



Report to the Chairwoman,
Subcommittee on Immigration and
Citizenship, Committee on the Judiciary,
House of Representatives

December 2019

IMMIGRATION ENFORCEMENT

Arrests, Detentions, and Removals, and Issues Related to Selected Populations

GAO Highlights

Highlights of [GAO-20-36](#), a report to the Chairwoman, Subcommittee on Immigration and Citizenship, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

In January 2017, the President issued Executive Order 13768 that instructs the Department of Homeland Security (DHS) to enforce U.S. immigration law against all removable individuals. In February 2017, the Secretary of DHS issued a memorandum (2017 DHS memo) establishing policy and providing guidance related to the Executive Order. Within DHS, ICE is responsible for providing safe confinement for detained aliens, including certain vulnerable populations.

GAO was asked to review ICE immigration enforcement priorities, including those for vulnerable populations. This report examines (1) ICE data on arrests, detentions, and removals from calendar years 2015 through 2018; (2) the policies in effect for selected populations and any changes ICE made to align these policies with the 2017 DHS memo; and (3) the extent to which ICE collects data on selected populations and what those data show.

GAO analyzed ICE data on arrests, detentions, and removals from calendar years 2015 through 2018; reviewed policies and documents on eight populations GAO selected based on ICE policies and input from organizations that represent various vulnerable populations; and interviewed agency officials.

What GAO Recommends

GAO is recommending that ICE collect readily available data on detained parents or guardians of U.S. citizen and legal permanent resident minors. DHS did not concur with the recommendation. GAO continues to believe this recommendation is valid as discussed in the report.

View [GAO-20-36](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwing@gao.gov.

December 2019

IMMIGRATION ENFORCEMENT

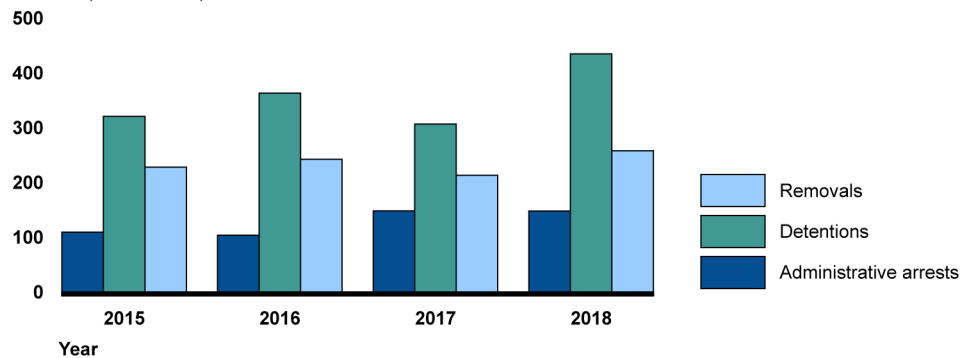
Arrests, Detentions, and Removals, and Issues Related to Selected Populations

What GAO Found

The numbers of administrative arrests (arrests), detentions, and removals of aliens (people who are not citizens or nationals of the United States) by U.S. Immigration and Customs Enforcement (ICE) varied during calendar years 2015 through 2018, and increased overall for the period. Males, aliens from four countries—Mexico, Guatemala, El Salvador, and Honduras—and convicted criminals accounted for the majority of ICE arrests and removals. The majority of detentions were made up of males, aliens from the same four countries, and non-criminals.

Enforcement and Removal Operations Administrative Arrests, Detentions, and Removals, Calendar Years 2015 through 2018

Number (in thousands)



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

ICE has policies related to six of the selected populations GAO examined, including aliens who are: transgender, individuals with disabilities, individuals with mental disorders, juveniles, parents of minors, and pregnant. These policies provide guidance on identifying, detaining, caring for, and removing aliens in these populations. After issuance of the 2017 DHS memo, ICE removed language from its existing policies for individuals who are pregnant and parents of minors that it determined to be inconsistent with 2017 DHS memo.

Available ICE detention data show that detentions of transgender and pregnant individuals increased from calendar years 2016 to 2018 and detentions of individuals with disabilities increased from 2017 to 2018. Detentions at facilities staffed by ICE medical personnel of individuals with mental disorders and women who are nursing varied from calendar years 2015 to 2018. We found that ICE does not collect or maintain readily available data on detained parents or legal guardians of U.S. citizen or legal permanent resident minors, as required by ICE policy. Without such information, ICE headquarters officials cannot ensure that ICE officers are collecting and entering this information into the system as required by policy. ICE officials said they have considered actions to identify this population, but are no longer considering these actions as of October 2019. Maintaining these data in a readily available format could help ensure that ICE personnel identify, evaluate, and share information on this population.

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Abbreviations

ATD	Alternatives to detention
CBP	Customs and Border Protection
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
HSI	Homeland Security Investigations
IIDS	ICE Integrated Decision Support
IHSC	ICE Health Service Corps
ICE	U.S. Immigration and Customs Enforcement
LGBTI	lesbian, gay, bisexual, transgender, and intersex
NGO	Nongovernmental organization
OPLA	Office of the Principal Legal Advisor
PEP	Priority Enforcement Program

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December 5, 2019

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship
Committee on the Judiciary
House of Representatives

Dear Madam Chairwoman:

In 2015, the Department of Homeland Security (DHS) estimated the total alien population in the United States was about 27.3 million; of that number, DHS reported that about 12 million aliens were without lawful status or presence.¹ U.S. Immigration and Customs Enforcement (ICE), one of DHS's component agencies, is responsible for identifying, apprehending, detaining, litigating charges of removability against, and removing aliens who are in the United States in violation of U.S. immigration law.² ICE conducts civil immigration enforcement actions, which includes administrative arrests for civil violations of U.S. immigration laws (arrests), detentions, and removals. ICE is also responsible for providing accommodations and medical care to individuals in detention with special needs or vulnerabilities, such as those who are pregnant, elderly, or who have certain medical conditions. To maximize its limited resources, ICE has prioritized certain groups of aliens for

¹DHS's *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* is the most recent report that DHS issued on this population. According to DHS, the remaining approximately 15.3 million aliens includes lawful permanent residents (13.2 million), resident nonimmigrants (2 million), and individuals granted refugee or asylee status (0.1 million), as of 2015. DHS reported data on lawful permanent residents and those without lawful presence or status as of January 2015, and data for resident nonimmigrants and refugees or asylees as of September 2015. Data on alien populations come from DHS's Office of Immigration Statistics, see DHS Office of Immigration Statistics, *Population Estimates: Lawful Permanent Resident Population in the United States: January 2015* (Washington, D.C.: May 2019); *Nonimmigrants Residing in the United States: Fiscal Year 2015* (Washington, D.C.: September 2017); *Refugees and Asylees: 2015* (Washington, D.C.: November 2016); and *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* (Washington, D.C.: December 2018).. The Immigration and Nationality Act defines an alien as a person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3), (a)(22).

²Under U.S. immigration law, an alien may be removable on statutory grounds of inadmissibility or deportability. See 8 U.S.C. §§ 1182, 1227, 1229a(c), (e)(2). An alien determined to be removable and not eligible for any requested relief or protection is to be removed pursuant to an administratively final order of removal. 8 C.F.R. § 1241.1.

removal from the United States, such as individuals with criminal convictions.

From January 5, 2015 through February 20, 2017, the Priority Enforcement Program (PEP) directed DHS personnel to prioritize the apprehension, detention, and removal of aliens from the United States who pose a threat to national security, border security, and public safety, among others. On January 25, 2017, the President issued Executive Order 13768, Enhancing Public Safety in the Interior of the United States, instructing federal agencies, including DHS, to ensure that U.S. immigration law is enforced against all removable individuals without exempting classes or categories, among other things.³ In response, the Secretary of Homeland Security issued a memorandum establishing policy and providing guidance related to Executive Order 13768 in February 2017 (2017 DHS memo).⁴ In accordance with both Executive Order 13768 and the 2017 DHS memo, although aliens with criminal history are prioritized for enforcement action, the department is authorized to take action against any removable aliens encountered during operations.

In 2018, we reported on ICE's initial actions to implement Executive Order 13768.⁵ We reported that ICE reviewed its policies, regulations, and forms relevant to enforcement priorities, rescinded prior enforcement priority guidance, and issued new guidance directing application of the new approach to immigration enforcement prioritization.

You asked us to review issues related to ICE immigration enforcement priorities, and prosecutorial discretion decisions, including those that relate to selected populations. This report examines (1) what ICE data

³Exec. Order No. 13768, §§ 4, 5, 7, 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017) (issued Jan. 25). Specifically, the executive order prioritizes aliens who are removable based on certain grounds of removability in the Immigration and Nationality Act, as well as removable aliens who have been convicted of, charged with or committed acts that constitute a criminal offense, have engaged in fraud or otherwise abused any government program, or who are determined to otherwise pose a risk to public safety or national security. See *id.* § 5. According to DHS officials, the priorities outlined in the executive order would cover almost all removable aliens, but place an emphasis on those with criminal history.

⁴Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, (February 20, 2017).

⁵GAO, *Border Security and Immigration: Initial Executive Order Actions and Resource Implications*, [GAO-18-470](#) (Washington, D.C.: June 12, 2018).

show about arrests, detentions, and removals from calendar years 2015 through 2018; (2) what policies are in effect for selected populations, and what changes ICE made to align these policies with the 2017 DHS memo; and (3) the extent to which ICE collects data on selected populations and what those data show. For the purposes of our report, we selected eight populations including aliens who are: lesbian, gay, bisexual, transgender, and intersex (LGBTI); individuals with disabilities; individuals with mental disorders; juveniles; parents or legal guardians of minors; pregnant; women who are nursing; or individuals who are elderly. We selected these eight populations based on ICE policies that identify aliens with special vulnerabilities and input from nongovernmental organizations (NGOs) that serve or represent aliens with special vulnerabilities.

To address our first question, we analyzed individual-level data from the ICE Integrated Decision Support (IIDS) database to determine the total number of ICE Enforcement and Removal Operations (ERO) arrests by gender, country of citizenship, criminality, arresting program, and area of responsibility between January 2015 (the start of PEP) and December 2018 (to include the first two years for the 2017 DHS Memo).⁶ We also analyzed individual-level IIDS data to determine the total number of ERO detentions and removals by gender, country of citizenship, arresting agency, and criminality between January 2015 and December 2018. To conduct our analysis of criminality, we used ICE's determination of criminality—criminal or non-criminal—which ICE determines by conducting electronic criminal history checks.

To address our second question, we reviewed a master list of ICE policies and interviewed officials to identify policies related to individuals with special vulnerabilities. Based on this review as well as input from NGOs that serve or represent various populations, we selected eight populations including aliens who are: LGBTI, individuals with disabilities, individuals with mental disorders, juveniles, parents or legal guardians of

⁶According to ICE, the IIDS is a data warehouse populated by Enforcement Case Tracking System (ENFORCE) information related to the investigation, arrest, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by certain DHS components, namely ICE and U.S. Customs and Border Protection. DHS personnel utilize various ENFORCE applications to enter information into the system. Specifically, officers use the Enforcement Integrated Database Arrest Guide for Law Enforcement to process arrest information, the ENFORCE Alien Removal Module (EARM) to track and support processing and removal of aliens, and the ENFORCE Alien Detention Module, a subsystem within EARM, to track aliens in ICE custody.

minors, pregnant, women who are nursing, or individuals who are elderly. To identify any changes ICE made to align its policies with the 2017 DHS memo, we reviewed specific provisions in the executive order and implementing memoranda. We then analyzed existing policies as well as policies that ICE revised or rescinded to align with the 2017 DHS memo, including policies related to prosecutorial discretion and selected populations. We conducted interviews with officials from ICE headquarters offices, including the Office of the Principal Legal Advisor, Office of Policy, Homeland Security Investigations, as well as program officials within ERO, including Domestic Operations, Fugitive Operations, and Custody Management Divisions. We also conducted interviews with representatives from NGOs that serve or represent our selected populations to obtain their perspectives on how, if at all, the policies affected the individuals they represent.

We conducted site visits to six selected ICE ERO areas of responsibility (Atlanta, Dallas, Los Angeles, San Diego, St. Paul, and Washington, D.C.) and interviewed ICE officials to obtain their perspectives on the policy revisions. We selected these locations based on the prevalence of arrests in fiscal year 2017, percent changes in arrests from fiscal year 2016 to 2017, and geographical dispersion. In each location we met with ERO liaisons and officers responsible for monitoring and implementing policy provisions for certain selected populations, as well as ICE medical staff, among others. We met with six national organizations that serve or represent immigrants as well as six state or regional organizations that serve or represent immigrants in the locations we visited. We selected these NGOs to reflect a range of types of populations served or represented as well as based on their proximity to ICE areas of

responsibility we visited.⁷ The information obtained from our site visits and interviews with the NGOs is not generalizable and may not be indicative of the care provided to all populations at all detention facilities, but provided insights into how the selected ICE areas of responsibility conduct enforcement activities and implement immigration enforcement policies.

To address our third question, we reviewed multiple data sources that ICE uses to track information on certain aliens with special vulnerabilities in detention and matched these data with individual-level detention data from IIDS to determine what ICE data show about detentions of selected populations between January 2015 and December 2018. We analyzed this information, for six of the eight selected populations (aliens who are: transgender, individuals with disabilities, pregnant, individuals with mental disorders, women who are nursing, or individuals who are elderly), to determine the total number of detentions; the number of detentions resulting from ICE versus U.S. Customs and Border Protection (CBP) arrests; detentions by criminality; and the length of detention. We excluded juveniles—aliens under the age of 18—from our analysis because ERO is generally not responsible for detaining juveniles, unless they were detained with their parent or legal guardian at an ICE Family Residential Center.⁸ To determine the extent to which ICE maintains data

⁷ERO has 24 field offices and corresponding areas of responsibility are Atlanta (Georgia, North Carolina, South Carolina); Baltimore (Maryland); Boston (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont); Buffalo (Upstate New York); Chicago (Illinois, Indiana, Wisconsin, Missouri, Kentucky, Kansas); Dallas (North Texas, Oklahoma); Denver (Colorado, Wyoming); Detroit (Michigan, Ohio); El Paso (West Texas, New Mexico); Houston (Southeast Texas); Los Angeles (Counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, and San Luis Obispo); Miami (Florida, Puerto Rico, U.S. Virgin Islands); Newark (New Jersey); New Orleans (Alabama, Arkansas, Louisiana, Mississippi, Tennessee); New York (Counties of New York City, Dutchess, Nassau, Putnam, Suffolk, Sullivan, Orange, Rockland, Ulster, Westchester); Philadelphia (Delaware, Pennsylvania, West Virginia); Phoenix (Arizona); Salt Lake City (Utah, Idaho, Montana, Nevada); San Antonio (Central South Texas); San Diego (San Diego and Imperial County); San Francisco (Northern California, Hawaii, Guam, Saipan); Seattle (Alaska, Oregon, Washington); St. Paul (Iowa, Minnesota, Nebraska, North Dakota, South Dakota); and Washington, D.C (District of Columbia, Virginia).

⁸Aliens under the age of 18 who are designated as unaccompanied alien children are to be transferred to the Office of Refugee Resettlement within 72 hours after they are determined to be unaccompanied alien children, except in exceptional circumstances. See 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232. Juveniles not designated as unaccompanied alien children who are apprehended with a parent or legal guardian may be detained for a limited period of time with their adult parent in ICE family residential centers. Juveniles who were detained in ICE family residential centers were included in our overall analysis of ICE detention data in our first objective.

on detained parents or legal guardians of minors, we reviewed ICE policies pertaining to detained parents, including those that set forth requirements for tracking detained parents or legal guardians of U.S. citizens and legal permanent resident minors. We interviewed ERO officials about ICE's data collection processes and any limitations with the data it collects and maintains. We assessed ICE's efforts to track this population against agency policy.⁹

To assess the reliability of the data used in each of our analyses, we analyzed available documentation, such as related data dictionaries; interviewed ERO officials knowledgeable about the data; conducted electronic tests to identify missing data, anomalies, or erroneous values; and followed up with officials, as appropriate. We determined the data were sufficiently reliable for our purposes of depicting general trends in detentions of selected populations. Appendix I describes our objectives, scope, and methodology in greater detail.

We conducted this performance audit from November 2017 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Immigration Enforcement Priorities

Priority Enforcement Program. Under PEP, which was in effect from January 5, 2015 until February 20, 2017, DHS personnel were directed to, among other things, prioritize the apprehension, detention, and removal from the United States of aliens who pose a threat to national security, border security, and public safety, including convicted felons. It further directed DHS personnel to prioritize for removal new immigration violators and those who had been issued a final order of removal on or

⁹We also assessed ICE's efforts to track this population against *Standards for Internal Control in the Federal Government*, including the standards related to using quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks. GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 10, 2014).

after January 1, 2014 and to exercise prosecutorial discretion, as appropriate, in accordance with these priorities and existing guidance.¹⁰ A 2011 ICE memorandum identified factors to consider when exercising prosecutorial discretion, such as the length of the individual's presence in the United States, whether the person or person's immediate relative has served in the U.S. military, on the basis of humanitarian reasons such as personal or family illness, among other factors.¹¹

Executive Order 13768. Executive order 13768, issued on January 25, 2017, focuses on immigration enforcement within the United States. Among other things, the executive order lays out the administration's immigration enforcement priorities for removable aliens. Specifically, the executive order prioritizes for the removal from the United States aliens who are removable based on certain criminal and security grounds in the Immigration and Nationality Act; as well as removable aliens who have been convicted of, charged with, or committed acts that constitute a criminal offense; have engaged in fraud or otherwise abused any government program; or who are determined to otherwise pose a risk to public safety or national security.¹² In addition, it calls for the termination of the PEP and reinstatement of Secure Communities.¹³ See table 1 for a description of enforcement priorities for the removal of aliens from the United States under PEP and Executive Order 13768.

¹⁰The Secretary of Homeland Security established the Priority Enforcement Program in a November 2014 memorandum. See Dept. of Homeland Security, *Secure Communities* (November 20, 2014).

¹¹U.S. 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* (June 17, 2011).

¹²Exec. Order No. 13768, §§ 5, 7, 8, 9, 82 Fed. Reg. at 8800-8801. See also 8 U.S.C. §§ 1182(a)(2)-(3), (a)(6)(C), 1225, 1227(a)(2), (a)(4).

¹³Exec. Order No. 13768, §§ 10, 82 Fed. Reg. at 8801. Under PEP, ICE issued a request for detainer (with probable cause of removability), information, or transfer, for a priority removable individual, such as one posing a threat to national security or public safety, including a foreign national convicted of a felony, among others, under DHS's former tiered civil enforcement categories. Under Secure Communities, ICE may issue detainers for removable individuals charged with, but not yet convicted of, criminal offenses, in addition to individuals subject to a final order of removal whether or not they have a criminal history.

Table 1: Enforcement Priorities for the Removal of Aliens from the United States from 2015-2018

Priority Enforcement Program (2015-2017)	Executive Order 13768 (issued January 25, 2017)
<p>Priority 1 (Threats to National Security, Border Security, and Public Safety):</p> <ul style="list-style-type: none"> Identified as the highest priority for enforcement resources, this category includes those aliens engaged in or suspected of terrorism or espionage or otherwise pose a danger to national security; those apprehended attempting to unlawfully enter the United States; and those with certain serious criminal convictions. 	<p>The executive order prioritized for removal the following categories of aliens:</p> <ul style="list-style-type: none"> Those who are removable from the United States under the Immigration and Nationality Act on criminal grounds, such as a conviction of a serious crime or a violation of controlled substance laws; on security and related grounds, such as engaging in terrorist activity; on the basis of fraud or misrepresentation in the procurement of an immigration benefit or admission into the United States; and those arriving who lack valid documentation to be admitted into the United States.^a
<p>Priority 2 (Misdemeanants and New Immigration Violators):</p> <ul style="list-style-type: none"> Identified as the second-highest priority for apprehension and removal, this category includes aliens who do not also fall into Priority 1, but have either three or more prior misdemeanor convictions, with some exceptions, or have a prior conviction of a “significant misdemeanor,” such as domestic violence, sexual abuse or drug trafficking; those apprehended anywhere in the United States after unlawfully entering who cannot establish that they had been physically present in the United States continuously since January 1, 2014; and those who have been determined to have significantly abused the visa or visa waiver program by U.S. Immigration and Customs Enforcement or U.S. Citizenship and Immigration Services officials. 	<ul style="list-style-type: none"> Those who have been convicted of any criminal offense; Those who have been charged with any criminal offense, where such charge has not been resolved; Those who have committed acts that constitute a chargeable criminal offense Those who have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency; Those who have abused any program related to receipt of public benefits;
<p>Priority 3 (Other Immigration Violations):</p> <ul style="list-style-type: none"> Identified as the third and lowest priority for apprehension and removal, this category includes aliens who do not otherwise meet Priorities 1 or 2 and have been issued a final order of removal on or after January 1, 2014. 	<ul style="list-style-type: none"> Those who are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or Those who, in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Source: Dept. of Homeland Security, Policies for Apprehension, Detention and Removal of Undocumented Immigrants (November 20, 2014); Exec. Order No. 13768, §§ 4, 5, 7, 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017) (issued Jan. 25). | GAO-20-36

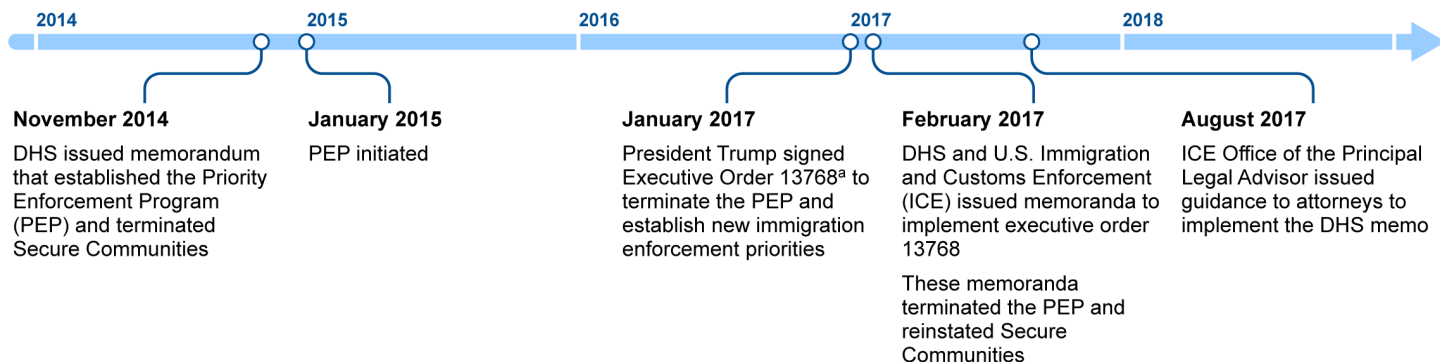
^aSee 8 U.S.C. §§ 1182(a)(2)-(3), (a)(6)(C), 1225, 1227(a)(2), (a)(4).

The Secretary of Homeland Security issued the 2017 DHS memo to implement Executive Order 13768.¹⁴ According to the 2017 DHS memo, in addition to the priorities outlined in the executive order, the Director of ICE, Commissioner of CBP, and Director of U.S. Citizenship and Immigration Services may allocate resources to prioritize enforcement activities as they deem appropriate, such as by prioritizing enforcement

¹⁴Department of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest*, (February 2017).

actions against convicted felons or gang members.¹⁵ ICE issued a memo further directing efforts to implement the executive order and apply the guidance from the 2017 DHS memo. The ICE memo stated that ICE was to review all existing policies and guidance documents and revise or rescind relevant policies in order to ensure consistency with the executive order.¹⁶ In addition, ICE’s Office of the Principal Legal Advisor (OPLA) issued additional guidance to OPLA attorneys to implement the 2017 DHS memo.¹⁷ OPLA is responsible for providing legal advice, training, and services to support the ICE mission, and for defending the interests of the United States in the administrative and federal courts including immigration court proceedings. See figure 1 for a timeline of DHS memoranda and Executive Order establishing immigration enforcement priorities from 2015 to 2018.

Figure 1: Timeline of Department of Homeland Security (DHS) Memoranda and Executive Order Establishing Immigration Enforcement Priorities from 2015 to 2018



Source: GAO analysis of Executive Orders and Department of Homeland Security policy memoranda. | GAO-20-36

^aExec. Order No. 13768, §§ 4, 5, 7, 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017) (issued Jan. 25).

¹⁵The 2017 DHS memo rescinded conflicting directives, memoranda, or field guidance regarding the enforcement of the nation’s immigration laws and priorities for removal to the extent of the conflict, including, the November 2014 memoranda entitled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. The November 2014 memo contained guidance on exercising prosecutorial discretion, and stated that DHS personnel should consider compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative, among other factors.

¹⁶U.S. Immigration and Customs Enforcement, *Implementing the President’s Border Security and Interior Immigration Enforcement Policies*, (February 2017).

¹⁷U.S. Immigration and Customs Enforcement, *Guidance to OPLA Attorneys Regarding the Implementation of the President’s Executive Orders and the Secretary’s Directives on Immigration Enforcement*, (August 2017).

Prosecutorial Discretion. Prosecutorial discretion is the longstanding authority of an agency charged with enforcing a law to decide where to focus its resources and whether or how to enforce, or not to enforce, the law against an individual.¹⁸ Due to limited resources, ICE cannot respond to all immigration violations or remove all persons who are determined to be in the United States without legal status, and therefore, must exercise prosecutorial discretion in the enforcement of the law. In accordance with the DHS, ICE, and OPLA memos, agents and officers are to exercise prosecutorial discretion on a case-by-case basis based on the individual facts presented in consultation with the head of the field office, and prosecutorial discretion is not to be exercised in a manner that exempts or excludes a specified class or category of foreign nationals from enforcement of the immigration laws.

Agency Roles and Responsibilities

ICE's ERO conducts civil immigration enforcement actions, which includes administrative arrests, detentions, and removals.

Arrests. ERO arrests aliens for civil violations of U.S. immigration laws.¹⁹ Through the Criminal Alien Program, ICE identifies and arrests potentially removable aliens who are incarcerated within federal, state, and local prisons and jails.²⁰ The National Fugitive Operations Program identifies and arrests removable aliens who are at-large.²¹

¹⁸U.S. Immigration and Customs Enforcement, *Guidance to OPLA Attorneys Regarding the Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement*, (August 2017).

¹⁹These arrests are referred to as administrative arrests. For the purposes of this report and our presentation of ICE data, we refer to administrative arrests as "arrests".

²⁰The Criminal Alien Program provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as convicted criminals at-large that have circumvented identification.

²¹The National Fugitive Operations Program provides policy direction, strategic planning, and operational oversight for ERO's efforts to locate, arrest, and reduce the population of at-large removable aliens within the United States. This program provides investigative support to at-large enforcement efforts within the 24 ERO field offices, including 129 fugitive operations teams that prioritize enforcement efforts toward aliens who present a heightened threat to national security and public safety, such as transnational gang members, child sex offenders, and aliens with prior convictions for violent crimes. While ERO is responsible for taking civil immigration enforcement actions, it may also coordinate with local law enforcement entities to, for example, refer for prosecution individuals for criminal violations of federal immigration law, such as illegal reentry after removal, or to effectuate the removal of individuals charged with or convicted of crimes through the Criminal Alien Program.

ICE does not detain all aliens it arrests, due to lack of bed space, among other factors. To inform custody decisions for aliens who are arrested and not subject to mandatory detention, ICE guidance requires officers to consider certain factors, including risk of flight, risk of harm to public safety, and special vulnerabilities.²² For example, individuals with a physical or mental illness or disability, or individuals who fear being harmed in detention based on their sexual orientation or gender identity may be considered for release or alternatives to detention (ATD) based on these special vulnerabilities. The ATD program requires that, among other things, aliens released into the community agree to appear at all hearings and report to ICE periodically.²³

Non-detained Unit. ERO is also responsible for supervising and ensuring that aliens who are not held in detention facilities comply with requirements to appear in immigration court for their administrative removal proceedings. ICE uses one or more release options when it determines that an alien can be released from ICE custody—including bond, order of recognizance, order of supervision, parole, and on condition of participation in the ATD program. Total ATD enrollment numbers ranged from about 29,000 in calendar year 2015 to over 78,000 in calendar year 2018.²⁴ ICE does not track specific characteristics of individuals enrolled in ATD programs, including aliens who are pregnant, nursing, disabled, elderly, primary caregivers of minor children, among others.

