and (c) the extent to which due process is afforded to K-12 students and their families.

The Committee held two public meetings: one held in Los Angeles on October 16, 2019, at the Los Angeles Central Library; the other held in Chula Vista on March 4, 2020 at Southwestern College. Various opinions were presented in testimony offering a wide array of perspectives in the areas of the possible impact of immigration enforcement on California children and otherwise; the role of immigration enforcement; federal immigration enforcement policy and its potential effects; the possible impact of California's sanctuary policies; due process and domestic violence reporting. Stakeholders, including the Customs and Border Protection, the California Department of Justice, academics, national and state advocacy organizations, legal experts, and

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[37] U.S. Commission on Civil Rights, *Trauma at the Border: The Human Cost of Inhumane Immigration Policies*, October 2019, https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf.

[38] Letter from Chief Justice Cantil-Sakauye to Attorney General Sessions and Secretary Kelly, Mar. 16, 2017 https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses.

[39] "Response from Sessions and Kelly to California's Chief Judge on Immigration," Mar. 29, 2017, https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html.

[40] Hamed Aleaziz. "ICE confirms 150-plus arrests in California sweep, slams Schaaf's early warning." *SFGATE,* Feb. 28, 2018. Accessed on March 18, 2020, https://www.sfgate.com/bayarea/article/Reports-of-California-immigration-sweep-are-true-12714833.php; Elizabeth Chou. "ICE arrests more than 200 in weeklong immigration sweeps across Southern California." *The Sun, Feb. 16, 2018.* https://www.sbsun.com/2018/02/16/ice-arrests-more-than-200-in-weeklong-immigration-sweeps-across-southern-california/.

individuals speaking on their own behalf or on behalf of interested organizations testified in person or provided written statements. In addition, the Committee convened a meeting with representatives from U.S. Immigration and Customs Enforcement on June 24, 2020, to obtain responses to specific questions posed by the Committee after receiving initial testimony at their meetings in Los Angeles and Chula Vista.

BACKGROUND

The following section provides a summary of relevant authority governing immigration enforcement in and around public schools, and other sensitive locations. While there are several laws that can be linked to this topic, the Committee felt the laws, policies, and court case below are particularly related to the scope of their inquiry.

Plyler v. Doe

In California, education is considered a fundamental right.[41] The California Constitution requires the State to provide for a system of free public education.[42] "California has assumed specific responsibility for a statewide public education system open on equal terms to all."[43] Under California law, children between the ages of 6–18 are subject to compulsory full-time education.[44] Therefore, all children in California, including undocumented children, not only have the right to attend school, but are mandated to do so under the Education Code.

School Administration and Security Provisions

The United States Supreme Court has held that schools cannot deny students access to a basic public education due to immigration status.[45] In other words, public schools must provide all children with equal access to schooling, regardless of immigration status, and offer the same benefits for undocumented student as they do for United States citizens or permanent residents. In *Plyler v. Doe*, Texas enacted legislation that denied public school enrollment and withheld state funds from school districts that included children who were "illegally admitted" to the United States.[46] The Supreme Court struck down this law and declared it an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment.[47]

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[41] *Serrano v. Priest*, 5 Cal.3d 584 (1971) ("Serrano I"); *Serrano v. Priest*, 18 Cal.3d 728 (1976) ("Serrano II").

[42] Cal. Const. art. IX, § 5.

[43] *Butt v. California*, 4 Cal.4th 668, 680 (1992).

[44] Cal. Educ. Code § 48200.

[45] *Plyler v. Doe*, 457 U.S. 202 (1982).

[46] *Id.*

[47] *Id.*

The impact of *Plyler v. Doe* is significant: students and their parents cannot be questioned or be required to disclose or document the status of their citizenship. Additionally, students cannot be denied enrollment in schools due to either their immigration status or their parent's immigration status. School districts cannot engage in any practices that "chill" the right of access to school, including making inquiries of students or parents that may expose their undocumented status.

Both federal and state laws explicitly prohibit discrimination on the basis of nationality, race or ethnicity, and immigration status.[48] All local educational agencies are tasked with providing a learning environment free of discrimination, harassment, and violence.[49] Schools are required to implement antidiscrimination and antiharassment policies.[50] School administrators may be liable in their official and personal capacity if they are deliberately indifferent, such as by failing to investigate or failing to take adequate prevention measures, to harassment or discrimination based on race, ethnicity, national origin, and other protected categories.[51]

Because the California Legislature has found that the interruption of class time seriously impairs the educational process, schools can limit disruptions on school grounds to ensure the safety of their students and staff.[52] Schools may deny an individual from accessing a campus during school hours.[53] Any person who willfully disturbs any public school or any public school meeting and does not depart upon request is guilty of a misdemeanor and will be fined.[54] A school district may not bar a student from enrolling because she does not have a birth certificate or has records that indicate a foreign place of birth. In assessing proof of residency, school districts may collect certain information, such as property tax receipts, utility bills, or rental property documents.[55] This list does not include documents that demonstrate proof of legal immigration status.[56]

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[48] 42 U.S.C. § 2000c et seq.; 42 U.S.C. § 2000(d) et seq.; 20 U.S.C. §1681 et seq.; 42 U.S.C. § 12132 et seq.; 20 U.S.C. § 1400 et seq.; 29 U.S.C. § 794; 20 U.S.C. § 1703(f); Cal. Educ. Code. §§ 200, 201, 220, 234.1; Cal. Civ. Code § 51; Cal. Gov't Code § 11135.

[49] Cal. Educ. Code § 201.

[50] Cal. Educ. Code § 234.1.

[51] See Justice Department Factsheet on Rights of All Children to Enroll in School: https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf.

[52] Cal. Educ. Code §§ 32211–12.

[53] Cal. Educ. Code § 32211.

[54] *Id.*

[55] Cal Educ. Code § 48204.1.

[56] *Id.*

Immigration Enforcement

Immigration and Nationality Act of 1965

In 1965, President Lyndon B. Johnson signed into law the Immigration and Nationality Act.[57] The law, known as the Hart-Celler Act for its congressional sponsors, ushered in far-reaching changes that continue to undergird the current immigration system and influenced significant demographic changes that are still shaping the U.S. today and will in future decades.[58] President Lyndon B. Johnson stated that the act "is not a revolutionary bill. It does not affect the lives of millions…. It will not reshape the structure of our daily lives or add importantly to either our wealth or our power."[59]

The law abolished an earlier quota system based on national origin and replaced it with a system that prioritizes relatives of U.S. citizens or permanent residents, those with skills deemed useful to the U.S., and refugees of violence or unrest.[60] It placed caps on per-county total immigration,[61] as well as caps on each category.[62] In addition, it established a new immigration policy focused on family reunification and would increasingly allow entire immigrant families to reestablish their lives in the U.S.

By the end of the 20th century, the policies put into effect by the Immigration and Nationality Act had greatly changed the face of the American population.[63] Compared with the 1950s where more than half of all immigrants were Europeans and just six percent were Asians, in the 1990s only 16 percent were Europeans and 31 percent were of Asian descent and the percentages of Latino and African immigrants had increased significantly.[64]

Pertinent to this report, the Immigration and Nationality Act also established enforcement power to federal agencies and specific leadership. For instance, the law charged the Secretary of

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[57] 8 U.S.C. § 1101.

[58] Saul Gonzalez and Matthew Bell, "50 years on, how one law changed America seeded today's immigration debate," Oct. 2, 2015, *PRI The World*, https://www.pri.org/stories/2015-10-02/50-years-how-one-law-changed-america-and-seeded-todays-immigration-debate.

[59] Lyndon B. Johnson Presidential Library, *President Lyndon B. Johnson's Remarks at the Signing of the Immigration Bill,* 1965. http://www.lbjlibrary.org/lyndon-baines-johnson/timeline/lbj-on-immigration (accessed on March 31, 2020).

[60] 8 U.S.C. § 1151.

[61] 8 U.S.C. § 1152.

[62] 8 U.S.C. § 1153.

[63] U.S. Immigration Since 1965, *History.com*, https://www.history.com/topics/immigration/us-immigration-since-1965 (website last updated June 7, 2019 and accessed on March 31, 2020)

[64] Ibid.

Homeland Security to perform duties such as establishing regulations[65] and controlling and guarding the border of U.S. from illegal entry of unauthorized immigrants.[66]

U.S. Immigration and Customs Enforcement's Sensitive Locations Policy

Under the Sensitive Locations policy, ICE is restricted from conducting enforcement actions at sensitive locations, including schools.[67] The Sensitive Locations policy does not include courthouses. It states that, under exigent circumstances, ICE officers can perform enforcement actions at a sensitive location, or if prior approval is obtained from a designated supervisory official.[68] Officers and agents must conduct themselves as discreetly as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location. ICE's definition of sensitive locations includes

> [s]chools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop."[69]

Enforcement actions covered by this policy are apprehensions, arrests, interviews, or searches, and for purposes of immigration enforcement only, surveillance. However, the Sensitive Locations Policy does not include obtaining records, documents, and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program compliance and certification visits, guarding or securing detainees, or participating in official functions or community meetings.

U.S. Immigration and Customs Enforcement's Secure Communities Policy

During the past three presidential administrations, there has been a shift between competing deportation policies. In 2008, the George W. Bush administration piloted ICE's Secure Communities policy; this policy continued during the Obama Administration until late 2014 when it was replaced by the Priority Enforcement Program.[70] Through executive order,[71] the

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[65] 8 U.S.C. § 1103 (a)(3).

[66] 8 U.S.C. § 1103 (a)(5).

[67] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Enforcement Actions at or Focused on Sensitive Locations*, October 24, 2011, https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf.

[68] *Id.*

[69] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Sensitive Locations FAQ*, https://www.ice.gov/ero/enforcement/sensitive-loc (hereinafter *Sensitive Locations FAQ*).

[70] "Obama Ends Secure Communities Program That Helped Hike Deportations," *NBC News*, Nov. 21, 2014, https://www.nbcnews.com/storyline/immigration-reform/obama-ends-secure-communities-program-helped-hike-deportations-n253541. The Priorities Enforcement Program focused on removing "the most dangerous and law-breaking immigrants."

Trump administration reinstated Secure Communities to replace the Priority Enforcement Program in January 2017.

The purpose of Secure Communities is to identify immigrants in U.S. jails who are deportable under immigration law. Under this program, participating jails submit arrestee's fingerprints to the FBI. The FBI then run the arrestee's fingerprints through its database of criminal records and sends information regarding the person's criminal history to state and local authorities. The Department of Homeland Security then receives those fingerprints from the FBI so that ICE can determine if that person is also subject to deportation.[72] Since its reactivation more than 43,300 convicted criminal aliens have been removed from the United States.[73]

Disclosure of Students' Personal Information

Federal Educational Rights and Privacy Act, restricts schools from releasing student education records, including immigration status information, except for in exceptional circumstances.[74] Under Federal Educational Rights and Privacy Act, ICE officials may only obtain information with the consent of a parent (or student, if 18 years old or older), or if presented with a judge-signed judicial order or subpoena. If presented with an administrative subpoena, school officials are permitted to seek review by legal counsel and challenge the reasonableness of the subpoena, if applicable.

The California Education Code has a similar provision which states that school districts are prohibited from permitting access to student records without written parental consent or under court order, with limited exceptions.[75] Immigration enforcement is not included in the limited exceptions.[76]

California Laws

California Values Act

The California Values Act[77] prevents the use of state and local resources on behalf of federal immigration officials in carrying out mass deportations, and ensures that public properties, such as schools, hospitals, and courthouses remain safe spaces from immigration enforcement. The

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[71] Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

[72] 8 U.S.C. § 1722(a)(2).

[73] *Secure Communities.*

[74] 20 U.S.C. § 1232g; 34 C.F.R. § 99.31.

[75] Cal. Educ. Code § 49076.

[76] Overstaying a visa is not a violation of federal criminal law; it is a civil violation is handled in immigration court proceedings.

[77] Cal. Gov't. Code § 7284 et seq.

Act prohibits state and local resources from being used to inquire into a person's immigration status, or being used to share sensitive non-public information, such as a person's home or work address.[78] Thus, the authority to enforce federal immigration laws is placed solely in the hands of federal officials. Central to the Act is the California Legislature's finding that the valuable relationship of trust between California's immigrant community and state and local government.[79] Integral to public safety and threatened when state and local government are "entangled with federal immigration enforcement" affecting immigrant community members ability to report crimes, obtain health services or attend school.[80] The Legislature also expressed similar concerns regarding potential Fourth Amendment and Equal Protection violations, should state and local resources be beholden to federal immigration enforcement.[81] The California Values Act was challenged in federal court by the Trump administration in *United States v. California*. The federal district court denied the administration's request for an injunction to block the law, and held that California's directive was permissible and did not conflict with federal law.[82] On April 18, 2019, the Ninth Circuit Court of Appeal affirmed this decision.[83] Therefore, the California Values Act is currently binding law in California.

California TRUTH Act

The TRUTH Act (Transparent Review of Unjust Transfers and Holds) requires that, if ICE places a detainer, a request by ICE to local law enforcement to transfer someone for deportation, on someone in a California jail, the custodial law enforcement agency must serve a copy of that detainer upon the person.[84] It upholds due process for immigrants held in local jails by giving them both the "right to know" when ICE requests to interview with them to gauge eligibility for deportation and the right to respond via consent form to those interview requests.[85] It also requires that a local legislative body host an annual community forum if law enforcement allows ICE access to any individual.[86] The TRUTH Act ensures that if a local jail chooses to notify ICE when an immigrant will be released, they must also provide that notice to the immigrant and their attorney or permitted designee.[87] Records related to ICE access are subject to the California Public Records Act.[88]

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[78] *Id*. at 7284.6 (a)(1).

[79] *Id*. at 7284.2 (b).

[80] *Id*. at 7284.2(c).

[81] *Id*. at 7284.2(e).

[82] *United States v. California*, 314 F. Supp. 3d 1077 (2018).

[83] *United States v. California,* 921 F.3d 865 (2019).

[84] Cal. Gov't. Code § 7283 et seq.

[85] *Id*. at 7283.1(a).

[86] *Id.* at 7283.1(d).

[87] *Id*. at 7283.1(b).

[88] Id. at 7283.1(c).

The TRUTH Act is, in part, a response to the Secure Communities[89] policy ICE has utilized to arrest immigrants in local jails.

Educational Equity: Immigration and Citizenship Status Act

In 2018, California enacted Assembly Bill 699,[90] Educational Equity: Immigration and Citizenship Status Act, which amended California's Education Code by prohibiting school officials and school district employees, county education offices and charter schools from collecting information or documents regarding citizenship or immigration status from students and their family members. The law limits the ability to request personal information or access to a school site requested by law enforcement and requires requests to be reported to the superintendent of the education agency.[91] It requires the California Department of Education to publish model policies on how to limit assistance with immigration enforcement in public schools and ensures that public schools remain safe and accessible to California students regardless of immigration status.[92]

SUMMARY OF PANEL TESTIMONY

The Committee convened two events to gather testimony: one on October 16, 2019 at the Los Angeles Central Library in Los Angeles and the other on March 4, 2020 at Southwestern College in Chula Vista. Stakeholders, including the Customs and Border Protection, the California Department of Justice, academics, national and state advocacy organizations, legal experts, and individuals speaking on their own behalf or on behalf of interested organizations testified in person or provided written statements. In addition, the Committee convened a meeting with representatives from U.S. Immigration and Customs Enforcement on June 24, 2020 to obtain responses to specific questions[93] posed by the Committee after receiving initial testimony at their meetings in Los Angeles and Chula Vista. Various opinions were presented in testimony offering a wide array of perspectives in the areas of the possible impact of immigration enforcement on California children and otherwise; the role of immigration enforcement; federal immigration enforcement policy and its potential effects; the possible impact of California's sanctuary policies; due process and domestic violence reporting.

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[89] *See* ICE's website for its Secure Communities program: https://www.ice.gov/secure-communities.

[90] Cal. Educ. Code §§ 200, 220, 234.1, 234.7.

[91] *Id*. at 234.7(b).

[92] *Id*. at 234.7(f)(1).

[93] See California Advisory Committee Letter to ICE in Appendix.

Impact of Immigration Enforcement and K-12 Students

Central to the Committee's inquiry is to consider the impact of immigration enforcement on all K-12 students. According to the Pew Research Center, in 2014, 3.2 million K-12 students in the U.S. were children of undocumented immigrants.[94] Additionally, California is one of six states that has the highest share of K-12 students with undocumented immigrant parents representing 12.3 percent.[95]

Panelists discussed three areas that immigration enforcement may have on students' wellbeing, academic performance, and safety.

Patricia Gándara, professor of education at the University of California, Los Angeles testified to the potential scope of students affected by immigration enforcement. She stated that in California, at least 750,000 children live with an undocumented parent, including 250,000 children who are undocumented themselves, constituting an estimate of 12 percent of all children in the state.[96]

Health and Wellbeing

The Committee received testimony from some speakers that students experience a range of health concerns as a result of the worry of being subject to immigration enforcement. For instance, several panelists stated that students and their parents may live in the midst of fear and anxiety because of the perception of heightened immigration enforcement.[97]

In an attempt to measure the impact of immigration enforcement on students, Professor Gándara testified to findings in a national study[98] of students as observed by educators from 24 districts with more than 760 schools in 13 states, many of which represent Title I schools.[99] The survey

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[94] Pew Research Center, https://www.pewresearch.org/fact-tank/2016/11/17/children-of-unauthorized-immigrants-represent-rising-share-of-k-12-students/, accessed May 3, 2019.

[95] Ibid. Also, according to Pew Research, there are an estimated 2.2 million unauthorized immigrants living in California and U.S.-born children made up 81% of all children of unauthorized immigrants enrolled in grades K-12 in the entire United States in 2014.

[96] "Undocumented Students In California: What You Should Know," *Education Trust-West,* 2017, https://west.edtrust.org/wp-content/uploads/sites/3/2015/11/ETW_CA-Undocumented-Students-What-You-Need-to-Know-FINAL-April-2017.pdf (accessed on April 10, 2020); Patricia Gándara, testimony, *Briefing Before the California Advisory Committee to the U.S. Commission on Civil Rights*, *Los Angeles, CA*, Oct. 16, 2019, transcript, p. 30 (hereafter cited as *Los Angeles Briefing*).

[97] Vaughan Testimony, *Los Angeles Briefing*, p. 27; Vazquez Testimony, *Los Angeles Briefing*, p. 102; Peralez-Dieckmann Testimony, *Los Angeles Briefing*, pp. 183-84; Gándara Testimony, *Los Angeles Briefing*, p. 32.

[98] Jongyeon Ee and Patricia Gándara, *The Impact of Immigration Enforcement on the Nation's Schools*, 57(2) AM. EDUC. RESEARCH JOURNAL 840–71(April 2020). doi:10.3102/0002831219862998. (hereafter cited as Immigration Enforcement on the Nation's Schools).

[99] Title I schools are schools that receive federal funding for children from low-income families to help ensure that all children meet challenging state academic standards.

captured the perceived impact of immigration enforcement on several topic areas: absenteeism, behavioral/emotional problems, academic performance, students' overt expression of concerns and fears at school, indirect effects on classroom climate, indirect effects on peers, parents' expression of concerns, parental involvement, and bullying.

According to her study, immigration enforcement affects all students because students have overtly expressed fear and especially among those who attend Title I schools.[100] Specific findings related to the perception of California children's well-being include 85 percent of the 1,480 California educators who completed the survey reported observing students' overt expressions of fear of an ICE intervention in their lives, with nearly 44 percent saying this was "extensive."[101] The study also found that pervasive fear and concern in the schools was consistent across regions surveyed; nearly 80 percent of educators surveyed reported observing emotional and behavioral problems among their immigrant students that many described as interfering with students' ability to attend to lessons.[102] This fear, according to Jessica Vaughan, director of policy studies at the Center for Immigration Studies could be addressed by having advocacy groups and schools engage with ICE to understand their roles and the types of situations, such as arrest or incarceration, that could lead to deportation.[103]

Professor Gándara and Mayra Alvarez, president of the Children's Partnership, also noted concerns with frequent bullying among students. According to Professor Gándara, roughly 37.6 percent of educators surveyed saw an increase in bullying among students.[104] The increased bullying in surveyed schools especially impact students who are perceived to be undocumented but are usually not.[105] Concurring with Professor Gándara's study findings, representatives from the Children's Partnership testified that many students are bullied because they or their parents were not born in the United States[106] and California passed AB 699 to address the issue of bullying based on immigration status:

> [California Assembly Bill 699, 2017-2018] [which] codified…the responsibility of schools to educate [] families o[f] …the impacts of bullying and pass anti-bullying policies and information around bullying based on immigration status.[107]

Ms. Alvarez also testified that students' mental health is negatively impacted. She stated that children who witness the detention or deportation of a parent experience depression, anxiety, and psychological distress. In addition, she testified that even the threat of a parent being detained or deported negatively impacts their social and emotional development.[108] Due to symptoms of

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[100] Immigration Enforcement on the Nation's Schools, at 4.

[101] Ibid., 3.

[102] Ibid.

[103] Vaughan Testimony, *Los Angeles Briefing*, p. 27.

[104] Ibid., 3.

[105] Gándara Testimony, *Los Angeles Briefing,* p. 61.

[106] Alvarez Testimony, *Los Angeles Briefing*, p. 189.

[107] Cal. Educ. Code § 234.1(a), § 234.1(b); Thornton Testimony, *Los Angeles Briefing*, p. 106.

[108] Alvarez Testimony, *Los Angeles Briefing*, p. 189.

mental distress, some children refuse to eat, pull out their hair, or have persistent stomachaches or headaches.[109] In addition, children of undocumented parents showed significantly higher risk of internalizing behavioral problems like anxiety, depression, withdrawal, as well as externalizing behavioral problems such as rule breaking and displays of irritability and aggression.[110]

In situations when a parent or parents are taken away, Ms. Alvarez stated that children left behind may face dramatically reduced incomes, housing and food security, and an increased risk of entering the child welfare system, all of which are predictors of poor social and educational outcomes for children later in life.[111] She said that a solution to address the impacts of immigration enforcement on students is to seek a human approach to immigration policy.

Professor Gándara stated that the perception of heightened immigration enforcement also prompted the American Psychological Association to draft a letter to the Trump Administration about the impact it may have on children.[112] According to the American Psychological Association, immigrants who fear deportation are much more vulnerable to heart disease, asthma, diabetes, depression, anxiety, and post-traumatic stress disorder, and their children are more likely to experience psychological distress, academic difficulties, and disruptions in their development.[113]

On the other hand, Stella May, Director for Concerned Citizens of California raised concern about the health of students as more undocumented immigrants have entered the U.S. and may be carriers of new and re-emerging rare diseases, including but not limited to: the Polio-like virus, EVD-68; Drug-resistant Tuberculosis; Chagas disease; Leprosy; Chicken pox; Mumps; Measles; Whooping Cough and other respiratory diseases. She claimed that the Centers for Disease Control admits "re-emerging dangerous diseases" have been "imported" such as Malaria, Dengue fever, Scabies, and other historically uncommon illnesses.[114] She called for enforcement of medical examinations of individuals applying to enter into the U.S.[115]

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[109] H. Koball, et al., "Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents," *Urban Institute and Migration Policy Institute*, September 2015.