ICE may also release aliens on bond or an order of recognizance who do not pose a threat to public safety, present a low risk of flight, and

²²Certain aliens may be subject to mandatory detention, including those arriving in the United States without documentation or with fraudulent documentation, those who are inadmissible or deportable on criminal or national security grounds, those certified as terrorist suspects, and those who have final orders of removal. See 8 U.S.C. §§ 1226, 1226a.

²³Upon the alien's request, an immigration judge may review the alien's placement in ATD in some instances. See 8 C.F.R. § 1236.1(d)(1); *Matter of Aguilar-Aquino*, 24 I. & N. Dec. 747, 753 (B.I.A. 2009).

²⁴ATD enrollment numbers were 29,077 in 2015; 57,518 in 2016; 35,957 in 2017; and 78,408 in 2018.

who are not required to be detained.²⁵ In addition, in rare instances, ICE may release an alien on an order of supervision when there is no significant likelihood of removal in the reasonably foreseeable future.²⁶ For example, ICE may not be able to coordinate travel arrangements for certain aliens with final orders of removal who are from countries with which the United States does not have repatriation agreements. An alien subject to a final order of deportation or removal may also request a stay of deportation or removal.²⁷ ICE may also release certain aliens on parole for urgent humanitarian reasons or significant public benefit, or for a medical emergency or legitimate law enforcement objective, on a case-by-case basis.²⁸

Detentions. ICE is responsible for providing safe, secure, and humane confinement for detained aliens in the United States who may be subject to removal while they await the resolution of their immigration cases or who have been ordered removed from the United States.²⁹ This includes aliens transferred to ICE from CBP who were apprehended at or between ports of entry.³⁰ In fiscal year 2019, ERO oversaw the detention of aliens in 147 facilities authorized to house detainees for over 72 hours. ICE manages these facilities in

²⁵See 8 U.S.C. § 1226; 8 C.F.R. § 1236.1. DHS may set a bond of at least \$1,500, which may also be used in conjunction with other release conditions, such as placement in ATD. In some instances, and upon the alien's request, an immigration judge may redetermine the amount of bond set by DHS. See 8 C.F.R. § 1236.1(d)(1). ICE may also release these aliens on an order of recognizance that requires the alien to abide by specified release conditions but does not require the alien to post a bond.

²⁶See 8 U.S.C. § 1231(a); 8 C.F.R. §§ 241.4, 241.5, 241.13, 241.14. ICE officers determine the frequency with which aliens released on an order of supervision must report to ICE.

²⁷See 8 C.F.R. § 241.6.

²⁸See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5, 235.3(b)(2)(iii).

²⁹The Immigration and Nationality Act, as amended, grants ICE the authority to detain aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, and mandates that ICE detain certain categories of aliens. ICE confines detainees for the administrative purpose of holding, processing, and preparing them for removal from the United States. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

³⁰CBP is the lead federal agency charged with keeping terrorists and their weapons, criminals and their contraband, and inadmissible aliens out of the country. Within CBP, the Office of Field Operations inspects individuals at designated U.S. ports of entry to determine their admissibility to the country and U.S. Border Patrol interdicts and apprehends aliens between ports of entry. Ports of entry are facilities that provide for the controlled entry into or departure from the United States.

conjunction with private contractors, state and local governments, and through contract with another federal agency.³¹

Within ERO, ICE Health Service Corps (IHSC) is responsible for providing direct medical, dental, mental health care, and public health services to detainees in 20 facilities authorized to house detainees for over 72 hours. Facilities serviced by IHSC include service processing centers, contract detention facilities, dedicated intergovernmental service agreement facilities, and family residential centers.³² IHSC medical staff are to monitor and implement policy provisions related to pregnant and mentally ill detainees. At detention facilities that are not staffed with IHSC personnel, similar services are provided by local government staff or private contractors and overseen by ICE.

Removals. ICE removes aliens who have been determined to be removable and not eligible for any requested relief or protection pursuant to an administrative final order of removal.³³ A removal is defined as the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States. ICE removals include both aliens arrested by ICE and aliens who were apprehended by CBP and transferred to ICE.

ERO operates across 24 areas of responsibility nationwide and each area of responsibility is led by a field office director. Each ERO field office director is required by ICE policy to designate supervisory level employees to serve, as a collateral duty, as field liaisons for their area of responsibility tasked with monitoring and implementing the provisions of policies for certain selected populations. These field liaison roles include the LGBTI Field Liaison, Child Welfare Field Point of Contact, Supporting Disability Access Coordinator, and Juvenile Coordinator.

In addition to ERO and OPLA, ICE Homeland Security Investigations (HSI) conducts worksite enforcement operations among other law enforcement operations such as oversight of the Student and Exchange

³¹This count does not include CBP holding facilities, hospitals, juvenile facilities, or facilities used by the Office of Refugee Resettlement in the Department of Health and Human Services for the purpose of housing unaccompanied alien children. ICE authorizes facilities to house detainees for up to 72 hours or more than 72 hours. Short-term facilities are intended to temporarily house detainees waiting for ICE transfer.

³²ICE Health Service Corps (IHSC) has the authority to provide health care to detainees, as well as to authorize treatment of detainees in hospitals outside of detention facilities while in ICE custody. See 42 U.S.C. § 249; 42 C.F.R. § 34.7(a).

³³See 8 U.S.C. § 1182, 1227, 1229a; see also 8 C.F.R. § 1241.1.

Visitor program.³⁴ This includes arresting undocumented workers and employers who knowingly hire them. We did not include HSI worksite enforcement arrests in our analysis of ICE arrest data because we were unable to identify the number of unique arrests in these data for the purpose of depicting general arrest trends.

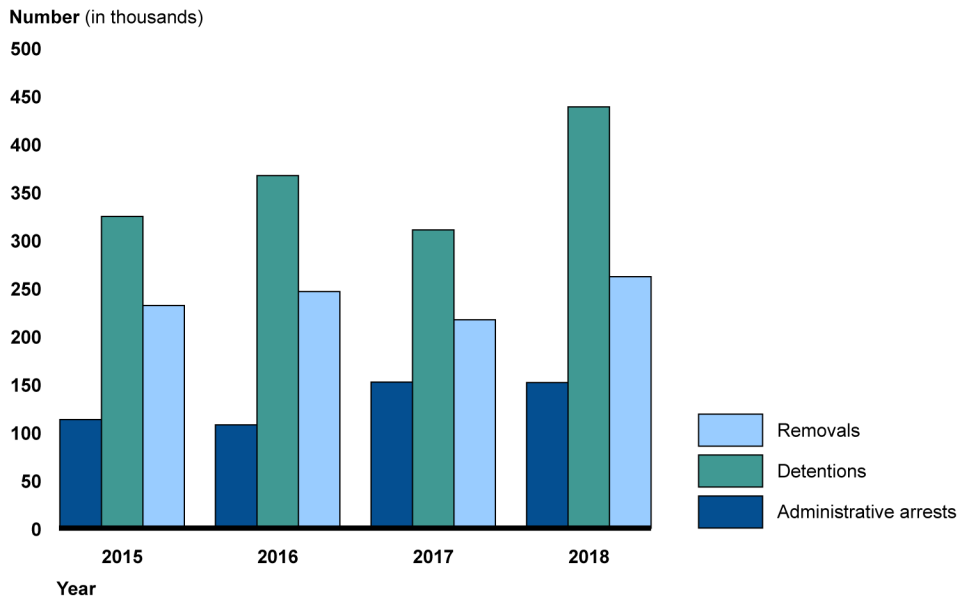
ERO Arrests, Detentions, and Removals Varied during Calendar Years 2015 through 2018, Increasing Overall

ERO arrests, detentions, and removals varied during calendar years 2015 through 2018, and increased overall for the period, as shown in figure 2. Specifically, males, aliens from four countries—Mexico, Guatemala, El Salvador, and Honduras—and convicted criminals accounted for the majority of ICE arrests and removals.³⁵ The majority of ICE detentions were made up of males, aliens from the same four countries, and non-criminals. See appendix II for additional information on ERO arrests, detentions, and removals by gender, country of citizenship, arresting agency, and criminality.

³⁴The Student and Exchange Visitor Program certifies schools authorized to enroll foreign students in academic and vocational programs, and oversees such schools and students.

³⁵For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.”

Figure 2: Enforcement and Removal Operations Administrative Arrests, Detentions, and Removals, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Administrative arrests include arrests by ICE’s Enforcement and Removal Operations. Detention and removal data include detentions and removals resulting from both ICE and U.S. Customs and Border Protection arrests.

ERO Arrests. The number of ERO arrests varied from calendar years 2015 through 2018 but increased overall from 112,870 in 2015 to 151,497 in 2018, see figure 2 above.³⁶ Male aliens, citizens of four countries—Mexico, Guatemala, El Salvador and Honduras—and arrests of aliens from state and local jails, through the Criminal Alien Program, accounted for the majority of these arrests each year from 2015 through 2018.³⁷ Further, ERO arrests increased in all ERO areas of responsibility from calendar years 2015 and 2016, when PEP was in effect, to calendar

³⁶We used “number of arrests” rather than “number of aliens arrested” as our unit of analysis because an individual may have been arrested multiple times in the same year. For our analysis, we excluded about 19,000 (2.6 percent) of ICE arrest records that had a missing alien number, invalid alien number, or duplicative alien number and arrest date combinations from calendar years 2015 through 2018. See appendix I for more details.

³⁷See appendix III and appendix IV for additional information on arrests, detentions and removals by gender. Also see appendix V for additional information on arrests of juveniles. See appendix VI for additional information on arrests by country of citizenship.

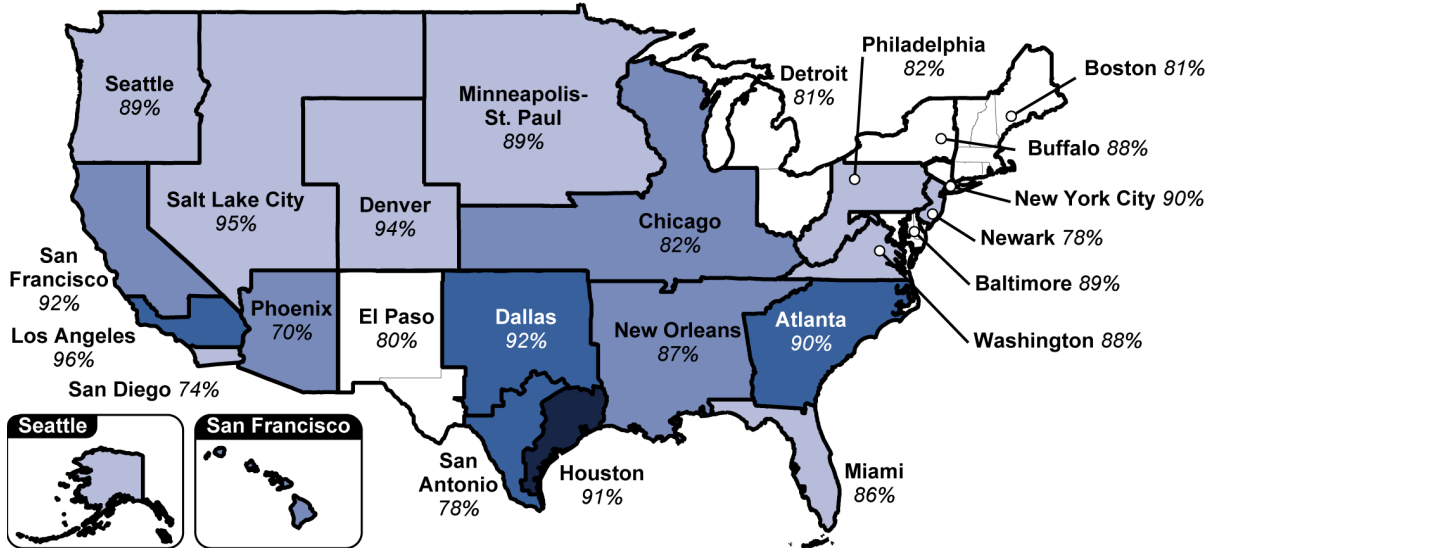
years 2017 and 2018, following implementation of the 2017 DHS memo.³⁸ Arrests of convicted criminals accounted for the majority of arrests in all areas of responsibility during both periods. However, as shown in figure 3, the proportion of arrests of convicted criminals decreased in each area of responsibility due to an increased number of arrests of non-criminals following the implementation of the 2017 DHS memo.³⁹ See appendix II for additional information on ERO arrests by gender, country of citizenship, arresting agency, and criminality.

³⁸These increases ranged from less than 1 percent increase in the Los Angeles area of responsibility to a 99 percent increase in the Miami area of responsibility. See appendix II for additional information on arrests by area of responsibility.

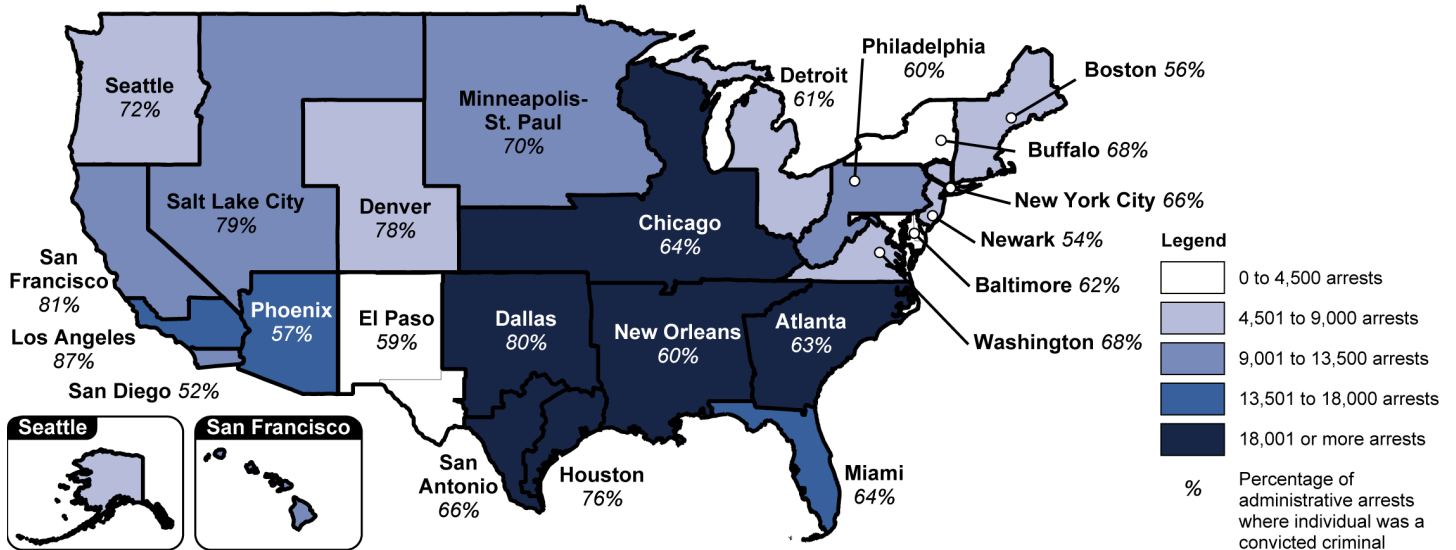
³⁹For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ERO officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center (NCIC) database, which maintains a repository of federal and state criminal history information. ICE officers are also able to manually enter criminal history information in ICE’s data system if they discover additional criminal history information that was not available in NCIC. ICE officers may also check for criminal convictions committed outside the United States, on a case by case basis.

Figure 3: Enforcement and Removal Operations Administrative Arrests by Area of Responsibility, Calendar Years 2015-2016 and 2017-2018

2015-2016



2017-2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data; MapInfo (map). | GAO-20-36

Notes: Arrest data represent the number of administrative arrests, rather than the number of aliens since an individual could have multiple arrests in the same calendar year. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged but not convicted of a crime as well as those with no prior criminal

history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI's National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE's determination of criminality for our analysis.

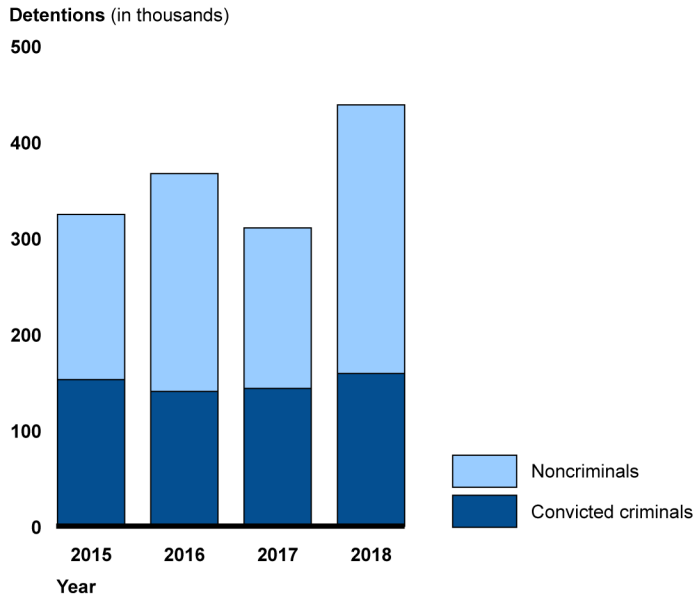
ERO Detentions. The number of ERO detentions varied from calendar years 2015 through 2018 but increased overall from 324,320 in 2015 to 438,258 in 2018.⁴⁰ Male aliens and citizens of four countries—Mexico, Guatemala, El Salvador and Honduras—collectively accounted for most ERO detentions.⁴¹ The majority of detentions resulted from CBP arrests at or between ports of entry.⁴² While the number of ERO detentions of convicted criminals stayed relatively stable from 2015 to 2018, the number of detentions of non-criminals increased from 171,856 in 2015 to 279,469 in 2018 and accounted for the majority of ERO detentions each year, as shown in figure 4. See appendix II for additional information on detentions by gender, country of citizenship, arresting agency, and criminality.

⁴⁰We used “number of detentions” rather than “number of aliens detained” as our unit of analysis because an individual may have been detained multiple times in the same year. For our analysis, we excluded less than one percent of ICE detention records that had a missing alien number, invalid alien number, or duplicative alien number and detention date combinations from 2015 through 2018. See appendix I for more details.

⁴¹See appendix III and appendix IV for additional information on arrests, detentions, and removals by gender. See appendix VII for additional information on detentions by country of citizenship.

⁴²ERO detention data include detentions resulting from both ICE and CBP arrests since ICE is responsible for detaining aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, including aliens transferred to ICE from CBP who were apprehended at or between ports of entry.

Figure 4: Enforcement and Removal Operations Detentions by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions, rather than the number of aliens detained since an individual could have multiple detentions in the same calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

ERO Removals. The number of ERO removals varied from calendar years 2015 through 2018 but increased overall from 231,559 in 2015 to

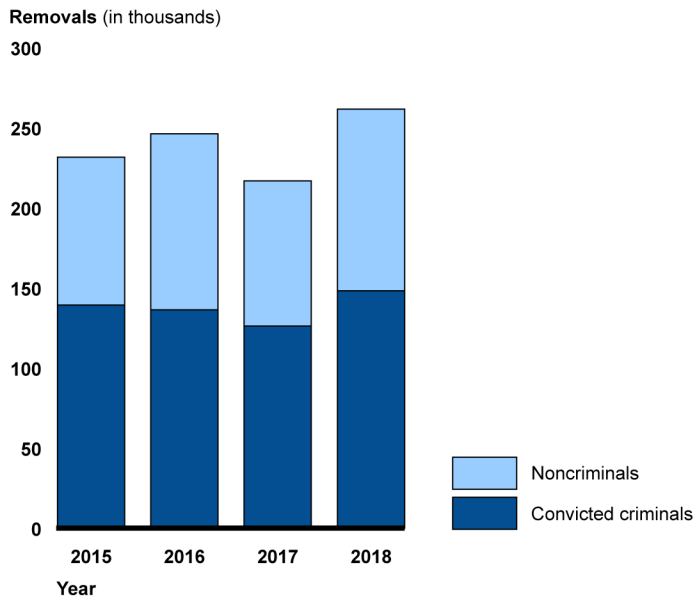
261,523 in 2018.⁴³ Male aliens and citizens of four countries—Mexico, Guatemala, El Salvador and Honduras—collectively accounted for most ERO removals.⁴⁴ The majority of removals resulted from CBP arrests at or between ports of entry.⁴⁵ While removals of both convicted criminals and non-criminals increased overall, removals of convicted criminals accounted for the majority of removals each year, see figure 5. See appendix II for additional information on removals by gender, country of citizenship, arresting agency and criminality.

⁴³We used “number of removals” rather than “number of aliens removed” as our unit of analysis because an individual may have been removed multiple times in the same year. For our analysis, we excluded less than one percent of ICE removal records that had a missing alien number, invalid alien number, or duplicative alien number and removal date combinations from calendar years 2015 through 2018. See appendix I for more details.

⁴⁴See appendix III and appendix IV for additional information on arrests, detentions, and removals by gender. See appendix VIII for additional information on detentions by country of citizenship.

⁴⁵ERO removal data include removals resulting from both ICE and CBP arrests. ERO removals include removals and returns where aliens were transferred to ICE custody from CBP for removal from the United States. This may include aliens processed for expedited removal or voluntary return that are transferred to ICE for detention. Aliens processed for expedited removal and not detained by ERO or voluntarily returned after June 1, 2013 were primarily processed by the U.S. Border Patrol and thus not included in these data.

Figure 5: Enforcement and Removal Operations Removals by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

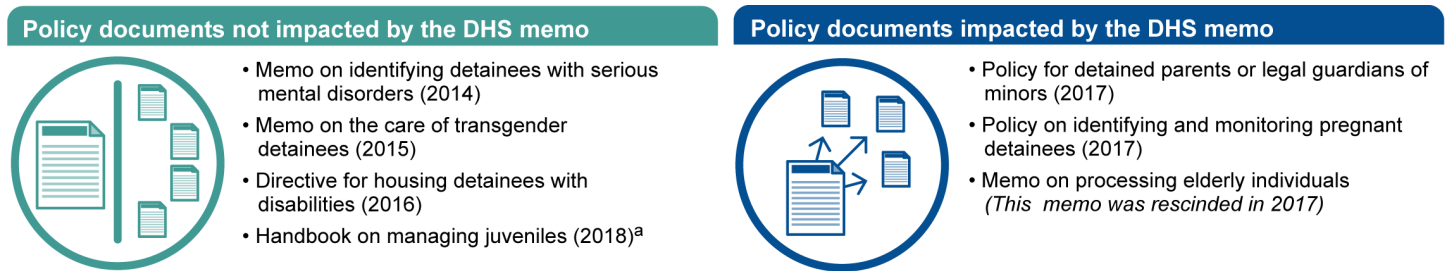
Note: Removal data represent the number of removals, rather than the number of aliens removed since an individual could have multiple removals in the same calendar year. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

ICE Has Operational Policies for Certain Selected Populations, and Revised Its Policies As Needed to Align with the 2017 DHS Memo

According to ICE officials, in early 2018, ERO conducted a review of all existing policies and related documents to help ensure alignment with the 2017 DHS memo, resulting in operational policies related to six of the eight selected populations discussed in this report. The six policies in effect as of July 2019 for the selected populations provide direction and guidance to ERO officers on the identification, detention, care, and removal of aliens who are: individuals with mental disorders, transgender, individuals with disabilities, parents of minors, pregnant, and juveniles. Of the six policies in effect, three were not impacted by the 2017 DHS memo and ERO did not make changes to these policies; two were impacted by the 2017 DHS memo and were revised to remove language ERO determined to be inconsistent with the memo; and guidance on managing

juveniles was first issued after the 2017 DHS memo. For the remaining two populations, ERO does not have a separate policy on care provided to detainees who are nursing and as a result of the policy review, rescinded a prior policy related to exercising prosecutorial discretion for elderly individuals, as shown in figure 6.⁴⁶

Figure 6: Status of U.S. Immigration and Customs Enforcement (ICE) Policy Documents for Selected Populations since the 2017 Department of Homeland Security (DHS) Memo, as of June 2019



Source: GAO analysis of U.S. Immigration and Customs Enforcement policy documents. | GAO-20-36

Note: While ICE does not have a policy for detainees who are nursing, the *Women’s Health Directive* (2017) contains guidance related to this population for medical officers in facilities operated by ICE Health Service Corps.

^aICE released this handbook after issuance of the 2017 DHS Memo.

Individuals with Mental Disorders. In May 2014, ICE issued a memo titled *Identification of Detainees with Serious Mental Disorders or Conditions*, which sets forth procedures to assist ICE and detention facility personnel in identifying detainees with serious mental disorders or conditions in order to assess appropriate facility placement and treatment.⁴⁷ To identify individuals with mental disorders, ICE’s national detention standards require facilities to conduct an initial medical

⁴⁶U.S. Immigration and Customs Enforcement, *Humanitarian Resolution Procedures for Elderly Fugitives* (2009) (Rescinded).

⁴⁷The memo states that a detainee has a serious mental disorder or condition if a qualified medical provider determines the detainee has a mental disorder that is causing serious limitations in communication, memory, or general mental or intellectual functioning; or a severe medical condition, such as dementia, that is significantly impairing mental function; or is exhibiting one or more of the following active psychiatric symptoms or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation or behavior, marked anxiety or impulsivity; or a qualified medical provider diagnoses the detainee as demonstrating significant symptoms of one of the following: psychosis or psychotic disorder; bipolar disorder; schizophrenia; major depressive disorder with psychotic features; dementia; or intellectual development disorder.

screening for all detainees, including a documented mental health screening, a 14-day full medical assessment, with mental health components, and timely referral for follow-up mental evaluations, diagnosis, and treatment.⁴⁸ ICE's policy also requires detention facilities to notify ICE field office directors of detainees with specified serious mental disorders. In addition, the policy requires that relevant personnel meet regularly to monitor the cases of detainees with serious mental disorders until their removal or release. ERO officials in all six areas of responsibility we visited said that these meetings are conducted weekly or biweekly with attorneys, medical staff, and ERO management staff to discuss and evaluate the needs of each detainee's medical care and security needs. According to ICE, this memo did not need to be revised to align with the 2017 DHS Memo. Our analysis of ICE data shows that the number of detentions of individuals with mental disorders at IHSC-staffed facilities varied from calendar years 2015 through 2018 but increased overall from 8513 to 8796 individuals.

Transgender Individuals. In June 2015, ICE issued a memo titled *Further Guidance Regarding the Care of Transgender Detainees*, which provides guidance regarding the placement and care of transgender adult detainees in ERO custody. This memo provides guidance for initial processing of transgender detainees who voluntarily disclose their gender identity to detention officers. Further, when a detainee self-identifies as transgender, the memo directs ERO officers to make individualized placement determinations to ensure the detainee's safety, and to ensure the facility chosen for placement is able to provide appropriate care for the individual, and to the extent practicable to consider the availability of medical personnel who have experience providing care and treatment to transgender detainees, including the delivery of hormone therapy.

This memo also directs ERO to designate a National LGBTI Coordinator to serve as the primary point of contact and subject matter expert for ERO regarding the care and treatment of detainees in ERO custody who self-identify as transgender. Specifically, the National LGBTI Coordinator is to evaluate and report information from all relevant ICE data systems regarding the demographics, care, and custody of transgender detainees and ensure field compliance with the provisions of this memo, among other things. Further, each field office is required to have a LGBTI Field

⁴⁸U.S. Immigration and Customs Enforcement, *Performance-Based National Detention Standards 2011* (Revised December 2016); U.S. Immigration and Customs Enforcement, *Serious Mental Disorders or Conditions* (Revised July 2019).

Liaison, appointed by the Field Office Director. The memo directs LGBTI Field Liaisons to provide regular updates to the national ERO LGBTI Coordinator and ERO Headquarters on the progress of implementing and maintaining the provisions of this memo, which includes determining the appropriateness of facilities to house transgender detainees. In addition, the memo requires certain detention facilities to convene a meeting no later than 72 hours after a transgender detainee's arrival to the facility to assess medical, psychological, and housing needs.⁴⁹ During our site visits, officers in three of the six areas of responsibility we visited said that they conduct these meetings with relevant ERO management staff and medical officials in accordance with the memo.⁵⁰

According to ICE officials, the transgender care memo did not need to be revised to align with the 2017 DHS Memo. The transgender care memo states that field office directors may exercise prosecutorial discretion for transgender individuals who are not subject to mandatory detention.⁵¹ Field ERO officers in five of the six areas of responsibility we visited explained that ERO generally does not detain transgender individuals unless their criminal histories warrant detention, in accordance with the memo. Specifically, officers in three of these five areas of responsibility reported that transgender individuals are likely to be released on bond or under an order of supervision. However, in the sixth area of responsibility, one ERO officer observed an increase in the detention of transgender individuals beginning in early 2017, which the official attributed to the revised priorities described in the 2017 DHS memo. In addition, attorneys from three NGOs we met with also observed an increase in the detention of transgender individuals or described ongoing challenges related to a decrease in the availability of dedicated transgender housing facilities.

⁴⁹According to the memo, in determining the appropriateness of facilities to house transgender detainees, ERO officials should consider facilities that have incorporated ICE's guidance for transgender care, and therefore are required to convene these meetings, among other factors.

⁵⁰During our site visit interviews, officers identified policies, practices, and trends that were relevant to their duties. For this example, officers in the other three areas of responsibility did not raise this practice during the course of our interviews, which does not necessarily mean that these officers do not engage in this practice or are required to engage in this practice. For instance, ERO officers in two of these three areas of responsibility reported that there are no facilities that house transgender individuals in their areas of responsibility.

⁵¹Aliens apprehended by ERO may be subject to mandatory detention if they have been convicted of or committed certain removable offenses, such as aggravated felonies, or pose a threat to public safety or national security.

They also provided anecdotes of transgender clients who had been detained or who experienced challenges obtaining access to appropriate medical care while in detention.⁵² Our analysis of ICE data shows that the number of detentions of transgender individuals increased from 237 in calendar year 2016 to 284 in calendar year 2018.

While ICE does not have separate policies for aliens who are lesbian, gay, bisexual, or intersex, the national LGBTI coordinator and LGBTI field liaisons also serve as subject matter experts for the care and treatment of these detainees. In addition, the transgender care memo prohibits discrimination or harassment of any kind based on a detainee's sexual orientation or gender identity. As such, ERO officers may take steps to protect a detainee who expresses safety concerns based on their sexual orientation, according to ERO officials. According to ERO officers in five of the six areas of responsibility we visited, they do not ask detainees about sexual orientation unless the individual voluntarily discloses this information.⁵³ Additionally, ERO officers in the same five areas of responsibility stated that they do not take sexual orientation into consideration for detention or housing decisions, unless an individual specifically requests protective custody due to safety concerns or harassment.

Individuals with Disabilities. In December 2016, ERO issued a directive titled Assessment and Accommodations for Detainees with Disabilities, which establishes policy and procedures for ERO to oversee and communicate with detention facilities on the identification, assessment, and accommodation of detainees with disabilities. According to this directive, ERO field leadership is to notify detention facilities in each area of responsibility of their existing obligations under federal law to accommodate detainees with disabilities. These obligations include maintaining a process to identify these detainees through observation, assessments, screenings, and self-identification; notifying detainees of their right to request accommodations; and establishing a process to

⁵²Anecdotal information provided by NGOs may not be indicative of care provided to transgender detainees at all detention facilities.

⁵³In the sixth area of responsibility we visited, detention facility personnel stated that they specifically ask detainees about their sexual orientation because the privately contracted detention facility requires gay and lesbian detainees to be identified during the initial screening process to determine appropriate housing placement. These officials noted that ICE policy only requires them to ask whether someone identifies as transgender during the initial screening process.

inform a detainee of the final decision on the request for accommodations, including whether the facility will provide alternative accommodations that are equally effective as those requested; among other things.

In addition, this directive requires ERO to designate an ERO disability access coordinator who is to serve as the primary point of contact and subject matter expert for ERO headquarters and the field regarding the accommodation of, and communication with, detainees with disabilities in ERO custody. Among other duties, the ERO disability access coordinator is responsible for evaluating information from all relevant ICE data systems regarding the identification, care, approved accommodations and custody of detainees with disabilities; as well as maintaining records of detainees with communication and mobility impairments, including records of denials of detainee requests for accommodations by facilities. According to the directive, detainees with communication impairments include detainees with hearing, visual, and speech impairments (e.g., detainees who are deaf or hard of hearing, blind, or nonverbal). Detainees with mobility impairments include detainees with physical impairments who require a wheelchair, crutches, prosthesis, cane, other mobility device, or other assistance. Accommodations for these impairments may include accessible showers, Braille material, or note takers for persons with physical and sensory impairments, among other things. The ERO disability access coordinator is also responsible for helping to ensure compliance with the provisions of this directive.

Field office directors are required to appoint at least one supervisory-level employee to serve as the supporting disability access coordinator for each area of responsibility. Supporting disability access coordinators are responsible for serving as the main point of contact for their field office regarding compliance with federal law and DHS, ICE, and ERO regulations, detention standards, policies, and procedures related to detainees with disabilities. Supporting disability access coordinators are also responsible for collaborating and communicating with ERO headquarters, field office, detention facility, and health care personnel to monitor the care and treatment of detainees with disabilities, among other things. In all six areas of responsibility we visited, supporting disability access coordinators and medical staff told us that they track detainees who receive accommodations for communication and mobility impairments by recording the accommodation on a form that they submit to ERO headquarters.

According to ICE, the Assessment and Accommodations for Detainees with Disabilities directive did not need to be revised to align with the 2017 DHS Memo. This directive states that it is meant to implement and complement the requirements of Section 504 of the Rehabilitation Act of 1973 and states that detainees with disabilities will be provided an equal opportunity to access, participate in, or benefit from in-custody programs, services, and activities, and that detainees with disabilities will be provided with auxiliary aids and services as necessary to allow for effective communication.⁵⁴ Further, the directive states that a field office director may consider releasing from ICE custody a detainee with an impairment or disability who is not subject to mandatory detention. ERO officers in five areas of responsibility we visited reported that they consult with the supporting disability access coordinator, medical staff, or a supervisor to determine whether local detention facilities are able to provide appropriate accommodations.⁵⁵ Our analysis of ICE data shows that the number of detentions of individuals with communication and mobility impairments increased from 434 to 530 in calendar years 2017 to 2018.

Parents or Legal Guardians of Minors. In August 2017, ICE issued a policy titled Detention and Removal of Alien Parents or Legal Guardians, which provides guidance regarding the detention and removal of alien parents and legal guardians, including those with children who are U.S. citizens and legal permanent residents and parents with ongoing cases in family court or child welfare proceedings in the United States.⁵⁶ This policy directs ERO to designate a child welfare coordinator to serve as the primary point of contact and subject matter expert for all ICE personnel regarding child welfare issues related to detained alien parents. The child welfare coordinator is also responsible for evaluating information from all relevant ICE data systems regarding detained alien parents or legal guardians of U.S. citizen and legal permanent resident minors and sharing appropriate information with field points of contact, among other things. Specifically, this policy directs field office directors to

⁵⁴See Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. § 794).

⁵⁵In the sixth area of responsibility, the supporting disability access coordinator and medical staff confirmed coordinating with ERO officials to determine if the facility can accommodate the medical needs of the detainee.

⁵⁶These are proceedings in which a family or dependency court or agency adjudicates or enforces the rights of parents or minor child(ren) through determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or other legal obligations in the context of parental rights.

make appropriate arrangements for detained parents to attend child welfare proceedings. ERO officers in three of the six areas of responsibility we visited stated that they coordinate visits to family courts for the detained parent to appear at these hearings.⁵⁷ The field office director in each area of responsibility is to designate a field point of contact to communicate with the child welfare coordinator and address public inquires related to detained parents or legal guardians in ERO custody.

The August 2017 policy superseded an August 2013 policy titled Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities, which ERO revised to align with the 2017 DHS memo. In the revised policy, ERO removed language indicating that field office directors should weigh whether an exercise of prosecutorial discretion may be warranted for an alien who is a parent or legal guardian of a U.S. citizen or legal permanent resident minor or is a primary caretaker of a minor, and to exercise such discretion as early as possible. ERO officers in five of the six areas of responsibility we visited stated that they typically do not detain parents of minors, unless criminal history warrants detention.⁵⁸ Attorneys we met with from a NGO that provides services to immigrant families and refugees stated that they have observed an increase in the number and length of detentions of parents or legal guardians of minors since January 2017. We were not able to identify trends in detention of detained parents because ERO does not collect or maintain data on this population in a readily available format.

Pregnant Women. In December 2017, ICE issued a directive titled Identification and Monitoring of Pregnant Detainees, which sets forth policy and procedures to ensure pregnant detainees in ICE custody for immigration violations are identified, monitored, tracked, and housed in an appropriate facility to manage their care. According to ICE policy on

⁵⁷During our site visit interviews, officers identified policies, practices, and trends when we asked them to do so or during the course of our discussion. For this example, officers in the remaining three areas of responsibility did not make this statement during the course of our interviews, which does not necessarily mean that these officers do not engage in this practice.

⁵⁸During our site visit interviews, officers identified policies, practices, and trends when we asked them to do so or during the course of our discussion. For this example, officers in the sixth area of responsibility reported that alien parents of minors who were detained in that area of responsibility were typically transferred from CBP, and that ERO officers may have considered these detainees for release on a case-by-case basis in extraordinary circumstances such as for humanitarian reasons.

women's health, pregnant women are identified upon arrival to a detention facility because all women of childbearing age undergo a pregnancy test during intake processing.⁵⁹ According to the December 2017 directive, IHSC personnel are responsible for notifying the field office director and IHSC headquarters, as soon as practical, when a pregnant detainee is identified; monitoring the condition of pregnant detainees, including the general health of the pregnant detainee and medical condition of the fetus; and communicating with the field office director about any specific risk factors or concerns. In addition, IHSC personnel are to provide oversight and review of facility capabilities to determine if the needs of a pregnant detainee can be accommodated and recommend to the field office director when a transfer to another facility is necessary for appropriate medical care. Further, IHSC personnel are to develop and maintain a system for tracking and monitoring all pregnant detainees.

This policy superseded an August 2016 version with the same title, which ERO revised to align with the 2017 DHS memo, according to ICE officials. In the revised version, ERO removed language stating that absent extraordinary circumstances pregnant women will generally not be detained by ICE. In five of the six areas of responsibility we visited, ERO officers stated that unless mandatory detention is required, they still generally avoid detaining pregnant women. In addition, ERO officers in all six areas of responsibility we visited stated that they are less likely to detain and may release a woman who is having a high risk pregnancy or in the third trimester of her pregnancy. However, an official in the sixth area of responsibility noted that under the revised policy, pregnant women may be detained during the third trimester, if she is likely to be removed quickly and has medical clearance to fly. Officers in two of the six areas of responsibility we visited noted that pregnant women may also be released on bond, under an order of supervision, or other non-detention options, after assessing the facts of the case. Attorneys and policy advocates we met with from three NGOs that represent a range of immigrant populations stated that they have observed increases in the detention of pregnant women since January 2017. Attorneys from another NGO we met with provided anecdotes of cases of pregnant detainees who experienced medical challenges, including miscarriages while in

⁵⁹U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, ICE Health Service Corps, *Women's Health Services* (August 2017).

custody.⁶⁰ Our analysis of ICE data shows that the number of detentions of pregnant women varied, but increased overall, from 1380 in calendar year 2016 to 2098 in calendar year 2018.

Juveniles. In April 2018, ICE issued the Field Office Juvenile Coordinator Handbook to guide ERO staff in processing, transporting, managing, and removing juveniles—persons encountered by ERO who have not reached 18 years of age. Field office juvenile coordinators, who serve as local subject-matter experts on juvenile matters for each area of responsibility, provide policy guidance to ERO personnel within their areas of responsibility, and assist with case review and custody redeterminations. Field office juvenile coordinators are also required to coordinate with other federal agencies including the Office of Refugee Resettlement,⁶¹ where juveniles designated as unaccompanied alien children are typically transferred.⁶² According to ERO policy, unaccompanied alien children apprehended by ERO or transferred into ERO custody by CBP are to be placed in the care of the Office of Refugee Resettlement within 72 hours of identification, if they are not repatriated at the border.⁶³ The Field Office Juvenile Coordinator Handbook was released after the 2017 DHS memo and aligns with the 2017 DHS Memo.

According to officers in four of the six areas of responsibility we visited, ERO does not target juveniles for arrests, unless they have criminal records. For example, officers we met with in one area of responsibility

⁶⁰GAO has ongoing work on pregnant women in ICE custody. The expected release date is spring 2020. Anecdotal information provided by NGOs may not be indicative of care provided to pregnant detainees at all detention facilities.

⁶¹The Office of Refugee Resettlement is a department within the Department of Health and Human Services that works in collaboration with other federal agencies to assist refugees with integrating into American society or repatriate to their country of birth.

⁶²See 6 U.S.C. § 279(g)(2) (defining “unaccompanied alien child” as a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom (1) there is no parent or legal guardian in the United States; or (2) no parent or legal guardian in the United States is available to provide care and physical custody).

⁶³See also 8 U.S.C. § 1232. For additional information on unaccompanied children, see GAO, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, [GAO-19-163](#) (Washington, D.C.: Oct. 9, 2018); GAO, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, [GAO-16-180](#) (Washington, D.C.: Feb. 5, 2016); and GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, [GAO-15-521](#) (Washington, D.C.: July 14, 2015).

stated that ERO typically does not target juveniles in that location, unless they are affiliated with gangs, because they are unlikely to pose a public safety threat. Our analysis of ICE data shows that the number of arrests of juveniles varied, but increased overall, from calendar years 2015 through 2018.⁶⁴ We excluded juveniles from our analysis of individual ICE detention data because ICE is generally not responsible for detaining juveniles, as discussed above.⁶⁵

Nursing Women. While ICE does not have a separate policy on the care, detention, or removal of women who are nursing, the 2017 Directive on Women’s Health Services provides guidance to IHSC staff on the delivery and administration of health services to this population. According to this directive, women who are nursing are identified during initial processing before being placed into custody at a detention facility because ERO officials and medical personnel are required to ask women if they are breastfeeding. Medical personnel make recommendations pertaining to the detention of women who are nursing, and in most cases, these detainees are placed in IHSC-staffed facilities. IHSC personnel record and use this information to monitor the care and needs of women who are nursing, according to IHSC officials. In five of the six areas of responsibility we visited, officers stated that they typically do not detain women who are nursing, unless their criminal histories warrant detention.⁶⁶ Specifically, health officials in one of the five areas of responsibility explained that if a nursing mother is detained, she is typically released within a few hours or placed on bond or order of supervision. Our analysis of ICE data shows that the number of detentions of nursing women at IHSC-staffed facilities varied from calendar years 2015 through 2018 but increased overall from 157 in 2015 to 381 in 2018.

Elderly Individuals. ICE no longer has a policy guiding the detention or care of elderly detainees. According to ICE guidance on assessing

⁶⁴For additional information on arrests of juveniles by age and gender, see appendix V.

⁶⁵Juveniles not designated as unaccompanied alien children who are apprehended with a parent or legal guardian may be detained with their adult parent in ICE family residential centers. Therefore, juveniles who were detained in ICE family residential centers were included in our overall analysis of ICE detention data.

⁶⁶During our site visit interviews, officers identified policies, practices, and trends when we asked them to do so or during the course of our discussion. For this example, officers in the sixth location did not raise this practice during the course of our interviews which does not necessarily mean that these officers do not engage in this practice.

individuals with special vulnerabilities during the intake process, ICE generally considers someone to be elderly starting at age 65. However, the guidance instructs agents and officers to assess whether these individuals have physical indicators of infirmity or fragility caused by old age when making decisions regarding detaining or releasing them. In February 2018, as part of its effort to align internal policies with the 2017 DHS memo, ERO rescinded a 2009 policy directing officers to administratively close cases of non-criminal fugitives who are 70 years old or older for humanitarian/health reasons.⁶⁷ ERO officers in five of the six areas of responsibility we visited reported that they do not target individuals who are elderly and continue to consider criminal history and medical condition when deciding whether to detain them. For example, officials in one of these five areas of responsibility explained that someone who committed an aggravated felony would be subject to mandatory detention regardless of age, but if the individual has a serious medical condition, such as advanced cancer, ERO may decide to release them from custody because the agency would be responsible for the cost of their medical treatments while they are in custody. Officers in the sixth area of responsibility said they have started to detain individuals who are elderly following the issuance of the 2017 DHS memo, but noted that they coordinate with the courts to expedite these hearings before an immigration judge who may order the release of an elderly detainee. Attorneys we met with from a NGO that provides services to immigrant families and refugees stated that they have observed an increase in detentions of individuals who are elderly, and only those with serious medical issues were considered for release. Our analysis of ICE data shows that the number of detentions of individuals who were elderly varied, increasing overall, from 882 in calendar year 2015 to 1159 in calendar year 2018.

⁶⁷ Administratively closing a case in removal proceedings refers to the practice of temporarily removing a case from the court's active calendar, and unless a party moves to re-calendar an administratively closed case, the case remains indefinitely suspended without a final resolution.

Data Indicate Detentions of Selected Populations Varied, Increasing Overall; but ICE Lacks Readily Available Data on All Detained Parents or Legal Guardians of Minors

Available ICE data show that detentions of most of the selected populations in our review varied between calendar years 2015 and 2018.⁶⁸ Specifically, detentions of transgender individuals and pregnant women increased from calendar years 2016 to 2018, after ICE began collecting data for these populations. Similarly, detentions of individuals with disabilities increased from 2017 to 2018, after ICE began collecting data for this population. Detentions of individuals with mental disorders and nursing women at IHSC-staffed facilities varied from calendar years 2015 to 2018. Finally, detentions of individuals who were elderly varied, increasing overall during the same timeframe. We were unable to obtain data on parents or legal guardians of minors in ICE custody because ICE does not collect or maintain data on this population in a readily available format.

ICE Data Show Detentions of Most Selected Populations Varied, Increasing Overall

Detentions of Transgender Individuals Increased from 2016 through 2018; the Majority Resulted from CBP Arrest and Were Detentions of Non-Criminals

ICE began collecting and maintaining data on transgender individuals who voluntarily disclose their gender identity to ICE officers in November 2015, as previously discussed. ERO officials said they use these data to monitor the placement and care of transgender individuals in ICE custody, in accordance to ICE's memo on Further Guidance Regarding the Care of Transgender Detainees. These data show that the number of detentions of transgender individuals increased from calendar years 2016

⁶⁸We present information on administrative arrests of juveniles in appendix V. We excluded juveniles from our analysis of detention data because ERO is generally not responsible for detaining juveniles. Upon apprehension, ICE transfers juveniles who are designated as unaccompanied alien children to the Office of Refugee Resettlement once they have been processed and placed in immigration proceedings. Juveniles not designated as unaccompanied alien children who are apprehended with a parent or legal guardian may be detained with their adult parent in ICE family residential centers. We also excluded detained parents from this analysis because ICE did not track this information in a readily available format at the time of our review. See appendix IX for the number and type of criminal charges of detentions of selected populations and appendix X for the length of detentions of selected populations.

through 2018, as shown in table 2.⁶⁹ Detentions resulting from CBP arrests accounted for about half of the total detentions of transgender individuals in 2016 and 2017, increasing to 69 percent in 2018.

Also shown in table 2, detentions of non-criminal transgender individuals increased from calendar years 2016 through 2018, increasing from 46 percent of total detentions of transgender individuals in 2016 to 71 percent in 2018. Detentions of non-criminal transgender individuals include both detentions of individuals with pending criminal charges (ranging from 12 to 24 percent) and individuals with no recorded criminal history (ranging from 76 to 88 percent). Detentions resulting from CBP arrests comprised most of these detentions (ranging from 77 to 91 percent). Detentions of transgender individuals with criminal convictions decreased over the same period, and most resulted from ICE arrests (ranging from 71 to 84 percent).

Table 2: Enforcement and Removal Operations Detentions of Transgender Individuals, Calendar Years 2016 through 2018

Calendar Year	CBP				ICE				Total Detentions of Transgender Individuals
	Convicted criminals	Non-criminals		Total	Convicted criminals	Non-criminals		Total	
		Pending criminal charges	No recorded criminal history			Pending criminal charges	No recorded criminal history		
2016	23	5	94	122	105	8	2	115	237
2017	20	9	92	121	102	22	8	132	253
2018	24	8	164	196	58	23	7	88	284

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Notes: Transgender data only include individuals who voluntarily disclosed their gender identity to ICE. Our analysis is based on the 228 unique transgender detainee records for 2016, 241 for 2017 and 277 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

⁶⁹ICE collected data for 232 transgender detainees in calendar year 2016, 274 in 2017, and 304 in 2018. To obtain more information on the characteristics of detention for transgender individuals, we analyzed individual transgender detainee data in conjunction with the ICE detention data. We excluded 4 of the unique transgender detainee records for 2016, 33 for 2017 and 27 for 2018 because we were unable to match these records using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on the unique transgender detainee records we were able to match: 228 for 2016, 241 for 2017, and 277 for 2018. ICE also recorded 55 transgender detainees in 2015; however, we excluded these records from our analysis since ICE did not collect complete data on this population in 2015.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with, but not convicted of a crime, (we refer to these as “aliens with pending criminal charges”), as well as those with no prior criminal history, (we refer to these as “aliens with no recorded criminal history”). According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Detentions of Individuals with Disabilities Increased from 2017 to 2018; the Majority Resulted from ICE Arrests and Were Detentions of Convicted Criminals

ICE began collecting and maintaining data on certain detainees with disabilities—i.e., those with communication and mobility impairments—who disclosed their impairment or who were identified by facility staff as having an impairment in January 2017, in accordance with its directive, titled Assessment and Accommodations for Detainees with Disabilities.⁷⁰ These data show that detentions of individuals with disabilities increased from calendar years 2017 to 2018, as shown in table 3.⁷¹ Detentions resulting from ICE arrests accounted for the majority of these detentions (70 percent in 2017 and over 50 percent in 2018).

Also shown in table 3, detentions of convicted criminals with disabilities decreased from calendar years 2017 to 2018, and accounted for the majority of total detentions of this population (67 percent in 2017 and 53

⁷⁰According to the directive, detainees with communication impairments include detainees with physical, hearing, visual, and speech impairments (e.g., detainees who are deaf or hard of hearing, blind, or nonverbal). Detainees with mobility impairments include detainees with physical impairments who require a wheelchair, crutches, prosthesis, cane, other mobility device, or other assistance.

⁷¹ICE collected data for 429 individuals with disabilities—i.e., those with communication and mobility impairments—detained in calendar year 2017 and 517 in 2018. To obtain more information on the characteristics of detention for individuals with disabilities, we analyzed individual detainees with disabilities data in conjunction with the ICE detention data. We excluded 5 of the unique detainee records for 2017, and 1 for 2018 because we were unable to match these records using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on the unique detainee with disabilities records we were able to match: 424 for 2017, and 516 for 2018. When ICE began collecting these data, it included individuals who were placed in detention prior to January 2017. We excluded 99 records for this reason from our analysis since ICE did not collect complete data on this population prior to January 2017.

percent in 2018). Most of these detentions resulted from ICE arrests (89 percent in 2017 and 72 percent in 2018). Detentions of non-criminals in this population increased from calendar years 2017 to 2018. Detentions of individuals with no recorded criminal history accounted for most detentions of non-criminals in this population (71 percent in 2017 and 79 in 2018 percent), and the majority resulted from CBP arrests (68 percent in 2017 and 74 percent in 2018).

Table 3: Enforcement and Removal Operations Detentions of Individuals with Disabilities, Calendar Years 2017 and 2018

Calendar Year	CBP				ICE				Total Detentions of Individuals with Disabilities
	Convicted criminals	Non-criminals		Total	Convicted criminals	Non-criminals		Total	
		Pending criminal charges	No recorded criminal history			Pending criminal charges	No recorded criminal history		
2017	33	11	87	131	257	31	15	303	434
2018	79	10	174	262	203	40	23	266	530 ^a

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Notes: These data only include individuals who disclosed their impairment or who were identified by facility staff as having an impairment. Our analysis is based on the 424 unique detainees with disabilities records for 2017, and 516 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminal aliens include individuals who have been charged with, but not convicted of a crime, (we refer to these as “aliens with pending criminal charges”), as well as those with no prior criminal history, (we refer to these as “aliens with no recorded criminal history”). According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aTotal detentions of individuals with disabilities in 2018 include two detentions of non-criminals with pending criminal charges resulting from other agency arrests.

Detentions of Pregnant Women Increased from 2016 through 2018; Most Resulted from CBP Arrests and Most Were Detentions of Non-Criminals

ICE began collecting and maintaining data on pregnant women in ICE's custody in June 2015.⁷² IHSC officials said they use these data to monitor the condition of pregnant women in ICE custody, including the term of the pregnancy, general health of the pregnant detainee, and medical conditions of the fetus, in accordance to ICE's directive on Identification and Monitoring of Pregnant Detainees. These data show that the number of detentions of pregnant women varied, but increased overall from calendar years 2016 through 2018, as shown in table 4.⁷³ Detentions resulting from CBP arrests accounted for most of the total detentions of pregnant women each year (ranging from 90 to 96 percent).

Also shown in table 4, detentions of non-criminal pregnant women varied from calendar years 2016 through 2018, but increased overall. Detentions of non-criminal pregnant women accounted for most of the total detentions of pregnant women each year (ranging from 91 to 97 percent), and detentions of women with no recorded criminal history accounted for almost all of these detentions (ranging from 96 to 99 percent). Detentions of convicted criminal pregnant women also increased overall for the period.

⁷²From August 2013 to June 2015, IHSC collected data on pregnant women at IHSC-staffed facilities only.

⁷³ICE collected data for 1,437 pregnant detainees in 2016, 1,170 in 2017, and 2,126 in 2018. To obtain more information on the characteristics of detention for pregnant women, we analyzed individual pregnant detainee data in conjunction with the ICE detention data. We excluded 60 of the unique pregnant detainee records for 2016, 20 for 2017 and 32 for 2018 because we were unable to match these records using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on the unique pregnant detainee records we were able to match: 1,377 for 2016, 1,150 for 2017, and 2,094 for 2018. ICE also recorded 675 pregnant detainees in 2015; however, we excluded these records from our analysis since ICE did not collect complete data on this population in 2015.

Table 4: Enforcement and Removal Operations Detentions of Pregnant Women, Calendar Years 2015 through 2018

Calendar Year	CBP				ICE				Total Detentions of Pregnant Women
	Convicted criminals	Non-criminals		Total	Convicted criminals	Non-criminals		Total	
		Pending criminal charges	No recorded criminal history			Pending criminal charges	No recorded criminal history		
2016	22	14	1286	1322	18	3	37	58	1380
2017	33	19	995	1047	48	22	43	113	1160
2018	149	38	1817	2004	33	24	37	94	2098

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Notes: Our analysis is based on the 1,377 unique pregnant detainee records for 2016, 1,150 for 2017 and 2,094 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an alien may have been detained multiple times during a calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with, but not convicted of a crime, (we refer to these as “aliens with pending criminal charges”), as well as those with no prior criminal history, (we refer to these as “aliens with no recorded criminal history”). According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Detentions of Individuals with Mental Disorders at IHSC-staffed facilities Varied from 2015 through 2018; the Majority Resulted from CBP Arrests and Were Detentions of Non-Criminals

ICE began collecting and maintaining data needed to identify individuals with mental disorders at IHSC-staffed facilities in August 2013.⁷⁴ According to IHSC officials, ICE does not collect these data for non-IHSC staffed facilities, in part because many of these facilities do not have electronic health records. However, IHSC personnel are notified of detainees with mental disorders at non-IHSC staffed facilities and these individuals may be transferred to another facility if the current facility is unable to provide appropriate care. While we were not able to present the overall number of detentions of individuals with mental disorders in ICE custody, we reviewed available ICE data to indicate the number and characteristics of detentions of individuals with mental disorders at IHSC-staffed facilities. These data show that the number of detentions of individuals with mental disorders at IHSC-staffed facilities varied from

⁷⁴In August 2013 IHSC started using a medical records system to record detainee conditions and diagnoses, including mental illness, at IHSC-staffed facilities.

calendar years 2015 through 2018, as shown in table 5.⁷⁵ Detentions resulting from CBP arrests accounted for the majority of these detentions (ranging from 53 to 67 percent) in 2015, 2016, and 2018. In 2017, detentions resulting from ICE arrests accounted for the majority (51 percent) of these detentions.