[110] "The Effect of Hostile Immigration Policies on Children's Mental Health*," The Children's Partnership and California Immigrant Policy Center,* March 2017. p. 2. https://www.childrenspartnership.org/wp-content/uploads/2017/03/The-Effect-of-Hostile-Immigration-Policies-on-Childrens-Mental-Health.pdf (accessed on April 7, 2020); Alvarez Testimony, *Los Angeles Briefing*, p. 189.

[111] Alvarez Testimony, *Los Angeles Briefing*, p. 190

[112] American Psychological Association letter to the Trump Administration on June 14, 2018 https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation (accessed on April 2, 2020).

[113] American Psychological Association, "The Psychology of Immigration," https://www.apa.org/advocacy/immigration/ (accessed on April 2, 2020).

[114] Stella May, testimony, *Community Forum Before the California Advisory Committee to the U.S. Commission on Civil Rights, Chula Vista, CA,* transcript, p. 12 (hereafter cited at *Chula Vista Community Forum*). The press release, available at https://www.cdc.gov/media/releases/2014/p0529-measles.html, attributes these diseases to "international travel by unvaccinated people" and not to immigrants specifically.

[115] Ibid, (Ms. May is referring to 42 C.F.R. § 34, 70, 71).

While there may be potential impacts of immigration enforcement on children, ICE implemented policies aimed at reducing the harm that children experience from the detention or deportation of their parents. For instance, immigration law gives discretion to ICE officers to suspend deportation for some immigrants.[116] ICE also implemented a directive known as the "Detention and Removal of Alien Parents of Legal Guardians" that provides guidelines for protecting children whose parents are apprehended, detained, and deported.[117] This directive includes designating a specific point of contact within each field office for matters involving detained parents; promoting complete entry of relevant case information into ICE's data and tracking systems; determining initial detention placement and transfer decisions; facilitating court participation in family court of child welfare proceedings; and other elements.[118]

Academic Performance

Professor Gándara also stated that some surveyed teachers indicated that some children experienced a decline in academic performance that they believe had to do with immigration enforcement. *Plyler v. Doe* provides children, regardless of their immigration status, the fundamental right to an education.[119] Professor Gándara's study suggests that students' education is largely disrupted and experience a host of academic outcomes due to current immigration enforcement policies.[120] Even with ICE policies that set safe zones where no enforcement activity is to take place,[121] Professor Gándara testified that students and parents reportedly still expressed hesitation about sending their children to schools in fear that they would be targeted.[122] She added that in cases when the head of a household is deported, it causes financial hardships that reportedly lead to children experiencing stress, concentration difficulties, disruptive behaviors, school absences, and parental disengagement.[123]

Drawing from the same study authored by Professor Gándara, 54 percent of educators surveyed reported that absenteeism had increased due to immigration enforcement. She testified that this is of concern because for some students, this may mean they are missing the only meal they may get that day.[124] Absenteeism, Professor Gándara stated, harms everyone and reduces funding in schools.[125] Students are absent, reportedly, because they are afraid of being bullied, because they

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[116] Shoba Sivaprasad Wadhia, The Role of Prosecutorial Discretion in Immigration Law, 9 CONN. PUB. INT. L.J. 243, 263 (2010) (quoting a 2009 DHS press release on relief for widows of U.S. citizens).

[117] U.S. Immigration and Customs Enforcement, ICE Detained Parents Directive, https://www.ice.gov/parental-interest.

[118] Ibid

[119] *Plyler v. Doe,* 457 U.S. 202 (1982); Gándara Testimony, *Los Angeles Briefing*, p. 34.

[120] Gándara Testimony, *Los Angeles Briefing*, p. 34.

[121] Sensitive Locations FAQ, https://www.ice.gov/ero/enforcement/sensitive-loc.

[122] Gándara Testimony, *Los Angeles Briefing*, p. 32.

[123] Amuedo-Dorantes Testimony, *Los Angeles Briefing*, pp. 16-17.

[124] Gándara Testimony, *Los Angeles Briefing*, p. 34.

[125] Ibid.

hear rumors about ICE raids, and/or they are scared their parent may be taken by ICE while they are in school.[126] She said, "absenteeism, in turn, creates havoc in schools, because classrooms are disrupted."[127]

According to Professor Gándara, a fourth of educators who completed the same survey also said that the behavioral issues that impede their students' learning were extensive. These issues include crying in school, acting out, putting their heads down on their desk, and tuning out of lessons.[128]

Catalina Amuedo-Dorantes, professor of economics at the University of California, Merced presented her research, a national study, using Current Population Survey data on the educational cost of intensified enforcement for children ages 6 through 17. Her study found that immigration enforcement adversely impacted children of undocumented immigrants, the vast majority of whom are U.S. born citizens.[129] According to Professor Amuedo-Dorantes, increased immigration enforcement increases the probability of youth 6-13 repeating a grade by 14 percent.[130] For older youth ages 14 to 17, dropping out of school rose by 18 percent.[131]

A study conducted by Professor Gándara found similar conclusions noting that 59 percent of respondents reported a decline in academic performance of students that they said was a result of immigration enforcement.[132] She added an anecdote from a school counselor who said:

> I've met with various students, who feel there's no hope for them, and letting[sic] their grades slip because they're under so much stress and unsure about the future. I struggle with encouraging them to have faith when I am unsure myself. It just breaks my heart.[133]

Professor Gándara emphasized that nearly 90 percent of children of undocumented immigrants are believed to be U.S. citizens. With this statistic in mind, she noted that many high school educators said their best students are giving up aspirations to go to college, and reducing their commitment to school.[134] Some students have even considered quitting school to get a job to help their family because their futures are so uncertain.[135] In another case, a high school teacher, who responded to Professor Gándara's survey, said that students who were college bound now

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[126] Ibid.

[127] Gándara Testimony, *Los Angeles Briefing*, pp. 34-35.

[128] Ibid., 33.

[129] Catalina Amuedo-Dorantes and Mary J. Lopez, *The Hidden Educational Costs of Intensified Immigration Enforcement*, SOUTHERN ECONOMIC JOURNAL, 84: 120-154. https://doi.org/10.1002/soej.12207; Amuedo-Dorantes Testimony, *Los Angeles Briefing*, pp. 12-20.

[130] Amuedo-Dorantes Testimony, *Los Angeles Briefing*, p. 16.

[131] Ibid.

[132] Gándara Testimony, *Los Angeles Briefing,* p. 35

[133] Ibid.

[134] Ibid., 32.

[135] Ibid.

question if it is worth pursuing because they are worried they would not be able to qualify for financial aid.[136]

The Committee also received testimony regarding concerns for U.S. citizen students, who have been deported to Mexico, and their transition into Mexican schools. Angelina Corona, Executive Director for Hermandad Mexicana Nacional noted that she received concerns about the increasing number of U.S. citizen children who left for Mexico with no transition process to allow for students to continue their education in Mexico.[137] Professor Gándara noted that roughly 53,000 U.S. born American citizen children are attempting to be integrated into Mexican schools.[138] These children are at enormous risk for "very poor long-term [educational] outcome[s]"[139] because they are unable to read and write Spanish despite being able to speak the language.

Public Safety

Several panelists also testified to the impact that immigration enforcement has on public safety for children. Ms. Vaughan stated that ICE makes a "very noteworthy contribution to school safety"[140] through its enforcement program that targets transnational gangs like MS-13 and 18th Street. She stated that these gangs are known to recruit in schools; and have many young members who are in the U.S. illegally.[141] Based on a study conducted by the Center for Immigration Studies examining MS-13 arrest cases nationwide between 2012-2018, there were 52 murder victims under the age of 18 from M-13 gang crimes and 87 of the 500 cases occurred in California.[142]

Don Rosenberg, President for Advocates for Victims of Illegal Alien Crime; Ms. Vaughan; and members of the Remembrance Project also testified that without federal immigration enforcement undocumented immigrants who have committed egregious crimes against U.S. citizens will continue to endanger U.S. citizens, including children, as long as sanctuary laws are in place.[143] Mr. Rosenberg testified that his son was killed by an undocumented immigrant driving without a driver's license.[144] Ms. Vaughan testified to criminal cases, which she stated

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[136] Ibid.

[137] Corona Testimony, *Los Angeles Briefing,* p. 82.

[138] Gándara Testimony, *Los Angeles Briefing,* p. 39.

[139] Ibid.

[140] Vaughan Testimony, *Los Angeles Briefing*, p. 25.

[141] Ibid., 25-26.

[142] Jessica M. Vaughan, "MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets," *Center for Immigration Studies*, February 2018, https://cis.org/Report/MS13-Resurgence-Immigration-Enforcement-Needed-Take-Back-Our-Streets.

[143] Rodriguez Testimony, *Chula Vista Community Forum*, pp. 3-4; Hvidston Testimony, *Chula Vista Community Forum*, pp. 13-5, Vaughan Testimony, *Los Angeles Briefing*, p. 25.

[144] Rosenberg Testimony, *Los Angeles Briefing*, p. 169.

involves undocumented immigrants. Ms. Vaughan testified regarding several criminal cases to a case where an alleged MS-13 gang leader was arrested for the slaying of a Novato High School student in the Spring of 2016[145] and in a separate case, there was a 17-year-old alleged MS-13 gang member who was arrested for the rape of a 15-year-old schoolmate.[146] Also, a member of the Remembrance Project, Raúl Rodriguez, shared a story about a 14-year-old woman who was abducted and killed by an undocumented immigrant who had committed other abductions in Central California and fled to Mexico to avoid arrest.[147] Robin Hvidston shared that similar crimes committed by undocumented immigrants occurred in cities across the country.[148] These crimes include the killing of a 19-year-old Oakland woman in a fatal road rage shooting where the perpetrator left the country,[149] sexual assault of a toddler at a Chicago fast food restaurant by a man who has a felony record and had previously been deported to Mexico[150] and the rape of a minor by an Ecuadorian national living in New York City who had multiple criminal convictions.[151]

Due Process

The Committee also heard testimony regarding due process for undocumented immigrants and sought to understand if there are civil rights concerns associated to the administration of justice. Lucero Chavez, Senior Staff Attorney at Public Counsel, the largest pro bono public interest law firm in the U.S., testified to the due process rights of undocumented individuals and ICE officials

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[145] Vaughan Testimony, *Los Angeles Briefing*, p. 26; Gary Klein, "Alleged MS-13 gang leader arrested in connection with Marin teen's slaying," *Mercury News*, Nov. 22, 2016, https://www.mercurynews.com/2016/11/22/alleged-ms-13-gang-leader-arrested-in-connection-with-marin-teens-slaying/.

[146] Vaughan Testimony, *Los Angeles Briefing*, p. 26; "Report: Novato High Murder Suspect Has Been Arrested in Rape Case," *CBS San Francisco Bay Area,* Jun. 17, 2019, https://sanfrancisco.cbslocal.com/2016/06/17/report-novato-high-murder-suspect-had-been-arrested-in-rape-case/.

[147] Rodriguez Testimony, *Chula Vista Community Forum,* p. 3. Joe Szydlowski, "Man pleads guilty to killing of 14-year-old Christy Piña in 1990 Castroville cold case," *The Californian,* Oct. 9, 2019, https://www.thecalifornian.com/story/news/2019/10/09/man-pleads-guilty-rape-murder-cold-case-castroville-california/3919964002/.

[148] Hvidston Testimony, *Chula Vista Community Forum*, p. 15.

[149] Harry Harris, "Suspect in fatal road rage shooting of 19-year-old Oakland woman identified," *East Bay Times,* Dec. 27, 2019, https://www.eastbaytimes.com/2019/12/27/suspect-in-fatal-road-rage-shooting-of-19-year-old-oakland-woman-identified/.

[150] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Man Arrested for Sexually Assaulting Toddler at Fast Food Restaurant Should Have Been Turned Over to ICE in 2019*, Feb. 27, 2020, https://www.ice.gov/news/releases/man-arrested-sexually-assaulting-toddler-fast-food-restaurant-should-have-been-turned.

[151] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *ICE Arrests Ecuadorian Man Accused of Raping a Minor During Enforcement Efforts in New York*, Jan. 31, 2020, https://www.ice.gov/news/releases/ice-arrests-ecuadorian-man-accused-raping-minor-during-enforcement-efforts-new-york#wcm-survey-target-id.

provided additional context as to how they provide them with access to legal representation despite the fact that they are not required to do so.[152]

Primarily working on behalf of clients who are English language learners and are recent arrivals of unaccompanied minors, Ms. Chavez explained that undocumented immigrants have a right to due process,[153] to counsel, to find an attorney, pay an attorney, and have an attorney represent them in "very complicated" Immigration Court proceedings.[154] In addition, they have the right to notice of proceedings against them and the opportunity to be heard in that proceeding.[155] Undocumented immigrants have a right to due process because courts have consistently held that anyone in the U.S. is protected by the Constitution's right to due process, even if they illegally entered the country, though people generally have greater legal protections inside the country than at the border.[156] She also added that they do not have the right to government-recognized counsel.[157] The amount of due process is decided based on the situation. In one ruling, undocumented immigrants who entered the U.S. illegally and ordered to be deported have a right to appeal those decisions.[158] However, the courts have also decided that Congress can decide that more limited procedures are sufficient for noncitizens detained at the border.[159] David Marin, Director of Enforcement and Removal Operations for ICE's Los Angeles regional office explained that despite undocumented individuals not being granted an attorney, ICE provides them with access to obtaining legal representation.[160] This includes an updated list of lawyers who offer pro bono legal representation and access to their home country's Consulate General.[161]

Ms. Chavez testified to her experience with helping children going through immigration court proceedings. In many cases, she said that those apprehended at or near the border are very young children.[162] These children are told immigration officials that they will not be deported.[163] When

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[152] Chavez Testimony, *Los Angeles Briefing*, p. 72.

[153] *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001) (noting that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent").

[154] Chavez Testimony, *Los Angeles Briefing*, p. 72; *Tawadras v. Ashcroft*, 364 F.3d 1099, 1106 (9th Cir. 2004) (explaining that the failure to properly obtain a knowing and voluntary waiver of counsel creates "a level of prejudice tantamount to a violation of ...due process rights.").

[155] *Salviejo-Fernandez v. Gonzales*, 455 F.3d 1063 (9th Cir. 2006).

[156] U.S. CONST. amend. V.

[157] Chavez Testimony, *Los Angeles Briefing*, p. 73.

[158] *Zadvydas v. Davis* (99-7791)185 F.3d 279 and 208 F.3d 815, vacated and remanded.

[159] *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), *superseded by statute*, The Illegal Immigration Reform and Immigrant Responsibility Act, 8 U.S.C. § 1252, as recognized in *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020).

[160] David Marin, testimony, *Meeting Before the California Advisory Committee to the U.S. Commission on Civil Rights*, Jun. 24, 2020, transcript, pp. 19-20 (hereafter cited as *6/24/20 Meeting*).

[161] Ibid.

[162] Chavez Testimony, *Los Angeles Briefing*, p. 73.

[163] Ibid., 75-76.

apprehended, she said, they are presented text-heavy documents advising them of their rights that include the right to call an attorney and call the parent. While this is her experience, ICE disagreed that the forms are text-heavy. Mr. Marin stated that children are read their rights and required to sign and date a form in the children's language.[164] They have a 24/7-language access line, which offers over 240 languages and dialects that agents use if the individual needs assistance with understanding those forms.[165]

She added that children are processed like criminal defendants: they are photographed, fingerprinted, and interrogated alone – however, in some cases they may have an interpreter present who speaks their language.[166] Statements made during their interview, she testified, are used against them at their own proceedings.[167] Children are given multiple forms to sign in English even if they do not know how to read, let alone read English.[168] Finally, they are placed in what she called "iceboxes"[169] known to children as "hierleras"[170] and then transferred to large shelters.

According to Ms. Chavez, there are concerns with the administration of justice for undocumented children's right to due process. First, because the U.S. does not provide attorneys for undocumented children in immigration court proceedings, these children are sometimes left to defend themselves in court. Ms. Chavez expressed grave concern that a senior Department of Justice official argued that 3- and 4-year-olds can represent themselves in immigration court.[171] In addition, considering the time it takes to go through immigration court proceedings and the quotas placed on judges to fast track immigration court cases, she testified that she does not believe judges will take the time to explain to the children forms of relief that are available to them such as asylum or special immigrant juvenile status.[172]

Secondly, she testified that immigration courts are not abiding by the required time period of 180 days to adjudicate an asylum petition for a child.[173] Ms. Chavez said this regulation is routinely violated and petitions are not adjudicated causing backlogs and preventing many undocumented

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[164] Marin Testimony, *6/24/20 Meeting*, p. 18.

[165] Ibid., 19-20.

[166] Chavez Testimony, *Los Angeles Briefing*, p. 73.

[167] Ibid.

[168] Ibid., 74.

[169] Ibid.

[170] Ibid.

[171] Jerry Markon, "Can a 3-year old represent herself in immigration court? This Judge thinks so," *Washington Post*, Mar. 5, 2016. https://www.washingtonpost.com/world/national-security/can-a-3-year-old-represent-herself-in-immigration-court-this-judge-thinks-so/2016/03/03/5be59a32-db25-11e5-925f-1d10062cc82d_story.html (accessed on April 1, 2020).

[172] Chavez Testimony, *Los Angeles Briefing*, p. 77.

[173] Ibid., 78.

immigrants from receiving, if qualified, legal status.[174] Also of concern are the court rulings that change the law while petitions are pending and while people are waiting for their cases to be heard.[175] She stated that this is one of the most egregious examples of a due process violation because immigration lawyers must rely on existing law and are beholden to changes to the rules in the middle of the process.[176]

Other concerns, she stated, with the administration of justice include: unchecked authority of administrative agencies that decide immigration cases and decide petitions, the lack of an established right to government-appointed counsel, additional state court and immigration court proceedings, heightened standard of evidence for attorneys to produce on behalf of their clients when the same standard does not apply to other non-undocumented litigants or the government itself.[177]

The behavior of judges at immigration court proceedings was also noted in Ms. Chavez's testimony. During immigration court, attorneys, even when present, are "bullied, [and] strong-armed by immigration judges or government attorneys when [defense attorneys] try to assert [their] clients' rights," and "threaten[ed] to re-detain or take retaliatory action against the clients' families."[178] Also, she said that immigration judges continue to excuse violations committed by immigration officers at the border and even after apprehension.[179]

Also related to the administration of justice during immigration court proceedings, Ms. Chavez said that undocumented children face challenges with getting legal representation because nonprofit law firms are largely underfunded and understaffed.[180] This deficit is of concern because children are more likely to receive the relief they are seeking if counsel represents them.[181]

Considering her experience, she noted several recommendations to address the abovementioned challenges litigating on behalf of immigrant children. She testified that families should be kept together at the border and children should not be kept in cages or boxes.[182] In addition, all stakeholders who deal with immigrant children receiving due process should follow existing

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[174] Ibid.

[175] Ibid., 78-79.

[176] Ibid., 79.

[177] Ibid.

[178] Ibid., 76.

[179] Ibid., 78.

[180] Ibid., 76.

[181] "Representation for Unaccompanied Children in Immigration Court." Syracuse University. https://trac.syr.edu/immigration/reports/371/; see also "Access to Counsel." *National Immigrant Justice Center.* https://www.immigrantjustice.org/issues/access-counsel (accessed on April 1, 2020).

[182] Chavez Testimony, *Los Angeles Briefing*, p. 79

laws that are meant and created to protect the rights of children.[183] She also suggested recognizing the right to government-appointed counsel for children, which is currently in litigation.[184] Lastly, she recommended for government agencies to follow their own deadlines as there is a 180-day requirement for cases to be adjudicated.[185]

Crime Victims and Victims of Domestic Violence

In 2017, California Supreme Court Chief Justice Tani Cantil-Sakauye delivered a letter[186] to then-Attorney General Jeff Sessions and then-Secretary Kelly expressing her "deep"[187] concern over reports from trial courts that federal immigration agents are "stalking undocumented immigrants" and arresting them at trial courts in the state. Persons affected by ICE tactics, the Chief Justice wrote, include "crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families seeking justice and due process of the law."[188] Chief Justice Cantil-Sakauye noted that while enforcement of the nation's immigration laws is necessary, "enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair."[189] She asked federal officials to refrain from enforcing in California's courthouses after hearing of incidents at local courthouses and courtrooms from judicial officers throughout the state.[190] In a joint response, then-Attorney General Jeff Sessions and then-Secretary Kelly stated that Justice Cantil-Sakauye should direct her concerns to Governor Jerry Brown and to law enforcement officials who refuse to honor detainers as several California municipalities are "sanctuary cities" that limit police cooperation with ICE.[191] They stated that "[s]uch policies threaten public safety, rather than enhance it," and as a result, ICE requires to arrest these individuals in public places, rather than in jails.[192]

Related to Chief Justice Cantil-Sakauye's concern, the Committee heard and received testimony from persons and witnesses regarding the effect of immigration enforcement actions on the

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[183] Ibid.

[184] Ibid.

[185] Ibid.

[186] Letter from Chief Justice Cantil-Sakauye to Attorney General Sessions and Secretary Kelly, Mar. 16, 2017 https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses.

[187] Ibid.

[188] Ibid.

[189] Ibid.

[190] Ibid.

[191] Ibid.

[192] "Response from Sessions and Kelly to California's Chief Judge on Immigration," Mar. 29, 2017, https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html.

administration of justice and the impact on participation in the justice system individuals who may be undocumented. One of the specific issues addressed by panelists related to the impact of immigration enforcement on reporting of domestic violence incidents. One of the panelists was Esther Peralez-Dieckmann, executive director for Next Door Solutions, an advocacy organization supporting survivors of domestic violence. Ms. Peralez-Dieckmann stated that in her experience domestic violence survivors are becoming more hesitant to report abuse to law enforcement because of fear of deportation for themselves or family members.[193] Ms. Peralez-Dieckmann, like other panelists, noted that with approximately 90 percent of all children in those households being U.S. citizens, the issue of immigration enforcement is placing an added stress on those children with the possibility of long-term emotional and psychological impacts.[194] Fear of deportation is layered with and exacerbated by existing cultural and linguistic barriers that keep many of these communities isolated and afraid of coming forward to report.[195] Also, abusers threaten their victims and keep them from seeking help and as a result, it keeps children in abusive and unstable homes, continuing to witness violence and experience trauma themselves.[196]

Professor Catalina Amuedo-Dorantes and Ms. Peralez-Dieckmann testified that restraining orders were not being filed at the level they were previously;[197] and that many survivors are afraid to go to court because they fear they will get picked up by ICE.[198] Ms. Peralez-Dieckmann, using the filing of restraining orders as an indicator to measure frequency of domestic violence reporting, cautioned to be wary of a decrease in reporting data related to domestic violence incidents because it means that "people do not trust they're going to be served with justice."[199]

On the other hand, Mr. Rosenberg argued that reporting is impacted by the implementation of state laws like Prop 47,[200] Prop 57,[201] and sanctuary laws.[202] He provided an example of how

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[193] Peralez-Dieckmann Testimony, *Los Angeles Briefing*, p. 180

[194] Ibid; Lee and Suh Statement, at 3.

[195] Lee and Suh Statement, at 3.

[196] Ibid.

[197] Ibid., 204; Amuedo-Dorantes Testimony, *Los Angeles Briefing*, p. 44; Police Trust and Domestic Violence: Evidence from Immigration Policies, Catalina Amuedo-Dorantes Esther Arenas-Arroyo, I Z A Institute of Labor Economics, Discussion Paper Series (Oct. 2019).

[198] Lee and Suh Statement, at 3.

[199] Peralez-Dieckmann Testimony, *Los Angeles Briefing*, p. 204.

[200] Prop 47 is a California law that changed certain low-level crimes from potential felonies to misdemeanors. Prop 47 also directs financial savings realized from reduced state costs into a new state fund to treat mental illness and drug addiction, reduce truancy, expand diversion and support crime victims.

[201] Prop 57 is a California law that incentivizes inmates to take responsibility for their own rehabilitation with credit-earning opportunities for sustained good behavior, as well as in-prison program and activities participation. Proposition 57 also moves up parole consideration of nonviolent offenders who have served the full-term of the sentence for their primary offense and who demonstrate that their release to the community would not pose an unreasonable risk of violence to the community.

sanctuary policy impedes the work of immigration enforcement and jeopardizes public safety and in this example, especially for domestic violence victims. Mr. Rosenberg detailed an account of an undocumented immigrant who was arrested for a domestic violence incident involving his girlfriend and was sent to the Sonoma County Jail.[203] According to Mr. Rosenberg, ICE asked local officials to keep him in custody so that they can detain him, however the Sonoma County Sheriff's office released him and waited an hour and a half before calling ICE to pick the individual up.[204] Sixteen days later, the individual returned home and murdered his girlfriend.[205] Such an example, Mr. Rosenberg says, impacts how immigrant communities view law enforcement in ensuring the detainment of individuals who commit domestic violence offenses and public safety.[206]

Other factors, Ms. Vaughan argued, influence a decrease in crime reporting. She asserted that studies have shown that an increase in immigration enforcement has not resulted in a decrease in crime reporting by immigrants.[207] Crime reporting and crime rates are affected by factors such as police budgets, policing strategies, and the weather.[208] Police departments, she said, "have to make sure that people have access to policing services that they feel [] they can report crimes without fear like anonymous tip lines, [][] community policing officers, officers on the force who speak the language of the community."[209] Additionally, the Department of Justice data indicates that Hispanic women report crimes more frequently than any other racial/ethnic group,[210] a statistic she stated contradicts the belief that immigrants as a group are less likely to report crimes. Immigrants surveyed by academic researchers have said that sometimes they have not reported crimes because of the following reasons: they do not know how to report a crime, they do not speak English, they do not know that what happened to them is a crime, they do not think their complaint will be taken seriously, and/or they come from countries where they do not trust authority.[211]

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[202] Rosenberg Testimony, *Los Angeles Briefing*, p. 111.

[203] Ibid., 112.

[204] Ibid.

[205] Ibid.

[206] Ibid.

[207] Thomas M. Guterbock et al, *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy: FINAL REPORT 2010*, prepared for the Prince William County (Va.) Board of Supervisors, November 2010, p. 96, Figure 8-7, https://www.pwcgov.org/government/dept/police/Documents/13185.pdf.

[208] Vaughan Testimony, *Los Angeles Briefing*, p. 47.

[209] Ibid.

[210] U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization,* by Jennifer L. Truman, *2010*, NCJ235508, September 2011, Table 8 on p. 11, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=2224; U.S. Department of Justice, Bureau of Justice Statistics, *Race and Hispanic Origin of Victims and Offenders, 2012-15,* by Rachel E. Morgan, October 2017, Table 6 on p. 7, https://www.bjs.gov/content/pub/pdf/rhovo1215.pdf.

[211] Robert C. Davis et al, "Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors," *Criminal Justice Policy Review*, Volume 12, Number 3, September 2001, p. 190, https://www.researchgate.net/profile/Edna_Erez/publication/245158456_Access_to_Justice_for_Immigrants_Victimized_by_Crime_The_Perspectives_of_Police_and_Prosecutors/links/587404ea08ae6eb871c67b68/Access-to-

Other panelists asserted that implementing various best practices will help build community trust among immigrant communities and will allow them to feel comfortable reporting domestic violence incidents. These best practices include ensuring that local law enforcement have a female officer respond to incidents,[212] and conduct outreach and education to the immigrant community about relief available to the survivor through the U-Visa and the Violence Against Women Act.[213] Similarly, there should be more education to assist the immigrant community with distinguishing between immigration enforcement officers and local law enforcement, as it would help them feel comfortable reporting crime.[214]

Immigration Enforcement

Panelists described the purpose of immigration policy, the role of federal agencies mandated to enforce immigration laws, and their observations about how immigration officials enforce laws passed by Congress.

Explanation of Immigration Enforcement

The Committee received testimony from several panelists, including current and former ICE officials to understand immigration enforcement efforts. The Committee heard from David Marin, director of Enforcement and Removal Operations for ICE's Los Angeles regional office; Richard Rocha, acting assistant director for ICE's Office of Partnership and Engagement; Barbara M. Gonzalez, assistant director for ICE's Office of Partnership and Engagement; and Claude Arnold, a retired special agent who led ICE's Homeland Security Investigations Los Angeles regional office.

What is not widely known to the public about ICE, according to former and current ICE representatives, is that there are two major enforcement components: Homeland Security Investigations and Enforcement and Removal Operations.[215] Homeland Security Investigations is the principal investigative component responsible for investigating cross-border crime. It is also responsible for conducting child pornography investigations, money laundering, illegal export of technology and firearms, drug smuggling, and investigating immigration violations.[216] As it

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Justice-for-Immigrants-Victimized-by-Crime-The-Perspectives-of-Police-and-Prosecutors.pdf; Robert C. Davis and Nicole J. Henderson, "Willingness to Report Crimes: The Role of Ethnic Group Membership and Community Efficacy," in *Crime and Delinquency*, October 2003, https://journals.sagepub.com/doi/10.1177/0011128703254418; Cecilia Menjívar and Cynthia L. Bejarano, "Latino immigrants' perceptions of crime and police authorities in the United States: A case study from the Phoenix Metropolitan area," in *Ethnic and Racial Studies*, January 2004, https://asu.pure.elsevier.com/en/publications/latino-immigrants-perceptions-of-crime-and-police-authorities-in- ; Vaughan Testimony, *Los Angeles Briefing*, p. 48.

[212] Amuedo-Dorantes Testimony, *Los Angeles Briefing*, p. 60.

[213] Corona Testimony, *Los Angeles Briefing*, p. 99.

[214] Chavez Testimony, *Los Angeles Briefing*, p. 101.

[215] Rocha Testimony, *6/24/20 Meeting*, p. 16; Arnold Testimony, *Los Angeles Briefing*, p. 118.

[216] Arnold Testimony, *Los Angeles Briefing*, p. 118.

relates to investigating immigration violations, Mr. Arnold explained that Homeland Security Investigations is mainly focused on large-scale criminal organizations that facilitate the illicit cross-border traffic of people.[217] Homeland Security Investigations has the authority to arrest people who are in violation of immigration laws and will only conduct arrests if it is in support of one of their investigations of a criminal organization.[218] In addition to Homeland Security Investigations, Enforcement and Removals Operations plays an important role in enforcing civil immigration laws such as interior removal proceedings.[219]

Like Mr. Arnold, Mr. Marin stated that while there are many critics of immigration enforcement, it benefits everyone because it ensures public safety.[220] Mr. Marin stated that ICE focuses on individuals who are in the U.S. illegally and who have committed a crime and/or have been previously removed.[221] According to ICE, 90 percent of apprehended individuals have a criminal record.[222] He stated that if 10 are arrested, only one of them fall into the category of not having a criminal record, but has either been ordered to be removed from the country and has not left yet or has been deported and returned without authorization.[223] ICE also places cases on a hierarchy based on the individual's criminal history and prioritize their enforcement efforts.[224] High on their list includes terrorists, murderers, and rapists.[225] Also included are individuals without felony convictions such as individuals with DUIs because they are believed to be a threat to the community.[226]

Although ICE, for the most part, targets individuals who have criminal records, Mr. Marin testified that individuals who do not have records could also be targeted for removal. For instance, an individual whose case is reviewed by the Department of Justice's Executive Office of Immigration Review can be ordered for removal by an immigration judge and ICE's authority permits them to enforce the judge's order.[227]

ICE provided explanations for several scenarios highlighted in media reports and those concerning to Committee members. For instance, news reports[228] allege that ICE conduct

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[217] Ibid.

[218] Ibid.

[219] Marin Testimony, *6/24/20 Meeting*, p. 3.

[220] Arnold Testimony, *Los Angeles Briefing*, p. 122; Marin Testimony, *6/24/20 Meeting*, p. 3.

[221] Marin Testimony, *6/24/20 Meeting*, p. 14.

[222] Ibid., 15.

[223] Ibid.

[224] Ibid.

[225] Ibid., 14.

[226] Ibid., 14-15.

[227] Ibid., 15.

[228] Caitlin Dickerson, Nick Corasaniti, and Edgar Sandoval, "ICE Launches Raids Targeting Migrant Families," *New York Times,* Jul. 14, 2019, https://www.nytimes.com/2019/07/14/us/ice-immigration-raids.html;

random immigration sweeps and raids.[229] Mr. Marin clarified that every action performed by ICE is a targeted enforcement operation based on a biometric match.[230] When an individual is apprehended by local law enforcement, fingerprinted, and entered into a database, ICE is notified to enforce a removal if that individual's fingerprints match.[231] The individual is usually flagged for the following reasons: because he or she has been ordered for removal and has not left the country; has a criminal record that makes them removable; has been removed from the country before; and/or are on a terrorist watch list.[232] According to Ms. Vaughan, the portrayal of mass immigration enforcement is inaccurate and this "inaccurate narrative…stokes fear and panic in immigrant communities."[233]

In another scenario, the Committee asked about immigration enforcement actions performed in sensitive locations such as schools. Mr. Marin explained that ICE does not routinely go into schools to enforce immigration laws and that such a situation would be rare.[234] He said most media reports claiming ICE enforcement at schools are false and misreported. He stated there are no statutory prohibitions to conduct enforcement actions even next to schools, but as an agency, they recognize the sensitivity and negative impact of immigration enforcement at schools.[235] As such, ICE created the 2011 Sensitive Locations policy.[236] The policy directs agency personnel to avoid conducting targeted enforcement activities in specific locations deemed sensitive including near schools.[237] Ms. Gonzalez and Mr. Marin explained that enforcement actions that occur near schools only occur if they have prior approval from an appropriate supervisory official[238] or "in the event of exigent circumstances."[239] In those cases, Mr. Marin said, ICE conducts thorough surveillance of the individual so that arrests are done safely.[240]

In addition, Mr. Marin said that ICE does not ask about the immigration status of students and their parents and that ICE would never arrest a parent at a school that their child attends unless they receive approval from their Washington D.C. headquarters.[241] Mr. Rocha also shared that

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[229] Marin Testimony, *6/24/20 Meeting*, p. 4.

[230] Ibid.

[231] Ibid.

[232] Ibid.

[233] Vaughan Testimony, *Los Angeles Briefing*, p. 22.

[234] Marin Testimony, *6/24/20 Meeting*, p. 13.

[235] Ibid., 21

[236] Ibid.

[237] Sensitive Locations FAQ.

[238] Ibid., 13.

[239] Barbara M. Gonzalez, Assistant Director U.S. Immigration and Customs Enforcement (ICE), letter to Ana Fortes, September 17, 2019. (hereafter cited as ICE Email to USCCR).

[240] Marin Testimony, *6/24/20 Meeting*, pp. 17-18.

[241] Ibid., 13.

ICE's Community Relations Office serves as a point of contact to local entities that need clarification about rumors regarding ICE's planned enforcement actions.[242]

Mr. Marin also explained enforcement actions that involve parents. He said, "being a parent[] doesn't absolve a person for their crimes"[243] and that when a parent is detained they "do everything [they] can to ensure the safety of that child."[244] He added that they do not arrest children, but have arrested families in the past if a judge orders for their removal. Subsequently, families are taken into custody together at one of the two family residential centers in Pennsylvania and Texas. [245]

ICE also clarified that they do not target day laborers who are suspected of being in the U.S. illegally. In the mid-1990s, immigration officials used to park in front of a Home Depot waiting to round up people to establish probable cause.[246] These individuals were then driven to and dropped off at the border.[247] Assessing its impact, Mr. Marin stated that it discontinued this strategy because it was not an effective use of their resources.[248] Mr. Rocha added that "an arrest is made because of that individual, not because of where they work"[249] and that any time an enforcement action is performed, officers have information on that individual, including where they may frequent and at what time.[250] Furthermore, enforcement actions performed at work sites are always a part of criminal investigations and involve obtaining federal warrants to seize property and other evidence to further those cases.[251]

Mr. Arnold testified to the Committee that immigration enforcement is a federal statute codified under Title 8 of the U.S. Code and is not a policy act. He noted that how the laws are enforced should take into account the constitutional interests and rights of citizens and that enforcement of the laws involves policy decisions.[252] Congress is responsible for passing immigration laws and the President has the ability to influence the enforcement of these laws as well as set priority areas.[253] Mr. Arnold also shared that the most recent change to the Immigration and Nationality Act was in 2000[254] and that the law has not changed significantly in the Trump

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[242] Rocha Testimony, *6/24/20 Meeting*, pp. 11-12.

[243] Marin Testimony, *6/24/20 Meeting*, p. 22.

[244] Ibid.

[245] Marin Testimony, *6/24/20 Meeting*, p. 22.

[246] Ibid., 16.

[247] Ibid.

[248] Ibid., 17.

[249] Rocha Testimony, *6/24/20 Meeting*, p. 16.

[250] Ibid.

[251] Ibid.

[252] Arnold Testimony, *Los Angeles Briefing*, pp. 145-46.

[253] Ibid., 116.

Administration.[255] He noted that the highest number of removals in a fiscal year during the Obama Administration was 432,448 in 2013[256] compared with 337,287 in 2018 during the Trump Administration.[257]

Peter Nuñez, a former federal prosecutor with extensive experience in federal law enforcement policy, added that these laws were passed by Congress and that any country that passes laws then refuses to enforce or implement those laws, "is violating the most basic concepts of democracy and the concept of a rule of law which we try to convey around the world."[258] The consequence of the lack of enforcement is that it will encourage people to commit crimes. He stated:

> Whenever any person breaks the law, the violator is not the only person to suffer the consequences. Innocent family members, relatives, friends, neighbors, coworkers, all may suffer collateral consequences as a result of the arrest and punishment of the violator.[259]

Individuals who violate immigration laws of the U.S., he said, are likely to face criminal sanctions or administrative sanctions such as deportation or removal and that, "the blame for these collateral consequences should fall on the immigration violator, not the government agency charged by Congress with enforcing our immigration laws."[260] Mr. Nuñez testified that ICE is seen as the face of immigration enforcement and believed to be the cause of the consequences when individuals break U.S. federal immigration law. He said that efforts should instead be dedicated to "discouraging [] law breakers from initiating this chain of events that can only end in serious problems for their families."[261]

Ms. Vaughan, who agreed that immigration enforcement helps ensure public safety, also testified that immigration enforcement supports several public policy goals. She said that it helps protect job opportunities for Americans and for legal immigrants and prevents wage erosion, especially for Americans who have not had access to a higher education; and preserves the integrity of legal immigration system by making sure that the rules are enforced.[262]

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[254] Legal Immigration and Family Equity Act of 2000. https://www.aila.org/infonet/full-text-of-life-act-and-life-act-amendments.

[255] Arnold Testimony, *Los Angeles Briefing*, p. 116.

[256] U.S. Department of Homeland Security, 2017 Yearbook of Immigration Statistics, *Table 39. Aliens Removed or Returned: Fiscal Years 1892 to 2017*, https://www.dhs.gov/immigration-statistics/yearbook/2017/table39; Arnold Testimony, *Los Angeles Briefing*, p. 137.

[257] U.S. Department of Homeland Security, 2018 Yearbook of Immigration Statistics, *Table 39. Aliens Removed or Returned: Fiscal Years 1892 to 2018*, https://www.dhs.gov/immigration-statistics/yearbook/2018/table39. Data for 2019 and 2020 have not been released.

[258] Nuñez Testimony, *Chula Vista Community Forum*, p. 6.

[259] Ibid., 7.

[260] Ibid.

[261] Ibid.

[262] Ibid.

Mr. Rosenberg argued that while immigration enforcement provides a public safety benefit, he testified that immigration is not enforced to the extent that it should be. Mr. Rosenberg, who founded an organization that "help[s] those who have been victims of crimes committed against them or their family by illegal noncitizens"[263] shared a story about the murder of his son by an undocumented immigrant driving without a license, who he learned entered the country illegally in 1999 and was given temporary protective status in 2000. He contributed to the immigration debate when he learned that "illegal noncitizens were a significant part of [the immigration] problem and responsible for more than half of the annual vehicle fatalities."[264] Reflecting upon these trends and understanding that many who enter the U.S. illegally do not mean harm, he questioned the lack of acknowledgement of the crimes committed by undocumented immigrants in political debates around immigration and challenged efforts to protect these individuals from deportation.[265] He testified that, his son and thousands of others have been impacted by the lack of enforcement and their civil rights were violated "to the maximum as their lives were taken from them because we didn't enforce our laws."[266] Similar to other speakers, he cautioned that if laws are not enforced for undocumented immigrants especially those who commit crimes, there will be more deaths, rapes, and crimes committed against law-abiding citizens, legal residents, and other illegal noncitizens.[267]

Border Security

While not a central theme to the Committee's inquiry, some panelists referenced border security actions.

Hector Andujo, a Border Patrol Agent who represents the National Border Patrol Council, testified to the process of apprehending individuals at the U.S./Mexico border. Mr. Andujo explained that he was trained to "be respectful and be professional at all times"[268] and ask a series of questions concerning the individual's wellbeing; if the individual has all of their belongings; if anyone was left behind, in distress, or has died along the way. He said that his role also requires being a first responder because he has provided these individuals with water, food, and even diapers.[269] In all his years of working as an agent, Mr. Andujo stated that he has never witnessed any misconduct and that his experience has been "nothing but positive from Border Patrol agents."[270]

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[263] Rosenberg Testimony, *Los Angeles Briefing*, p. 169.

[264] Ibid., 171.

[265] Rosenberg Testimony, *Los Angeles Briefing*, pp. 172-73.

[266] Ibid., 173.

[267] Ibid.

[268] Andujo Testimony, *Chula Vista Community Forum*, p. 9.

[269] Ibid., 11

[270] Ibid.

Although Mr. Andujo's testimony indicates no concern regarding protocol and observation of possible misconduct at the apprehension stage, testimony from Jill Esbenshade, principal researcher and author of a 2019 ACLU study[271] indicated concerns with the treatment of asylum seekers in detention by immigration officers and general protocol. The report documents aspects of the current U.S. asylum process from the perspective of asylum seekers transitioning through the San Diego Migrant Family Shelter and noted that half of asylum seekers reported mistreatment by immigration officers, most commonly verbal abuse and threats. Others in the study reported being denied adequate food, clean drinking water and bedding. In addition, more than three quarters of people surveyed reported being unable to shower, even if detained longer than the 72-hour standard. As it relates to the health of asylum seekers, two-thirds of adults and more than 40 percent of children were not screened by medical personnel while detained. Of those who reported medical problems to immigration officers, more than a third did not receive medical attention while detained. Asylum seekers also reported that immigration officers did not communicate legal documentation instructions in a manner they understood and nearly half of people surveyed reported they were not informed of their rights.[272]

Solutions to Immigration Enforcement Challenges

Panelists offered varying solutions related to federal enforcement actions.

Mr. Nuñez argued that until "Congress rises to its responsibilities to address our ongoing immigration crisis, this country will continue to struggle with illegal immigration and the consequences it visits on the minority communities and the country at large."[273] He suggested several recommendations, some of which are already stated in immigration law; these include: reform laws that allow for individuals to seek asylum; improve border enforcement where needed and effective entry-exit system to deal with those who overstay their visas; increase attention by ICE to monitor those who overstay their visas; enforce labor laws that do not allow undocumented immigrants from obtaining a job in the U.S., and increase workplace enforcement by ICE.[274]

Along with Ms. Vaughan and Ms. May, Mr. Nuñez stated that local and state jurisdictions should cooperate fully with federal officials to jointly discourage future illegal immigration through effective enforcement of joint laws.[275]

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[271] Jill Esbenshade, "The Right to Seek Asylum: Migrants' Stories of the Struggle for Human Rights, Dignity, Peace and Justice in the United States," *ACLU*, Dec. 10, 2019, https://www.aclusandiego.org/wp-content/uploads/2019/12/The_Right_to_Seek_Asylum-Migrant-Stories_with_Links-1.pdf (hereafter cited as *The Right to Seek Asylum*).

[272] *The Right to Seek Asylum,* p. 7.

[273] Nuñez Testimony, *Chula Vista Community Forum*, p. 8.

[274] Ibid.

[275] Nuñez Testimony, *Chula Vista Community Forum*, p. 8; May Testimony, *Chula Vista Community Forum*, p. 12; Vaughan Testimony, *Los Angeles Briefing,* p. 20.

To dispel misinformation about immigration enforcement actions impacting certain immigrant communities, Ms. Vaughan advocated for transparency from ICE to release more information on its operation regarding who is being targeted and why (e.g. due to prior offenses or deportations, failure to comply with court orders, warrants from other law enforcement agencies, etc.[276] In addition, she called for other solutions such as encouraging Congress and the President to appropriate more federal funding to support anti-gang operations, expedite the removal of deportable gang members, and examine how the lack of immigration enforcement impacts American citizens.[277]

Other panelists explained the need for a pathway to citizenship to address issues with federal enforcement actions.[278]

Current Immigration Enforcement Efforts by the Numbers

Enforcement actions conducted by Department of Homeland Security agencies are varied and collectively work to prevent unlawful entry into the U.S. and to apprehend and repatriate noncitizens who have violated or failed to comply with U.S. immigration laws. Accordingly, the primary responsibility for the enforcement of immigration law within DHS rests with U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement (ICE). Customs and Border Protection enforces immigration laws at and between the ports of entry and ICE is responsible for interior enforcement and for detention and removal operations.