Also shown in table 5, detentions of non-criminals with mental disorders varied from calendar years 2015 through 2018. These detentions accounted for the majority of total detentions of individuals with mental disorders in 2015, 2016, and 2018 (ranging from about 53 to 58 percent). Detentions of individuals with no recorded criminal history accounted for most detentions of non-criminals for this population (ranging from 79 to 92 percent), and most resulted from CBP arrests (ranging for 77 to 97 percent). Detentions of convicted criminals with mental disorders varied over the period and the majority resulted from ICE arrests (ranging from 71 to 79 percent).

Table 5: Enforcement and Removal Operations Detentions of Individuals with Mental Disorders in ICE Health Service Corps (IHSC)-staffed Facilities, Calendar Years 2015 through 2018

Calendar Year	CBP				ICE				Total Detentions of Individuals with Mental Disorders
	Convicted criminals	Non-criminals		Total	Convicted criminals	Non-criminals		Total	
		Pending criminal charges	No recorded criminal history			Pending criminal charges	No recorded criminal history		
2015	1035	291	4249	5575	2782	69	84	2935	8513^a
2016	1193	318	5130	6641	2951	152	158	3261	9903^b
2017	944	196	3254	4394	3660	680	303	4643	9038^c
2018	1119	167	3392	4678	3054	785	274	4113	8796^d

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

⁷⁵ICE collected data for 8,129 individuals with mental disorders in IHSC staffed facilities in calendar year 2015; 9,673 in 2016; 9,493 in 2017; and 9,734 in 2018. To obtain more information on the characteristics of detention for these individuals, we analyzed individual detainee with mental disorders data in conjunction with the ICE detention data. We excluded 207 of the unique detainee records with the detention data for 2016, 850 for 2017, and 1,233 for 2018 because we were unable to match these records using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on the unique detainee with mental disorders records we were able to match: 8,138 for 2015, 9,466 for 2016, 8,643 for 2017, and 8,501 for 2018.

Notes: These data only include individuals with mental disorders detained at IHSC-staffed facilities. Our analysis is based on the 8,138 unique detainee with mental disorders records for 2015, 9,466 for 2016, 8,643 for 2017, and 8,501 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with, but not convicted of a crime, (we refer to these as “aliens with pending criminal charges”), as well as those with no prior criminal history, we refer to these as (“aliens with no recorded criminal history”). According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aTotal detentions of individuals with mental disorders in 2015 include three detentions of convicted criminals resulting from another agency arrest.

^bTotal detentions of individuals with mental disorders in 2016 include one detention of a convicted criminal resulting from another agency arrest.

^cTotal detentions of individuals with mental disorders in 2017 include one detention of a convicted criminal resulting from another agency arrest.

^dTotal detentions of individuals with mental disorders in 2018 include two detentions of convicted criminals and three detentions of non-criminals with pending criminal charges resulting from another agency arrest.

Detentions of Nursing Women at IHSC-staffed Facilities Varied from 2015 through 2018; Most Resulted from CBP Arrests and Most Were Detentions of Non-Criminals

IHSC began collecting and maintaining data needed to identify women who are nursing at IHSC-staffed facilities, which is where ICE typically detains women who are nursing, in August 2013. These data are used to monitor the care and needs of women who are nursing, according to IHSC officials. While we were not able to present the overall number of detentions of nursing women in ICE custody, we reviewed available ICE data to indicate the number and characteristics of detentions of nursing women at IHSC-staffed facilities. These data show that the number of detentions of nursing women at IHSC-staffed facilities varied from calendar years 2015 through 2018, as shown in table 6.⁷⁶ Detentions resulting from CBP arrests accounted for most of the detentions of women who were nursing each year (ranging from 98 to 99 percent).

⁷⁶ICE collected data for 159 nursing detainees in IHSC staffed facilities in calendar year 2015; 398 in 2016; 567 in 2017; and 386 in 2018. To obtain more information on the characteristics of these detentions, we analyzed individual nursing detainee data in conjunction with the ICE detention data. We excluded 2 of the unique nursing detainee records for 2015, 3 for 2017 and 5 for 2018 because we were unable to match these records using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on the unique nursing detainee records we were able to match: 157 for 2015, 399 for 2016, 564 for 2017, and 381 for 2018.

Also shown in table 6, detentions of both non-criminal and convicted criminal nursing women at IHSC-staffed facilities varied from calendar years 2015 through 2018. Detentions of non-criminal women who were nursing accounted for most of the total detentions of nursing women at IHSC-staffed facilities each year (ranging from 98 to 99 percent), and detentions of women who were nursing with no recorded criminal history accounted for almost all of these detentions (ranging from 99 to 100 percent), and resulted from CBP arrests (ranging from 98 to 100 percent).

Table 6: Enforcement and Removal Operations Detentions of Nursing Women in ICE Health Service Corps (IHSC)-staffed Facilities, Calendar Years 2015 through 2018

Calendar Year	CBP				ICE				Total Detentions of Nursing Women
	Convicted criminals	Non-criminals		Total	Convicted criminals	Non-criminals		Total	
		Pending criminal charges	No recorded criminal history			Pending criminal charges	No recorded criminal history		
2015	2	1	153	156	1	0	0	1	157
2016	1	4	389	394	2	0	5	7	401
2017	3	0	557	560	3	0	4	7	567
2018	3	2	370	375	0	3	3	6	381

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Notes: These data only include nursing women at IHSC-staffed facilities. Our analysis is based on the 157 unique detainee records for 2015, 399 for 2016, 564 for 2017 and 381 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an alien may have been detained multiple times during a calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with, but not convicted of a crime, (we refer to these as “aliens with pending criminal charges”), as well as those with no prior criminal history, (we refer to these as “aliens with no recorded criminal history”). According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Detentions of Elderly Individuals Varied from 2015 through 2018; the Majority Resulted from ICE Arrests and Were Detentions of Convicted Criminals

From calendar year 2015 through 2018, ICE collected and maintained data on a detainee’s date of birth and is able to identify whether an individual is elderly, defined as someone who is over 65 years old, by calculating the individual’s age at the time they are detained. ICE does not collect or maintain specific data on whether an individual is elderly because it does not have a separate policy for elderly detainees. Rather, ICE considers an individual’s health, criminal history, and other factors when making detention determinations, according to officials. ICE data show that the number of detentions of individuals who were elderly

varied, but increased overall from calendar years 2015 through 2018, as shown in table 7.⁷⁷ Detentions resulting from ICE arrests accounted for the majority of detentions of individuals who were elderly each year (ranging from 64 to 71 percent).

Also shown in table 7, detentions of both non-criminal and criminal individuals who were elderly varied from calendar years 2015 through 2018, and increased overall. Detentions of convicted criminals accounted for the majority of detentions of individuals who were elderly each year (ranging from 65 to 74 percent) and most of these detentions resulted from ICE arrests (ranging from 82 to 85 percent). Detentions of individuals who were elderly with no recorded criminal history accounted for most detentions of non-criminal individuals who were elderly (ranging from 80 to 91 percent), and the majority resulted from CBP arrests (ranging from 70 to 74 percent).

Table 7: Enforcement and Removal Operations Detentions of Elderly Individuals, Calendar Years 2015 through 2018

Calendar Year	CBP			Total	ICE			Total	Total Detentions of Elderly Individuals
	Convicted criminals	Non-criminals			Convicted criminals	Non-criminals			
		Pending criminal charges	No recorded criminal history			Pending criminal charges	No recorded criminal history		
2015	115	11	164	290	522	11	59	592	882
2016	99	20	128	247	446	10	46	502	749
2017	84	15	127	226	491	25	36	552	778
2018	123	14	282	419	636	60	44	740	1159

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Notes: Our analysis is based on the 863 unique elderly detainee records for 2015, 736 for 2016, 763 for 2017 and 1,132 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

⁷⁷ICE identified 867 elderly detainees (those over 65 years) in calendar year 2015; 739 in 2016; 763 in 2017; and 1,136 in 2018. To obtain more information on the characteristics of the detention of individuals who were elderly, we analyzed individual elderly detainee data in conjunction with the ICE detention data. We excluded 4 of the unique elderly detainee records for 2015, 3 for 2016 and 4 for 2018 because we were unable to match these records using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on the unique elderly detainee records we were able to match: 863 for 2015, 736 for 2016, 763 for 2017, and 1,132 for 2018.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with, but not convicted of a crime, (we refer to these as “aliens with pending criminal charges”), as well as those with no prior criminal history, (we refer to these as “aliens with no recorded criminal history”). According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

ICE Does Not Readily Know How Many Parents or Legal Guardians of U.S. Citizens and Legal Permanent Resident Minors It Has in Custody

While ICE collects information on detained parents or legal guardians, including those of U.S. citizens and legal permanent resident minors, this information is not maintained in a readily available format that would allow ICE to systematically identify such detained parents and ensure officers are collecting information on this population as required by policy.⁷⁸

According to ICE officials, before making custody determinations, ICE officers are instructed to inquire whether arrested aliens are parents or legal guardians of minors, including parents of U.S. citizen and legal permanent resident minors. ICE officers are to enter this information in a separate tab in the ENFORCE Alien Detention Module, a subsystem within ICE’s data system for recording information about individuals in its custody. This information on detained parents, however, cannot be readily searched to identify all detained parents or legal guardians in custody. Therefore, ICE does not know how many detained parents or legal guardians are in custody, including parents of U.S. citizen and legal permanent resident minors, during any given time.

In accordance with a currently recurring Congressional reporting requirement, ICE generates a semi-annual report on removals of parents of U.S.-born citizen children.⁷⁹ However, officials explained that they must review this information manually to generate the report and added that ICE is not required to report in an aggregate way on detained parents of U.S. citizen or legal permanent residents. ICE also tracks individual cases requiring specific actions, such as arranging transportation for parents to attend child welfare proceedings or accommodating visitation for parents with mandated child visitation schedules. However, according to ICE

⁷⁸See 8 U.S.C. § 1101(a)(20). Legal permanent residents, also known as “green card” holders, are aliens who are lawfully authorized to live and work permanently within the United States. Legal permanent residents may generally accept an offer of employment without special restrictions, own property, receive financial assistance at public colleges and universities, and join the Armed Forces.

⁷⁹See, e.g., S. Rep. 114-264, 114th Cong. (2017) (accompanying Pub. L. No. 115-31, 131 Stat. 135 (2017)).

officials, these parents represent a small proportion of all parents in ICE custody.

ICE's policy on Detention and Removal of Alien Parents or Legal Guardians requires ICE personnel to enter information into ENFORCE once a detained alien has been determined to be a parent or legal guardians of a U.S. citizen or legal permanent resident minor.⁸⁰ As previously mentioned, this policy also requires the Child Welfare Coordinator to evaluate information from all relevant ICE data systems regarding detained parents or legal guardians of minors, including parents of U.S. citizen and legal permanent resident minors, and share appropriate information with the ERO field points of contact.⁸¹ ICE's policy further states that in pursuing the enforcement of U.S. immigration laws against parents of minors, ICE personnel should remain cognizant of the impact enforcement actions may have on U.S. citizen or legal permanent resident minors.

Standards for Internal Control in the Federal Government call for design of any data collection to collect quality information, and for management to use quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks. Because information entered into ICE's data system on detained parents or legal guardians, including those of U.S. citizen or legal permanent resident minors, is not maintained in a readily available format, ICE headquarters officials cannot ensure that ICE officers are collecting and entering this information into the system as required by policy. According to ICE officials, the agency had previously considered implementing a system update to readily identify certain detained parents of minors, but as of October 2019 is no longer considering this update. Collecting and maintaining information in a readily available format on detained parents

⁸⁰ICE Policy Number 11064.2: *Detention and Removal of Alien Parents or Legal Guardians* (August 29, 2017); This policy applies generally to all alien parents or legal guardians of minors. However, the requirement to record information in ICE's data system applies only to parents of U.S. citizen or legal permanent resident minors. In addition, *Standards for Internal Control in the Federal Government* call for design of any data collection to collect quality information, and for management to use quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks. GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 10, 2014).

⁸¹ERO field points of contact serve as the local subject matter experts on these issues and address public inquires related to detained parents or legal guardians, including parents of U.S. citizen or legal permanent resident minors, in ERO custody.

of U.S. citizen or legal permanent resident minors could help ensure that ICE personnel can identify, evaluate, and share information on this population, as required by ICE policy. In addition, collecting and evaluating this information would provide greater transparency regarding the impacts of ICE's enforcement actions on U.S. citizen or legal permanent resident minors.

Conclusions

In 2015, DHS reported that about 12 million aliens were residing in the United States without lawful status or presence, which includes parents of U.S. citizen, legal permanent resident, and alien minors. Through its policies, ICE has established the importance of collecting and maintaining information on detained parents and legal guardians of U.S. citizen and legal permanent resident minors. However, because ICE has not implemented a process to collect or maintain this information in a readily available format, it does not have reasonable assurance that it can identify all detained parents and legal guardians of U.S. citizen and legal permanent resident minors. Therefore, ICE cannot evaluate and share this information and ensure its officers are collecting information on this population in accordance with its policy. Implementing a process to collect and maintain this information in a readily available format would allow ICE to better assess the impacts of its enforcement actions on U.S. citizen and legal permanent resident minors and help improve ICE oversight efforts.

Recommendation for Executive Action

The Director of ICE should implement a process to collect and maintain data in a readily available format on detained parents or legal guardians of U.S. citizen and legal permanent resident minors to ensure that information on this population is entered into ICE's data system as required by policy. (Recommendation 1)

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to DHS. DHS provided comments, which are reproduced in appendix XI. DHS also provided technical comments, which we incorporated, as appropriate. DHS did not concur with our recommendation.

Specifically, in its comments, DHS stated that data on detained parents or legal guardians of U.S. citizens and legal permanent residents are available to approved EARM users and that we did not identify any problems with the quality of the data. However, as we noted in our report, these data are not readily available because ICE's data on family

relationships, including parents or legal guardians of U.S. citizens and legal permanent resident minors, can only be accessed by manually reviewing each separate case file in EARM. To that end, we or anyone else wishing to do so are unable to determine whether there are problems with the data as ICE is not able to provide aggregate data that would allow us to assess the quality or to report on these data.

In its comments, DHS states that ICE does not have any requirement or need to aggregate data on this particular group and doing so would not better inform ICE's decision making processes. However, as noted in the report, ICE's policy states that in pursuing the enforcement of U.S. immigration laws against parents of minors, ICE personnel should remain cognizant of the impact enforcement actions may have on U.S. citizen or legal permanent resident minors. Without making these data readily available, ICE is not able to account for the overall impact of its enforcement actions on U.S. citizen or legal permanent resident minors whose parents or legal guardians have been detained. Additionally, headquarters and field officials we met with during the course of this review agreed that having this information readily available would be useful. They also explained that ICE was developing a method to better track and report on primary caregivers of children. However, in October 2019, ICE officials stated that the agency is no longer considering this improvement.

We continue to believe that collecting and maintaining information in a readily available format on detained parents or legal guardians of U.S. citizen or legal permanent resident minors could help ensure that ICE personnel can identify, evaluate, and share information on this population, as required by ICE policy. Without such data, ICE headquarters officials cannot ensure that ICE officers are collecting and entering this information into the system as required. In addition, collecting and evaluating this information would provide greater transparency regarding the impacts of ICE's enforcement actions on U.S. citizen or legal permanent resident minors.

We are sending copies of this report to the appropriate congressional committees, and the Acting Secretary of the Department of Homeland Security. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or goodwing@gao.gov. Contact points for our

Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix XII.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gretta L. Goodwin".

Gretta L. Goodwin
Director, Homeland Security and Justice Issues

Appendix I: Objectives, Scope, and Methodology

This appendix provides additional information on our objectives, scope, and methodology. Specifically, our objectives were to examine the following questions:

1. What does ICE data show about ICE arrests, detentions, and removals from calendar years 2015 through 2018?
2. What policies are in effect for selected populations and what changes did ICE make to align these policies with the 2017 DHS memo?
3. To what extent does ICE collect data on selected populations in detention and what do these data show?

To address our first question, we analyzed individual-level data from the U.S. Immigration and Customs Enforcement (ICE) Integrated Decision Support (IIDS) database,¹ to determine the total number of ICE Enforcement and Removal Operations (ERO) administrative arrests (arrests),² detentions, and removals from January 2015 (the start of the Priority Enforcement Program) through December 2018 (to include the first two years for the 2017 DHS Memo).³ ERO conducts civil immigration enforcement actions, which includes arrests for civil violations of U.S. immigration laws, detentions, and removals.

¹According to ICE, the ICE Integrated Decision Support (IIDS) is a data warehouse populated by Enforcement Case Tracking System (ENFORCE) information related to the investigation, arrest, booking detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by certain DHS components, namely ICE and U.S. Customs and Border Protection. DHS personnel utilize the ENFORCE applications to enter information into the system. Specifically, officers use the Enforcement Integrated Database Arrest Guide for Law Enforcement to process arrest information, the ENFORCE Alien Removal Module (EARM) to track and support processing and removal of aliens, and the ENFORCE Alien Detention Module, a subsystem within EARM, to track aliens in ICE custody.

²ERO arrests of aliens for civil violations of U.S. immigration laws are referred to as administrative arrests. For the purposes of this report and our presentation of ICE data, we refer to administrative arrests as “arrests”.

³Under the Priority Enforcement Program, which was in effect from January 5, 2015 until February 20, 2017, DHS personnel were directed to exercise prosecutorial discretion to, among other things, prioritize the apprehension, detention, and removal of foreign nationals who pose a threat to national security, border security, and public safety, including convicted felons, as well as new immigration violators and those who had been issued a final order of removal on or after January 1, 2014. In February 2017, the Secretary of Homeland Security issued a memorandum establishing policy and providing guidance related to Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*. Department of Homeland Security, Enforcement of the Immigration Laws to Serve the National Interest, (February 2017).

Arrests. We analyzed individual-level arrest data from IIDS to determine the total number of ERO arrests for each calendar year 2015 through 2018. We examined multiple data fields from the individual-level arrest data, including alien file number, family name, given name, gender, country of citizenship, arrest date, area of responsibility, and criminality, among other variables.⁴ Because aliens may have multiple arrests, we used alien number and arrest date to identify the unique number of arrests rather than the number of unique aliens who were arrested. We excluded from our analysis arrest records that had a missing alien number, an invalid alien number—i.e., that included all zeroes or had duplicate alien number and arrest date combinations—or records that indicated test in the name fields.⁵ We analyzed these data to determine total numbers of arrests by gender, country of citizenship, criminality, arresting program, and area of responsibility.

- To determine the number of arrests by gender, we analyzed IIDS individual-level arrest data. We also analyzed these data to determine the number of arrests by criminality for each gender, using ICE’s determination of criminality for our analysis, as discussed below.
- To determine the number of arrests by country of citizenship, we analyzed IIDS individual-level arrest data. ICE obtains country of citizenship data from arrest reports, which may be based on documentation or self-reported.
- To determine the number of arrests by criminality, we analyzed IIDS individual-level arrest data. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ERO officials, arrests of non-criminals include individuals who have been charged but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center (NCIC) database, which maintains a repository of federal and state criminal history information. ICE

⁴An alien number, or alien file number, is a unique number assigned to a noncitizen’s administrative file for tracking purposes.

⁵From calendar years 2015 through 2018, we excluded 19,377 (about 2.6 percent) total arrest records for these reasons.

officers are also able to manually enter criminal history information in ICE's data system if they discover additional criminal history information that was not available in NCIC. ICE officers may also check for criminal convictions committed outside the United States, on a case-by-case basis. Most of the ICE data we reviewed indicated criminal or non-criminal history, where criminal included convictions, and non-criminal included both pending criminal charges and other immigration violations. Therefore, wherever we referred to criminality, we used ICE's determination of criminality—criminal or non-criminal—for our analysis.

- To determine the number of arrests by arresting program, we analyzed IIDS individual-level arrests data to determine the number of arrests at-large in the communities by ICE's fugitive operations teams and those resulting from an incarceration in federal, state, and local prisons and jails through the Criminal Alien Program.⁶
- To determine the number of arrests by ERO area of responsibility, we analyzed IIDS individual-level arrests data for calendar years 2015 through 2018. We also used these data to calculate the proportion of arrests of convicted criminals by ERO area of responsibility. We compared the number of arrests across the 24 ERO areas of responsibility to examine the differences in enforcement actions between the years the Priority Enforcement Program were in effect (2015-2016) and the years immediately following implementation of the DHS memo (2017-2018). We excluded from our analysis arrest records that had a missing or unknown area of responsibility.⁷

We also analyzed IIDS individual-level arrest data to determine the total number of arrests of juveniles during calendar years 2015

⁶ICE's fugitive operations teams are part of the National Fugitive Operations Program, which provides policy direction, strategic planning, and operational oversight for ERO's efforts to locate, arrest, and reduce the population of at-large removable aliens within the U.S. This program provides investigative support to at-large enforcement efforts within the 24 ERO field offices, including 129 fugitive operations teams that prioritize enforcement efforts toward aliens who present a heightened threat to national security and public safety, such as transnational gang members, child sex offenders, and aliens with prior convictions for violent crimes. The Criminal Alien Program provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as convicted criminals at-large that have circumvented identification.

⁷From calendar years 2015 through 2018, we excluded 1,946 (less than one percent) total arrest records for this reason.

through 2018. Because aliens may have multiple arrests, we used alien number and arrest date to identify the unique number of arrests rather than the number of unique aliens who were arrested. We excluded from our analysis arrest records that had a missing alien number, an invalid alien number—i.e., that included all zeroes or had duplicate alien number and arrest date combinations.⁸ We used these data to determine the total number of arrests of juveniles by age and gender.

Detentions. We analyzed individual-level detention data from IIDS to determine the total number of ERO detentions during calendar years 2015 through 2018. We examined multiple data fields from the individual-level detention data, including alien file number, person id, family name, given name, gender, country of citizenship, arresting agency, criminality, detention facility, book-in date, book-out date, release reason, and length of stay, among other variables. Because aliens may have multiple detentions, we used alien number and initial book-in date fields—i.e., the first date the individual is taken into ICE custody—to identify the unique number of detentions rather than the number of unique aliens who were detained. We excluded from our analysis arrest records that had a missing alien number or had an invalid alien number—i.e., that included all zeroes.⁹ We analyzed these data to determine total numbers of detentions by gender, country of citizenship, arresting agency, and criminality.

- To determine the number of detentions by gender, we analyzed IIDS individual-level detention data. We also analyzed these data to determine the number of detentions by arresting agency—ICE or U.S. Customs and Border Protection (CBP)—and criminality for each gender. We included all detentions resulting from both ICE and CBP arrests because ICE is responsible for detaining certain aliens apprehended by CBP at or between ports of entry. To conduct our analysis, we used ICE’s determination of criminality—criminal or non-criminal—which ICE determines by conducting electronic criminal history checks, as previously discussed.
- To determine the number of detentions by country of citizenship, we analyzed IIDS individual-level detention data. ICE obtains

⁸From calendar years 2015 through 2018, we excluded 241 (about 3.8 percent) records of arrests of juveniles for these reasons. We also excluded 13 of these records because we were unable to match them to the overall arrest data.

⁹From calendar years 2015 through 2018, we excluded 11,479 (less than one percent) total detention records for this reason.

country of citizenship data from arrest reports, which may be based on documentation or self-reported.

- To determine the number of detentions by arresting agency, we analyzed IIDS individual-level detention data for detentions resulting from ICE arrests and those resulting from CBP arrests at or between ports of entry.
- To determine the number of detentions by criminality, we analyzed IIDS individual-level detention data. We also examined the extent to which detentions varied by criminality and arresting agency. To conduct our analysis, we used ICE's determination of criminality—criminal or non-criminal—which ICE determines by conducting electronic criminal history checks, as previously discussed.

Removals. We analyzed individual-level removal data from IIDS to determine the total number of ERO removals during calendar years 2015 through 2018. We examined multiple data fields from the individual-level removal data, including alien file number, family name, given name, gender, country of citizenship, criminality, arresting agency, and removal date, among other variables. Because aliens may have multiple removals, we used alien number and removal date to identify the unique number of removals rather than the number of unique aliens. We excluded from our analysis removal records that had a missing alien number, an invalid alien number—i.e., that included all zeroes, or had duplicate alien number and removal date combinations, or records that indicated test in the name fields.¹⁰ We analyzed these data to determine total numbers of removals by gender, country of citizenship, arresting agency, and criminality.

- To determine the number of removals by gender, we analyzed IIDS individual-level removal data. We also analyzed these data to determine the number of removals by arresting agency and criminality for each gender. To conduct our analysis, we used ICE's determination of criminality—criminal or non-criminal—which ICE determines by conducting electronic criminal history checks, as previously discussed.
- To determine the number of removals by country of citizenship, we analyzed IIDS individual-level data. ERO obtains country of citizenship data from arrest reports, which may be based on documentation or self-reported.

¹⁰From calendar years 2015 through 2018, we excluded 5,312 (less than one percent) total removal records for these reasons.

- To determine the number of removals by arresting agency, we analyzed IIDS individual-level removal data for removals resulting from ERO arrests and those resulting from CBP arrests at or between ports of entry.
- To determine the number of removals by criminality, we analyzed IIDS individual-level removal data. To conduct our analysis, we used ICE’s determination of criminality—criminal or non-criminal—which ICE determines by conducting electronic criminal history checks, as previously discussed.

We determined that the data used in each of our analyses were sufficiently reliable for the purposes of this report by analyzing available documentation, such as related data dictionaries; interviewing ICE officials knowledgeable about the data; conducting electronic tests to identify missing data, anomalies, or erroneous values; and following up with officials, as appropriate.

We also analyzed arrest data from Homeland Security Investigations (HSI) worksite enforcement to determine the total number of criminal and administrative arrests conducted by HSI worksite enforcement between January 2015 and December 2018. We were unable to use these data for the purposes of reporting the total number of arrests by HSI worksite enforcement for each calendar year.¹¹ Specifically, we identified combined arrest, charge, and conviction dates in the same field, among other issues, which limited our ability to identify the number of aliens arrested by HSI as a result of worksite enforcement operations each year.

To address our second question, we reviewed a master list of ICE policies and interviewed policy officials to identify policies related to individuals with special vulnerabilities. Based on this review as well as input from nongovernmental organizations (NGOs) that serve or represent various populations, we selected eight populations including aliens who are: lesbian, gay, bisexual, transgender, and intersex (LGBTI), individuals with disabilities, juveniles, parents or legal guardians of minors, pregnant, individuals with mental disorders, women who are nursing, or individuals who are elderly. To identify the changes ICE made to align these policies with the 2017 DHS memo, we reviewed specific provisions in the executive order and implementing memoranda. We then

¹¹ICE’s Homeland Security Investigations (HSI) conducts worksite enforcement operations which include the criminal arrest of employers and administrative arrest of unauthorized workers, among other things.

analyzed existing policies as well as policies that ICE revised or rescinded to align with the 2017 DHS memo, including policies related to prosecutorial discretion and selected populations. We conducted interviews with officials from ICE headquarters offices, including the Office of the Principal Legal Advisor, Office of Policy, Homeland Security Investigations, as well as program officials within ERO, including Domestic Operations, Fugitive Operations, and Custody Management Divisions. We met with six national organizations that serve or represent immigrants as well as six state or regional organizations that serve or represent immigrants in the locations we visited to obtain their perspectives on how the policies affected the individuals they represent. The perspectives of NGOs are not generalizable and may not be indicative of care provided at all detention facilities. We selected these NGOs to reflect a range of types of populations served or represented as well as based on their proximity to ICE areas of responsibility we visited, see table 8 for more information on the organizations we interviewed.

Table 8: Nongovernmental Organizations Interviewed

Organization	Location	Population(s)	Services Provided
The Advocates for Human Rights	National	Immigrants, refugees, and asylum seekers	Represents immigrants and refugees seeking asylum; and advocates for legal reform.
American Immigration Council	National	Immigrants	Focuses on policy, research, and advocacy.
American Immigration Lawyers Association	National	Immigrants and asylum seekers	National association of more than 15,000 attorneys and law professors who practice and teach immigration law. Member attorneys from the American Immigration Lawyers Association represent U.S. families seeking permanent residence for close family members, as well as foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis.
Catholic Charities Atlanta	Atlanta	Immigrants, refugees, and asylum seekers	Provides low-cost legal representation. Assist eligible immigrants, refugees, asylum seekers and their families obtain legal status, naturalization, and removal defense.
Catholic Legal Immigration Network, Inc.	National	Immigrants	Non-profit organization that supports community-based immigration programs and provides legal representation to low-income immigrants.
Detention Watch Network	National	Immigrants	National coalition of organizations focused on immigration detention issues
Immigration Equality	National	LGBTI immigrants and asylum seekers	Provides legal representation to low-income or indigent LGBTI individuals for asylum and immigration related cases.

Appendix I: Objectives, Scope, and Methodology

Organization	Location	Population(s)	Services Provided
Immigrant Law Center of Minnesota	Minnesota	Immigrants and refugees	Provides immigration legal assistance to low-income immigrants and refugees in Minnesota.
Mid-Minnesota Legal Aid	Minnesota	Mentally ill immigrants	Non-profit law firm that provides professional legal help to Minnesotans who cannot afford the services of a private attorney, and provides representation in court to obtain immigration relief for clients with mental illness and issues of competency.
National Immigrant Justice Center	Illinois, Indiana, Washington, D.C.	Immigrants, refugees, and asylum seekers	Provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education.
Refugee and Immigrant Center for Education and Legal Services	Texas	Immigrants and refugees	Non-profit agency that provides free and low-cost legal services to underserved immigrant children, families, and refugees in Texas.
Refugee Services of Texas	Dallas	Refugees and asylum seekers	Responsible for implementing the U.S refugee admissions program on behalf of the U.S. Department of State, and provides resettlement services to populations deemed eligible by the Office of Refugee Resettlement, including asylum seekers who are victims of human trafficking.

Source: GAO. | GAO-20-36

We conducted site visits to six selected ICE ERO areas of responsibility (Atlanta, Dallas, Los Angeles, San Diego, St. Paul, and Washington, D.C.) and interviewed ICE officials to obtain their perspectives on the policy revisions. We selected these locations based on the prevalence of arrests in fiscal year 2017, percent changes in arrests from fiscal year 2016 to 2017, and geographical dispersion. Specifically, we identified locations that had the highest arrest numbers in fiscal year 2017 or the largest percentage increases in arrests from fiscal years 2016 to 2017, and then selected locations that provided wide geographical representation. In each location we met with ERO liaisons and officers responsible for monitoring and implementing the provisions of policies for certain selected populations, as well as detention and deportation officers and supervisors who oversee the detention and removal of aliens, including those with special vulnerabilities. We also met with ICE medical staff in areas of responsibility with this position. In one area of responsibility, we limited our visit to a detention facility and met with the staff at that facility due to its proximity to another area of responsibility we visited. The information obtained from these site visits is not generalizable and may not be indicative of care provided to all populations at all detention facilities, but provided insights into how selected ICE areas of responsibility conduct enforcement activities and implement immigration enforcement policies.

To address our third question, we reviewed multiple data sources that ICE uses to track information on certain aliens with special vulnerabilities in detention and matched these data with IIDS individual-level detention data to determine what ICE data show about detentions of selected populations between January 2015 and December 2018. To conduct our analysis, we first excluded records that contained missing alien numbers or alien numbers that were all zeroes.¹² Then, we matched each data source to the IIDS detention data using alien number and excluded additional records we were unable to match. Because aliens may have multiple detentions, we compared the admission or book-in date from each data source with the book-in dates from the IIDS detention data, and excluded additional records with dates beyond 30 days apart. We analyzed this information to determine the total number of detentions for six of the eight selected populations (aliens who are: transgender, individuals with disabilities, pregnant, individuals with mental disorders, nursing, and elderly); and the number of detentions resulting from ICE versus CBP arrests; as well as detentions by criminality and the length of detention for each of these six populations. We excluded juveniles from our analysis because ERO is generally not responsible for detaining juveniles.¹³ To determine the extent to which ICE maintains data on detained parents or legal guardians of minors, we reviewed ICE policies pertaining to detained parents, including those that set forth requirements for tracking detained parents or legal guardians of U.S. citizens and legal permanent resident minors. We also interviewed ERO officials about ICE's data collection processes and any limitations with the data it collects and maintains. We assessed ICE's efforts to track this population against agency policy.¹⁴

¹²Because we excluded these records and analyzed these data at the detention level, the number of detentions may not equal the number of detainees.

¹³Aliens under the age of 18 who are designated as unaccompanied alien children are to be transferred to the Office of Refugee Resettlement within 72 hours after they are determined to be unaccompanied alien children, except in exceptional circumstances. See 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232. Juveniles not designated as unaccompanied alien children who are apprehended with a parent or legal guardian may be detained for a limited period of time with their adult parent in ICE family residential centers.

¹⁴We also assessed ICE's efforts to track this population against *Standards for Internal Control in the Federal Government*, including the standards related to using quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks. GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 10, 2014).

To conduct our analysis of criminality for each population, we used ICE’s determination of criminality—criminal or non-criminal—which ICE determines by conducting electronic criminal history checks, as previously discussed. We also analyzed IIDS data on criminal charges for detentions of aliens that resulted from ICE arrests to determine the type of charges (e.g., immigration-related or other criminal charges) associated with these detentions.¹⁵ To conduct our analysis on length of detention, we compared initial book-in date with the most recent book-out date to calculate the total days in detention for each of our selected populations.

- **Transgender Individuals:** We matched ERO records for transgender detainees from calendar years 2016 through 2018 with IIDS individual-level detention data to determine the total number of detentions of transgender individuals, as well as the number of detentions by arresting agency, criminality, and length of detention.¹⁶ We excluded 4 of the unique transgender detainee records for 2016, 33 for 2017 and 27 for 2018. These records were excluded because we were unable to match these records to the IIDS individual level-detention data using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on those records we were able to match: 228 for 2016, 241 for 2017, and 277 for 2018. ICE also recorded 55 transgender detainees in 2015; however, we excluded these records from our analysis since ICE did not collect complete data on this population in 2015. For the LGBTI population, ICE only collects and maintains data on transgender individuals in detention. Therefore, we were only able to analyze data for this subset of the LGBTI population.
- **Individuals with Disabilities:** We matched ERO records for individuals with communication and mobility impairments in ERO custody during calendar years 2017 and 2018 with IIDS individual-level detention data to determine the total number of detentions of these individuals, as well as the number of detentions by arresting

¹⁵For the purposes of our report, immigration-related convictions or charges encompass those charges identified in IIDS data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and citations to specific criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

¹⁶ICE began collecting and maintaining data on transgender detainees at all detention facilities to monitor the placement and care provided to transgender individuals in ICE custody in November 2015.

agency, criminality, and length of detention.¹⁷ We excluded 5 of the unique detainee records for 2017, and 1 for 2018 because we were unable to match these records to the IIDS individual level-detention data using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on those records we were able to match: 424 for 2017, and 516 for 2018. When ICE began collecting these data, it included aliens who were placed in detention prior to January 2017. We excluded 99 records for this reason from our analysis since ICE did not collect complete data on this population prior to January 2017.

- **Pregnant Women:** We matched ICE Health Service Corps (IHSC) records for pregnant women in ERO custody during calendar years 2016 through 2018 with IIDS individual-level detention data to determine the total number of detentions of pregnant women, as well as the number of detentions by arresting agency, criminality, and length of detention.¹⁸ We excluded 60 of the unique pregnant detainee records for 2016, 20 for 2017 and 32 for 2018 because we were unable to match these records to the IIDS individual-level detention data using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on those records we were able to match: 1,377 for 2016, 1,150 for 2017, and 2,094 for 2018. ICE also recorded 675 pregnant detainees in 2015; however, we excluded these records from our analysis since ICE did not collect complete data on this population in 2015.
- **Elderly Individuals:** We analyzed data records in IIDS for elderly individuals (those 65 years or older at the time of initial book-in) in ERO custody during calendar years 2015 through 2018 to determine the total number of detentions of elderly individuals, as well as the number of detentions by arresting agency, criminality, and length of detention. According to ERO, the agency does not maintain separate data records for elderly individuals in ERO custody; however, ERO officials were able to identify these detainees by calculating their age

¹⁷ICE began collecting information on individuals with communication and mobility impairments at all detention facilities in January 2017.

¹⁸From August 2013 through June 2015, ICE Health Service Corps only maintained data on pregnant detainees at IHSC-staffed facilities. IHSC staff recorded these pregnancies in IHSC's medical record systems. From June 2015 to January 2016 ICE used a separate pregnancy tracking spreadsheet maintained by field medical coordinators to track pregnancies in non-IHSC staffed facilities. Beginning in January 2016, ICE implemented a new process to track all pregnancies (at both IHSC and non-IHSC staffed facilities).

at the time they were detained. We excluded 4 of the unique elderly detainee records for 2015, 3 for 2016 and 4 for 2018 because we were unable to match these records to the IIDS individual-level detention data using alien number and book-in date combinations. According to ICE officials, this may be due to data entry errors. Our analysis is based on those records we were able to match: 863 for 2015, 736 for 2016, 763 for 2017, and 1,132 for 2018.

- **Individuals with Mental Disorders and Nursing Women:** We matched IHSC records for individuals with mental disorders and nursing women detained at IHSC-staffed facilities during calendar years 2015 through 2018 with IIDS individual-level detention data to determine the total number of detentions of each of these populations, as well as the number of detentions by arresting agency, criminality, and length of detention. Because ICE did not maintain data on individuals with mental disorders or nursing women detained at the over 200 non-IHSC staffed facilities, our findings for these two populations are not generalizable, but provided valuable insights into these detentions. We excluded 207 of the unique detainee with mental disorders records for 2016, 850 for 2017, and 1,233 for 2018 because we were unable to match these records with the IIDS individual-level detention data using alien number and book-in date combinations. Our analysis is based on the unique detainee with mental disorders records we were able to match: 8,138 for 2015, 9,466 for 2016, 8,643 for 2017, and 8,501 for 2018. Similarly, we excluded 2 of the unique nursing detainee records for 2015, 3 for 2017 and 5 for 2018 for the same reason. Our analysis is based on the unique nursing detainee records we were able to match: 157 for 2015, 399 for 2016, 564 for 2017, and 381 for 2018. According to ICE officials, this may be due to data entry errors.

We assessed the reliability of the data used in each of our analyses by analyzing available documentation, such as related data dictionaries; interviewing ERO officials knowledgeable about the data; conducting electronic tests to identify missing data, anomalies, or erroneous values; and following up with officials, as appropriate. We determined the data were sufficiently reliable for depicting general trends in detentions for the selected populations.

We conducted this performance audit from November 2017 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe

that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Enforcement and Removal Operations Arrests, Detentions, and Removals, 2015-2018

This appendix presents:

- The number of Enforcement and Removal Operations (ERO) administrative arrests (arrests) by gender, country of citizenship, ICE enforcement program, criminality, and area of responsibility from calendar years 2015 through 2018.¹
- The number of detentions by gender, country of citizenship, arresting agency, and criminality from calendar years 2015 through 2018.
- The number of removals by gender, country of citizenship, arresting agency, and criminality from calendar years 2015 through 2018.

We analyzed individual-level Immigration and Customs Enforcement (ICE) data to identify ERO arrests, detentions, and removals during calendar years 2015 through 2018.

Arrests

The Number of Arrests Varied during the Period, Increasing Overall. The number of ERO arrests varied from calendar years 2015 through 2018, and increased more than 30 percent overall for the 4-year period (from 112,870 arrests in 2015 to 151,497 arrests in 2018).² During the two years Priority Enforcement Program (PEP) was in effect, the number of ERO arrests varied little, decreasing 5 percent from 2015 to 2016. Following issuance of the 2017 DHS memo, ERO arrests increased 41 percent from 2016 to 2017, and stayed relatively the same from 2017 to 2018.

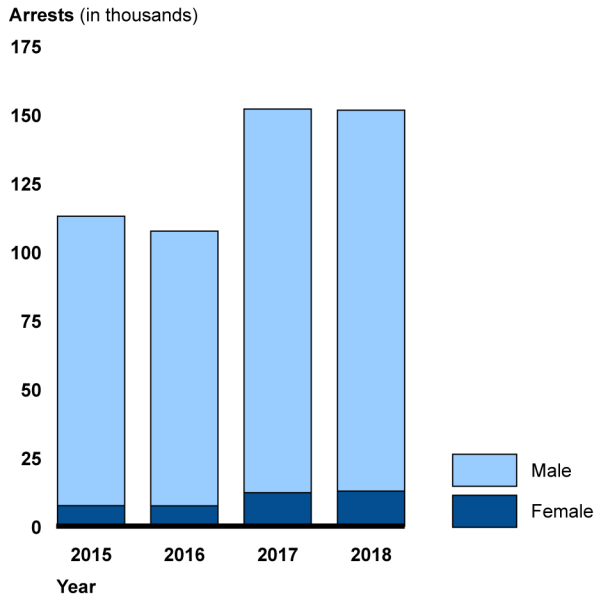
Arrests by Gender. Each year from calendar years 2015 through 2018, arrests of males accounted for the majority of ERO arrests (ranging from 92 to 93 percent), as shown in figure 7.³

¹ERO arrests of aliens for civil violations of U.S. immigration laws are referred to as administrative arrests. For the purposes of this report and our presentation of ICE data, we refer to administrative arrests as “arrests”.

²We used “number of arrests” rather than “number of aliens arrested” as our unit of analysis because an individual may have been arrested multiple times in the same year. For our analysis, we excluded over 19,000 (about 2.6 percent) of ICE arrest records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and arrest date combinations from calendar years 2015 through 2018. See appendix I for more details.

³See appendix III and appendix IV for additional information on arrests, detentions and removals by gender. Also see appendix V for additional information on arrests of juveniles.

Figure 7: Enforcement and Removal Operations Administrative Arrests by Gender, Calendar Years 2015 through 2018



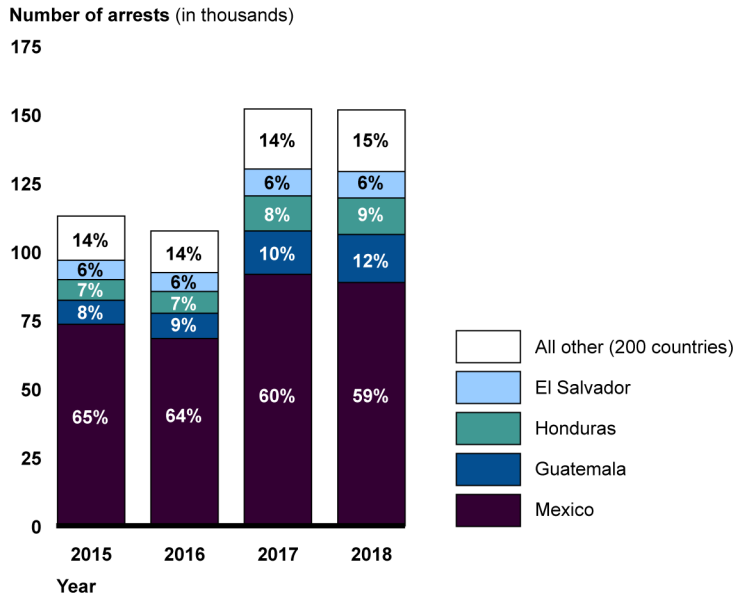
Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year. We excluded incomplete arrest records for which gender was not recorded, which ranged between 5 and 36 records during calendar years 2015 through 2018.

Arrests by Country of Citizenship. Each year from 2015 through 2018, ERO arrests of citizens of Mexico, Guatemala, El Salvador, and Honduras collectively accounted for about 86 percent of all ERO arrests, with individuals from Mexico accounting for the majority (ranging from 59 to 65 percent), as shown in figure 8. All other individual countries collectively accounted for about 14 to 15 percent of total arrests each year.⁴

⁴Country of citizenship information is based on an individual's self-reported citizenship to ICE. Arrest data do not represent the number of unique aliens arrested since these aliens could have multiple arrests during the reporting period. See appendix VI for additional information on arrests by country of citizenship.

Figure 8: Enforcement and Removal Operations Administrative Arrests by Country of Citizenship, Calendar Years 2015 through 2018



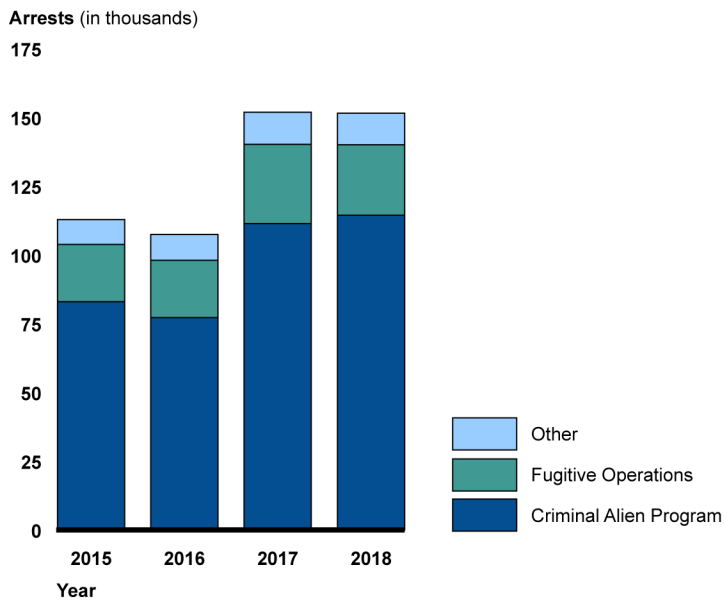
Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Arrests by ICE Enforcement Program. Arrests of individuals from federal, state and local prisons and jails, through the Criminal Alien Program, accounted for the majority (ranging from 72 to 76 percent) of ERO arrests each calendar year from 2015 through 2018, as shown in figure 9.⁵ Arrests of individuals at-large through Fugitive Operations (ranging from 17 to 19 percent) and other programs accounted for the

⁵The Criminal Alien Program provides ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as convicted criminals at-large that have circumvented identification.

balance of the arrests each year.⁶ Criminal Alien Program arrests also accounted for most of the increase in ERO arrests in calendar years 2017 and 2018 (see figure 9).

Figure 9: Enforcement and Removal Operations Administrative Arrests by Enforcement Program, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Notes: Other enforcement programs include alternatives to detention and non-detained programs, such as those in which individuals are released under order of supervision or their own recognizance, among others.

Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year.

Arrests by Criminality. As shown in figure 10, the number and proportion of ERO arrests of non-criminals aliens increased each year

⁶ICE's fugitive operations teams are part of the National Fugitive Operations Program, which provides policy direction, strategic planning, and operational oversight for ERO's efforts to locate, arrest, and reduce the population of at-large removable aliens within the U.S. Other ICE enforcement programs include alternatives to detention and non-detained programs, such as those in which individuals are released under order of supervision or their own recognizance, among others. ICE may supervise individuals in these programs using various mechanisms including GPS monitoring, and individuals are typically required to report to ICE on a recurring schedule. ICE may arrest individuals in these programs for various reasons including individuals who absconded or violated the conditions of the program.

from calendar years 2015 through 2018. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.”⁷

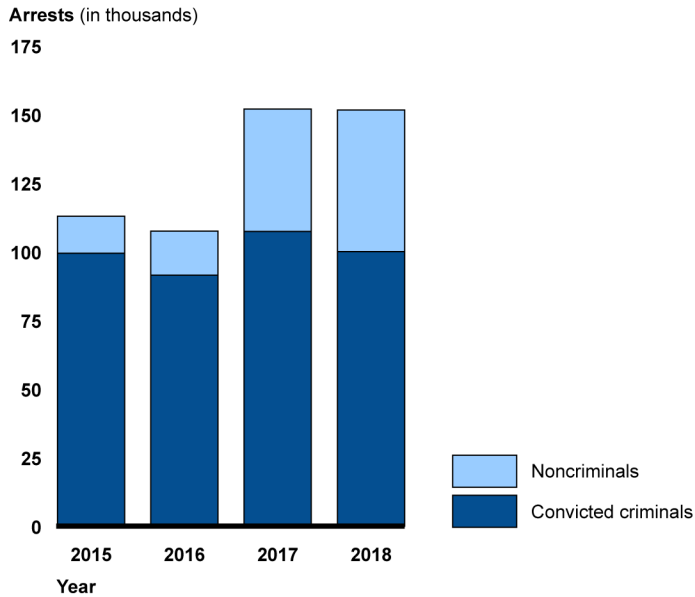
Specifically, the arrests of non-criminals increased from 13,494 (12 percent of total arrests) in 2015 to 51,513 (34 percent of total arrests) in 2018.⁸ According to ERO officials, arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history.

The number of ERO arrests of convicted criminals stayed relatively stable from calendar years 2015 to 2018, ranging between about 91,000 and 107,000. Each of these years, arrests of convicted criminals comprised the majority of total arrests, but decreased from 88 percent in 2015 to 66 percent in 2018. Most arrests of convicted criminals resulted from the Criminal Alien Program (ranging from 76 to 80 percent), followed by Fugitive Operations (ranging from 15 to 19 percent).

⁷According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center (NCIC) database, which maintains a repository of federal and state criminal history information. ICE officers are also able to manually enter criminal history information in ICE’s data system if they discover additional criminal history information that was not available in NCIC. ICE officers may also check for criminal convictions committed outside the United States, on a case by case basis.

⁸Arrests of non-criminals through the Criminal Alien Program increased from 7,683 in 2015 to 34,475 in 2018. Arrests of non-criminals through Fugitive Operations increased from 2,386 in 2015 to 11,014 in 2018.

Figure 10: Enforcement and Removal Operations Administrative Arrests by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Notes: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Arrests by Areas of Responsibility. The number of ERO arrests increased in all ERO areas of responsibility when comparing calendar years 2015 and 2016, when PEP was in effect, to calendar years 2017 and 2018, following implementation of the 2017 DHS memo. These increases ranged from less than 1 percent increase in the Los Angeles area of responsibility to a 99 percent increase in the Miami area of responsibility.⁹ Arrests of convicted criminals accounted for the majority of

⁹In the Los Angeles area of responsibility, ERO arrests increased from 15,551 arrests for 2015 and 2016 combined compared to 15,601 arrests for 2017 and 2018 combined. In the Miami area of responsibility, ERO administrative arrests increased from 7,877 arrests for 2015 and 2016 combined compared to 15,636 arrests for 2017 and 2018 combined.

Appendix II: Enforcement and Removal
Operations Arrests, Detentions, and Removals,
2015-2018

total arrests in all areas of responsibility. However, the proportion of arrests of convicted criminals to total arrests decreased in all areas of responsibility from 2015 and 2016 to 2017 and 2018. This decrease is partially due to the increase in the number of ERO arrests of non-criminals in all areas of responsibility during these years.

Table 9 presents total numbers of ERO arrests for each of ERO’s 24 areas responsibility nationwide. It also presents the percentage of arrests of convicted criminals by area of responsibility for calendar years 2015 and 2016 combined and calendar years 2017 and 2018 combined.

Table 9: Enforcement and Removal Operations Administrative Arrests by Area of Responsibility, Calendar Years 2015 through 2018

Area of Responsibility	2015		2016		2017		2018	
	Number of Arrests	% of arrests where an individual was a convicted criminal	Number of Arrests	% of arrests where an individual was a convicted criminal	Number of Arrests	% of arrests where an individual was a convicted criminal	Number of Arrests	% of arrests where an individual was a convicted criminal
Atlanta	9,585	94%	8,193	86%	15,563	64%	14,461	61%
Baltimore	1,111	93%	1,281	85%	1,732	67%	1,624	57%
Boston	1,627	84%	1,899	79%	2,976	58%	2,848	55%
Buffalo	1,183	91%	1,152	86%	1,525	70%	1,507	65%
Chicago	6,659	85%	6,787	78%	9,148	67%	8,944	60%
Dallas	7,830	94%	10,047	90%	16,220	83%	16,982	77%
Denver	2,285	96%	2,276	93%	2,904	81%	2,578	74%
Detroit	2,224	85%	2,256	77%	3,602	65%	3,554	56%
El Paso	1,774	83%	1,481	76%	1,929	66%	2,137	54%
Houston	13,319	90%	12,713	93%	13,972	79%	14,037	73%
Los Angeles	8,283	96%	7,268	95%	8,612	87%	6,989	87%
Miami	4,301	87%	3,576	84%	6,660	68%	8,976	60%
New Orleans	4,742	91%	5,111	84%	9,014	61%	9,918	59%
New York City	2,024	93%	1,636	85%	2,862	70%	3,298	62%
Newark	2,331	81%	2,230	74%	3,503	56%	3,221	51%
Philadelphia	4,127	80%	3,418	85%	5,369	60%	4,781	60%
Phoenix	6,753	72%	5,196	68%	6,707	63%	6,841	52%
Salt Lake City	4,560	95%	4,404	94%	5,379	82%	5,811	76%
San Antonio	9,871	82%	7,781	74%	8,339	69%	10,032	63%
San Diego	3,670	72%	3,612	75%	5,979	48%	4,312	59%

**Appendix II: Enforcement and Removal
Operations Arrests, Detentions, and Removals,
2015-2018**

Area of Responsibility	2015		2016		2017		2018	
	Number of Arrests	% of arrests where an individual was a convicted criminal	Number of Arrests	% of arrests where an individual was a convicted criminal	Number of Arrests	% of arrests where an individual was a convicted criminal	Number of Arrests	% of arrests where an individual was a convicted criminal
San Francisco	6,260	92%	6,454	92%	7,321	81%	5,760	80%
Seattle	2,827	88%	2,684	91%	3,409	74%	2,886	70%
St. Paul	2,287	95%	2,757	84%	4,522	71%	4,552	68%
Washington	2,865	92%	2,965	84%	4,339	69%	4,406	66%

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Note: For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. Convicted criminals are aliens without lawful status who have criminal convictions known to ICE. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. ICE uses this information to determine the criminality level of the individuals- convicted criminal or non-criminal. We used ICE’s determination of criminality for our analysis.

Detentions

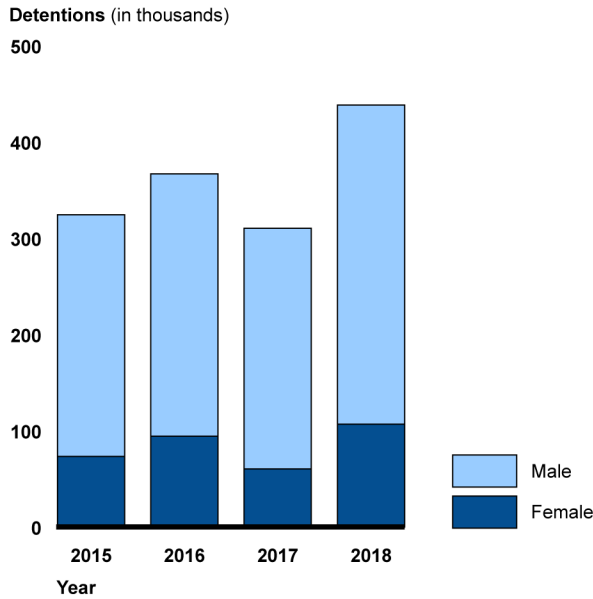
The Number of Detentions Varied, Increasing Overall. The number of ERO detentions varied from calendar years 2015 through 2018, and increased more than 30 percent overall for the 4-year period (from 324,320 detentions in 2015 to 438,258 detentions in 2018).¹⁰ ERO detention data include detentions resulting from both ICE and CBP arrests.¹¹ During the two years PEP was in effect, the number of ERO detentions increased 13 percent, from 324,320 in 2015 to 366,740 in 2016. Following issuance of the 2017 DHS memo, ERO detentions decreased 15 percent from 2016 to 2017 (from 366,740 to 310,309 detentions), and increased 41 percent from 2017 to 2018 (to 438,258 detentions).

¹⁰We used “number of detentions” rather than “number of aliens detained” as our unit of analysis because an individual may have been detained multiple times in the same year. For our analysis, we excluded less than one percent of ICE detention records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and detention date combinations from 2015 through 2018. See appendix I for more details.

¹¹ICE is responsible for detaining aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, including aliens transferred to ICE from CBP who were apprehended at or between ports of entry.