Enforcement and Removals Operations is the ICE directorate that carries out most of the high-profile immigration enforcement activities that have been the subject of political controversy, including large-scale enforcement actions and the management of detention centers. Its mission is

> [t]o identify, arrest, and remove noncitizens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts.[279]

As such, Enforcement and Removals Operations' main areas of focus are interior enforcement operations, management of agency's detained population nationwide, and removal of noncitizens who have received a final order. Discussion concerning the prevalence of immigration enforcement can be illustrated in the annual statistics released by the Enforcement and Removals Operations report.[280] In 2019, ICE decreased the number of administrative arrests – arrests that

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[276] Vaughan Testimony, *Los Angeles Briefing,* p. 28.

[277] Ibid., 29.

[278] Alvarez Testimony, *Los Angeles Briefing,* p. 212; Peralez-Dieckmann Testimony, *Los Angeles Briefing,* p. 213.

[279] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Who We Are*, https://www.ice.gov/about-ice (updated May 13, 2020).

[280] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Fiscal Year 2019 Enforcement and Removal Operations Report,* 2019, https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf. (hereafter cited as *2019 ERO Report*).

involve a civil violation of immigration law – by 10 percent from 2018 and reportedly focused largely on criminals (Figure 1). ICE noted they are "committed to directing [their] enforcement resources to those aliens posing the greatest risk to the safety and security of the United States."[281]

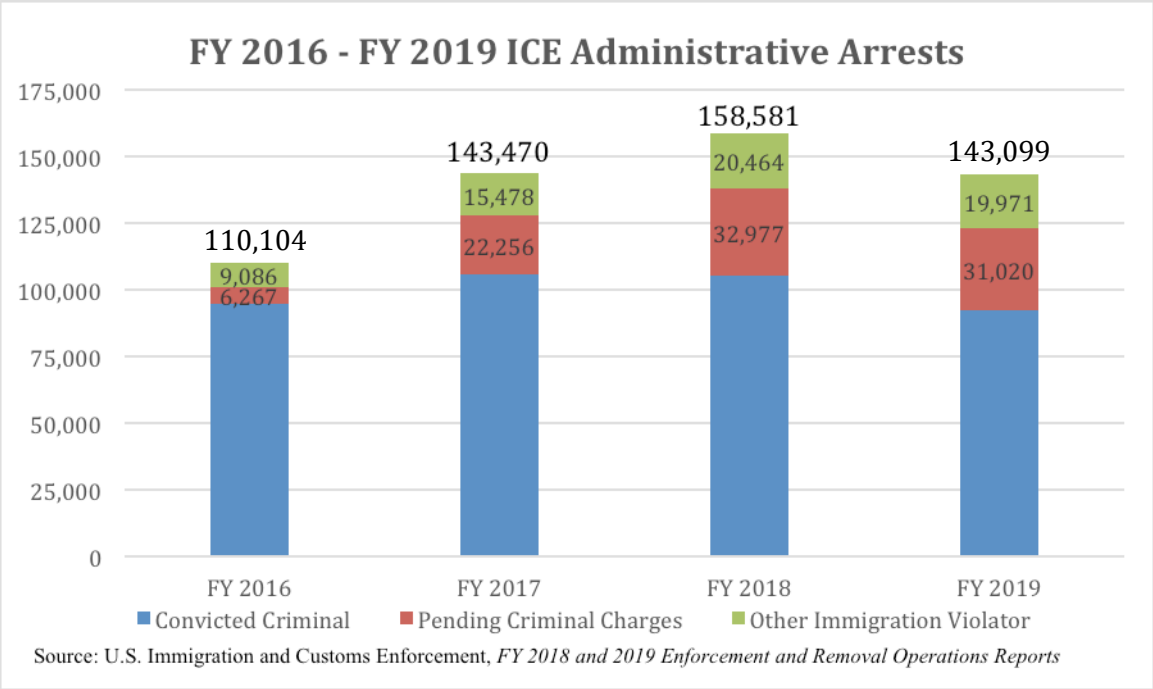

Figure 1

Data on administrative arrests were the highest within a four-year span in 2018 when Enforcement and Removals Operations made 158,581 arrests. The lowest number of arrests occurred in 2016 when Enforcement and Removals Operations made 110,104 arrests. Such arrests are subsequently adjudicated by an immigration judge or through other administrative processes. While arrests provide one indicator of the prevalence of enforcement activity, Mr. Arnold argued it does not illustrate the full extent of immigration enforcement. Arrests, according to Mr. Arnold, is not a significant indicator of the federal government's overall enforcement actions as the number of arrests do not guarantee removals. In his experience, most individuals who are arrested end up being released, awaiting the outcome of their removal proceedings, and are likely to abscond.[282]

ICE also reports on the number of detainers—a request from ICE to local law enforcement agencies to notify Department of Homeland Security as early as practicable before a removeable noncitizen is released from local custody. Detainers are issued to reduce potential risks to Enforcement and Removals Operations officers and the general public by allowing arrests to be made in secure custodial settings as opposed to at-large in communities, conserve scarce

[281] *2019 ERO Report*, at 21.

[282] Arnold Testimony, *Los Angeles Briefing,* p. 152.

government resources, and allow Enforcement and Removals Operations to assume custody of criminal noncitizens before they have an opportunity to reoffend.[283]

Lee Sherman, Deputy Attorney General for the California Department of Justice testified that he measures the frequency of immigration enforcement based on the number of ICE detainers issued to California law enforcement agencies.[284] In 2017, there were 142,356 detainers issued to local law enforcement nationwide and 35,000 detainers specifically issued to California law enforcement agencies.[285] In 2019, the Enforcement and Removals Operations issued 165,487 detainers across all law enforcement agencies for noncitizens who committed crimes such as assault, sex crimes, robberies, and homicides (Figure 2). The seven percent decrease from 2018 year was reportedly impacted by the diversion of resources to the Southwest Border as well as limited detention space to hold these individuals.[286] Additionally, ICE experienced an increase in the number of jurisdictions that do not cooperate with its enforcement efforts and stated that it is the biggest impediment to Enforcement and Removals Operations' public safety efforts.[287]

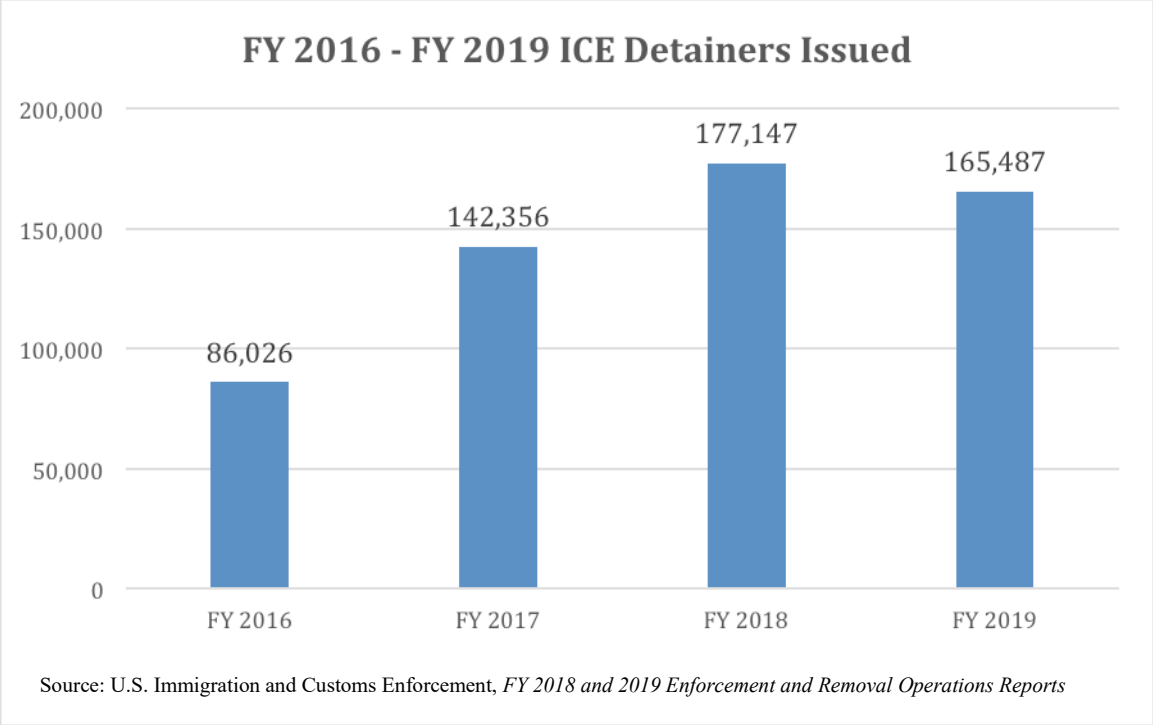

Figure 2

[283] *2019 ERO Report*, p. 16.

[284] Sherman Testimony, *Los Angeles Briefing*, p. 141.

[285] Ibid

[286] *2019 ERO Report*, p. 17.

[287] Ibid

An ICE removal is the compulsory and confirmed movement of an inadmissible or deportable noncitizen out of the U.S.[288] ICE removals include both noncitizens arrested by ERO in the interior of the county and noncitizens who were apprehended by Customs and Border Protection and turned over to Enforcement and Removals Operations for removal efforts.[289] In FY 2019, ICE removed 267,258 noncitizens, an increase from the 256,085 removals in FY 2018 (Figure 3).[290] ICE reported that while their overall removals increased slightly from the previous year, the portion of removals resulting from Customs and Border Protection apprehensions increased significantly during the period as a direct result of the changes in migration flows at the Southwest Border.[291]

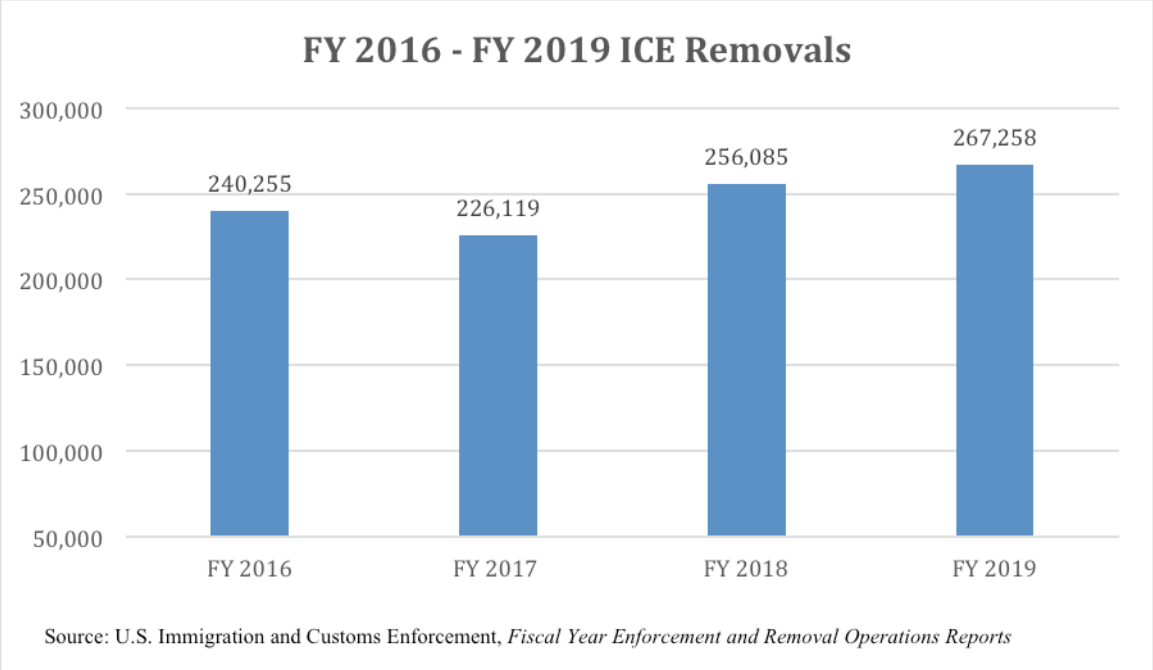

Figure 3

[288] 8 U.S.C. § 1231.

[289] *2019 ERO Report,* p.18.

[290] Ibid., 19.

[291] Ibid., 10, 12.

Based on fiscal year 2016 to fiscal year 2018 figures, there was a 31.6 percent increase in removals (from 65,332 to 85,958) tied to ICE arrests with fiscal year 2018 as the highest increase at 46 percent (65,332 to 95,360) (Figure 4).[292]

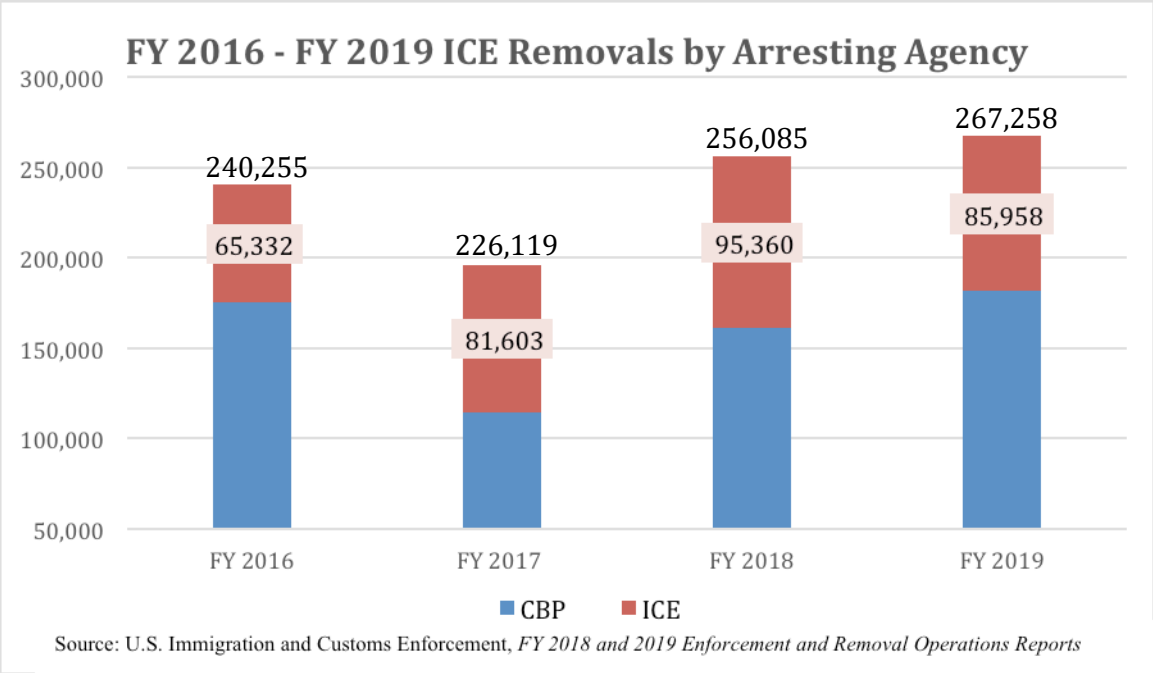

Figure 4

Changes to Federal Immigration Enforcement Policy

In the decades after the ratification of the Constitution, the Supreme Court took a leading role in determining how the immigration power would be allocated among the three branches of Government. Ultimately, the Court gave "plenary power," in other words, absolute power over immigration to Congress and the Executive.[293]

In recent years, U.S. presidents have attempted to manage immigration by issuing executive orders. Executive orders instruct administrative agencies what to do and are followed like a law. Similarly, each president made administrative changes that shift the way U.S. immigration policies are carried out going forward. Testimonies below note a few of these changes to immigration enforcement policies that aimed to curb immigration for certain populations.

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[292] *2019 ERO Report*; U.S. Immigration and Customs Enforcement, *Fiscal Year 2018 Enforcement and Removal Operations Report,* p. 11, https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf.

[293] *Fong v. United States,* 149 U.S. 698 (1893).

Panelists, Joann Lee, special counsel for Legal Aid Foundation of Los Angeles and Debra Suh, executive director for Center for the Pacific Asian Family, were concerned about the 2018 Department of Homeland Security change to its longstanding policy of allowing certain types of humanitarian relief to be filed without risk of removal. Now, even battered spouse petitions under the Violence Against Women Act and relief as human trafficking victims are subject to removal, if denied.[294] According to Ms. Lee and Ms. Suh, a high volume of Asian and Pacific Islander survivors with children seek these benefits and stated that this policy change sent "a great chilling effect" to survivors who are undocumented from coming forward to apply for relief because they risk potential deportation if their applications are not considered strong enough.[295] Several of their Asian and Pacific Islander clients face challenges as many have limited evidence of their victimization due to linguistic and cultural barriers, as well as their fears of reporting to law enforcement and seeking relief in court.[296] Heightened scrutiny, mistrust, and misapplication of the law, they say, have been the causes for a delay in getting applications approved.[297]

USCIS also enhanced requirements to obtain fee waivers for certain applications.[298] Ms. Lee and Ms. Suh stated that this change could impact undocumented survivors from applying because of their inability to pay and "adversely affects the[ir] ability [] to achieve safety, stability and self-sufficiency for themselves and their children, as they must overcome more barriers in order to flee abusive situations and obtain lawful immigration status."[299]

The Administration's announcement in August of 2018 about proposed changes to the definition of "public charge" also raised concern among some speakers. The new rule[300] established that a "public charge" refers to someone who receives public benefits for more than 12 months out of 36. While the public charge rule does not apply to U.S. citizens,[301] some panelists asserted the

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[294] U.S. Department of Homeland Security, Citizenship and Immigration Services, *Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, Jun. 28, 2018, https://www.uscis.gov/news/alerts/uscis-continue-implementing-new-policy-memorandum-notices-appear.

[295] Joann Lee, Special Counsel, Legal Aid Foundation of Los Angeles; Debra Suh, Executive Director, Center for the Pacific Asian Family, Joint Written Statement for the Los Angeles Briefing before the California Advisory Committee to the U.S. Commission on Civil Rights, October 16, 2019 at p. 4 (hereinafter Lee and Suh Statement).

[296] Ibid.

[297] Ibid.

[298] USCIS Updates Fee Waver Requirements, https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements (updated 10/25/2019).

[299] Lee and Suh Statement at 4.

[300] Inadmissibility of Public Charge Grounds, A Rule by the Homeland Security Department, 84 Fed. Reg. 41292 (August 14, 2019) https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds. Since its announcement, plaintiffs in New York, Connecticut, and Vermont have pursued legal action. On July 31, 2020, the U.S. District Court of the Southern District of New York blocked the implementation of the public charge rule (see David Welna, "Twin Rulings by Federal Judge Block 'Public Charge' Rules for Immigrants," *NPR*, Jul. 31, 2020, https://www.npr.org/2020/07/31/897429845/twin-rulings-by-federal-judge-block-public-charge-rules-for-immigrants).

[301] U.S. Department of Homeland Security, Citizenship and Immigration Services, *Public Charge Fact Sheet*, https://www.uscis.gov/news/public-charge-fact-sheet (updated July 31, 2020).

announcement of the potential change caused fear among many immigrant communities who may live in mixed-status households.[302] Mayra Alvarez, president of the Children's Partnership testified that, if implemented, up to 628,000 children, many of whom are U.S. citizens, will lose Medicaid coverage and up to 311,000 will lose access to food stamps or CalFresh[303] based on an analysis conducted by The Children's Partnership and Kidsdata.org which mirrors Henry J. Kaiser Family Foundation's analysis predicting levels of disenrollment.[304] Another panelist, Ms. Corona, testified that even permanent residents are afraid to leave the country because they do not believe they will be able to return.[305] She said that individuals are fearful that proposed changes to public charge law could notify immigration officials of their use of public benefits causing them to be a target for deportation.[306] Also, Lorena Vazquez, a representative from the Los Angeles Unified School District said that parents expressed concern about applying for the lunch meal program and feared discussing with a Los Angeles Unified School District's staff specialist about their medical insurance options.[307] She testified that parents are also refraining from submitting Medi-Cal[308] forms that would enable children to access mental health and health services offered in their wellness clinics despite Los Angeles Unified School District staff informing parents that the resources will not affect them.[309]

Lastly, Ms. Lee and Ms. Suh indicated that potential changes[310] to the Deferred Action for Childhood Arrivals (DACA) program, an Obama-era program that shields young undocumented immigrants from deportation, has also affected Asian and Pacific Islander children and young adults in California.[311] Although the large majority of those eligible for DACA are from Latin American countries, Ms. Lee and Ms. Suh noted there are 120,000 immigrants from Asian countries eligible, many of whom reside in California.[312] They stated that these individuals are

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[302] Corona Testimony, *Los Angeles Briefing*, p. 81; Vazquez Testimony, *Los Angeles Briefing,* p. 104.

[303] CalFresh is the California implementation of the federal Supplemental Nutrition Assistance Program which provides financial assistance for purchasing food to low-income California residents.

[304] Samantha Artiga Rachel Garfield, and Anthony Damico, "Issue Brief: Estimated Impacts of Final Public Charge Inadmissibility Rule on Immigrants and Medicaid Coverage," *Henry J. Kaiser Family Foundation*, Sept. 2009, https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-final-public-charge-inadmissibility-rule-on-immigrants-and-medicaid-coverage/.

[305] Corona Testimony, *Los Angeles Briefing*, p. 81

[306] Ibid.

[307] Vazquez Testimony, *Los Angeles Briefing,* p. 104.

[308] Medi-Cal is a California health program that offers free or low-cost health coverage for children and adults with limited income and resources.

[309] Vazquez Testimony, *Los Angeles Briefing,* p. 103.

[310] In September of 2017, the Trump Administration ordered to rescind DACA and at the center of three lawsuits combined into one that will be heard by the Supreme Court: Department of Homeland Security, et al., v. Regents of the University of California, et al. As of June 18, 2020, the Supreme Court rejected the Trump Administration's to dismantle the DACA program in a 5-4 decision.

[311] Lee and Suh Statement, at 4.