Detentions by Gender. Each year from calendar years 2015 through 2018, detentions of males accounted for the majority of ERO detentions (ranging from 74 to 81 percent), as shown in figure 11.¹²

Figure 11: Enforcement and Removal Operations Detentions by Gender, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

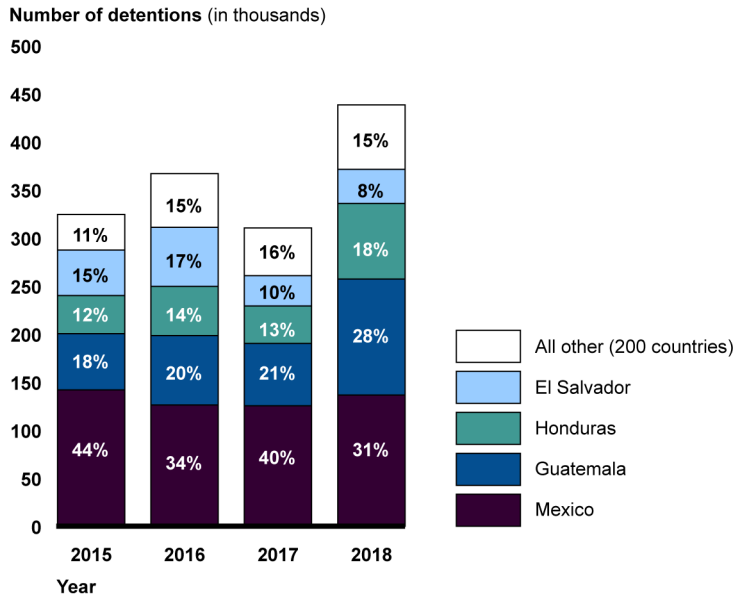
Note: Detention data represent the number of detentions, rather than the number of aliens detained since these aliens could have multiple detentions in the same calendar year. We excluded incomplete detention records for which gender was not recorded which ranged between 23 and 50 records during calendar years 2015 through 2018.

Detentions by Country of Citizenship. Each year from 2015 through 2018, ERO detentions of citizens of Mexico, Guatemala, El Salvador, and Honduras collectively accounted for the most detentions (ranging from 84 to 89 percent). All other individual countries collectively accounted for 11 to 16 percent of total detentions each year, as shown in Figure 12.¹³

¹²See appendix III and appendix IV for additional information on arrests, detentions, and removals by gender.

¹³Country of citizenship information is based on an individual's self-reported citizenship to ICE. Detention data do not represent the number of unique alien detainees since these aliens could have multiple detentions during the reporting period. See appendix VII for additional information on detentions by country of citizenship.

Figure 12: Enforcement and Removal Operations Detentions by Country of Citizenship, Calendar Years 2015 through 2018

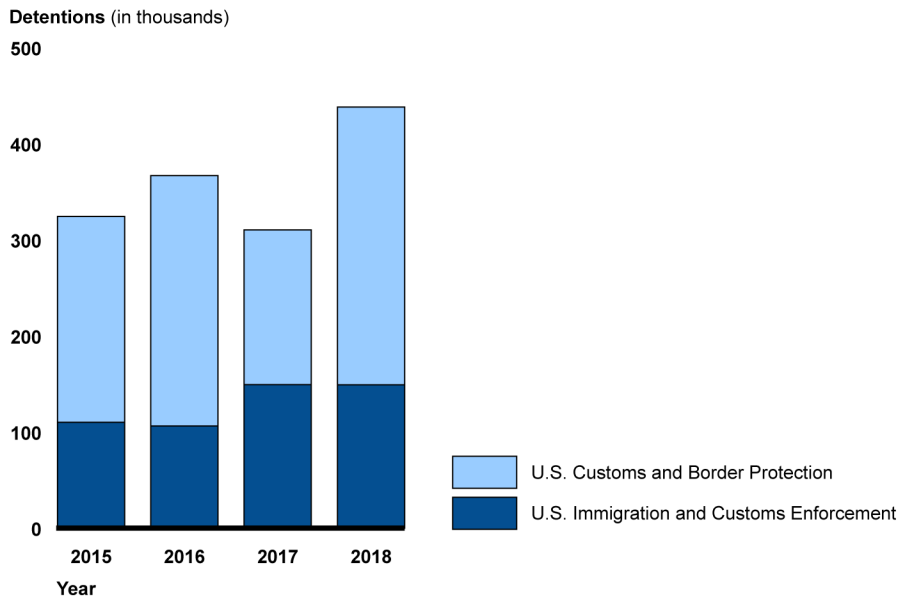


Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Detentions by Arresting Agency. Detentions resulting from CBP arrests at or between ports of entry accounted for the majority of ERO detentions each year from calendar years 2015 through 2018 (ranging from 52 to 71 percent). Detentions resulting from CBP arrests also accounted for most of the variation in detentions from year to year, as shown in figure 13.¹⁴ Detentions resulting from ICE arrests varied little from 2015 to 2016, increased in 2017, and then varied little from 2017 to 2018.

¹⁴CBP recorded the lowest level of illegal cross-border migration on record in fiscal year 2017, as measured by apprehensions along the border and inadmissible encounters at U.S. ports of entry. Nationwide, CBP recorded 337,117 apprehensions in fiscal year 2015, 415,816 in fiscal year 2016, 310,531 in fiscal year 2017, and 404,142 in fiscal year 2018. CBP recorded 225,342 inadmissible encounters in fiscal year 2015, 274,821 in fiscal year 2016, 216,370 in fiscal year 2017, and 279,036 in fiscal year 2018.

Figure 13: Enforcement and Removal Operations Detentions by Arresting Agency, Calendar Years 2015 through 2018



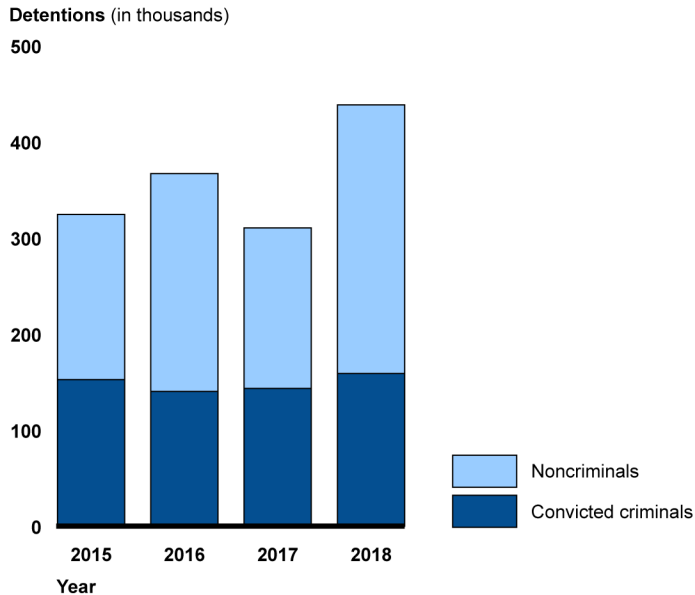
Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions, rather than the number of aliens detained since these aliens could have multiple detentions in the same calendar year. Because ERO does not detain all individuals arrested by ICE components, the number of detentions that resulted from ICE administrative arrests did not equal the total number of ICE arrests in each year. This figure excludes records with “other” for arresting agency (ranging from 26 to 195 records for the above years) because this field was not populated at the time of arrest due to internal database limitations, according to ICE.

Detentions by Criminality. As shown in figure 14, the number of ERO detentions of non-criminals varied, but increased overall from calendar years 2015 to 2018. These detentions accounted for the majority of total ERO detentions each year (ranging from 53 to 64 percent). The variation in the number of detentions of non-criminals was partially due to fluctuations in detentions that resulted from CBP arrests.

The number of ERO detentions of convicted criminals stayed relatively stable from 2015 to 2018, and accounted for the minority of total ERO detentions (ranging from 36 to 47 percent). The majority of these detentions resulted from ICE arrests (ranging from 64 to 76 percent) rather than CBP arrests.

Figure 14: Enforcement and Removal Operations Detentions by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions, rather than the number of aliens detained since these aliens could have multiple detentions in the same calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Removals

The Number of Removals Varied, Increasing Overall. The number of ERO removals varied from calendar years 2015 through 2018, and increased 13 percent overall for the 4-year period (from 231,559 removals in 2015 to 261,523 removals in 2018). ERO removal data include removals

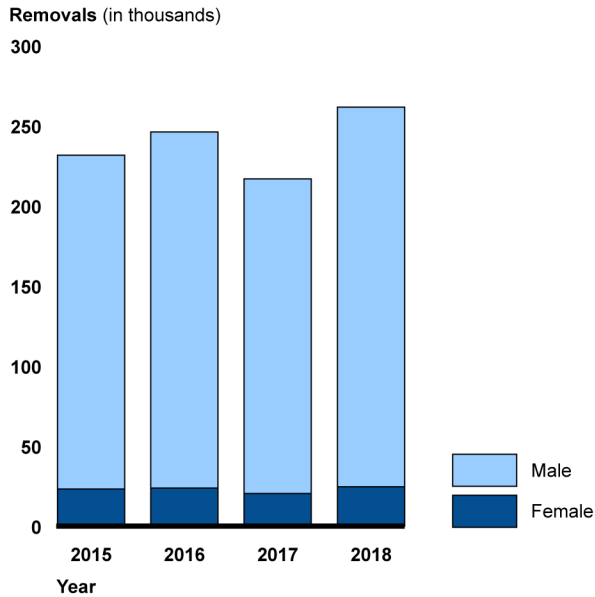
resulting from both ICE and CBP arrests.¹⁵ During the two years PEP was in effect, the number of ERO removals varied little, increasing 6 percent from 2015 to 2016. Following issuance of the 2017 DHS memo, ERO removals decreased 12 percent in 2017, and increased 21 percent from 2017 to 2018.

Removals by Gender. Removals of male aliens accounted for most of ERO removals (about 90 percent) each year from calendar years 2015 through 2018, as shown in figure 15.¹⁶

¹⁵ERO removals include removals and returns where aliens were transferred to ICE custody from CBP for removal from the United States. This may include aliens processed for expedited removal or voluntary return that are transferred to ICE for detention. Aliens processed for expedited removal and not detained by ERO or voluntary returned after June 1, 2013 were primarily processed by the U.S. Border Patrol and thus not included in these data. We used “number of removals” rather than “number of aliens removed” as our unit of analysis because an individual may have been removed multiple times in the same year. For our analysis, we excluded less than one percent of ICE removal records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and removal date combinations from calendar years 2015 through 2018. See appendix I for more details.

¹⁶See appendix III and appendix IV for additional information on arrests, detentions, and removals by gender.

Figure 15: Enforcement and Removal Operations Removals by Gender, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

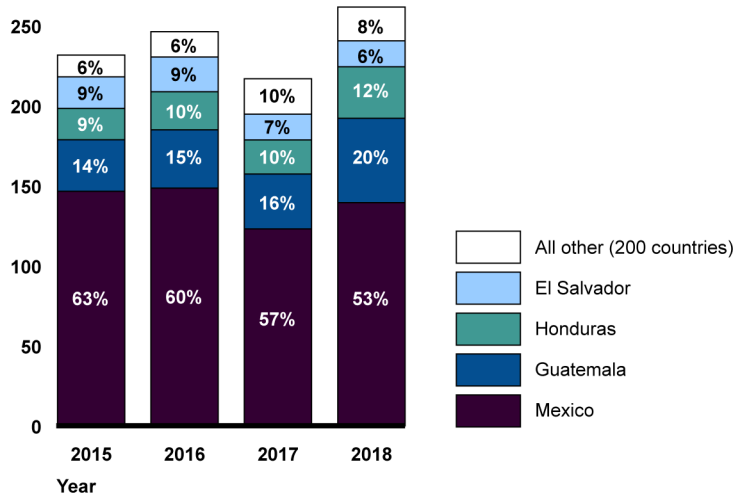
Note: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year. We excluded incomplete removal records for which gender was not recorded, which ranged between 12 and 35 records during calendar years 2015 through 2018.

Removals by Country of Citizenship. In addition, from calendar years 2015 through 2018, ERO removals of citizens of Mexico, Guatemala, El Salvador, and Honduras collectively accounted for most of the removals each year (ranging from 90 to 94 percent). Citizens of all other countries collectively accounted for 6 to 10 percent of total removals each year, as shown in figure 16.¹⁷

¹⁷Country of citizenship information is based on an individual's self-reported citizenship to ICE. Removal data do not represent the number of unique aliens removed since these aliens could have multiple removals during the reporting period. See appendix VIII for additional information on removals by country of citizenship.

Figure 16: Enforcement and Removal Operations Removals by Country of Citizenship, Calendar Years 2015 through 2018

Number of removals (in thousands)
300

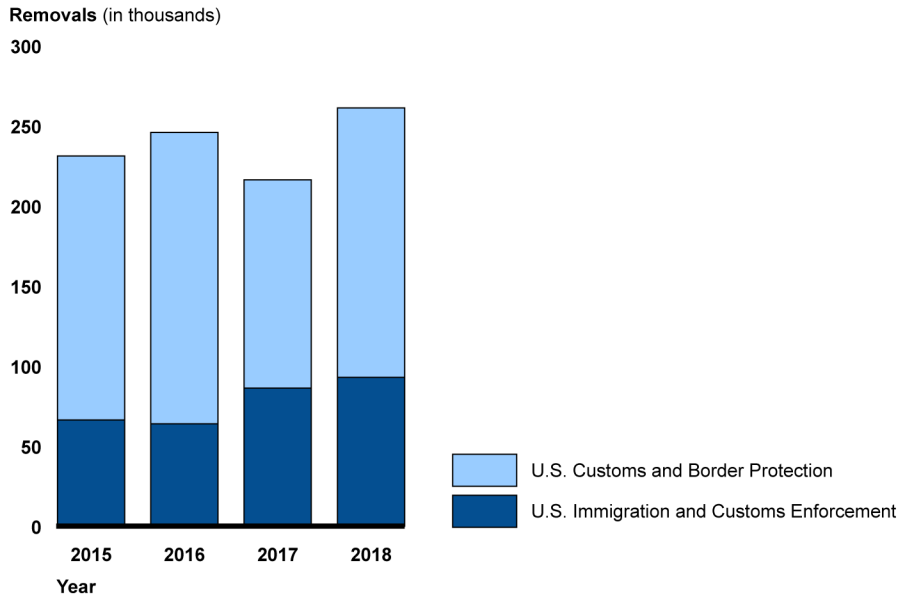


Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Removals by Arresting Agency. Each year, removals resulting from CBP arrests at or between ports of entry accounted for the majority of total ERO removals (ranging from 60 to 74 percent). ERO removals resulting from CBP arrests also accounted for most of the variation in total removals from year to year, as shown in figure 17.¹⁸

¹⁸According to ICE, the decrease in total removal numbers from 2016 to 2017 was primarily due to the decline in border apprehensions in 2017. This decline in border apprehensions contributed to the decrease in total removal numbers because the majority of aliens arriving at the border are processed under the provisions of expedited removal and are removed quickly, while aliens arrested in the interior are more likely to have protracted immigration proceedings and appeals, which delays the issuance of an executable final order of removal. These cases also frequently require a more complex and lengthy process to obtain travel documents, further delaying the process.

Figure 17: Enforcement and Removal Operations Removals by Arresting Agency, Calendar Years 2015 through 2018



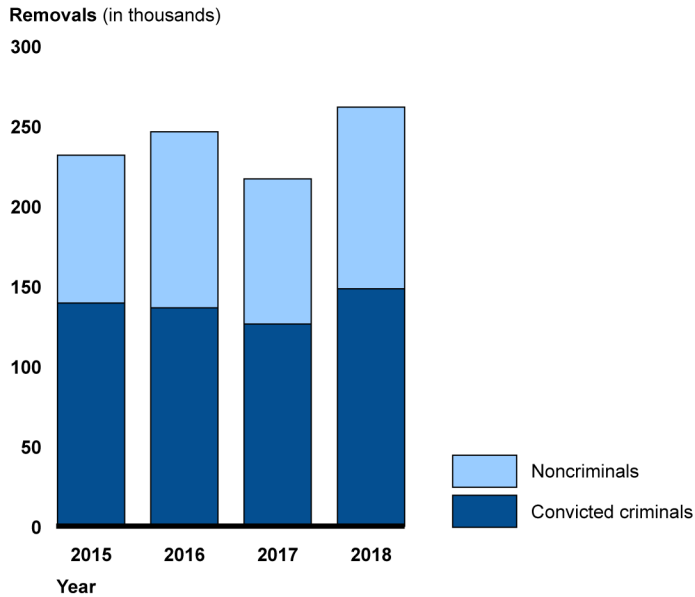
Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Notes: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year. This figure excludes records with “other” for arresting agency (ranging from 371 to 589 records for the above years) because this field was not populated at the time of arrest due to internal database limitations, according to ICE.

Removals by Criminality. The number and proportion of ERO removals of non-criminals varied, but increased overall, from calendar years 2015 through 2018, as shown in figure 18. Specifically, removals of non-criminals increased from 40 percent of total removals in 2015 to 43 percent of total removals in 2018. Most removals of non-criminals resulted from CBP arrests (ranging from 80 to 95 percent), rather than ICE arrests.

ERO removals of convicted criminals varied, increasing overall, from calendar years 2015 to 2018, and accounted for the majority of total ERO removals each year (ranging from 55 to 60 percent). Removals of convicted criminals resulted from CBP and ICE arrests at approximately equal levels.

Figure 18: Enforcement and Removal Operations Removals by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Appendix III: Enforcement and Removal Operations Arrests, Detentions, and Removals of Males, 2015-2018

This appendix presents the overall number of Enforcement and Removal Operations (ERO) administrative arrests (arrests), detentions, and removals of males from calendar years 2015 through 2018, including the number of arrests by criminality and the number of detentions and removal by criminality and arresting agency.¹ We analyzed individual-level Immigration and Customs Enforcement (ICE) data to identify ERO arrests, detentions, and removals of males during calendar years 2015 through 2018.

Arrests

The Number of Arrests of Males Generally Increased. The number of ERO arrests of males varied from calendar years 2015 through 2018 but generally increased by 32 percent across the period, as shown in figure 19.² During the two years the Priority Enforcement Program (PEP) was in effect, between calendar years 2015 and 2016, the number of ERO arrests remained stable, decreasing by about 5 percent in that period. The following year, after the issuance of the 2017 DHS memo in February 2017, ERO arrests increased by about 40 percent from calendar years 2016 to 2017, and decreased by less than 1 percent in calendar year 2018.

Arrests of Males by Criminality. During the same time, the proportion of ERO arrests of convicted criminal males decreased each year from 90 percent of total arrests of males in calendar year 2015 to 69 percent in calendar year 2018, as shown in figure 19.³ For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and

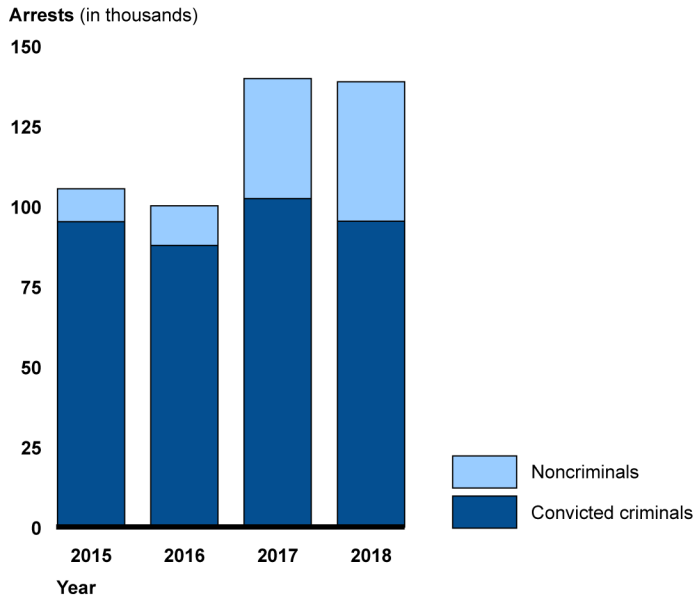
¹ERO arrests of aliens for civil violations of U.S. immigration laws are referred to as administrative arrests. For the purposes of this report and our presentation of ICE data, we refer to administrative arrests as “arrests”.

²We use “number of arrests” rather than “number of aliens arrested” as our unit of analysis because an individual may be arrested multiple times in the same year. For our analysis, we excluded ICE arrest records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and arrest date combinations. See appendix I for more details.

³According to ICE, to determine criminality, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center (NCIC) database, which maintains a repository of federal and state criminal history information. ICE officers are also able to manually enter criminal history information in ICE’s data system if they discover additional criminal history information that was not available in NCIC. ICE officers may also check for criminal convictions committed outside the United States, on a case-by-case basis.

aliens with criminal convictions known to ICE as “convicted criminals.” Conversely, the proportion of ERO arrests of non-criminal males increased each year, from 10 percent of total arrests of males in calendar year 2015 to 31 percent of total arrests in calendar year 2018. According to officials, arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history.

Figure 19: Enforcement and Removal Operations Administrative Arrests of Males by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Detentions

Detentions of Males Increased Overall. The number of ERO detentions varied from calendar years 2015 through 2018, but increased overall by 32 percent over the period, as shown in figure 20.⁴ ERO detention data include detentions resulting from both ICE and U.S. Customs and Border Protection (CBP) arrests.⁵ During the two years PEP was in effect, the number of ERO detentions of males increased by more than 8 percent from calendar years 2015 to 2016. Following the issuance of the 2017 DHS memo, the number of male detentions decreased by more than 8 percent in calendar year 2017, and increased again in calendar year 2018, by over 32 percent.

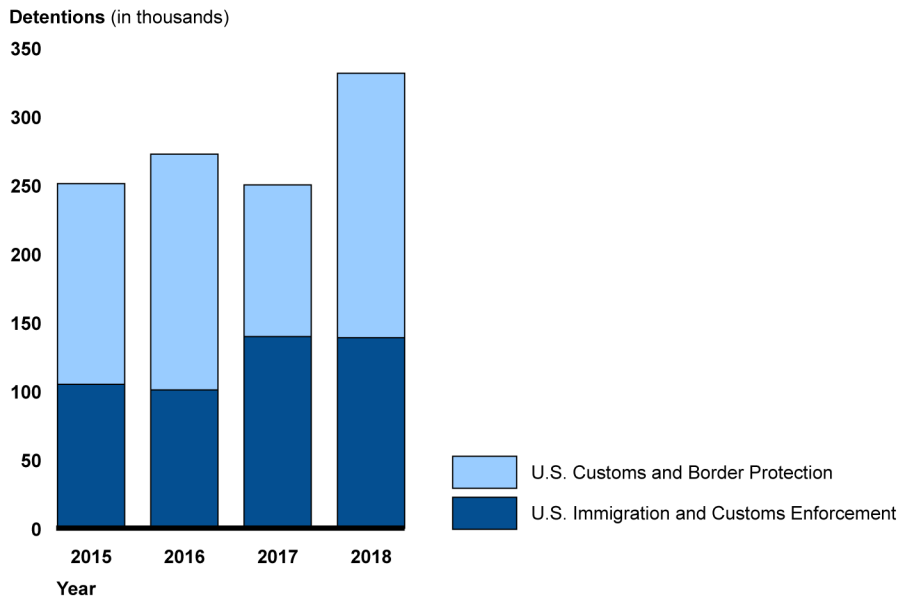
Detentions of Males by Arresting Agency. Detention of males resulted from both ICE and CBP arrests from calendar years 2015 through 2018, as shown in figure 20.⁶ For all the years in this period, except calendar year 2017, detentions resulting from a CBP arrest at or between ports of entry account for the majority of the detentions of males (ranging from about 58 to 63 percent). In calendar year 2017, detentions resulting from ICE arrests accounted for about 56 percent of all male detentions.

⁴We use “number of detentions” rather than “number of aliens detained” as our unit of analysis because an individual may be detained multiple times in the same year. For our analysis, we excluded ICE detention records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and book-in date combinations. See appendix I for more details.

⁵ICE is responsible for detaining aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, including aliens transferred to ICE from U.S. Customs and Border Protection (CBP) who were apprehended at or between ports of entry.

⁶The number of detentions resulting from an ICE arrest may not be the same as the total number of ICE arrests for a given year since ICE does not detain all individuals arrested.

Figure 20: Enforcement and Removal Operations Detentions of Males by Arresting Agency, Calendar Years 2015 through 2018



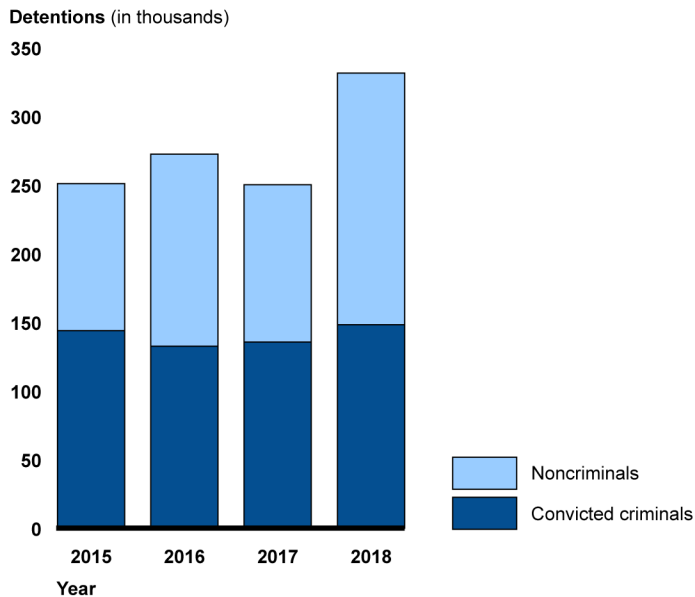
Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions in a given year, rather than the number of aliens detained since one alien could have multiple detentions in the same calendar year. In addition, every individual with an administrative arrest by an ICE component is not detained so the number of detentions does not equal the total number of ICE arrests in each year. This figure excludes records with “other” for arresting agency (ranging from 20 to 172 records for the above years) because this field was not populated at the time of arrest due to internal database limitations, according to ICE.

Detentions of Males by Criminality. During the same time, the number and proportion of ERO detentions of convicted criminal males varied, ranging from 45 to 57 percent of all detentions of males, as shown in figure 21. The majority of these detentions resulted from ICE arrests, ranging from 66 to 77 percent of all convicted criminal male detentions.

The number of ERO detentions of non-criminal males also varied, ranging from 43 to 55 percent of all detentions of males. Detentions of non-criminal males primarily resulted from CBP arrests, which ranged from 69 to 93 percent of detentions of non-criminal males between calendar years 2015 and 2018.

Figure 21: Enforcement and Removal Operations Detentions of Males by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions in a given year, rather than the number of aliens detained since one alien could have multiple detentions in the same calendar year. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Removals

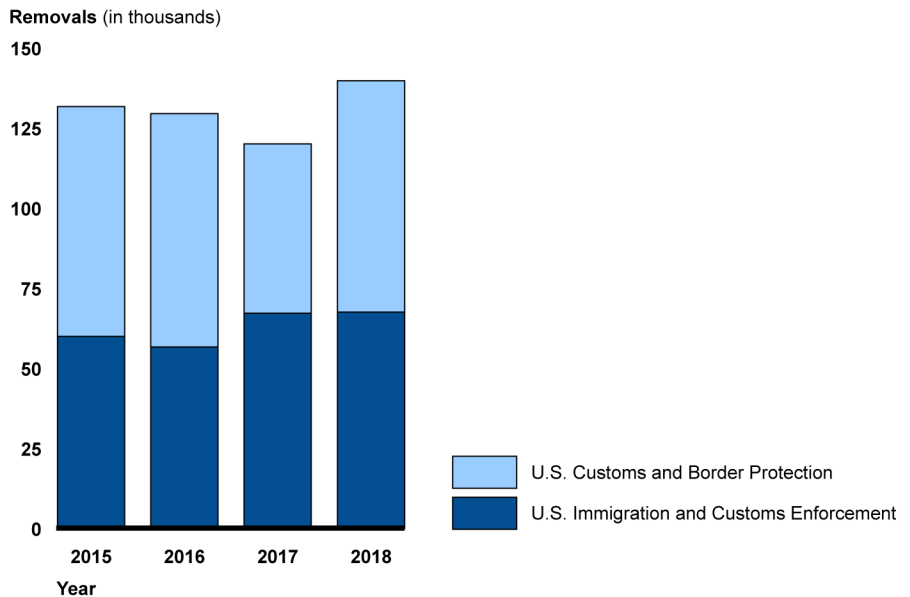
Removals of Males Increased Overall. The number of ERO removals of males varied from calendar years 2015 through 2018, but increased overall by 14 percent over the period, as shown in figure 22. ERO

removal data include removals resulting from both ICE and CBP arrests.⁷ During PEP, which was in effect from calendar years 2015 and 2016, the number of ERO removals of males increased by about 6 percent. From calendar years 2016 to 2017, following the issuance of the 2017 DHS memo, the number of these removals decreased by more than 11 percent, then increased by more than 20 percent in calendar year 2018.