[312] Ibid.

from all parts of Asia, with significant numbers from Korea, China, and India; and[313] historically, participation in DACA of those from Asian countries has been low, due to fear, lack of knowledge about the program, and language barriers.[314] The proposed curtailing of the DACA program, according to Ms. Lee and Ms. Suh, will negatively impact Asian and Pacific Islander youth from "obtaining and maintaining the life-changing opportunities that DACA can provide."[315]

California Approach

In the past few years, jurisdictions have adopted so-called sanctuary policies, a term applied to jurisdictions that limit cooperation with federal immigration authorities, such as declining to provide information about an individual's personal information for immigration enforcement purposes and refusing to extend the length of a person's detention pursuant to an ICE detainer hold.[316] These policies have emerged as a point of tension between federal, state, and local authorities. California legislators passed three "sanctuary" policies that went into effect during over the last six years. These laws include the Trust Act (AB 4), the Truth Act (AB 2792), and the Values Act (SB 54).[317]

California Trust Act (AB 4),[318] California Truth Act (AB 2792)[319] and California Values Act (SB 54)[320]

California is involved in several court cases still pending against the Trump Administration challenging recent immigration enforcement actions. At the time of the Committee's meetings in October 2019 and March 2020, the implementation of the California Values Act was at the

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[313] Gregg Orton and John Yang, "DACA Has a Significant Impact on the Asian American Community," *Insight into Diversity*, Apr. 17, 2018. Accessed March 25, 2020 https://www.insightintodiversity.com/daca-has-a-significant-impact-on-the-asian-american-community/;

[314] Douglas Soule, "Why Are DACA Participation Rates so Low for Asian Immigrants?" *Globe Post*, Jul. 10, 2019. https://theglobepost.com/2019/07/10/daca-asian-immigrants/ (accessed March 25, 2020).

[315] Ibid.

[316] States and localities cooperate with federal law enforcement, particularly in criminal investigations, for example, under voluntary agreements such as the 287(g) program. Some state and local governments have policies that limit cooperation in civil investigations to support public safety and community policing goals, such as encouraging witnesses and victims of crime to come forward.

[317] The Trust Act (AB 4) went into effect in 2014, the Truth Act (AB 2792) in 2016, and the Values Act (SB 54) in 2017.

[318] Gov. Code §§ 7282, 7282.5.

[319] Cal. Gov't. Code § 7283 et seq.

[320] Cal. Gov't. Code § 7284 et seq.

center of one of these court cases between the California Attorney General Xavier Becerra's office and the Trump Administration.[321]

Testifying to the enforcement of the state's sanctuary policies carried out by the California Attorney General's Office, Deputy Attorney General, Lee Sherman said that the Bureau of Children's Justice within the Civil Rights Enforcement section is responsible for protecting the rights of children through systemic enforcement and advocacy efforts, juvenile justice, child welfare, and access to education.[322] He explained that in response to the increase in immigration enforcement from 2016 to 2017,[323] California lawmakers passed the California Values Act with the aim to:

> foster community trust and ensure that the state's law-abiding immigrant population can interact with the state and local governments without the fear that those interactions will result in deportation."[324]

Discussed in the California Values Act are changes in the way in which California law enforcement agencies respond to immigration enforcement requests about the people they serve. Deputy Attorney General Sherman said:

> [it is] guided by the State's values and those are that every Californian, irrespective of their nationality, their race, their ethnicity, their citizenship status, or their immigration status, should feel safe and secure in participating in their communities. They should feel free to access public facilities, seek medical treatment, pursue justice in court, and [] attend school."[325]

The California Values Act, he stated, is significant because it defines the circumstances in which California law enforcement agencies may participate in immigration enforcement. The California legislature argued that enacting the California Value Act

> is in the best interest of public safety and was critical to effective policing, protecting the safety and constitutional rights of Californians, and directing the state's limited resources toward issues of local concern.[326]

The law prohibits law enforcement agencies from asking a person about his or her immigration status for immigration purposes, holding an individual past his or her ordinary release on the basis of an ICE detainer, and providing personal information about an individual for immigration enforcement purposes unless that information is publicly available.[327] The Values Act also

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[321] Noting that the Supreme Court declined the Department of Justice's request to review a federal appeals court decision that upheld three California sanctuary laws: https://www.scotusblog.com/2020/06/court-turns-down-governments-sanctuary-state-petition/.

[322] Sherman Testimony, *Los Angeles Briefing*, p. 126.

[323] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Fiscal Year 2018 Enforcement and Removal Operations Report,* p. 6, https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf.

[324] Sherman Testimony, *Los Angeles Briefing*, p. 127.

[325] Ibid., 127-28.

[326] Ibid., 131.

[327] Cal. Gov't. Code § 7284 et seq.

directed the Attorney General's office to issue model policies for responding to immigration issues for colleges and universities, courthouses, health care facilities, libraries, shelters, and labor agencies, to ensure safety and accessibility for all Californians; and in October of 2018, these model policies were published.[328]

On the other hand, ICE officials critical of California's sanctuary laws argued that "these sanctuary policies and[*sic*] these non-cooperative jurisdictions… are only protecting criminal aliens."[329]

Ms. Gonzalez testified that:

> Communities are safer when law enforcement work [] together, yet sanctuary policies and laws like those in California, continue to hinder the coordination [between ICE and law enforcement agencies] needed to keep dangerous criminals off the streets."[330]

Mr. Rocha added that measures that limit the cooperation between law enforcement and ICE have not been helpful and pointed to states like Texas, Florida and Iowa that have passed laws mandating cooperation with immigration enforcement and sharing of information with ICE.[331]

Drawing on tracked data, the number of detainers honored by law enforcement agencies may serve as a measurement for public safety risk. In September 2019, ICE officials issued over 11,000 detainers to the Los Angeles County Sheriff's Department and less than 500 of those have been honored.[332] Because few detainers are honored, panelists argued, criminal undocumented immigrants are released to the community, providing the opportunity for these individuals to disappear and/or reoffend.[333] Since 2014 there have been more than 10,000 individuals who were sought by ICE after a criminal arrest, but who were released because of sanctuary policies, and subsequently reoffended.[334] ICE noted that they do not track how many individuals have been arrested, released and have subsequently committed crimes, but some sheriff's offices may track more specific information about an individual.[335]

Some of those re-offenses, according to Ms. Vaughan, are against children. She gave an example of a deportable individual who was released and kept getting arrested for continued sexual abuse

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[328] Cal. Gov't. Code § 7284.8 (a) et seq.

[329] Marin Testimony, *6/24/20 Meeting*, p. 24.

[330] ICE Email to USCCR.

[331] Rocha Testimony, *6/24/20 Meeting*, p. 25.

[332] U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Local ICE Director Discusses Sanctuary Policy Impact on Public Safety*, Sept. 26, 2019 https://www.ice.gov/news/releases/local-ice-director-discusses-sanctuary-policy-impact-public-safety#wcm-survey-target-id.

[333] Vaughan Testimony, *Los Angeles Briefing,* p. 25; Rosenberg Testimony, *Los Angeles Briefing,* p. 112.

[334] Vaughan Testimony, *Los Angeles Briefing,* p. 25.

[335] Marin Testimony, *6/24/20 Meeting*, pp. 5-6.

of a child under 10.[336] She concluded that the federal government and states should pursue injunctions and other legal challenges to the sanctuary policies that are driving ICE to make at-large arrests, contributing to fear, and potentially harming members of the public.[337]

Ms. Vaughan also testified that sanctuary laws are one important the cause for at-large arrests, as seen in media reports, in California and throughout the country. She also argued that California experiences more at-large and is not a coincidence or a result of a change in presidential administration, but instead, it is the direct result of sanctuary policies that limit ICE's ability to work with local law enforcement.[338] In effect, it requires ICE to resort to arresting its targets in homes, workplaces, and public places such as courthouses and sometimes on the street, rather than in the jails, where the individuals can be handed over to ICE.[339]

Claude Arnold testified that ICE has broad discretion in enforcing the laws.[340] He said enforcement activity is based primarily on availability of resources.

> If you have the resources to arrest 10 people, you are going to prioritize arresting 10 of the worst people. So in this case, people with criminal history. You are not going to arrest people who are not criminals.[341]

Mr. Arnold added that if ICE is unable to deal with criminals while incarcerated, ICE agents will need to go into communities to make these arrests. They do not go into the communities to arrest all undocumented immigrants, only those with criminal records.[342] As mentioned earlier in this report, Mr. Marin stated that ICE focuses on undocumented immigrants with criminal records who pose a threat to society.[343] If ICE is unable to deal with them while they are in custody, ICE agents have to deal with them in the communities which is far more dangerous to agents as well as the community.[344]

In defense of the California Values Act, Deputy Attorney General Sherman argued that the law does not impose a blanket prohibition on California law enforcement agencies in assisting in immigration enforcement.[345] The law, he said, allows California law enforcement agencies to provide immigration authorities access to detention facilities, provide release date information and transfers individuals in custody to immigration authorities if those individuals had been

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[336] Vaughan Testimony, *Los Angeles Briefing,* p. 25.

[337] Ibid., 28.

[338] Ibid., 24.

[339] Ibid; Marin Testimony, *6/24/20 Meeting*, pp. 3, 9.

[340] Arnold Testimony, *Los Angeles Briefing,* p. 146.

[341] Ibid.

[342] Ibid., 125.

[343] Marin Testimony, *6/24/20 Meeting*, p. 14.

[344] Vaughan Testimony, *Los Angeles Briefing,* p. 25.

[345] Sherman Testimony, *Los Angeles Briefing*, p. 132.

previously convicted of criminal offenses identified in the statute.[346] More pointedly, he said, the law does not interfere with federal immigration authorities from conducting enforcement using their own resources but rather, the law directs state and local law enforcement resources in an area within the state's control.[347]

The Attorney General's office has been defending the California Values Act, the California Trust Act, and several other state laws in court against a preemption lawsuit filed by the Trump Administration and in connection with the Administration's efforts to impose immigration enforcement funding conditions on various federal grants that he argues are unrelated to immigration enforcement. Citing testimony from a wide range of stakeholders in support of these laws, Mr. Sherman said those testimonies demonstrate that jurisdictions that limit entanglement with immigration enforcement are safer and that immigrants are more likely to seek government services if their local governments are not entangled with immigration enforcement.[348] In response, two federal courts and the Ninth Circuit Court of Appeals determined that the California Values Act does not conflict with federal law and does not interfere with federal immigration authorities.[349]

Mr. Sherman also testified to other examples of court cases that demonstrate the Trump Administration's attempt to attach immigration enforcement requirements on various grants that threatened to withhold funding from California on the basis of confidentiality statutes that had been enacted prior to 2016.[350] Mr. Sherman asserted that it is the State's responsibility to provide for the health, safety, and welfare of its residents through its laws.[351] He added, "our federalism system of government grants the State the power and responsibility to provide these services for the state's residents, and these principles directed by the federal government cannot force the state to assist in enforcing federal immigration laws against its own residents"[352]

Response to Fear Regarding Immigration Enforcement Impacting Students

Mike Ambrose, associate general counsel for the California School Boards Association testified to how the California School Boards Association responded to its membership of nearly 1,000 educational agencies statewide regarding immigration enforcement concerns. Members were worried over the increase in absentee rates of students, lack of engagement from parents in parent-teacher conferences and other school events, and their ability to provide a good education to students who do not feel safe at school.[353]

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[346] Ibid.

[347] Ibid.

[348] Ibid., 4.

[349] *United States v. California*, 921 F.3d 865 (2019).

[350] Sherman Testimony, *Los Angeles Briefing,* pp. 159-160.

[351] Ibid., 135.

[352] Ibid.

[353] Ambrose Testimony, *Los Angeles Briefing,* p. 64.

Outlining federal protections for students and families as it relates to immigration status and educational institutions' responsibility to uphold them, Mr. Ambrose discussed that *Plyler v. Doe*, a Supreme Court decision that all students, regardless of immigration status, have equal access to education.[354] The ruling ensures that school districts cannot discourage undocumented students or their parents from enrolling in school, which includes requiring documents or information.[355] This means that schools cannot inquire about a student's immigration status for establishing residency in the district or require a social security number and passport.[356] He also explained that the Family Educational Rights and Privacy Act ensures that schools do not share student information, including citizen status, with ICE or the federal government without parental consent.[357] According to the California School Boards Association, these measures provide some measure of security for students while they are at school.[358] The reality, he said, is that despite these protections, students and families still report fear of immigration enforcement at schools, and reports have indicated that immigration authorities have stopped parents after they dropped off their children at school and in one case, ICE visited an elementary schools asking for school records.[359]

According to Mr. Ambrose, members of the California School Boards Association have gone to "great lengths to ensure that families do[sic] feel safe at school and to make [*sic*] them know that that's their goal and their job there, is to educate students."[360] As part of that effort, school districts asked the California School Boards Association to provide legal guidance and create sample policies and sanctuary resolutions to communicate the message that schools are safe havens from federal immigration enforcement activities, through laws already in place.[361] At the same time, many school districts have approved board resolutions, which do not have additional legal protections, to communicate the message that:

> all students have a right to attend school, that, regardless of immigration status, students need to come to school and have both an obligation under California law to come to school and a constitutional right to an education here.[362]

He also testified that this move communicates to families that school districts will not: ask students or their families about immigration status, share student information, and participate in voluntary enforcement by sharing information with ICE and informs parents of ICE's policy

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[354] *Plyler v. Doe*, 457 U.S. 202 (1982).

[355] *Id.*

[356] *Id.*

[357] The Family Educational Rights and Privacy Act of 1974, Pub. L. 93-380, 88 Stat. 572 (codified as 20 U.S.C. § 1232g).

[358] Ambrose Testimony, *Los Angeles Briefing,* p. 66.

[359] Ibid.

[360] Ibid.

[361] Ibid.

[362] Ibid., 67.

about sensitive locations are largely off limits.[363] Even with this response, members have reported that immigration enforcement still creates a difficult situation for students and schools to fulfill their constitutional duty.[364]

In addition to Family and Educational Rights and Privacy Act and *Plyler v. Doe*, AB 699, Educational Equity: Immigration and Citizenship Status Act,[365] is also intended to address the impact of immigration enforcement on school children. The law, enacted by California voters in 2017, directed the Attorney General's office to push model policies for K-12 schools to provide guidance as to how to respond to immigration issues.[366] The Act codified the responsibility of schools to educate their families on their students' right to a safe education, responsibilities to educate about the impacts of bullying, and pass anti-bullying policies and information concerning bulling based on immigration status. [367] Since its passage in July of 2018, 140 school districts have implemented this law impacting over 2.5 million students in California.[368]

FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.[369]

Below, the Committee offers to the Commission a summary of findings identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission to consider several recommendations for federal and state actors.

Findings

1. Immigration enforcement impacts children in many ways. Of the 5.1 million children who have at least one undocumented parent, 4.5 million are U.S. citizens. The removal of undocumented parents of children who are U.S. citizens splits families and may negatively impact the growth and stability of millions of children.

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[363] Ambrose Testimony, *Los Angeles Briefing,* p. 67.

[364] Ibid., 69.

[365] Cal. Educ. Code §§ 200, 220, 234.1, 234.7.

[366] *Id.*

[367] Cal. Educ. Code § 234.1(a), § 234.1(b); Thornton Testimony, *Los Angeles Briefing,* p. 106.

[368] Ibid., 107.

[369] 45 C.F.R. § 703.2.

2. In California alone, at least 750,000 children live with a parent who is undocumented, including 250,000 children who are undocumented themselves. The arrest and/or deportation of parents adversely affects their children as does the continual fear of arrest and deportation. Media reports and testimony regarding enforcement activity in and around schools also affects undocumented children and children of undocumented parents. Such effects may include an increase in absenteeism among students, a decline in parent participation in school events, an increase in bullying of students because of their perceived national origin and/or citizenship status, and a decline in school participation and willingness to seek higher education.

3. In 2011, ICE promulgated its Sensitive Locations policy that limits ICE enforcement actions at schools, hospitals, places of worship, public religious ceremonies and during public demonstrations. ICE also noted that:

    a. ICE has discretion in how it conducts enforcement actions pursuant to federal law; and if and when enforcement actions occur *near or around* schools, agents are required to ask for supervisory approval.

    b. The ICE Sensitive Locations policy does not prohibit ICE from conducting enforcement actions *near or around* schools or hospitals or places of worship; however, ICE attempts to avoid sensitive locations if possible.

    c. A lack of data collection and reporting by ICE limits a full review, examination and understanding of the efficacy and impact of the Department of Homeland Security's Sensitive Locations policy and limits a full understanding of the impact of ICE's practices and procedures on U.S. children.

4. The Sensitive Locations policy does not limit or restrict ICE from conducting enforcement actions in or around courthouses. On March 16, 2017, Tani Cantil-Sakauye, the Chief Justice of the California Supreme Court, notified the U.S. Attorney General and the U.S. Secretary of Homeland Security about her concern about reports from some California trial courts that immigration agents appeared to be stalking undocumented immigrants in state courthouses to make arrests, that those tactics undermine the judiciary's ability to provide equal access to justice, and she requested that that ICE refrain from that sort of enforcement in California's courthouses. In a joint response, then-Attorney General Jeff Sessions and then-Secretary Kelly stated that Justice Cantil-Sakauye should direct her concerns to Governor Jerry Brown and to law enforcement officials who refuse to honor detainers as several California municipalities are "sanctuary cities" that limit police cooperation with ICE. They stated that "[s]uch policies threaten public safety, rather than enhance it,"[370] and as a result, ICE requires to arrest these individuals in public places, rather than in jails.

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[370] "Response from Sessions and Kelly to California's Chief Judge on Immigration," Mar. 29, 2017, https://www.nytimes.com/interactive/2017/03/31/us/sessions-kelly-letter.html.

5. Many local law enforcement agencies allow limited access to ICE to undocumented persons in local custody. This limited access may reduce the ability for ICE to deport undocumented individuals who committed crimes and who may pose the highest risk to public safety. As a result, many undocumented individuals convicted of crimes are released into communities resulting in ICE agents seeking the arrest and deportation of these same individuals in communities rather than in a controlled custodial environment. The transfer of ICE enforcement activity from the local jails/prisons to the communities increases the risk to agents, the undocumented individuals being sought as well as to community members at large. The enforcement in communities also increases the negative perception of ICE in those communities and creates greater fear for undocumented individuals and their children living in those communities. Although the sanctuary laws were intended to protect undocumented immigrants, they may be doing more harm than good and primarily protecting undocumented immigrants who commit crimes.

6. California schools are required to uphold federal laws that: protect students' personal information; prohibit discrimination in public education on the basis of race, color, or national origin; and prohibit discrimination based on immigration status in access to basic public education. While these laws remain in place, and efforts were put forth by California school districts to address concerns about immigration enforcement potentially occurring in and around schools, and ICE's Sensitive Locations policy explicitly indicating that schools are off-limits to conduct enforcement actions, families still express anxiety and fear of deportation. The effect is that students in mixed-status households choose to stay home because of that fear. Such fear, whether real or not, has a chilling effect on education for undocumented children and children of undocumented parents. It also affects school funding that is intended to support all students because funding is largely tied to attendance and impacts student achievement.

7. Testimony indicated that executive orders impact immigrant communities' perception of safety and feel targeted because of their presumed national origin and immigration status.

8. California's sanctuary laws continue to be a point of tension between federal, state, and local authorities. In particular, the California Values Act made a dent in decreasing immigrant arrests in the state reinforcing the notion supported by previous research and testimony that implementation of deportation procedures would not be as extensive if local officials declined to participate. ICE asserts that a consequence of the California Values Act is that federal immigration enforcement actions are more likely to be conducted in public rather than in local law enforcement custody. In addition, the law fosters a precarious relationship between immigrant communities and local law enforcement.

9. Testimony indicated concerns with immigration courts fulfilling procedural due process requirements. At this time, immigration courts have limited resources, are experiencing a large and growing caseload that sometimes goes beyond the 180-day adjudication period for asylum cases, and are subject to fluctuations in enforcement policy changes. Testimony indicated that these examples may impede due process because they can cause

long wait times before cases can be heard, and over-detention of undocumented immigrants.

10. According to U.S. law, undocumented immigrants have a right to due process; however, they do not have a right to counsel provided by the government in civil proceedings. ICE provides undocumented immigrants resources such as contact information for consulates and the American Immigration Lawyers Association to obtain legal representation; however, some individuals are unable to access representation due to understaffed and underfunded nonprofit law firms, who often provide this service. This is notable because children are more likely to receive the relief they are seeking if counsel represents them.

11. Testimony before this Committee indicates a concern with due process and consistency with immigration courts and judges. Undocumented immigrants appearing in immigration court face obstacles to due process and fair adjudication of claims for relief. Testimony indicated inconsistency among immigration judges and highly disparate grant rates as well as hostility and contempt toward immigrants and their attorneys. In contrast, additional testimony indicated favoritism and leniency towards immigrants by some immigration judges. Based on testimony, it appears that outcomes may depend on which court or judge is deciding the case rather than established principles and rules of law.

12. Immigration enforcement may impact the reporting of crimes in immigrant communities. There are several possible reasons that affect a victim's inclination to report crimes. For instance, immigrants, who may be undocumented, and are victims may not report crimes because of shame, fear of deportation, and a lack of faith in law enforcement in taking their report seriously. Fear of reporting crime may result in continual victimization of undocumented immigrants. Such crimes may include domestic violence and child abuse and many other crimes. Failing to report a crime also means that the nation's crime statistics may be grossly inaccurate and potentially misleading. This has significant consequences for policymaking and budgeting because, without proper reporting, resources could be allocated to the wrong place. On the other hand, Department of Justice statistics estimate that approximately 50 percent of all crimes nationwide go unreported. Under reporting of crime is an issue that goes well beyond immigrant communities, and hence is broader than immigration enforcement.

13. Testimony indicated concerns with the treatment by federal immigration authorities and/or federal detention conditions that are in violation of the Customs and Border Patrol's National Standards on Transport, Escort, Detention, and Search. Asylum seekers reported mistreatment by immigration officers through verbal abuse and threats; denied adequate food; clean drinking water and bedding. In addition, testimony indicated medical personnel did not screen children while detained and some did not receive medical attention. Lastly, families continue to be separated while in federal custody.

14. ICE no longer exempt groups of removable undocumented immigrants from enforcement. As a result, all undocumented immigrants are likely targets even if they

have lived in the United States for many years and have U.S. born children. As seen in the Administration's January 25, 2017 Executive Order,[371] the shift in enforcement philosophy has translated to more arrests and deportations of undocumented immigrants.

Recommendations

1. The U.S. Commission on Civil Rights should study the impact of sanctuary laws and their effectiveness.

2. The U.S. Commission on Civil Rights should send this report and issue recommendations to the Department of Homeland Security, Immigrations and Customs Enforcement Agency to:
    a. Track and release detailed information on enforcement operations including information on who is targeted, arrested, and deported especially those operations conducted near or around sensitive locations, and at courthouses. In addition, track and release information on the detention of U.S. children and those who are legal residents.

    b. Examine the availability of legal representation for detainees provided by legal aid organizations and develop solutions to ensure detainees have sufficient and proper access to legal representation.

    c. Comply with the Sensitive Location policy and communicate its importance to the public

    d. Comply with the Federal Educational Rights and Privacy Act.

    e. Conduct outreach to immigrant communities to educate them on the core functions of its agencies.

    f. Expedite the removal of deportable gang members.

    g. Amend its October 24, 2011, Sensitive Locations policy memorandum to add courthouses to the list of sensitive locations that are subject to certain limitations on immigration enforcement actions.