Removals of Males by Arresting Agency. From calendar years 2015 to 2018, the majority of ERO removals of males resulted from CBP arrests at or in between ports of entry (ranging from 58 to 72 percent), as shown in figure 22.

⁷ERO removals include removals and returns where aliens were transferred to ICE custody from CBP for removal from the United States. This may include aliens processed for expedited removal or voluntary return that are transferred to ICE for detention. Aliens processed for expedited removal and not detained by ERO or voluntarily returned after June 1, 2013 were primarily processed by the U.S. Border Patrol and thus not included in these data. We used “number of removals” rather than “number of aliens removed” as our unit of analysis because an individual may have been removed multiple times in the same year. For our analysis, we excluded ICE removal records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and removal date combinations from calendar years 2015 through 2018. See appendix I for more details.

Figure 22: Enforcement and Removal Operations Removals of Males by Arresting Agency, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

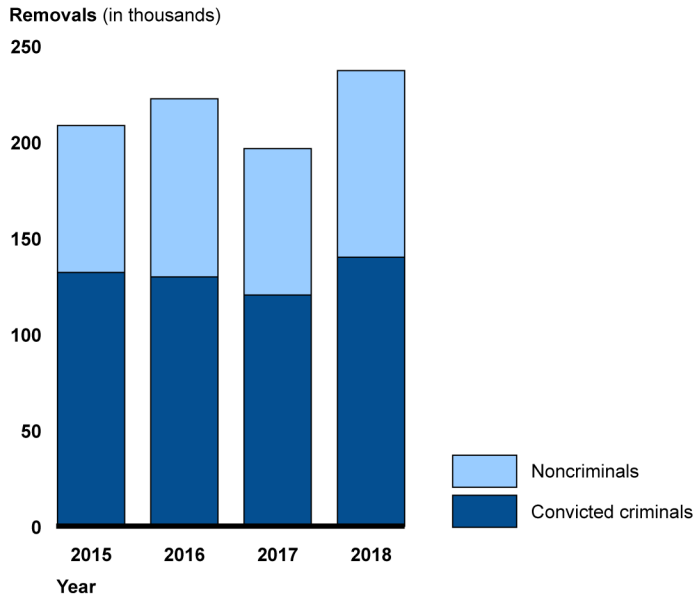
Note: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year. This figure excludes records with “other” for arresting agency (ranging from 317 to 490 records for the above years) because this field was not populated at the time of arrest due to internal database limitations, according to ICE.

Removals of Males by Criminality. From calendar years 2015 through 2018, ERO removals of convicted criminal males accounted for the majority of removals each year, ranging from 58 to 63 percent of the total removal of males, as shown in figure 23. The removals of convicted criminal males were the result of both CBP and ICE arrests. For all the years in this period, except calendar year 2017, removals resulting from a CBP arrest account for the majority of the removals of convicted criminal males (ranging from about 52 to 56 percent). In calendar year 2017, removals resulting from ICE arrests accounted for about 56 percent of all removals of convicted criminal males.

ERO removals of non-criminal males varied, increasing overall, from calendar years 2015 to 2018, and accounted for the minority of ERO removals of males each year (ranging from 37 to 42 percent). Most of the removals of non-criminal males were as a result of CBP arrests, ranging from 79 to 95 percent of all removals of non-criminal males.

Appendix III: Enforcement and Removal Operations Arrests, Detentions, and Removals of Males, 2015-2018

Figure 23: Enforcement and Removal Operations Removals of Males by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Appendix IV: Enforcement and Removal Operations Arrests, Detentions, and Removals of Females, 2015-2018

This appendix presents the overall number of Enforcement and Removal Operations (ERO) administrative arrests (arrests), detentions, and removals of females from calendar years 2015 through 2018, including the number of arrests by criminality and the number of detentions and removals by criminality and arresting agency.¹ We analyzed individual-level Immigration and Customs Enforcement (ICE) data to identify ERO arrests, detentions, and removals of females during calendar years 2015 through 2018.

Arrests

The Number of Arrests of Females Generally Increased. The number of ERO arrests of females generally increased more than 70 percent from calendar years 2015 through 2018, as shown in figure 24.² Between 2015 and 2016, the two years the Priority Enforcement Program (PEP) was in effect, the number of ERO arrests remained stable, decreasing by less than 1 percent in that period. Following the issuance of the 2017 DHS memo, ERO arrests increased by 65 percent from calendar years 2016 to 2017, and increased by less than 5 percent in calendar year 2018.

Arrests of Females by Criminality. During the same time, the proportion of arrests of non-criminal females increased each year from 43 percent in calendar year 2015 to 63 percent of total arrests of females in calendar year 2018.³ For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to officials, arrests of non-criminals include individuals who have been charged with but not

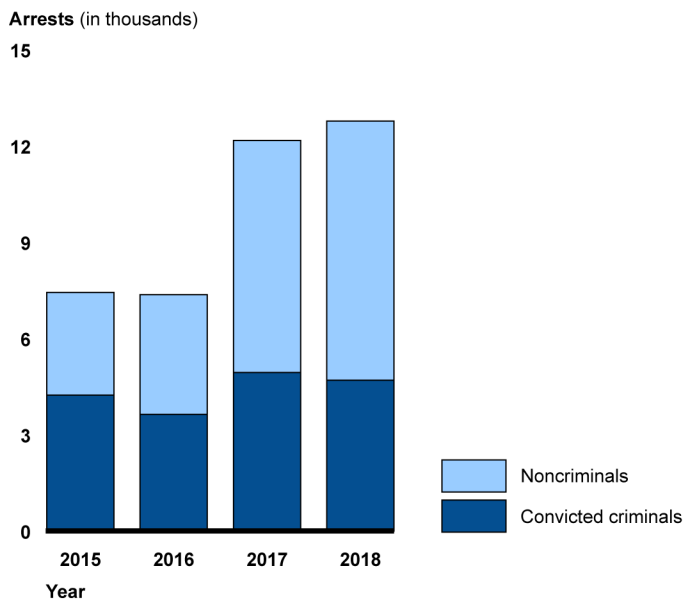
¹ERO arrests of aliens for civil violations of U.S. immigration laws are referred to as administrative arrests. For the purposes of this report and our presentation of ICE data, we refer to administrative arrests as “arrests”.

²We use “number of arrests” rather than “number of aliens arrested” as our unit of analysis because an individual may be arrested multiple times in the same year. For our analysis, we excluded ICE arrest records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and arrest date combinations. See appendix I for more details.

³According to ICE, to determine criminality, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center (NCIC) database, which maintains a repository of federal and state criminal history information. ICE officers are also able to manually enter criminal history information in ICE’s data system if they discover additional criminal history information that was not available in NCIC. ICE officers may also check for criminal convictions committed outside the United States, on a case-by-case basis.

convicted of a crime as well as those with no prior criminal history. Conversely, the proportion of ERO arrests of convicted criminal females decreased each year from 57 percent in calendar year 2015 to 37 percent in calendar year 2018, as shown in figure 24.

Figure 24: Enforcement and Removal Operations Administrative Arrests of Females by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

Detentions

Detentions of Females Increased Overall. The number of ERO detentions varied from calendar years 2015 through 2018, and increased more than

45 percent over the period, as shown in figure 25.⁴ ERO detention data include detentions resulting from both ICE and U.S. Customs and Border Protection (CBP) arrests.⁵ During the two years PEP was in effect, the number of ERO detentions of females increased by more than 28 percent from calendar years 2015 through 2016. Following the issuance of the DHS memo, the number of detentions decreased by about 36 percent in 2017, then increased by over 77 percent in calendar year 2018.

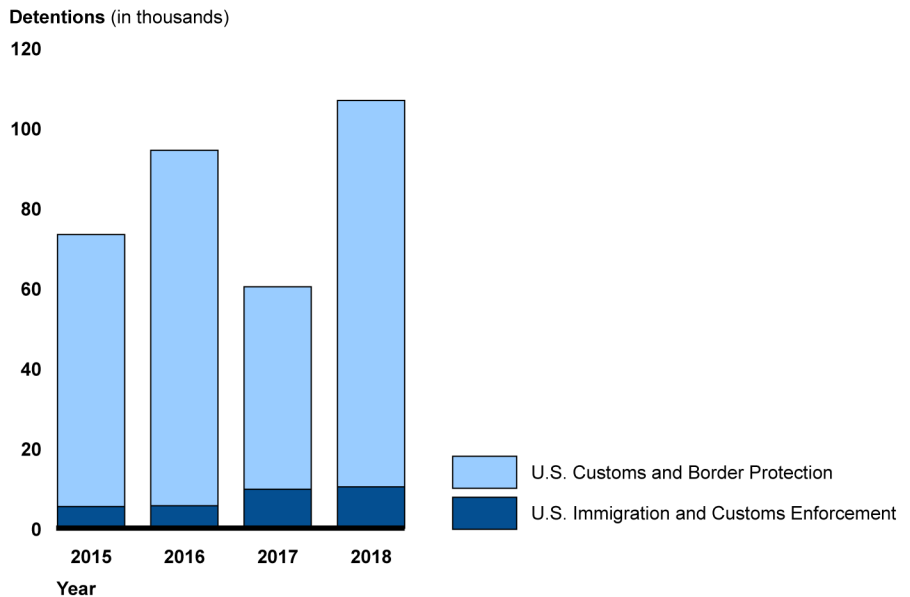
Detentions of Females by Arresting Agency. Detentions of females resulting from CBP arrests at or between ports of entry accounted for most of the detentions of females each year from calendar years 2015 through 2018 (ranging from 84 to 94 percent), as shown in figure 25.⁶

⁴We use “number of detentions” rather than “number of aliens detained” as our unit of analysis because an individual may be detained multiple times in the same year. For our analysis, we excluded ICE detention records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and book-in date combinations. See appendix I for more details.

⁵ICE is responsible for detaining aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, including aliens transferred to ICE from U.S. Customs and Border Protection (CBP) who were apprehended at or between ports of entry.

⁶The number of detentions resulting from an ICE arrest may not be the same as the total number of ICE arrests for a given year since ICE does not detain all individuals arrested.

Figure 25: Enforcement and Removal Operations Detentions of Females by Arresting Agency, Calendar Years 2015 through 2018



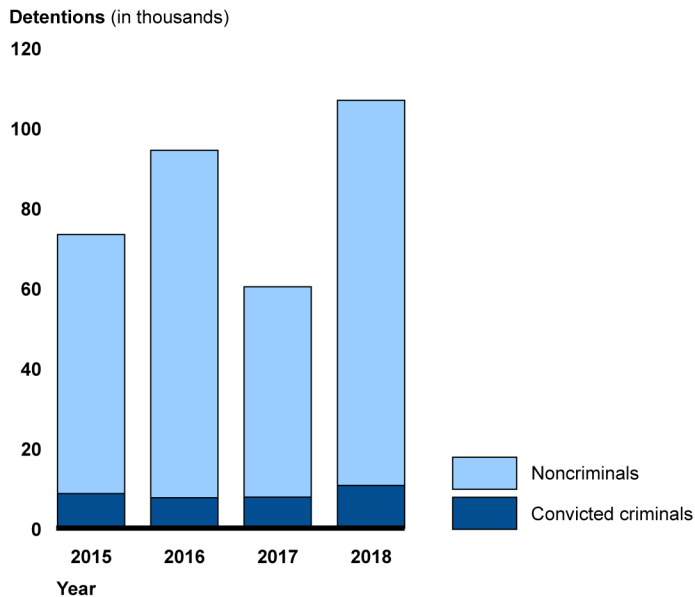
Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions, rather than the number of aliens detained since these aliens could have multiple detentions in the same calendar year. Because ERO does not detain all individuals arrested by ICE components, the number of detentions that resulted from ICE administrative arrests did not equal the total number of ICE arrests in each year. This figure excludes records with “other” for arresting agency (ranging from 4 to 23 records for the above years) because this field was not populated at the time of arrest due to internal database limitations, according to ICE.

Detentions of Females by Criminality. As shown in figure 26, the number of ERO detentions of non-criminal females varied, but increased overall from calendar years 2015 to 2018. These detentions accounted for most of the total ERO detentions of females each year (ranging from 87 to 92 percent). Most of the detention of non-criminal females resulted from CBP arrests (ranging from 91 to 98 percent) rather than ICE arrests.

The number of ERO detentions of convicted criminal females stayed relatively stable from calendar years 2015 through 2018, and accounted for the minority of total ERO detentions (ranging from 8 to 13 percent). CBP and ICE arrests accounted for approximately the same number of detentions of convicted criminal females.

Figure 26: Enforcement and Removal Operations Detentions of Females by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Detention data represent the number of detentions in a given year, rather than the number of aliens detained since one alien could have multiple detentions in the same calendar year. For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

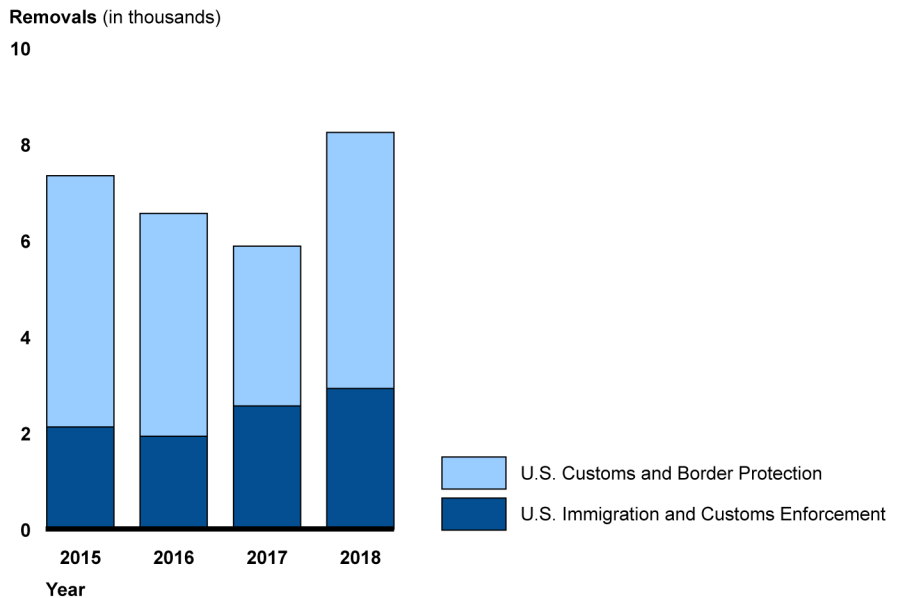
Removals

Removals of Females Increased Overall. The number of ERO removals of females remained relatively stable from calendar years 2015 through 2018, but increased overall by 6 percent over the period, as shown in figure 27. ERO removal data include removals resulting from both ICE

and CBP arrests.⁷ During the PEP, which lasted from calendar years 2015 and 2016, the number of ERO removals increased by more than 2 percent. From calendar years 2016 to 2017, following the issuance of the 2017 DHS memo, the number of ERO removals decreased by more than 14 percent, then increased by more than 20 percent in 2018.

Removals of Females by Arresting Agency. Each calendar year, removals resulting from CBP arrests at or between ports of entry accounted for most of the ERO removals of females (ranging from 80 to 90 percent), as shown in figure 27.

Figure 27: Enforcement and Removal Operations Removals of Females by Arresting Agency, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

⁷ERO removals include removals and returns where aliens were transferred to ICE custody from CBP for removal from the United States. This may include aliens processed for expedited removal or voluntary return that are transferred to ICE for detention. Aliens processed for expedited removal and not detained by ERO or voluntary returned after June 1, 2013 were primarily processed by the U.S. Border Patrol and thus not included in these data. We used “number of removals” rather than “number of aliens removed” as our unit of analysis because an individual may have been removed multiple times in the same year. For our analysis, we excluded ICE removal records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and removal date combinations from calendar years 2015 through 2018. See appendix I for more details.

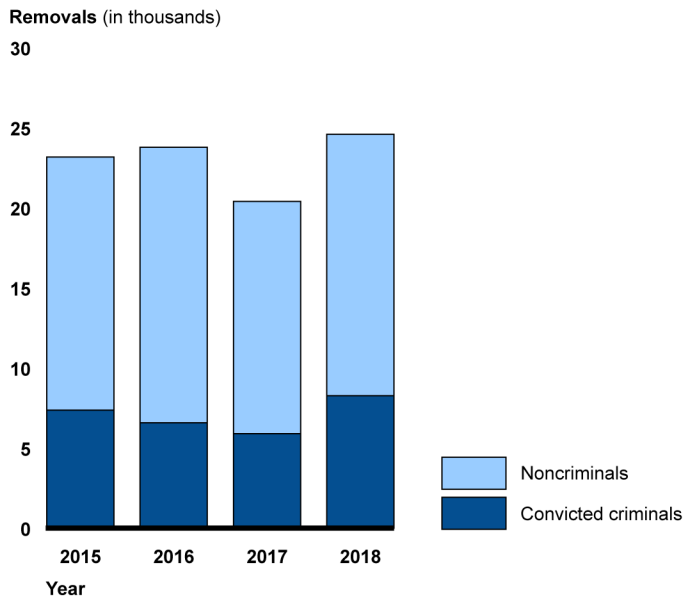
Appendix IV: Enforcement and Removal Operations Arrests, Detentions, and Removals of Females, 2015-2018

Note: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year. This figure excludes records with “other” for arresting agency (ranging from 54 to 103 records for the above years) because this field was not populated at the time of arrest due to internal database limitations, according to ICE.

Removals of Females by Criminality. From calendar years 2015 through 2018, the majority of ERO removals were of non-criminal females (ranging from 66 to 72 percent), as shown in figure 28. Most removals of non-criminal females resulted from CBP arrests (ranging from 88 to 97 percent), rather than ICE arrests.

ERO removals of convicted criminal females varied, increasing overall, from calendar years 2015 to 2018, and accounted for the minority of ERO removals of females each year (ranging from 28 to 34 percent). The majority removals of convicted criminal females also resulted from CBP arrests (ranging from 56 to 71 percent).

Figure 28: Enforcement and Removal Operations Removals of Females by Criminality, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Removal data represent the number of removals, rather than the number of aliens removed since these aliens could have multiple removals in the same calendar year.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens without criminal convictions known to ICE as “non-criminals” and aliens with criminal convictions known to ICE as “convicted criminals.” According to ICE officials, administrative arrests of non-criminals include individuals who have been charged with but not convicted of a crime as well as

**Appendix IV: Enforcement and Removal
Operations Arrests, Detentions, and Removals
of Females, 2015-2018**

those with no prior criminal history. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI's National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE's determination of criminality for our analysis.

Appendix V: Enforcement and Removal Operations Arrests of Juveniles by Age and Gender, 2015-2018

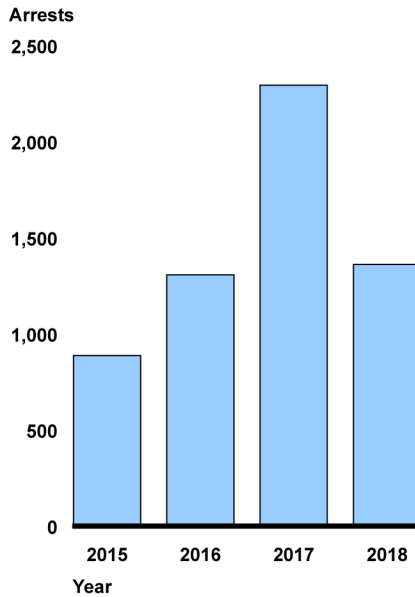
This appendix presents the overall number of Enforcement and Removal Operations (ERO) administrative arrests (arrests) of juveniles—persons encountered by ERO who have not reached 18 years of age—as well as the number of juvenile arrests by age and gender.¹ We analyzed individual-level Immigration and Customs Enforcement (ICE) data to identify the number of ERO arrests of juveniles during calendar years 2015 through 2018.

The Number of Arrests of Juveniles Increased Overall. The number of ERO arrests of juveniles increased overall by 53 percent from calendar years 2015 through 2018, as shown in figure 29.² During the two years the Priority Enforcement Program was in effect, ERO arrests of juveniles increased 47 percent (from 887 arrests in 2015 to 1,307 arrests in 2016). Following issuance of the 2017 DHS memo, ERO arrests of juveniles increased 76 percent in calendar year 2017 (2,294 arrests), and decreased 41 percent in calendar year 2018 (1,361 arrests).

¹According to ERO officials, ERO enforcement officers do not target juveniles in their enforcement activities. Aliens under the age of 18 who are designated as unaccompanied alien children are to be transferred to the Office of Refugee Resettlement within 72 hours after they are determined to be unaccompanied alien children, except in exceptional circumstances. See 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232. Juveniles not designated as unaccompanied alien children who are apprehended with a parent or legal guardian may be detained for a limited period of time with their adult parent in ICE family residential centers. ERO arrests of aliens for civil violations of U.S. immigration laws are referred to as administrative arrests. For the purposes of this report and our presentation of ICE data, we refer to administrative arrests as “arrests”.

²We use “number of arrests” rather than “number of juveniles arrested” as our unit of analysis because an individual may have been arrested multiple times in the same year. For our analysis, we excluded 241 (about 3.8 percent) of ICE juvenile arrest records that had a missing alien number, invalid alien number (e.g. all zeros), or duplicative alien number and arrest date combinations from calendar years 2015 through 2018. See appendix I for more details.

Figure 29: Enforcement and Removal Operations Administrative Arrests of Juveniles, Calendar Years 2015 through 2018

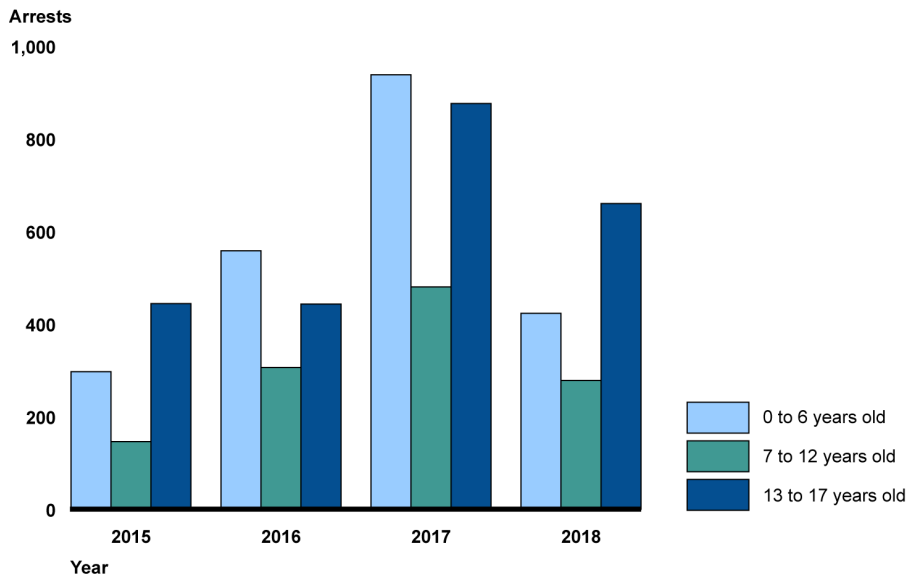


Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year.

Arrests of Juveniles by Age. The proportion of arrests for juveniles of all age groups—ages 0 to 6, 7 to 12, and 13 to 17—varied between calendar years 2015 and 2018, as shown in figure 30. For instance, the proportion of arrests of juveniles ages 0 to 6 between calendar years 2015 and 2018, ranged from 31 to 43 percent of the total number of arrests of juveniles. The proportion of arrests of juveniles ages 7 to 12 ranged from 16 percent to 23 percent of total arrests of juveniles during this same period while arrests of juveniles ages 13 to 17, during the same period ranged from 34 percent to 50 percent of total arrests of juveniles.

Figure 30: Enforcement and Removal Operations Administrative Arrests of Juveniles by Age, Calendar Years 2015 through 2018

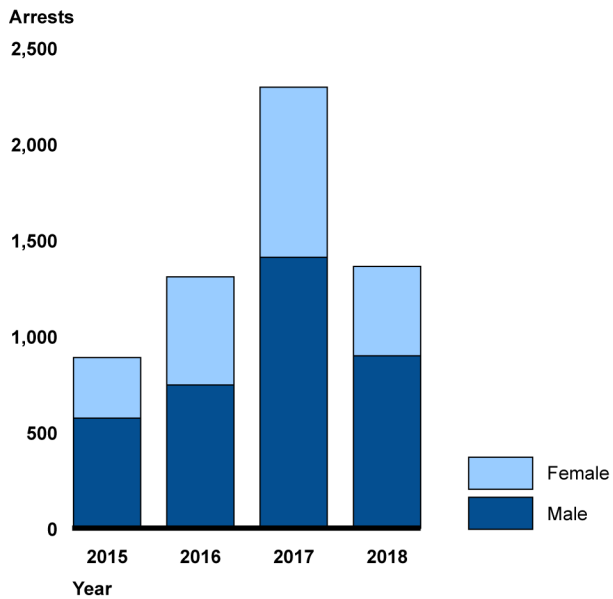


Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year.

Arrests of Juveniles by Gender. Each calendar year from 2015 through 2018, arrests of male juveniles accounted for the majority of ERO arrests of juveniles (ranging from 57 to 66 percent), as shown in figure 31.

Figure 31: Enforcement and Removal Operations Administrative Arrests of Juveniles by Gender, Calendar Years 2015 through 2018



Source: GAO analysis of U.S. Immigration and Customs Enforcement data. | GAO-20-36

Note: Arrest data represent the number of administrative arrests, rather than the number of aliens since these aliens could have multiple arrests in the same calendar year.

Appendix VI: Enforcement and Removal Operations Administrative Arrests by Country of Citizenship

This appendix presents the number of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) administrative arrests by country of citizenship for calendar years 2015 through 2018.¹ Each year from 2015 through 2018, ERO administratively arrested aliens from over 200 countries.²

Table 10: Enforcement and Removal Operations Administrative Arrests by Country of Citizenship, Calendar Years 2015 through 2018

Country of Citizenship	2015	2016	2017	2018
Afghanistan	54	50	61	36
Albania	38	34	65	60
Algeria	15	15	33	16
Andorra	0	0	1	0
Angola	7	6	19	31
Anguilla	2	0	1	2
Antigua-Barbuda	20	18	25	18
Argentina	74	61	132	134
Armenia	87	67	97	80
Aruba	1	1	1	1
Australia	24	17	20	31
Austria	5	3	8	5
Azerbaijan	13	18	20	28
Bahamas	117	70	96	104
Bahrain	2	0	1	1
Bangladesh	73	102	144	132
Barbados	25	17	22	29
Belarus	14	16	19	25
Belgium	6	12	7	9
Belize	118	75	110	90
Benin	7	7	13	12
Bermuda	3	2	0	6
Bhutan	19	18	23	18
Bolivia	63	71	96	101

¹ICE arrests of aliens for a civil violation of U.S. immigration laws are referred to as administrative arrests.

²Country of citizenship information is based on an individual's self-reported citizenship to ICE.