3. The U.S. Commission on Civil Rights should send this report and issue a recommendation to the Department of Homeland Security to investigate and/or

[371] The Executive Order defines as a priority any undocumented immigrant who: has been convicted of any criminal offense; has been charged with any criminal offense, where the charge has not been resolved; has committed acts that constitute a chargeable criminal offense; has engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency; has abused any program related to the receipt of public benefits; is subject to a final order of removal, but has not departed; or otherwise poses, in the judgment of an immigration officer, a risk to public safety or national security.

review ICE and CBP policing activities and actions at and in proximity to schools and courthouses and other sensitive locations.

4. The U.S. Commission on Civil Rights should send this report and issue recommendations to the Department of Homeland Security, Customs and Border Protection Agency to:
    a. Comply with the National Standards on Transport, Escort, Detention, and Search.

    b. Do not separate undocumented immigrant families who have been apprehended at the border and during detainment, especially those with young children.

    c. Provide detainees with the contact information of immigration lawyers and create better access to detention facilities by either moving detention facilities to higher populated areas, implementing transportation systems, or expanding video conferencing.

    d. Provide adequate translation services in detention facilities for indigenous languages so that migrants who do not speak English or Spanish have the ability to communicate with detention staff and have equal access to legal information and representation.

5. The U.S. Commission on Civil Rights should send this report and issue a recommendation to the Department of Justice, Executive Office for Immigration Review to abide by the 180-day period to adjudicate asylum cases.

6. The U.S. Commission on Civil Rights should send this report and issue recommendations to the U.S. Congress to:
    a. Pass legislation that streamlines the legal immigration process to ensure civil rights protections for children.

    b. Provide appropriate funding to support anti-gang operations.

    c. Consider legislation to make the immigration court system independent, separate from the Department of Justice, to ensure impartiality and to insulate the system from policy changes. Congress should also consider creating trial and appellate divisions to create judicial independence.

    d. Provide adequate funding to support the Department of Justice, Executive Office for Immigration Review to adjudicate cases.

    e. Authorize and fund additional studies examining the impact of sanctuary laws and its relationship to crime rates, reporting crime, removals, and recidivism rates.

f. Hold federal agencies accountable for treatment of asylum seekers by reexamining policies and practices for how asylum petitions are received, reviewed, and decided.

g. Hold the Department of Homeland Security accountable for compliance with its policies such as the National Standards on Transport, Escort, Detention, and Search.

h. Consider legislation codifying the Department of Homeland Security's Sensitive Locations policy to ensure that the Constitutional rights of U.S. children are protected, including access to education, criminal justice, and social services without fear of family separation or detention.

7. The U.S. Commission on Civil Rights should send this report and issue a recommendation to the California Legislature to conduct an in-depth study on the impact of sanctuary laws and their effectiveness in obtaining their stated goal. In addition, consider examining their relationship to crime rates, reporting crime, removals, and recidivism rates.

8. The U.S. Commission on Civil Rights should send this report and issue a recommendation to the California Attorney General's Office to continue enforcing the Educational Equity: Immigration and Citizenship Status Act so that schools educate families on students' right to a safe and free education and the impacts of bullying, and develop anti-bullying policies and information concerning bullying based on immigration status.

9. The U.S. Commission on Civil Rights should send this report and issue recommendations to the California Department of Education to:
    a. Ensure all school districts are in compliance with the Family Educational Rights Privacy Act.

    b. Track and monitor the implementation of the Educational Equity: Immigration and Citizenship Status Act in public schools, including but not limited to the tracking of complaints of discrimination by students and school employees on the basis of immigration status.

    c. Implement measures to ensure that public schools are not collecting information or documents regarding citizenship or immigration status of pupils or their family members.

    d. Implement measures to ensure that all school districts are in compliance with the Family Educational Rights Privacy Act and state laws protecting the privacy of student records.

10. Require all school districts to annually notify students and parents about the Federal Educational Rights Privacy Act, Educational Equity: Immigration and Citizenship Status Act,

and any policies and procedures regarding immigration enforcement on school property.

APPENDIX

Dissent Statement by Members Maimon Schwarzschild, Nancy Eisenhart, and Velma Montoya

Concurrence Statements and Partial Dissent by Members Rachel Sigman, Robin Toma, and Rogelio Ruiz

October 16, 2019 Briefing Agenda & Minutes

October 16, 2019 Briefing Transcript

October 16, 2019 Presentation Slides

March 4, 2020 Community Forum Agenda & Minutes

March 4, 2020 Community Forum Transcript

March 19, 2020 Jill Esbenshade Testimony Transcript

June 24, 2020 ICE Testimony Transcript

April 3, 2020 California Advisory Committee Letter to ICE

California School Board Association Board Sample Resolution

California School Board Association Board Sample Resolution (DACA)

March 16, 2017 Letter from Chief Justice Cantil-Sakauye to Attorney General Sessions and Secretary Kelly

March 29, 2019 Response Letter from Attorney General Sessions and Secretary Kelly to Chief Justice Cantil-Sakauye

Written Testimony

Ted Hilton

Joint Letter from Joann H. Lee from Legal Aid Foundation of Los Angeles and Debra Suh from the Center for the Pacific Asian Family

Stella May, Concerned Citizens of California

Jessica Vaughan, Center for Immigration Studies

Supporting documents can be found here:
https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L0NBL0ltbWlncmF0aW9uIEVuZm9yY2VtZW50

California State Advisory Committee to the United States Commission on Civil Rights

Supplementary and Dissenting Statement

Maimon Schwarzschild

Nancy Eisenhart

Velma Montoya

Summary and Introduction

The California Advisory Committee (SAC) to the US Commission on Civil Rights has issued a Report on immigration law enforcement, after holding a one-day public hearing in Los Angeles and one afternoon hearing in metropolitan San Diego, and deliberating over the course of more than a year. The majority of the Committee's members were determined from the outset to impugn federal immigration law enforcement and to advance a case for minimal enforcement -- or complete non-enforcement – of the law, and in effect for open, or virtually open, borders. Accordingly, the Committee's "findings and recommendations" press for a significant reduction in immigration enforcement, alleging harmful effects on children in particular; the Committee also calls for the creation of a new immigration court to provide aliens with additional opportunities to argue against deportation, misleadingly suggesting that aliens are routinely mistreated or denied due process in the current system.

We do not support the Committee's recommendations, nor do we believe that the information, testimony and public comments gathered by the committee support them. Instead, we find that the testimony provided to the Committee by representatives of US Immigration and Customs Enforcement (ICE), invited experts, and members of the public strongly indicates that effective and consistent immigration law enforcement enhances the quality of life for families with children, including immigrant families. Immigration law enforcement contributes to public safety and protects job opportunities, wages, affordable housing, and resources for social services by reducing illegal settlement in the country. These protections are perhaps most important for those American citizens and legal immigrants who live on the economic margins of our society – who lack a higher education, who labor at low wage jobs, and who often struggle to support their families. The United States Commission on Civil Rights should not endorse the adoption of policies that undermine these protections and the families who benefit from them.

The Committee document dwells largely, if not primarily, on an emotionally inflammatory claim that children are victimised by immigration law enforcement. That document sets out to establish that

pervasive and abusive immigration enforcement is suppressing academic achievement, emotional well-being, and socio-economic progress for children in California, hence a civil rights violation. In addition, if somewhat as an afterthought, the Committee suggests that there is a lack or failure of due process for illegal immigrants who wish to stay in the United States, and that this too is a civil rights violation.

Regrettably, many of the Committee's "findings and recommendations" are based on dubious and controversial academic research and exaggerated testimony from politically-motivated advocacy groups – testimony that was challenged by other official and expert testimony as well as by thoughtful and cogent statements at the SAC Community Forum and at each opportunity for public comment: statements which overwhelmingly supported effective enforcement of the immigration laws, only to be virtually ignored by the Committee.

As this Supplementary and Dissenting Statement will demonstrate, the Committee report puts forth a false narrative about immigration enforcement, claiming misleadingly that enforcement is ubiquitous, overzealous, and abusive. Its assertions about the effects on children, in particular, rely on dubious and unsubstantiated claims.

Fishing for civil rights violations, the Committee report also alleges problems in courts, in detention, and at the border, misconceiving due process in the immigration context, and relying on testimony from advocates who allege abuses, while downplaying rebutting testimony.

The Committee uncovered no convincing link between actual law enforcement operations and the well-being of California children, and no systemic civil rights violations or abuse of authority. The SAC's entire exercise of hearings, deliberations and written report – far from being an objective or consensus-building fact-finding exercise -- was transparently designed to lead to a set of misguided policy recommendations for reduced immigration law enforcement, rather than to address any actual civil rights violations.

I. The Importance of Effective Immigration Law Enforcement

Considerable evidence was presented to the SAC that supports effective enforcement of immigration law and demonstrates how state "sanctuary" policies undermine that law, and indeed undermine the principle of the rule of law itself. Yet this evidence is downplayed in the Committee Report and is virtually ignored in the Committee's "findings and recommendations".

As the late Barbara Jordan expressed it while she was serving as Chair of the U.S. Immigration Reform Commission in 1995, "Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave."[1]

Immigration enforcement supports a number of important public policy goals and generally is viewed positively by the public. According to one recent poll by the non-partisan research institute Public Agenda:

> "Americans across the political spectrum agree on several aspects of immigration policy, including creating a path to citizenship for people brought to the U.S. illegally as children; quickly and fairly processing people who enter the U.S. illegally; enforcing border security; and welcoming immigrants who are skilled, financially secure or escaping war. While Americans differ on whether to create a path to citizenship for people who came illegally as adults, they share a discomfort with allowing undocumented immigrants who fail to pay taxes or commit crimes to stay in the U.S."[2]

The thoughtful and considered views expressed by members of the public, both at the SAC Community Forum in the San Diego area – in Chula Vista, California, in March 2020 – and at the opportunities for public comment at the conclusion of many of the SAC telephone meetings, overwhelmingly reflected this view. Nearly 90% of the public comments to the SAC supported consistent and effective enforcement of the immigration laws, and expressed deep concern about the erosion of public order, and of the rule of law itself, from failure to enforce the law, and in particular from "sanctuary" policies which obstruct enforcement of the law.[3] These concerned members of the public took great trouble to make their voices heard: both by coming to Chula Vista to speak in person, and by waiting patiently – often for considerably more than an hour – until the end of SAC meetings when they were given an opportunity to speak briefly. Yet the Committee Report barely acknowledges the public comments, and essentially ignores their substance.

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[1] Barbara Jordan, quoted in *Becoming an American: Immigration and Immigrant Policy,* U.S. Commission on Immigration Reform Report to Congress, 1997, https://www.numbersusa.com/sites/default/files/public/from_drupal5/JordanCommissionfull-report.pdf.

[2] *Where Americans Stand on Immigration: A Hidden Common Ground Report*, Public Agenda, August 12, 2020, https://www.publicagenda.org/reports/where-americans-stand-on-immigration-a-hidden-common-ground-report/.

[3] More precisely, by our tally, 87 percent of the public comments – 33 out of 38 -- supported vigorous and effective enforcement and opposed toleration of illegal immigration.

There is – or ought to be -- widespread agreement that the proper purpose of immigration laws is to regulate the inflow of foreign visitors and immigrants, to determine in a transparent and orderly way who will be admitted, and to ensure the correct consequences under law for those who cannot be admitted.

A. Public Safety

In evidence presented to the SAC, experts and government officials provided information on the undeniable public safety benefits to US communities from effective enforcement of the immigration laws. David Marin, director of the ICE Enforcement and Removal Operations division in Los Angeles, told the Committee that ICE had removed approximately 37,000 aliens from California in 2019: this figure includes both those apprehended at the border and cases arising in the "interior" i.e. beyond the border. The vast majority of the aliens removed or deported from the "interior" had criminal convictions, and many also had prior removals or deportations, or were fugitives from the criminal justice system. Jessica Vaughan, a policy researcher with the Center for Immigration Studies, testified to the Committee that according to her analysis of ICE deportation records, 98 percent of the 13,600 deported from the interior by the ICE California field offices in 2018 were arrested in one of ICE's many criminal targeting programs. Their offenses include crimes ranging from drunk driving to drug trafficking to domestic violence to homicide.

ICE's work against criminal gangs is particularly important for ensuring that children are safe in schools and in their neighborhoods. Jessica Vaughan described the recent surge in violent street-gang activity in parts of the country, including in California, attributable to the years-long influx of unaccompanied young people arriving illegally, from Central America in particular, and the ability of gangs to take advantage of lenient legal policies and procedures that apply to minors. In particular, Vaughan noted that according to her research, a significant share of recent MS-13 gang incidents in the US occurred in California, and that a significant share both of the victims and offenders were minors. The presence of these gangs in schools is a serious threat to safety in the schools, and cannot effectively be addressed without active communication and cooperation between schools, local authorities and ICE.

Also providing information to the Committee, numerous members of the pubic shared stories of personal loss at the public meetings and teleconferences, and implored the committee to consider the consequences for Americans and legal residents alike when immigration laws are not enforced.

B. Sanctuary Policies which Undermine Immigration Law and Public Safety

The Committee heard extensive testimony from law enforcement experts, ICE officials, a California deputy attorney general, and members of the public regarding the effects of state and local sanctuary laws and ordinances in California. The Committee majority merely notes that California's sanctuary laws "may negatively impact immigrant communities as well as public safety in general."

This greatly understates the matter. In fact, the testimony established very clearly that California's sanctuary laws and ordinances are definitely causing harm in California communities – including immigrant communities – and undermining public safety. The Committee report actually spells out why this is so:

> "…Specifically, many local law enforcement agencies allow limited access to ICE to undocumented persons in local custody [ie arrested for crimes]. This limited access may reduce the ability for ICE to deport undocumented individuals who committed crimes and who may pose the highest risk to public safety. As a result, many undocumented individuals convicted of crimes are released into communities resulting in ICE agents seeking the arrest and deportation of these same individuals in communities, rather than in a controlled custodial environment. The transfer of ICE enforcement activity from the local jails/prisons to the communities increases the risk to agents, the undocumented individuals being sought, as well as to community members at large…."

For example, Don Rosenberg of Westlake Village, California, who is the president of Advocates for Victims of Illegal Alien Crime, testified to the Committee about the loss of his son in a traffic crash in San Francisco in 2010. The illegal alien who killed his son had been arrested numerous times for unlicensed, uninsured, and negligent driving prior to the fatal crash, but had been protected repeatedly by the non-enforcement of California laws. Rosenberg also provided details of a case in Sonoma County, in which a man was arrested for domestic violence and then released by the sheriff, despite a detainer issued by ICE. Within two weeks the man was arrested again, this time for killing the girlfriend he had previously been arrested for abusing.[4]

These were preventable crimes – two lives lost needlessly, because local law enforcement agencies refused to enforce laws against illegal aliens, and willfully hindered ICE from enforcing the laws.

These are not isolated incidents. A number of other members of the public spoke of different cases in California. Jessica Vaughan, of the Center for Immigration Studies, presented her research on the public safety problems created by sanctuary policies, based on her analysis of ICE records obtained through the

[4]Hamed Aleaziz, "Man Wanted for Deportation Allegedly Kills Girlfriend," *San Francisco Chronicle*, August 31, 2017, https://www.sfchronicle.com/crime/article/Man-wanted-for-deportation-allegedly-kills-12162718.php.

Freedom of Information Act. She said that during an eight-month period in 2014, nationwide, there were 1,867 non-citizen offenders who were arrested by local authorities and released despite receiving an ICE notice to hold them, and who subsequently re-offended during the eight-month period studied. These offenders were arrested an additional 4,298 times during those eight months. Together they accumulated 7,491 new charges after release. Ten percent of the new charges involved dangerous drugs and seven percent were for driving under the influence of alcohol (DUI).

These included the following cases in California[5]:

- **Los Angeles:** On April 6, 2014, an alien was arrested for "felony continuous sexual abuse of a child". After release, the alien was arrested for "felony sodomy of a victim under 10 years old".

- **San Francisco:** On March 19, 2014, an illegal alien with two prior deportations was arrested for "felony second degree robbery, felony conspiracy to commit a crime, and felony possession of a narcotic controlled substance", After release, the alien was again arrested for "felony rape with force or fear", "felony sexual penetration with force", "felony false imprisonment", witness intimidation, and other charges.

- **San Mateo County:** On February 16, 2014, an individual was arrested for "felony lewd or lascivious acts with a child under 14". In addition, the alien had a prior DUI conviction. Following release by the local agency, the individual was arrested for three counts of "felony oral copulation with a victim under 10" and two counts of "felony lewd or lascivious acts with a child under 14".

More recently, ICE has revealed details of similar cases on its public website, involving the subsequent commission of multiple and serious crimes by illegal immigrants who had been under arrest in California, and who had been released by the California authorities in defiance of specific "detainer" requests by ICE.[6]

Testimony from David Marin, ICE Director in Los Angeles who took questions from members of the Committee in a conference call, confirmed that local and state sanctuary policies are hampering ICE efforts to arrest and remove criminal aliens. He said that the number of arrests that ICE officers are making in the communities – rather than in custody of local law enforcement: hence with increased peril

[5] Each of the following three cases appear in the Department of Homeland Security "Declined Detainer Outcome Report", dated October 8, 2014, obtained through a FOIA request by the Center for Immigration Studies and posted on the Center's website: https://cis.org/sites/cis.org/files/Declined%20detainers%20report_0.pdf

[6] See e.g. *ICE Declined Detainer Report, Fiscal Year 2018, Second Quarter*, giving details of numerous cases in California where the state authorities declined to honour ICE detainer requests for suspects already under arrest, and upon release the suspects were subsequently arrested for serious crimes, including murder, rape, threatening crime with intent to terrorize, burglary, and inflicting corporal injury on a spouse: https://www.ice.gov/declined-detainer-report.

to all concerned -- is increasing due to restrictions on cooperation with federal authorities imposed upon local law enforcement agencies by state sanctuary laws.

C. Labor and Fiscal Impacts

Immigration laws play an important role in regulating the supply of labor in the United States, so as to protect job opportunities for American citizens and legal immigrants, and to help prevent labor market distortions that suppress wages. This is especially important to those Americans who have not had the benefit of higher education or may not have finished high school, who often are competing directly with illegal immigrants for employment in occupations such as construction, manufacturing, restaurant and hotel work, and many others.

A large body of research has documented the adverse economic impacts of the recent immigration experience of the United States. The most compelling of these reports was done by the National Academies of Sciences, Engineering, and Medicine[7]. It found that immigration, legal and illegal, does create an economic benefit for some native-born Americans, but this benefit is generated by reducing the wages of native-born workers, often the least-educated and poorest. The report catalogued a litany of studies finding negative effects on the wages of different groups of Americans and immigrants, with the largest effects on those without high school diplomas, African-American men, and non-Hispanic men.[8] Sixteen other studies published since the National Academies report also document the wage-depressing effects of immigration on Americans and prior legal immigrants.[9]

This effect is due in substantial part to illegal immigration, which adds hundreds of thousands of new workers to the American labor market annually. Most of these arriving workers compete directly with Americans and legal immigrants who are seeking jobs that do not require advanced education or training. This effect has been documented in numerous academic studies, including one studying the

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[7] *The Economic and Fiscal Consequences of Immigration*, National Academies of Sciences, Engineering, and Medicine, 2017, https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration.

[8] The most widely known of these is by George J. Borjas, et al, "Immigration and the Economic Status of African American Men," in *Economica,* Volume 77, Issue 306, April 2010, https://gps.ucsd.edu/_files/faculty/hanson/hanson_publication_immigration_men.pdf.

[9] See Jason Richwine, "An Abundance of New Academic Studies Find Negative Impacts of Immigration," Center for Immigration Studies, June 4, 2020, https://cis.org/Richwine/Abundance-New-Academic-Studies-Find-Negative-Impacts-Immigration.

transformation of the janitorial occupations in Los Angeles, which once provided relatively well-paying jobs but are now dominated by contractors who hire illegal workers.[10] Another study looked at how the arrival of the Cuban Marielitos in south Florida affected local workers of the same educational levels, and found that wages for those without high school diplomas dropped 10 to 30 percent.[11]

It should go without saying that when American and legal immigrant heads of households are displaced from jobs or experience wage stagnation, there are harmful effects on their ability to support their families and on the health, well-being, and academic achievement of their children.

Publicly funded welfare programs, too, are inevitably limited by the scope of government resources. Accordingly, schools and health care institutions are strained when growth of the population needing the services exceeds the resources available. Adding to the total needy population by tolerating illegal immigration makes it more difficult to provide adequately for the large number of American citizens and legal immigrants in need of assistance and support.

II. The Committee's Majority Report and Where It Goes Astray

A. Immigration enforcement policies and trends.

The Committee's project proposal, at the outset, embraced numerous assertions that law enforcement by United States Immigration and Customs Enforcement (ICE) is traumatizing California children, disrupting their educational progress, and might constitute an abuse of statutory or constitutional authority. The proposal hypothesized that ICE was violating its own policies by making arrests at or near schools, separating families to the detriment of children, and intimidating or threatening children and families to the point where they cannot gain access to benefits and rights to which they are entitled, as U.S. citizens or otherwise. These claims are not supported by the testimony that was presented by representatives of ICE and the Border Patrol and by other experts.

It was clearly established in testimony and supporting research papers that ICE's enforcement actions are only rarely directed at minors (typically when they are arrested for serious crime), rarely take place where children are present, and include protocols to avoid creating additional caregiving problems for the family

[10] "Illegal Aliens: Influence of Illegal Workers on Wages and Working Conditions of Legal Workers," U.S. Government Accounting Office, March 1988, https://www.gao.gov/assets/80/76971.pdf

[11] George J. Borjas, "The Wage Impact of the Marielitos: A Reappraisal," *ILR Review*, October 2017, https://scholar.harvard.edu/files/gborjas/files/ilrr2017.pdf.

members of those targeted for enforcement. While immigration advocates implied repeatedly in the SAC proceedings that ICE is likely to lurk around schools and would pressure school officials for information on illegal residents, the Committee was told explicitly by ICE Field Office Director David Marin that ICE "would never seek information from the schools about students or parents."

When asked if ICE would ever conduct surveillance on a school, Marin answered that such an operation would only take place in the case of a known or suspected terrorist at the school, or an individual on ICE's 10 Most Wanted list: in other words, extremely rarely and only in the case of a very serious public safety threat. In fact, as many of the experts on both sides agreed, ICE policy has long designated schools as off-limits for enforcement actions, along with daycare centres, churches, hospitals and other designated "sensitive" locations.[12] Marin also stated that ICE officers "never" ask children about their immigration status, nor their parents' immigration status. He said that in 2019 ICE removed about 37,000 aliens from California (including both border and "interior" – i.e. away from the border -- apprehensions), of whom 357 were non-citizen juveniles, or less than one percent of all removals, typically as part of a family unit who departed the country together.

In the absence of a direct threat to children from immigration enforcement, the committee majority relies on a narrative that enforcement has been dramatically ramped up by the Trump Administration, and therefore settled families headed by illegal aliens and including US-citizen children are now at much greater risk of deportation under federal policies.

This too is a myth. While the Trump administration has scrapped the rigid prioritization scheme of the previous administration, which exempted all but the most serious criminal offenders from deportation, in reality, for a variety of reasons, enforcement activity in the "interior" actually declined from 2018 to 2019, and remains well below the peak in interior enforcement under the Obama administration from 2010 to 2013. Nevertheless, to bolster its narrative, the Committee report chose to highlight ICE enforcement statistics that cover only the last four years, without showing how enforcement under the Trump Administration compares to the previous administration.

By all major metrics, immigration enforcement in the community has declined significantly since the peak years of the Obama Administration, and even declined from the beginning of the Trump Administration, according to ICE's enforcement statistics, presented in the graph below.[13]

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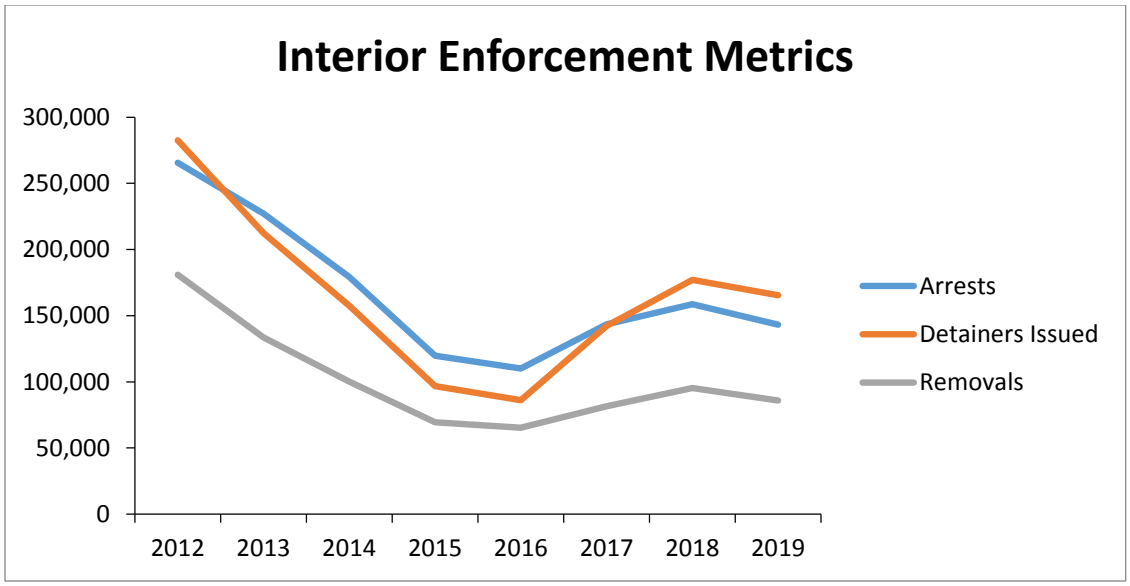
[12] "FAQ on Sensitive Locations and Courthouse Arrests, US Immigration and Customs Enforcement, https://www.ice.gov/ero/enforcement/sensitive-loc.

[13] See ICE annual statistics reports: https://www.ice.gov/statistics.



This means that in reality the vast majority of illegal aliens in the country face a small risk of deportation. As former acting ICE director John Sandweg told the *Los Angeles Times* in 2014, when enforcement activity was about the same level as today, "If you are a run-of-the-mill immigrant here illegally, your odds of getting deported are close to zero — it's just highly unlikely to happen."[14] The total population of illegal residents in the United States is generally estimated to be 11 to 12 million[15] or more, and annual deportations from the interior have been less than 100,000 for the last several years.

This is especially true in states like California, where strict state-law sanctuary policies and other state rules shield illegal aliens from detection, including allowing illegal aliens to obtain driving licences, to receive publicly-funded health care and other welfare benefits, to receive scholarships for higher education, to qualify for professional licences, and to be provided legal services. Most notably, under California state law, law enforcement agencies are not permitted to cooperate with ICE in transferring custody of deportable aliens who have been arrested, convicted, or served jail or prison time for crimes, except in certain extreme cases. Since nearly all of ICE's targets are criminal aliens, this mandated non-cooperation makes it especially difficult for ICE to make arrests and carry out deportations in California.

[14] Brian Bennett, "High deportation figures are misleading," *Los Angeles Times,* April 1, 2014, https://www.latimes.com/nation/la-na-obama-deportations-20140402-story.html.
[15] Jynnah Radford and Luis Noe-Bustamante, "Facts on Immigrants: 2017," Pew Research Center, June 3, 2019, https://www.pewresearch.org/hispanic/2019/06/03/facts-on-u-s-immigrants/.

B. Advocacy Research on Effects on Children

The Committee Report gives much weight to several academic studies that are said to establish that there are serious adverse effects on the health, well-being and academic performance of California children from the alleged increase in immigration enforcement under the Trump Administration. Several of the studies' authors and supporters appeared in person before the Committee.

A closer examination of these reports reveals that in fact they offer very thin support for the Committee's thesis on the impacts of enforcement on children. The marquee report, "U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools," by Patricia Gandara and Jongyeon Ee of the Civil Rights Project of UCLA, claims to be a comprehensive national survey of teachers that reveals pervasive and profound fear and anxiety in millions of children nationwide who are undocumented or live in households with close or extended family members who are undocumented. [16] The SAC gleaned from the study that "Nearly 80 percent of educators surveyed reported observing emotional and behavioral problems among their immigrant students that many described as interfering with student's ability to attend to lessons."

It sounds like a national crisis in the schools. But the Committee's summary does not give a true picture. First, the survey that allegedly generated that finding was skewed in several ways. Only half of the school districts that were initially approached for the survey even agreed to participate by forwarding the survey to educators in their system. Half of the districts that did participate chose which educators were to be surveyed, according to which schools they thought would be most "interested." There was very uneven geographic representation of respondents, with 44 percent from California, but none from New York and Illinois, and only 6 percent from Texas, 1.5 percent from Florida, and 0.6 percent from Georgia – all states with large immigrant populations. Ninety percent of the schools surveyed were Title I "low income" schools. Then, if respondents answered "no" to the first question asking if they had observed any impact of immigration enforcement on their students (27% said "no" and 9% said "I don't know"), the survey was ended as to them.[17]

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[16] Patricia Gandara & Jongyeon Ee, "US. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools," University of California Los Angeles Civil Rights Project, February 28, 2018, https://www.civilrightsproject.ucla.edu/research/k-12-education/immigration-immigrant-students/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools.

[17] Patricia Gandara & Jongyeon Ee, "U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation's Schools," Civil Rights Project of the University of California, Los Angeles, February 28, 2018, https://www.civilrightsproject.ucla.edu/research/k-12-education/immigration-immigrant-students/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools/Immigration-enforcement-on-schools-093018.pdf.

Even after rigorous filtering out of the respondents that would be most likely to disagree with the survey's premise of harm to the children from enforcement, still the results showed only a lukewarm indication of perceived problems. For each and every question asked of the most concerned educators who completed the entire survey, a majority always answered either "No" or "A Little/Somewhat" when asked if they perceived negative effects of immigration enforcement on their students. Less than one-third of respondents said they perceived "A lot/Extensive" negative effects of immigration enforcement on the students. The study authors administered the survey primarily between October, 2017 and January, 2018.

The authors actually published two different tabulations of their data, once in February, 2018 and again in April, 2020. The second tabulation -- of 121 fewer total responses, but with about 100 new respondents added -- given in red below, produced a slightly different result, as indicated below.[18]

In both analyses, the results demonstrate that a majority of educators surveyed perceived little to no indications of behavioral/emotional problems, increased absenteeism, academic decline, or increased bullying among students due to fear or anxiety about immigration enforcement.

Results for four of the dozen survey questions are as follows:

Have you noticed any behavioral and/or emotional problems with any of your students that appear to be related to concerns about immigration enforcement? [Number in black is 2018, red is 2020]

No –	21%	20%
A Little/Somewhat –	55%	48%
A lot/Extensive –	24%	32%

Have you noticed any increase in absences that may be related to concerns about immigration enforcement?

No –	43%	42%
A little/Somewhat –	47%	38%
A lot/Extensive –	11%	20%

Have you noticed a decline in student academic performance that may be related to concerns about immigration issues?

No –	39%	39%

[18] Jongyeon Ee and Patricia Gandara, "The Impact of Immigration Enforcement on the Nation's Schools," *American Educational Research Journal*: April 2020, Volume 57, No. 2, pp. 840-857.

A little/Somewhat –	48%	39%
A lot/Extensive –	13%	22%

Have you noticed any increase in bullying (verbal or physical) related to the perceived immigration status of students or their parents over the last year?

No –	63%	62%
A little/Somewhat –	28%	13%
A lot/Extensive –	9%	25%

If anything, even the results this second survey, which was skewed to elicit concerns about allegedly widespread fear and anxiety, demonstrate that a large proportion of educators actually do *not* perceive extensive adverse effects. Further, when asked what should be done about the perceived fear and anxiety, a large majority (88 percent) of the educators said that there should be more forums for school-community communication to address rumours, concerns, and explain school policies and certain immigration policies. They did not, notably, recommend amnesty, nor did they recommend any of the changes to immigration policy that the Committee report recommends after considering this research.

Advocates who appeared before the Committee dwelt on claims about the children of that small cohort of undocumented immigrants who actually encounter immigration enforcement, to the effect that these children would suffer emotional trauma stemming from a brief or a prolonged separation from their parent. It is important to remember that unauthorized immigrants are typically aware that they may be subject to enforcement, and choose to remain in the country despite the risk, usually knowing that only a small fraction of the illegal population is actually subject to enforcement. For the small number that do experience enforcement, separation of the family is not inevitable, but is the choice then made by the heads of the household.

Advocates cited studies estimating that about 750,000 children in California live with a parent who is in the country illegally, of whom 250,000 children are themselves in the country illegally. The total number of illegal aliens settled in California is estimated to be 2.2 million.[19]

According to David Marin, Los Angeles ICE Field Office Director, in 2019 ICE removed 37,000 aliens from California, including 357 juveniles. The total number of removals from California thus represents 1.7 percent of the total unauthorized population in the state, and the number of juveniles removed

[19] "U.S. unauthorized immigrant population estimates by state, 2016," Pew Research Center: https://www.pewresearch.org/hispanic/interactives/u-s-unauthorized-immigrants-by-state/.

represents 0.1 percent of the unauthorized juvenile population. These figures indicate that the number of children actually affected by enforcement in California is small, compared to the total size of the illegally present population.

One of the studies cited by advocates who testified, done by a team from the Urban Institute, which examined the effects of enforcement on the children of illegal workers arrested in several worksite raids in the late 2000s, noted that families who are directly affected by immigration enforcement make different choices on how to deal with the prospect of deportation, and these choices do not always result in separation of children from parents.[20] Some families choose to return to their home country together if one parent is ordered removed. Others split up voluntarily, with some children remaining in the United States with one parent while the other parent returns to the home country alone or with one or more of the children. Others choose to leave their child or children in the United States with other non-parental guardians.

Ultimately, the situation of the children is under the control of the parents and is a result of the choices that they make. As Peter K. Nunez, former U.S. Attorney in San Diego, testified:

> Whenever any person breaks the law, the violator is not the only person to suffer the consequences. Innocent family members, relatives, friends, neighbors, coworkers, all may suffer collateral consequences as a result of the arrest and punishment of the violator.

Therefore, Mr. Nunez added, U.S. policies should be dedicated to "discouraging law breakers from initiating this chain of events that can only end in serious problems for their families."[21]

C. Due Process Concerns

One stated goal of the Committee was to explore concerns about alleged denials of due process to non-citizens who are in immigration proceedings or who are seeking other benefits, or who are seeking police services after victimization. The SAC's public meeting in Los Angeles included several invited experts and advocates who claimed that there is widespread unfair denial of due process in the immigration system. This testimony underlies several findings expressing the Committee majority's assertions about denial of due process.

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[20] Ajay Chaudry, et al, "Facing Our Future: Children in the Aftermath of Immigration Enforcement," Urban Institute, February 2, 2010, https://www.urban.org/research/publication/facing-our-future/view/full_report.

[21] Testimony of Peter K. Nunez before the committee at the Chula Vista Community Forum, March 4, 2020.

Like the findings on immigration enforcement's alleged harm to the health, well-being and academic performance of children, the findings about alleged due process denial are built on a misleading and one-sided narrative. This narrative is really based on what attorneys who defend immigrants *wish* the law provided, not on what the law actually says, nor on what has been established through case law. Further, the committee did not focus on the relevant legal principles, nor upon the facts of how the complex immigration enforcement system operates, and how it both resembles and differs from other criminal and civil justice systems. It is basic to the constitutional framework of immigration law that statutory due process – so long as it is within constitutional bounds - is determined by Congress, primarily through the Immigration and Nationality Act and Title 8 of the U.S. Code. The law has established different levels of due process for different classes of aliens; the law also establishes the powers and procedures of immigration officers; and especially of the immigration courts, which fall under the U.S. Department of Justice.[22] The Committee was evidently not well enough informed to probe the allegations of the invited advocates or to make informed recommendations on this subject: the Committee simply seems to have accepted the advocates' assertions at face value, even when challenged by other experts.

1. Due Process in Immigration Matters Generally

Under the federal Immigration and Nationality Act and other relevant federal statutes, immigration courts within the United States Department of Justice adjudicate immigration cases, including claims for relief by immigrants against possible deportation. The Committee Report suggests, at least by implication, that there is widespread deprivation of due process in the immigration courts, and that aliens in proceedings are left to fend for themselves in a hostile setting.

In fact, the Executive Office of Immigration Review (EOIR), which is the agency within the Department of Justice that runs the immigration court system, administers several programs to assist both detained and non-detained aliens who are challenging their deportation. These programs are administered by EOIR's Office of Legal Access.[23]

The largest of these programs is the Legal Orientation Program. This program provides detained aliens with group orientation sessions on the removal process and options for relief; intensive individual orientations; self-help workshops on obtaining voluntary departure, relief from removal and seeking release on bond; and referrals to pro bono legal representation. In the 2020 fiscal year, this office

[22] See W.D. Reasoner, *Deportation Basics: How Immigration Enforcement Works (Or Doesn't) in Real Life*, Center for Immigration Studies, July 18, 2011, https://cis.org/Report/Deportation-Basics.
[23] See https://www.justice.gov/eoir/office-of-legal-access-programs.

received an initial appropriation of $18 million, followed by a supplemental emergency appropriation of $10 million. The program operates in 45 ICE detention facilities in 12 states.

In addition, the Office of Legal Access Programs runs a special program for custodians of unaccompanied minors who have entered illegally and who are being released to parents or other caregivers. This program operates in 16 cities across the country, including Los Angeles and San Francisco. The program provides information on the immigration court process, scheduling hearings, consequences for skipping out on proceedings, options for relief, and caregiver responsibilities. There is also a National Call Center for those located far from one of the 16 program locations.

In addition, there is an Immigration Court Help Desk for aliens who are not detained and seeking assistance. The Office of Legal Access maintains an accreditation program for NGOs wishing to assist aliens in proceedings, so that the petitioners can be assured of consistently qualified pro bono assistance. Finally, there is a program that offers enhanced due process protections and representation to aliens who are referred by an immigration judge due to mental competency problems: the National Qualified Representative Program.

The Committee notes "with concern" the lengthy duration of immigration proceedings and recommends that the immigration courts should be required to complete all cases, including those involving children, within 180 days. The truth is that the government would like nothing better than to complete these cases in a shorter time frame, but Congress has not provided the funding to do so while still honoring the due process that Congress established in the law. Further, immigration judges in many cases grant repeated continuances for the purpose of obtaining counsel so that advocates can explore various avenues of humanitarian relief, such as asylum applications, trafficking and crime victim visas, and Special Immigrant Juvenile (SIJ) green cards. To address this problem, the Trump administration has created a special docket for children's cases, and before the 2020 pandemic shutdown, had made some progress in reducing the backlog. In addition, the Trump administration recently proposed a new regulation that is designed to assist immigration judges in meeting the 180-day deadline for asylum application adjudications.[24]

2. Due Process for Juveniles

[24] See 85 Federal Register No. 185, Sept 23, 2020 p. 59692: https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-21027.pdf?utm_source=federalregister.gov&utm_medium=email&utm_campaign=subscription+mailing+list

Immigration law and policy has established additional protections for children. The vast majority of these cases involve either minors whose parents placed them in the hands of criminal smugglers to cross into the United States illegally, often to join other family members residing here illegally, or teenagers who came of their own volition, often with siblings or friends, to seek employment. Although most eventually are found to be ineligible to remain here legally, under current practice and federal court order, so-called unaccompanied minors are released to the custody of the Office of Refugee Resettlement and eventually to a parent or other adult custodian. They are allowed to apply for asylum under more lenient rules than adults must follow[25], and there are special interviewing procedures and a special legal assistance program for them, as mentioned above. Under the landmark law establishing these protections, the Trafficking Victims Protection Reauthorization Act:

> "Applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases." [26]

For example, minors are not subject to so-called "safe third country "rules and, unlike adults, face no deadline on when they may file an application. [27] Further, Congress recently imposed special confidentiality rules so that ICE may not access information on the minor or the minor's family members except in the case of criminal investigations.[28] Besides asylum, minors are able to apply for other special forms of relief, including the Special Immigrant Juvenile green card, T visas for victims of trafficking, and U visas for victims of crimes.

3. Immigration Courts and Due Process

The Committee has determined, based on a few hours of testimony from advocates for illegal aliens, that the immigration court system, currently administered by the Department of Justice, inadequately serves

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[25] Immigration and Nationality Act Section 208(b)(3)(C), https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1158&num=0&edition=prelim.

[26] Trafficking Victims Protection Reauthorization Act of 2008, Section 235(d)(8), https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf.

[27] Immigration and Nationality Act Section 208(a)(2)(E), loc cit.

[28] See Consolidated Appropriations Act 2019, Division A, Title II, Section 224 (Public Law No 115-6) ("None of the funds provided by this act…may be used by the Secretary of Homeland Security to place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child… based on information shared by the Secretary of Health and Human Services").

the needs of those wishing to contest their deportation and secure permanent residency and citizenship in the United States. It recommends that this system should be replaced by a new system that is independent of the Department of Justice.

Even if Congress could agree on such legislation, it would raise significant constitutional issues due to the courts' long-standing decisions that adjudications of immigration cases are a matter of foreign relations, which fall squarely under the authority of the executive branch, not the judiciary.[29]

The constitutional implications of moving the adjudication of immigration cases out of the executive branch, were set forth clearly in the Supreme Court's decision in *INS v. Aguirre-Aguirre* 330, where the Court stated:

> [W]e have recognized that judicial deference to the Executive Branch is especially appropriate in the immigration context where officials "exercise especially sensitive political functions that implicate questions of foreign relations." . . . The judiciary is not well positioned to shoulder primary responsibility for assessing the likelihood and importance of such diplomatic repercussions.[30]

In fact, under existing law and practice, the decisions of trial-level immigration judges can be appealed to the Board of Immigration Appeals. The Board's decisions can be reviewed in turn by the Attorney General, and either the Board's decision or the Attorney General's may be subject to judicial review in the United States Circuit Court of Appeals.[31] Neither the Committee nor the advocates upon whom the Committee relies have established that due process is stinted or denied in the immigration court system.

4. Enforcement Delayed and Defied

The real problem in our immigration system is not that there is too little "due process" but that there is too much. Cases languish for years on the immigration court and enforcement dockets, and those who enter illegally or violate their immigration status have multiple bites at the apple to try to qualify for relief from deportation. They can apply for asylum and other humanitarian programs, receive Temporary Protected

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[29] Andrew R. Arthur, Testimony before the U.S. House of Representatives Committee on the Judiciary hearing entitled "Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts" January 29, 2020, https://cis.org/sites/default/files/2020-01/Arthur-EOIR-testimony-1-29-20.pdf.

[30] INS v Aguirre-Aguirre, 526 US 315, 425 (1999). See also Arizona v US, 567 US 387, (2012) ("The dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy with respect to these and other realities").

[31] See Expanding the Size of the Board of Immigration Appeals, Federal Register, April 20 2020 ("Background"): https://www.federalregister.gov/documents/2020/04/01/2020-06846/expanding-the-size-of-the-board-of-immigration-appeals

Status, Deferred Action, Suspension of Deportation, Cancellation of Removal, Special Immigrant Juvenile Status, U visas for crime victims, T visas for victims of trafficking, VAWA green cards for victims of domestic violence; they can marry someone with legal status, obtain repeated continuances of their cases in court, or ask for their cases (if unlikely to succeed) to be administratively closed.

At the present time, nearly 3.3 million aliens are currently on ICE's enforcement docket and eligible for due process in the immigration court system.[32] This includes approximately 1.2 million cases already on the immigration court dockets.[33] Nearly all of these individuals are living at large in the United States, often with a work permit. Only about 1.6 percent (51,000) are detained in ICE custody, and another 3 percent (96,000) have been released and are enrolled and monitored under an "alternative to detention" supervision program, according to ICE statistics.

Many illegal aliens are able to exploit the very generous due process they receive once they have made it past border patrol agents and settled in the United States. They take full advantage of overwhelmed and backlogged immigration courts: these delays operate to the advantage of unqualified applicants, because the longer it takes for an immigration case to be heard in court and then for all appeals to be exhausted, the longer the illegal resident can stay here and acquire "equities", such as spouses and children, that can be used to argue for permission to remain.

There is probably no other court system in the world in which the orders of judges are so infrequently complied with. On paper, as far as formal results are concerned, most cases seeking relief from deportation are doomed to fail. According to immigration court statistics, about 70 percent of all cases completed are found to be unqualified and rejected by judges.[34] This rejection rate has remained consistent for the last 22 years, except for the years 2012-2018. Nevertheless, it is to the alien's advantage to demand a court hearing, because the huge volume of cases and resulting backlogs guarantee that even those with entirely frivolous cases can remain in the country for years. Currently, the average time to case completion is 759 days.[35]

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[32] US Immigration and Customs Enforcement, "Fiscal Year 2019 Enforcement and Removal Operations Report" page 7.

[33] "Backlog of Pending Cases in Immigration Courts as of April 2020," immigration court statistics through Aprils 2020 compiled by the Transactional Records Access Clearinghouse project of Syracuse University, https://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php.

[34] "Outcomes of Deportation Proceedings in Immigration Court," showing immigration court statistics through April 2020, compiled by the Transactional Records Access Clearinghouse, Syracuse University, https://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php.

[35] "Immigration Court Backlog Tool," immigration court cases through April 2020 compiled by the Transactional Records Access Clearinghouse of Syracuse University, https://trac.syr.edu/phptools/immigration/court_backlog/.

A shockingly large number (and proportion) of those petitioning for relief from deportation and notified to appear in court do not show up for their hearings, especially compared to other state and federal criminal and civil courts.[36] Among those seeking asylum, the rate is even lower. According to statistics from the Department of Justice, only about half of those who have been apprehended at the border and then released into the country after claiming a fear of return actually file an application for asylum. Of those who do, nearly half do not show up for their court hearings. Of those who do complete their proceedings, only about 20 percent qualify for asylum, and most of those who do not qualify fail to appear for deportation as ordered.[37]

As a result, the number of unenforced orders of removal now stands at more than one million cases.[38] This may represent 10 percent of the entire illegally-present population – meaning some 10 percent of the illegal population have had their day in court, have exhausted all appeals, and ignored orders to depart.

D. The Myth of "Chilling Effect" on Crime Reporting

Advocates consulted by the Committee repeatedly alleged that fear of immigration enforcement causes immigrants to refrain from reporting crimes, which leaves immigrants vulnerable to continual victimization and skews the nation's crime statistics.

These assertions are unsupported in fact; on the contrary, the most credible information indicates the opposite, which is that immigration enforcement does not have a "chilling effect" on crime reporting; that if some immigrants do not report crimes it is not primarily or even secondarily due to fear of immigration enforcement; and that what many immigrants actually do fear is the regular release of criminal aliens back into their communities due to sanctuary policies.

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[36] Mark Metcalf, "Skipping Court: U.S. Immigration Courts & Aliens Who Disappear Before Trial," Center for Immigration Studies, January 24, 2019, https://cis.org/Report/Immigration-Courts-Aliens-Disappear-Trial.

[37] U.S. Department of Justice, Executive Office of Immigration Review, "Credible Fear in the U.S. Immigration System: Overview of Fiscal Year 2006 to Present," May 24, 2018.

[38] According to ICE records, in September 2014 the number of unexecuted final orders of removal stood at 897,572. This number refers to those aliens who had been ordered removed from the country by an immigration judge and had exhausted all due process and appeals, but who had not been removed by ICE; most of these individuals are considered fugitives and absconders. By 2016, this number had risen to 953,000, according to figures obtained by the Judiciary Committee of the U.S. House of Representatives and cited in sworn testimony: (https://docs.house.gov/meetings/JU/JU01/20170328/105787/HHRG-115-JU01-Wstate-ArthurA-20170328.pdf, p. 2). According to ICE officials cited in news accounts, by mid-2019 this number had reached approximately one million non-departed aliens under removal orders: https://www.miamiherald.com/news/local/immigration/article231687048.html.

Encouraging the reporting of crimes is an issue for many law enforcement agencies around the country, and it is not confined to any one segment of the population. In fact, most crimes are not reported, regardless of the victim's immigration status or ethnicity. According to the most recent data from the periodic Crime Victimization Survey of the Bureau of Justice Statistics (BJS), in 2018, only 43 percent of all violent victimizations were reported to police.[39]

The BJS data show no meaningful differences among ethnic groups in crime reporting, and this has been the case consistently for at least the last 10 years. Overall, Hispanics are slightly more likely than others to report crimes. Hispanic females especially are slightly more likely than white females and more likely than Hispanic and non-Hispanic males to report violent crimes.[40] This is consistent with several academic surveys finding Hispanic females to be more trusting of police than other groups.[41]

A number of other studies refute the notion that local-federal cooperation in immigration enforcement causes immigrants to refrain from reporting crimes:

- A major study completed in 2009 by researchers from the University of Virginia and the Police Executive Research Forum (PERF) found no decline in crime reporting by Hispanics after the implementation of a local police program to screen offenders for immigration status and to refer illegals to ICE for removal. This examination of Prince William County, Virginia's "287(g)" program is the most comprehensive study to refute the "chilling effect" theory. The study also found that the county's tough immigration policies likely resulted in a decline in certain violent crimes.[42]
- The most reputable academic survey of immigrants on crime reporting found that by far the most commonly mentioned reason for not reporting a crime was a language barrier (47 percent), followed by cultural differences (22 percent), and a lack of understanding of the U.S. criminal

[39] Rachel E. Morgan, Ph.D. and Barbara A. Oudekerk, Ph.D., "Crime Victimization: 2018," U.S. Department of Justice, Bureau of Justice Statistics, NCJ253043, September, 2019, https://www.bjs.gov/content/pub/pdf/cv18.pdf.
[40] See additional data from the National Crime Victimization Survey: http://www.bjs.gov/content/pub/pdf/cvus0805.pdf.
[41] Lynn Langton, Marcus Berzofsky, Christopher Krebs, and Hope Smiley-McDonald, Bureau of Justice Statistics report, "Victimizations Not Reported to the Police, 2006-2010," http://www.bjs.gov/content/pub/pdf/vnrp0610.pdf.
[42] Thomas M. Gutterbock et al., *Evaluation Study of Prince William County's Illegal Immigration* Enforcement Policy: *FINAL REPORT 2010*, prepared for the Prince William County (Va.) Board of Supervisors, November 2010, see page 96, Figure 8-7 : http://www.pwcgov.org/government/dept/police/Documents/13185.pdf.

justice system (15 percent) — not fear of being turned over to immigration authorities. (Davis, Erez, and Avitable, 2001).[43]

- The academic literature reveals varying attitudes and degrees of trust toward police within and among immigrant communities. Some studies have found that Central Americans may be less trusting than other groups, while others maintain that the most important factor is socio-economic status and feelings of empowerment within a community, rather than the presence or level of immigration enforcement. (See Davis and Henderson 2003 study of New York; Menjivar and Bejarano 2004 study of Phoenix).[44]
- A 2009 study of calls for service in Collier County, Fla., found that the implementation of the 287(g) partnership program with ICE enabling local sheriff's deputies to enforce immigration laws, resulting in significantly more removals of criminal aliens, did not affect patterns of crime reporting in immigrant communities. (Collier County Sheriff's Office).[45]

A better understanding the true reasons that immigrants and others in the community sometimes do not report crimes has enabled law enforcement agencies across the country to adopt effective ways to encourage crime reporting. These include: engaging in community outreach, hosting public events to foster communication and information-sharing with community groups, hiring personnel who speak the languages of the community, establishing anonymous tip lines, and setting up community sub-stations with non-uniformed personnel to take inquiries and reports.

Most law enforcement agencies have not found it helpful to public safety or to community relations to suspend cooperation with federal immigration enforcement efforts. Senior Justice Department official Kenneth Blanco summed it up for the Senate Judiciary Committee members in testimony in June, 2017:

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[43] Robert C. Davis et al, "Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors," *Criminal Justice Policy Review*, Volume 12, Number 3, September 2001, p. 190: https://www.researchgate.net/profile/Edna_Erez/publication/245158456_Access_to_Justice_for_Immigrants_Victimized_by_Crime_The_Perspectives_of_Police_and_Prosecutors/links/587404ea08ae6eb871c67b68/Access-to-Justice-for-Immigrants-Victimized-by-Crime-The-Perspectives-of-Police-and-Prosecutors.pdf.

[44] Robert C. Davis and Nicole J. Henderson, "Willingness to Report Crimes: The Role of Ethnic Group Membership and Community Efficacy," in *Crime and Delinquency*, October 2003, https://journals.sagepub.com/doi/10.1177/0011128703254418, and Cecilia Menjívar and Cynthia L. Bejarano, "Latino immigrants' perceptions of crime and police authorities in the United States: A case study from the Phoenix Metropolitan area," in *Ethnic and Racial Studies*, January 2004, https://asu.pure.elsevier.com/en/publications/latino-immigrants-perceptions-of-crime-and-police-authorities-in-.

[45] The study, by the Collier County, Fla. Sheriff's Department, surveyed public calls for service, comparing geographic areas with larger and smaller numbers of foreign-born residents, and is described by the commanding officer in this webinar: https://cis.org/Web-Program/287g-Law-Enforcement-Group-Moderated-CIS-Analyst.

> I've been in law enforcement for 28 years. I can tell you that it is very important to have trust and respect with our immigrant communities and for our immigrant communities to have trust and respect for the police. There are a host of reasons why a person may not call the police, and much of it has to do with the fear they have of the violent crime gangs, not so much of the police**.** And that really, in my 28 years, that has been the fear that they have of perhaps calling the police, not the other way around."[46]

Finally, it is neither true nor even possible that reluctance or unwillingness on the part of immigrants to report crimes is significantly skewing the nation's crime statistics. First, immigrants do not make up a large enough share of the population to affect national statistics in a meaningful way, especially when their crime reporting rates are nearly identical to those of the larger population, as the Department of Justice has found.[47] Second, the Bureau of Justice Statistics research has established that there is are no significant discrepancies between the number of violent crimes that are reported by victims in the annual Crime Victimization Survey, which counts crimes claimed by victims, whether or not reported to police, and the number of crimes reported by law enforcement agencies in the official Unified Crime Reporting system. This indicates strongly that the incidents of crimes that immigrants are allegedly afraid to report -- as highlighted by the advocates who testified to the Committee -- are not representative of the situation at large, and that any access problems should be dealt with at the community level, not through an across-the-board nationwide reduction in immigration enforcement.

Conclusion

Americans cherish our tradition of a generous legal immigration system that welcomes newcomers from around the globe who wish to join our nation to find economic opportunity, freedom, and safe haven from oppression. But when the rules are not enforced and illegal immigration is tolerated, or actually

[46] Testimony of Kenneth Blanco, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice, before the U.S. Senate Judiciary Committee hearing entitled "The MS-13 Problem: Investigating Gang Membership, its Nexus to Illegal Immigration, and Federal Efforts to End the Threat," June 26, 2017, https://www.judiciary.senate.gov/meetings/the-ms-13-problem-investigating-gang-membership-its-nexus-to-illegal-immigration-and-federal-efforts-to-end-the-threat.

[47] See aforementioned DOJ annual Crime Victimization Study. Illegal residents make up 6% of the population, non-citizens are 7.2%, and the foreign born are 13.6% of the population.

encouraged by sanctuary policies -- or by procedural excess that invites frivolous applications or even fraud -- then the integrity of this system is undermined.

Peter Nunez, the former U.S. Attorney for the Southern District of California, made this point at the SAC's public hearing in Chula Vista:

> Congress has passed a set of immigration laws to determine who and how many people are allowed to immigrate to the United States. These immigration laws contain penalties both civil, criminal and administrative for those who violate the law. …. This includes the statutory requirement to locate, arrest and deport those who have violated our immigration laws. Any country that passes laws and then refuses to enforce those or implement those laws, is violating the most basic concepts of democracy and the concept of a rule of law which we try to convey around the world.

If we accept the concept that there must be limits on immigration, then out of fairness to the millions of immigrants who have been sponsored by their family members or employers or sought legal immigration on their own, who have completed extensive forms and paperwork, shown they are qualified, paid application fees, and are now awaiting their turn, then we must enforce the rules – not out of malice or contempt for those who do not qualify, but to honor both the rule of law and those we are welcoming through a lawful and democratically established process.

October 28, 2020

To The Honorable Members of the United States Commission on Civil Rights:

The California State Advisory Committee has prepared an impactful report – "Understanding the Impact of Immigration Enforcement on California Children in K-12 Schools" – that offers new perspectives on one of the most important issues of our time: immigration and the impact of ICE enforcement on U.S. communities including and especially children who are U.S. citizens with one or more undocumented parents. The report is the product of extensive input and testimony from many viewpoints, and the Committee considered the various opinions on the subject from a variety of stakeholders including the federal Customs and Border Protection, the California Department of Justice, academics, national and state advocacy organizations, school districts, legal experts, and individuals speaking on their own behalf or on behalf of interested organizations. The Committee was provided with thousands of pages of materials to consider as part of this process, including academic research, surveys, information and analyses made available by Customs and Border Protection and Immigration and Customs Enforcement (ICE), prepared written statements of concerned individuals, and the transcripts of testimony provided by witnesses. By and through its Report, the Committee brings to light certain key findings made through the review, testimony and investigation process, among them that:

(1) There are approximately 4.5 million U.S. citizen children in the United States with at least one undocumented parent. The manner in which the federal government and law enforcement pursue, surveil, detain and arrest and/or deport parents adversely affects their children as does the continual fear of arrest and deportation.

(2) The harmful effects on children resulting from they and their parents/guardians living under the constant fear of arrest and deportation may include an increase in absenteeism among students, a decline in parent participation in school events, an increase in bullying of students because of their perceived national origin and/or citizenship status, and a decline in school participation and willingness to seek higher education.

(3) ICE's Sensitive Locations policy limits ICE enforcement actions at schools, hospitals, places of worship, public religious ceremonies and during public demonstrations but notably does not limit or restrict enforcement actions in or around courthouses. As noted by Chief Justice Tani Cantil-Sakauye of the California Supreme Court in her March 16, 2017, letter to (then) Attorney General Jeff Sessions and Secretary of Homeland Security John Kelly, "[immigration] enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair . . . [and they] not only compromise our core value of fairness but they undermine the judiciary's ability to provide equal access to justice." The Chief Justice and several witnesses expressed serious concern that the method of enforcement actions was impacting the willingness of crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families from all "[coming} to our courts seeking justice and due process of law."

(4) ICE's Sensitive Locations policy does not prohibit ICE from conducting enforcement actions *near or around* schools or hospitals or places of worship and Customs and Border Protection representatives acknowledged that, indeed, enforcement actions are carried out near and around schools and other sensitive locations.

(5) ICE asserts that California's and other states' "sanctuary" laws have caused ICE to resort to more public enforcement in "targeted" actions to apprehend dangerous criminals. Notably, however, ICE representatives acknowledged in their testimony that ICE has significant gaps in its data on enforcement actions relevant to this report because it does not collect the data or information in the first place. For example: (i) ICE does not track or release information on the detention of U.S. children swept up in its enforcement actions, or how many of those children are legal U.S. residents; (ii) ICE does not track how many immigration enforcement actions have occurred at schools or other locations where children are regularly present in substantial numbers in the last five years, and (iii) ICE does not track or maintain data on persons who have been arrested or detained, then released, and then reoffend or commit other offenses. These data are key to understanding the full effect of the activities of one of the largest law enforcement agencies in the U.S. on millions of U.S. citizen children including, especially, Latino children.

While we concur in and support and recognize the importance of these key findings and all other findings and recommendations in the Report, the undersigned do not support specific statements and a portion of Finding #5 in the Report (described below), and we therefore submit this dissent on that basis and for the reasons outlined below.

We are concerned that the weight and importance of this information and findings in the Report may be overshadowed by other information included in the body of the report which we believe lacks foundational support. Namely, the report (*see* Impact of Immigration Enforcement and K-12 Students: *Health and Well-Being*) includes the testimony of at least one witness proffering the assertion *as fact* that immigrants (i.e., undocumented immigrants) are primarily responsible for "importing" diseases such as the Polio-like virus, EVD-68, drug-resistant Tuberculosis, Chagas disease, Leprosy, Chicken pox, Mumps, Measles, Whooping Cough and other respiratory diseases into the United States and, further, that the Centers for Disease Control has "admitted" that undocumented immigrants are responsible for "importing" dangerous diseases such as Malaria, Dengue fever, Scabies, and other historically uncommon illnesses. The witness proffering those claims was provided every opportunity to provide data and other information (beyond the witness's mere testimony) to support those serious and far-reaching claims. No such evidence or data was ever provided linking primary responsibility for the resurgence or spread of these diseases to undocumented immigrants – or immigrants of any origin or status -- was ever provided to the Committee. While persons have every right to appear before the Committee to assert their own respective opinions and beliefs (and the work of the Committee benefits from the consideration of a broad range of viewpoints), we believe that the Committee should exercise caution and discretion in receiving such information for inclusion in any official actions unless such information is supported by scientific review and validation, peer-reviewed academic studies, or other means to verify the authenticity and accuracy of the claim. When it cannot be so authenticated then the Committee should appropriately exercise its discretion to relegate such testimony to the official transcript of the proceeding where the testimony was provided, and nothing more. In these COVID-19 times

especially, such statements and assertions stoke the worst kind of xenophobia and racism and, we believe, deserve no countenance in any official report of the Committee. For that reason, we DISSENT to the portions of the Report including those unsupported claims.

The last sentence in Finding #5 in the Report includes that "Although the sanctuary laws were intended to protect undocumented immigrants, they may be doing more harm than good and primarily protecting undocumented immigrants who commit crimes." We take two separate exceptions to this portion of Finding #5. First, with respect to the California Values Act (SB 54), that law was and is intended to protect *all* persons – i.e., citizens, residents, visitors and documented and undocumented immigrants alike -- from the overreach of law enforcement in the name of federal immigration enforcement. It was not and is not intended for the sole or exclusive benefit or protection of undocumented immigrants. Second, from a review of the entire record of all material, information and testimony presented to the Committee, we do not believe that the weight of information provided and considered supports a finding that the California Values Act and similar legislation "may be doing more harm than good and primarily protecting undocumented immigrants who commit crimes." Third, there are a number of social science studies that, using an array of different data and statistical methods, have not been able to find any evidence that the passage of SB54 and the adoption of local "sanctuary" laws in California have led to increases in crime rates.[1] While we are certain that continued study and analysis of the implementation and impact of that legislation would be helpful and appropriate, the record simply does not support this broad and unsupported condemnation of the California Values Act in the Report. On these bases, we DISSENT from this portion of Finding #5 in the Report.

Respectfully submitted,

Rogelio M. Ruíz, Committee Member
Rachel Sigman, Committee Member
Robin S. Toma, Committee Member

[1] See, for example, Kubrin, Charis E., and Bradley J. Bartos. "Sanctuary Status and Crime in California: What's the Connection?." *Justice Evaluation Journal* (2020): 1-19; Martínez, Daniel E., Ricardo D. Martínez-Schuldt, and Guillermo Cantor. "Providing Sanctuary or Fostering Crime? A Review of the Research on "Sanctuary Cities" and Crime." *Sociology compass* 12, no. 1 (2018): e12547.

Statement of Concurrence with Findings 2 and 3C

The California State Advisory Committee to the United States Civil Rights Commission has produced a report entitled "Understanding the Impact of Immigration Enforcement on California Children in K-12 Schools." The Report calls attention to a number of important issues, among which are the impacts of U.S. immigration enforcement activities on K-12 students in California. Although we have voted in support of this Report, there are several sections of the report that warrant further discussion and consideration. We focus on two such areas: 1) additional social scientific evidence on the impacts of immigration enforcement on K-12 students; and 2) the absence of data to assess Immigration and Customs Enforcement's (ICE) claims that they conduct their enforcement and removal operations to minimize impacts on the community.

The Report includes testimony from a number of experts about the academic and psychological impacts of immigration enforcement on K-12 students in California (Finding #2). In particular, it highlights ways that immigration enforcement actions and rhetoric negatively impact students' abilities to attend school and learn. This Committee's findings are bolstered by a wide range of academic and policy research that was not considered by the Committee. The findings from this body of research are particularly relevant to the Committee's Report and, more broadly, to the rights of all California children, irrespective of their immigration status, to attend school as affirmed by the Supreme Court decision in Plyler v. Doe.

Numerous studies have found that immigration enforcement has negative impacts on school enrollment and attendance. One study, published in 2020 in the *American Educational Research Journal*, found that when local jurisdictions established partnerships with ICE, the enrollment of Hispanic students in public schools declined by 10% within two years, displacing a total of over 300,000 Hispanic students from public schools across the country.[1] In an in-depth study one California school district, each ICE raid that was conducted between 2014 and 2018 within the school district's boundaries was associated with a statistically significant increase in student absence from their courses, amounting to about two class absences per student.[2] Enforcement actions that involved larger numbers of arrests resulted in a sustained 2% decline in the district's attendance rate, with a more severe drop in attendance for Latinx students. Yet another study found that school districts that had a greater numbers of deportations within 25 miles of a high school are associated with larger gaps in absenteeism and math achievement between white and Latinx students.[3]

These research findings raise important questions about whether immigration enforcement is conducted in ways that seek to balance the equal protection rights of millions of children and minimize the impacts on all California childrens' rights to attend school. Although representatives of ICE testified to the Committee that they seek to minimize the impacts of their activities on communities and children, they also acknowledged that there is no effort to track compliance with,

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[1] Dee, Thomas S., and Mark Murphy. "Vanished classmates: The effects of local immigration enforcement on school enrollment." *American Educational Research Journal* 57, no. 2 (2020): 694-727.
[2] Kirksey, Jacob. "The Ripple Effects of Immigration Enforcement in K-12." PhD diss., UC Santa Barbara, 2020.
[3] Kirksey, J. Jacob, Carolyn Sattin-Bajaj, Michael A. Gottfried, Jennifer Freeman, and Christopher S. Ozuna. "Deportations near the schoolyard: Examining immigration enforcement and racial/ethnic gaps in educational outcomes." *AERA Open* 6, no. 1 (2020): 2332858419899074.

or violations of, their sensitive locations policy (Finding #3c). Yet, a number of accounts suggest that, since 2017, ICE has ramped up the number of arrests of undocumented immigrant parents occurring near school grounds as well as in other locations, that were once considered "sensitive" by ICE policy, such as hospitals and court houses.[4] Additionally, as the research cited above suggests, deportations need not be conducted in or around schools in order to have adverse impacts on student access to education, or on their ability to remain engaged in educational programs.

For these reasons, we encourage Commissioners to focus particular attention on Findings #2 and #3c, as well as their associated recommendations, outlined in the California SAC's Report.

Concurring Members:

Rachel Sigman
Rogelio Ruiz
Robin Toma

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[4] J. Burnett, Border patrol arrests parents while infant awaits serious operation. All Things Considered/NPR, September 20, 2017. https://www.npr.org/2017/09/20/552339976/borderpatrol-arrests-parents-while-infant-awaits-serious-operation ; Olga Rodriguez and Juliet Williams, ICE ignores California Law in Courthouse Arrests, Prompting Outcry from Local Officials, USA Today, February 20, 2020, https://www.usatoday.com/story/news/nation/2020/02/20/immigration-arrests-ice-ignores-california-law-courthouse-arrests/4823356002/; Ray Sanchez, Ice Arrests Undocumented Father Taking Daughter to California School, CNN, March 3, 2017, https://www.cnn.com/2017/03/03/us/california-father-ice-arrest-trnd/index.html.

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