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Country of Citizenship	2015	2016	2017	2018
Bosnia-Herzegovina	102	89	101	58
Botswana	2	1	4	3
Brazil	406	471	1015	1,078
British Virgin Islands	1	3	3	2
Brunei	0	1	0	0
Bulgaria	19	23	28	25
Burkina Faso	4	9	28	29
Burma	46	54	63	72
Burundi	8	20	12	17
Cambodia	122	176	179	144
Cameroon	41	49	49	71
Canada	311	249	311	254
Cape Verde	34	40	68	68
Cayman Islands	2	2	2	6
Central African Republic	1	4	6	15
Chad	3	2	8	13
Chile	72	73	114	175
China, People's Republic of	439	596	763	912
Colombia	994	811	1,008	1,088
Comoros	0	1	0	0
Congo	13	20	36	31
Costa Rica	103	110	189	180
Croatia	14	1	11	14
Cuba	1,024	960	1,963	2,022
Cyprus	1	0	1	0
Czech Republic	10	20	28	52
Czechoslovakia	5	7	4	1
Democratic Republic of the Congo	21	33	40	55
Denmark	5	1	3	2
Djibouti	1	1	2	0
Dominica	13	19	17	27
Dominican Republic	2,058	1,698	1,957	1,924
Ecuador	689	683	1040	993
Egypt	68	57	104	85
El Salvador	7,048	6,854	9,779	9,650
Equatorial Guinea	1	1	7	3

**Appendix VI: Enforcement and Removal
Operations Administrative Arrests by Country
of Citizenship**

Country of Citizenship	2015	2016	2017	2018
Eritrea	43	36	38	38
Estonia	9	12	13	6
Ethiopia	63	65	69	66
Fiji	22	18	22	25
Finland	3	1	2	1
France	27	22	52	52
French Guiana	0	0	1	0
Gabon	0	1	11	10
Gambia	25	34	82	127
Georgia	15	22	42	51
Germany	79	55	81	68
Ghana	108	140	150	173
Greece	9	16	17	28
Grenada	20	13	17	19
Guadeloupe	2	3	5	5
Guatemala	8,794	9,173	15,845	17,484
Guinea	31	44	120	108
Guinea-Bissau	2	3	2	5
Guyana	181	118	154	150
Haiti	723	971	811	588
Honduras	7,504	7,967	12,757	13,313
Hong Kong	8	10	6	11
Hungary	21	35	108	49
Iceland	1	1	0	0
India	317	390	536	620
Indonesia	17	28	99	85
Iran	107	86	138	118
Iraq	125	136	411	150
Ireland	20	18	46	57
Israel	65	63	102	107
Italy	67	53	87	96
Ivory Coast	26	16	47	99
Jamaica	1,110	852	969	1,049
Japan	6	10	32	6
Jordan	107	94	141	157
Kazakhstan	18	14	27	43
Kenya	148	135	159	181

Appendix VI: Enforcement and Removal Operations Administrative Arrests by Country of Citizenship

Country of Citizenship	2015	2016	2017	2018
Kiribati	0	0	0	1
Korea	69	35	38	40
Kosovo	17	11	10	16
Kuwait	12	12	16	17
Kyrgyzstan	7	7	25	13
Laos	193	185	195	161
Latvia	12	11	15	12
Lebanon	56	38	43	73
Lesotho	1	0	3	0
Liberia	138	156	233	190
Libya	3	9	5	16
Lithuania	19	23	41	35
Macau	0	1	1	2
Macedonia	10	13	11	17
Madagascar	1	0	2	0
Malawi	5	6	10	4
Malaysia	10	10	16	11
Maldives	0	0	1	0
Mali	21	22	47	55
Marshall Islands	36	22	40	37
Mauritania	9	10	25	84
Mauritius	4	3	0	3
Mexico	73,399	68,245	91,610	88,645
Micronesia, Federated States of	76	90	120	127
Moldova	33	30	49	31
Monaco	0	0	0	1
Mongolia	18	20	44	19
Montenegro	4	6	8	10
Montserrat	2	0	0	2
Morocco	45	47	85	66
Mozambique	2	0	2	2
Namibia	3	2	2	2
Nauru	0	1	1	0
Nepal	28	31	37	44
Netherlands	24	16	30	29
Netherlands Antilles	1	4	6	4

**Appendix VI: Enforcement and Removal
Operations Administrative Arrests by Country
of Citizenship**

Country of Citizenship	2015	2016	2017	2018
New Zealand	22	8	21	15
Nicaragua	462	416	626	691
Niger	9	15	9	23
Nigeria	236	198	375	573
North Korea	0	1	1	0
Norway	0	3	4	8
Oman	2	2	0	2
Pakistan	123	123	175	181
Palau	9	22	11	10
Panama	81	65	67	72
Papua New Guinea	2	2	1	2
Paraguay	6	5	8	12
Peru	374	316	461	480
Philippines	246	223	227	250
Poland	143	101	141	183
Portugal	57	51	81	84
Qatar	2	0	4	4
Romania	113	159	366	367
Russia	104	120	167	177
Rwanda	11	12	14	16
Samoa	11	21	26	39
San Marino	0	0	1	1
Saudi Arabia	106	83	109	83
Senegal	30	50	75	80
Serbia	6	12	26	15
Serbia And Montenegro	0	1	1	0
Seychelles	1	0	1	2
Sierra Leone	53	48	82	105
Singapore	6	5	3	4
Slovakia	8	8	25	30
Slovenia	3	1	0	2
Somalia	139	163	300	198
South Africa	42	28	41	52
South Korea	114	91	119	149
South Sudan	14	16	54	66
Spain	55	43	125	162
Sri Lanka	14	12	21	14

**Appendix VI: Enforcement and Removal
Operations Administrative Arrests by Country
of Citizenship**

Country of Citizenship	2015	2016	2017	2018
St. Kitts-Nevis	18	8	14	12
St. Lucia	28	20	28	37
St. Vincent-Grenadines	17	14	15	19
Sudan	74	87	98	121
Suriname	5	6	11	20
Swaziland	0	1	0	1
Sweden	12	6	12	8
Switzerland	0	3	4	5
Syria	23	23	32	30
Taiwan	19	14	26	30
Tajikistan	10	4	7	11
Tanzania	31	19	30	35
Thailand	69	56	86	113
Togo	6	10	20	17
Tonga	24	23	31	20
Trinidad And Tobago	178	169	191	162
Tunisia	8	10	16	14
Turkey	45	34	92	92
Turkmenistan	1	1	2	2
Turks And Caicos Islands	5	4	2	8
Uganda	12	13	16	30
Ukraine	126	91	148	153
United Arab Emirates	4	4	3	3
United Kingdom	194	142	193	201
Unknown	86	50	60	78
Uruguay	34	23	55	73
Ussr	15	20	36	20
Uzbekistan	31	19	55	30
Venezuela	144	129	266	410
Vietnam	420	395	543	502
Yemen	32	25	39	53
Yugoslavia	16	24	11	17
Zambia	14	16	21	21
Zimbabwe	16	19	31	45
Total	112870	107446	151889	151497

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Note: Country of citizenship information is based on an individual's self-reported citizenship to ICE.

Appendix VII: Enforcement and Removal Operations Detentions by Country of Citizenship

This appendix presents the number of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) detentions by country of citizenship for calendar years 2015 through 2018.¹ Each year from 2015 through 2018, ERO detained aliens from over 200 countries.²

Table 11: Enforcement and Removal Operations Detentions by Country of Citizenship, Calendar Years 2015 through 2018

Country of Citizenship	2015	2016	2017	2018
Afghanistan	87	122	114	77
Albania	130	142	153	115
Algeria	25	29	46	38
Andorra	0	0	1	0
Angola	20	38	107	111
Anguilla	1	1	1	3
Antigua-Barbuda	20	25	30	18
Argentina	105	102	165	155
Armenia	361	502	398	428
Aruba	1	1	1	0
Australia	58	45	36	41
Austria	17	12	14	8
Azerbaijan	20	26	40	56
Bahamas	144	108	138	147
Bahrain	2	1	2	4
Bangladesh	714	717	704	1309
Barbados	24	23	26	31
Belarus	25	32	46	51
Belgium	21	23	23	19
Belize	231	179	163	176
Benin	19	15	21	24
Bermuda	4	3	2	6
Bhutan	10	16	24	13

¹ICE is responsible for detaining aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, including aliens transferred to ICE from U.S. Customs and Border Protection who were apprehended at or between ports of entry.

²Country of citizenship information is based on an individual's self-reported citizenship to ICE.

**Appendix VII: Enforcement and Removal
Operations Detentions by Country of
Citizenship**

Country of Citizenship	2015	2016	2017	2018
Bolivia	127	108	122	151
Bosnia-Herzegovina	100	86	110	70
Botswana	2	3	3	5
Brazil	2,175	5,289	4,168	6,597
British Virgin Islands	2	2	1	4
Brunei	0	1	1	0
Bulgaria	30	31	54	41
Burkina Faso	46	76	43	41
Burma	59	55	67	72
Burundi	13	23	28	20
Cambodia	136	183	182	160
Cameroon	271	525	503	874
Canada	417	315	379	326
Cape Verde	41	42	82	69
Cayman Islands	3	3	1	7
Central African Republic	3	5	4	14
Chad	9	10	16	18
Chile	102	122	162	214
China, People's Republic of	2,016	3,272	1,984	2,609
Colombia	1,581	1,427	1,419	1,656
Comoros	0	1	0	0
Congo	15	30	75	45
Costa Rica	204	233	265	245
Croatia	18	5	20	17
Cuba	1,202	1,219	5,318	10,125
Cyprus	4	1	2	2
Czech Republic	36	37	46	71
Czechoslovakia	5	8	5	2
Democratic Republic of the Congo	44	111	267	241
Denmark	17	3	10	7
Djibouti	3	9	6	8
Dominica	18	19	21	30
Dominican Republic	2,971	2,549	2,492	2,552
Ecuador	2,969	3,312	2,216	2,868
Egypt	146	132	212	154
El Salvador	47,366	61,446	31,413	35,502

**Appendix VII: Enforcement and Removal
Operations Detentions by Country of
Citizenship**

Country of Citizenship	2015	2016	2017	2018
Equatorial Guinea	3	3	14	7
Eritrea	263	396	706	505
Estonia	17	17	29	9
Eswatini	5	3	2	2
Ethiopia	222	145	114	118
Fiji	29	18	23	25
Finland	6	12	5	6
France	101	105	124	117
French Guiana	0	2	5	3
Gabon	8	3	14	15
Gambia	46	154	153	135
Georgia	42	76	83	121
Germany	140	115	131	107
Ghana	706	726	294	327
Greece	42	52	38	55
Grenada	23	12	21	17
Guadeloupe	1	1	5	3
Guatemala	58,616	72,201	64,829	120,745
Guinea	97	264	345	153
Guinea-Bissau	2	9	4	8
Guyana	193	147	212	216
Haiti	1157	12519	3151	939
Honduras	39,560	51,215	39,025	78,630
Hong Kong	10	15	13	11
Hungary	75	70	173	115
Iceland	3	2	2	1
India	3,532	3,913	5,322	9,811
Indonesia	21	39	110	120
Iran	145	119	165	147
Iraq	200	168	448	191
Ireland	39	41	63	62
Israel	103	106	185	156
Italy	160	165	180	192
Ivory Coast	47	44	64	107
Jamaica	1,324	1,168	1,204	1,268
Japan	57	72	51	26
Jordan	168	144	281	241

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Operations Detentions by Country of
Citizenship**

Country of Citizenship	2015	2016	2017	2018
Kazakhstan	34	30	41	76
Kenya	187	176	211	234
Kiribati	0	1	0	1
Korea	79	47	53	73
Kosovo	24	48	51	70
Kuwait	23	28	31	26
Kyrgyzstan	12	14	115	104
Laos	183	181	190	183
Latvia	42	24	26	20
Lebanon	75	59	64	88
Lesotho	1	0	3	0
Liberia	142	172	242	214
Libya	9	12	17	16
Lithuania	29	37	51	61
Luxembourg	1	1	1	0
Macau	1	1	0	4
Madagascar	1	0	2	0
Malawi	7	7	11	6
Malaysia	16	14	16	25
Maldives	0	0	2	0
Mali	23	79	68	73
Marshall Islands	36	22	41	38
Mauritania	12	16	36	108
Mauritius	5	2	0	1
Mexico	141,688	126,047	125,314	136,409
Micronesia, Federated States of	75	93	123	125
Moldova	56	41	72	52
Mongolia	25	24	58	30
Montenegro	13	9	22	25
Montserrat	2	0	1	1
Morocco	67	58	99	83
Mozambique	2	2	2	2
Namibia	4	3	3	2
Nauru	1	1	0	0
Nepal	389	774	646	795
Netherlands	51	40	54	50
Netherlands Antilles	1	3	3	6

**Appendix VII: Enforcement and Removal
Operations Detentions by Country of
Citizenship**

Country of Citizenship	2015	2016	2017	2018
New Zealand	31	23	30	15
Nicaragua	1,449	1,690	1,390	5,497
Niger	15	26	20	36
Nigeria	582	544	769	931
North Korea	0	0	1	0
North Macedonia	19	30	28	29
Norway	6	13	9	17
Oman	3	3	0	2
Pakistan	389	639	507	425
Palau	8	16	13	10
Panama	105	96	90	87
Papua New Guinea	1	2	2	3
Paraguay	15	10	14	22
Peru	894	954	900	1,116
Philippines	299	259	267	293
Poland	194	137	182	216
Portugal	103	72	104	123
Qatar	6	11	6	5
Romania	683	2346	973	754
Russia	251	294	392	648
Rwanda	13	11	22	20
Samoa	13	22	26	35
San Marino	0	0	2	0
Saudi Arabia	204	183	246	135
Senegal	80	321	115	103
Serbia	17	27	45	50
Serbia And Montenegro	5	1	1	3
Seychelles	1	0	2	2
Sierra Leone	60	86	112	119
Singapore	17	12	5	6
Slovakia	16	27	43	42
Slovenia	8	2	3	4
Somalia	898	520	464	251
South Africa	57	45	60	77
South Korea	229	158	168	215
South Sudan	34	44	82	105
Spain	241	189	262	287

**Appendix VII: Enforcement and Removal
Operations Detentions by Country of
Citizenship**

Country of Citizenship	2015	2016	2017	2018
Sri Lanka	143	70	161	325
St. Kitts-Nevis	25	11	20	13
St. Lucia	30	22	30	40
St. Vincent-Grenadines	17	16	16	28
Sudan	67	81	99	104
Suriname	4	6	15	27
Sweden	39	25	29	27
Switzerland	17	11	11	9
Syria	141	133	76	50
Taiwan	54	36	35	38
Tajikistan	26	14	21	25
Tanzania	36	28	35	40
Thailand	64	64	87	105
Togo	33	72	57	35
Tonga	27	21	35	19
Trinidad And Tobago	192	181	222	187
Tunisia	21	18	31	39
Turkey	119	142	265	386
Turkmenistan	11	8	13	5
Turks And Caicos Islands	6	5	4	8
Uganda	21	24	41	84
Ukraine	278	335	285	331
United Arab Emirates	1	1	7	5
United Kingdom	285	255	284	296
Unknown	85	61	100	81
Uruguay	34	27	66	88
Ussr	13	16	20	29
Uzbekistan	45	59	192	367
Venezuela	301	495	744	1,399
Vietnam	454	409	608	840
Yemen	53	33	56	107
Yugoslavia	15	20	9	4
Zambia	17	20	23	26
Zimbabwe	31	26	48	49
Total	324,320	366,740	310,309	438,258

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Note: Country of citizenship information is based on an individual's self-reported citizenship to ICE.

Appendix VIII: Enforcement and Removal Operations Removals by Country of Citizenship

This appendix presents the number of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) removals by country of citizenship for calendar years 2015 through 2018.¹ Each year from 2015 through 2018, ERO removed aliens from almost 200 countries.²

Table 12: Enforcement and Removal Operations Removals by Country of Citizenship, Calendar Years 2015 through 2018

Country of Citizenship	2015	2016	2017	2018
Afghanistan	10	15	47	32
Albania	43	30	69	98
Algeria	5	13	31	15
Andorra	0	0	1	0
Angola	9	6	15	36
Anguilla	0	1	0	0
Antigua-Barbuda	13	15	24	19
Argentina	71	75	122	124
Armenia	25	18	28	31
Aruba	0	0	2	0
Australia	26	22	25	48
Austria	8	9	9	5
Azerbaijan	4	4	6	18
Bahamas	80	98	100	98
Bahrain	0	0	2	0
Bangladesh	46	207	172	112
Barbados	13	16	16	21
Belarus	7	7	11	13
Belgium	7	9	10	13
Belize	117	117	85	86
Benin	6	1	12	8

¹ERO removals include removals and returns where aliens were transferred to ICE custody from CBP for removal from the United States. This may include aliens processed for expedited removal or voluntary return that are transferred to ICE for detention. Aliens processed for expedited removal and not detained by ERO or voluntary returned after June 1, 2013 were primarily processed by the U.S. Border Patrol and thus not included in these data.

²Country of citizenship information is based on an individual's self-reported citizenship to ICE.

Appendix VIII: Enforcement and Removal Operations Removals by Country of Citizenship

Country of Citizenship	2015	2016	2017	2018
Bermuda	4	2	2	5
Bhutan	0	0	0	1
Bolivia	66	66	69	80
Bosnia-Herzegovina	51	43	46	47
Botswana	1	2	2	2
Brazil	747	1,270	1,432	1,787
British Virgin Islands	4	6	0	2
Bulgaria	24	21	23	35
Burkina Faso	9	13	40	23
Burma	6	4	14	41
Burundi	2	4	5	15
Cambodia	32	44	38	137
Cameroon	27	35	61	71
Canada	418	380	368	339
Cape Verde	5	14	48	71
Cayman Islands	1	1	2	2
Central African Republic	0	0	2	5
Chad	3	3	7	14
Chile	66	85	127	202
China, People's Republic of	391	483	602	627
Colombia	1,248	1,045	1,074	1,157
Congo	4	3	6	16
Costa Rica	150	169	143	168
Croatia	7	7	5	11
Cuba	43	64	233	491
Cyprus	0	1	2	2
Czech Republic	21	19	33	55
Czechoslovakia	4	3	7	2
Dem Rep Of The Congo	8	22	55	69
Denmark	8	2	6	1
Djibouti	1	2	0	3
Dominica	15	11	9	17
Dominican Republic	2,054	1,837	1,936	1,827
Ecuador	1,122	1,168	1,127	1,304
Egypt	59	38	69	79
El Salvador	19,690	21,687	16,187	16,141

Appendix VIII: Enforcement and Removal Operations Removals by Country of Citizenship

Country of Citizenship	2015	2016	2017	2018
Equatorial Guinea	1	5	5	4
Eritrea	6	19	43	59
Estonia	7	9	19	8
Ethiopia	46	34	43	35
Fiji	10	16	14	17
Finland	2	2	2	3
France	53	57	86	95
French Guiana	0	0	1	0
Gabon	6	1	5	6
Gambia	7	14	73	124
Georgia	13	25	23	18
Germany	65	65	82	74
Ghana	54	175	243	267
Greece	10	18	18	32
Grenada	12	9	17	9
Guadeloupe	1	1	0	2
Guatemala	32,132	36,485	34,249	52,755
Guinea	8	19	185	170
Guinea-Bissau	1	2	4	6
Guyana	108	102	136	150
Haiti	341	1,709	4,401	794
Honduras	19,686	23,784	21,300	32,180
Hong Kong	10	6	13	13
Hungary	34	38	123	80
Iceland	3	3	0	2
India	296	387	474	831
Indonesia	32	34	97	99
Iran	20	23	20	16
Iraq	38	52	59	66
Ireland	23	25	40	51
Israel	56	52	93	86
Italy	78	65	131	128
Ivory Coast	10	17	25	89
Jamaica	765	778	753	830
Japan	24	18	21	24
Jordan	68	79	90	104
Kazakhstan	10	20	20	26

Appendix VIII: Enforcement and Removal Operations Removals by Country of Citizenship

Country of Citizenship	2015	2016	2017	2018
Kenya	89	74	116	134
Korea	43	37	42	52
Kosovo	12	13	10	17
Kuwait	10	14	14	7
Kyrgyzstan	6	15	11	17
Laos	3	0	8	7
Latvia	19	10	17	17
Lebanon	37	42	31	58
Lesotho	0	1	0	1
Liberia	10	54	105	112
Libya	2	5	7	12
Lithuania	14	19	28	48
Luxembourg	0	1	0	0
Macau	0	1	0	2
Macedonia	5	6	14	17
Madagascar	1	0	2	0
Malawi	1	5	4	2
Malaysia	12	9	8	12
Maldives	0	0	1	0
Mali	7	10	44	64
Marshall Islands	34	22	24	40
Mauritania	6	9	13	109
Mauritius	1	1	1	0
Mexico	146,485	148,418	122,968	139,330
Micronesia, Federated States of	67	78	107	104
Moldova	18	17	37	33
Mongolia	13	9	27	26
Montenegro	7	5	12	19
Montserrat	0	2	0	1
Morocco	29	24	75	50
Mozambique	0	1	1	0
Namibia	2	1	1	2
Nepal	27	20	62	38
Netherlands	39	20	42	42
Netherlands Antilles	4	0	2	2
New Zealand	12	15	25	20

**Appendix VIII: Enforcement and Removal
Operations Removals by Country of
Citizenship**

Country of Citizenship	2015	2016	2017	2018
Nicaragua	826	807	829	1,113
Niger	5	7	14	7
Nigeria	232	248	327	363
Norway	2	7	7	4
Oman	1	3	1	0
Pakistan	70	94	187	228
Palau	7	14	14	9
Panama	86	62	57	61
Papua New Guinea	0	1	2	0
Paraguay	9	6	7	8
Peru	443	400	495	587
Philippines	206	171	190	212
Poland	120	112	122	123
Portugal	41	44	75	103
Qatar	7	2	5	4
Romania	119	201	323	433
Russia	79	99	117	143
Rwanda	5	5	8	8
Samoa	1	5	13	31
San Marino	0	0	1	0
Sao Tome And Principe	1	0	0	0
Saudi Arabia	93	109	143	120
Senegal	18	15	214	125
Serbia	9	15	21	31
Serbia And Montenegro	2	1	2	3
Seychelles	0	1	0	0
Sierra Leone	4	22	49	90
Singapore	7	6	5	5
Slovakia	9	10	23	34
Slovenia	4	2	0	1
Somalia	148	188	491	279
South Africa	27	21	28	38
South Korea	98	91	109	134
South Sudan	0	1	22	85
Spain	108	90	203	247
Sri Lanka	29	39	39	37
St. Kitts-Nevis	14	13	13	16

Appendix VIII: Enforcement and Removal Operations Removals by Country of Citizenship

Country of Citizenship	2015	2016	2017	2018
St. Lucia	7	20	27	23
St. Vincent-Grenadines	7	14	10	17
Sudan	10	2	26	36
Suriname	4	1	10	19
Swaziland	2	1	1	0
Sweden	22	12	18	23
Switzerland	9	6	6	7
Syria	8	5	5	5
Taiwan	27	23	27	38
Tajikistan	8	9	6	9
Tanzania	19	15	13	25
Thailand	30	26	36	62
Togo	8	7	23	20
Tonga	16	19	17	18
Trinidad And Tobago	113	119	135	107
Tunisia	13	6	12	14
Turkey	47	60	100	96
Turkmenistan	5	4	9	3
Turks And Caicos Islands	3	3	3	4
Uganda	9	5	13	14
Ukraine	84	64	89	121
United Arab Emirates	1	1	3	3
United Kingdom	160	154	156	222
Unknown	23	16	33	42
Uruguay	24	18	43	55
Uzbekistan	24	16	26	43
Venezuela	146	184	274	372
Vietnam	35	32	115	90
Yemen	6	12	5	36
Yugoslavia	8	3	5	5
Zambia	11	7	11	14
Zimbabwe	8	8	9	24
Total	231,559	246,107	216,756	261,523

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Note: Country of citizenship information is based on an individual's self-reported citizenship to ICE.

Appendix IX: Review of Available Criminal Charges for Detentions of Selected Populations Resulting from ICE Arrests

This appendix presents the number and type of criminal charges of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) detentions of selected populations (aliens who are: transgender, individuals with disabilities, pregnant, individuals with mental disorders, women who are nursing, or individuals who are elderly) resulting from ICE arrests.¹ ICE administrative arrests of aliens for civil violations of U.S. immigration laws include arrests of both aliens with prior criminal convictions and those without prior criminal convictions.² According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI's National Crime Information Center (NCIC) database, which maintains a repository of federal and state criminal history information. ICE officers are also able to manually enter criminal history information in ICE's data system if they discover additional criminal history information that was not available in NCIC. ICE officers may also check for criminal convictions committed outside the United States, on a case by case basis.

To identify which convictions or charges were immigration-related for these selected populations, we reviewed the criminal history information recorded in ICE's data system by ICE officers. ICE collected data to identify each of these populations beginning at different timeframes or subsets within the population, as shown below. For information on the number of detentions of selected populations resulting from ICE arrests by criminal charge type, see tables 13 through 18.

¹ERO conducts civil immigration enforcement actions, which includes administrative arrests, detentions, and removals. ICE is responsible for providing safe, secure, and humane confinement for detained aliens in the United States who may be subject to removal while they await the resolution of their immigration cases or who have been ordered removed from the United States. This includes aliens transferred to ICE from U.S. Customs and Border Protection who were apprehended at or between ports of entry.

²We used ICE's determination of criminality for our analysis.

Appendix IX: Review of Available Criminal Charges for Detentions of Selected Populations Resulting from ICE Arrests

Table 13: Enforcement and Removal Operations Detentions of Transgender Individuals Resulting from U.S. Immigration and Customs Enforcement (ICE) Arrests by Criminal Charge Type, Calendar Years 2016 through 2018

Calendar Year	Charges									No recorded criminal history
	Immigration-related ^a			Other ^b			Both Immigration and other			
	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	
2016	6	0	6	84	9	93	34	0	34	3
2017	7	0	7	88	25	113	15	2	17	8
2018	1	0	1	52	25	77	16	0	16	7

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Note: Detention data represent the number of detentions, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. Transgender data only include individuals who voluntarily disclosed their gender identity to ICE. The number of detentions represents those for which we were able to match ICE data on convictions and charges with the unique transgender detainee records and may not represent total of detentions of transgender individuals resulting from ICE arrests.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens with criminal convictions known to ICE as “convicted criminals.” To identify which convictions or charges were immigration-related for detentions of transgender aliens resulting from ICE arrests, we reviewed the criminal history information recorded in ICE’s data system by ICE officers and categorized these records as “immigration-related” or “other” and also identified whether the recorded criminal history was a prior conviction or a pending criminal charge. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aFor the purposes of our report, immigration-related convictions or charges include those charges identified in ICE data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and those that cited specific immigration-related criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

^bOther” includes charges and convictions for assault, burglary, domestic violence, drug offenses, larceny, and theft, among others.

Table 14: Enforcement and Removal Operations Detentions of Individuals with Disabilities Resulting from U.S. Immigration and Customs Enforcement (ICE) Arrests by Criminal Charge Type, Calendar Years 2017 and 2018

Calendar Year	Charges									No recorded criminal history
	Immigration-related ^a			Other ^b			Both Immigration and other			
	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	
2017	1	0	1	216	31	247	46	1	47	39
2018	10	1	11	171	38	209	40	0	40	30

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. These data only include

Appendix IX: Review of Available Criminal Charges for Detentions of Selected Populations Resulting from ICE Arrests

individuals who disclosed their impairment or who were identified by facility staff as having an impairment. The number of detentions represents those for which we were able to match ICE data on convictions and charges with the unique detainee records and may not represent total of detentions of individuals with disabilities resulting from ICE arrests.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens with criminal convictions known to ICE as “convicted criminals.” To identify which convictions or charges were immigration-related detentions of aliens with disabilities resulting from ICE arrests, we reviewed the criminal history information recorded in ICE’s data system by ICE officers and categorized these records as “immigration-related” or “other” and also identified whether the recorded criminal history was a prior conviction or a pending criminal charge. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aFor the purposes of our report, immigration-related convictions or charges include those charges identified in ICE data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and those that cited specific immigration-related criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

^bOther” includes charges and convictions for assault, burglary, domestic violence, drug offenses, larceny, and theft, among others.

Table 15: Enforcement and Removal Operations Detentions of Pregnant Women Resulting from U.S. Immigration and Customs Enforcement (ICE) Arrests by Criminal Charge Type, Calendar Years 2016 through 2018

Calendar Year	Charges									No recorded criminal history
	Immigration-related ^a			Other ^b			Both Immigration and other			
	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	
2016	6	2	8	15	3	18	5	0	5	37
2017	3	5	8	50	23	73	4	0	4	48
2018	6	1	7	31	28	59	4	1	5	42

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions, rather than the number of detainees since these women could have multiple detentions in the same calendar year. The number of detentions represents those for which we were able to match ICE data on convictions and charges with the unique detainee records and may not represent total of detentions of pregnant women resulting from ICE arrests.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens with criminal convictions known to ICE as “convicted criminals.” To identify which convictions or charges were immigration-related for detentions of pregnant aliens resulting from ICE arrests, we reviewed the criminal history information recorded in ICE’s data system by ICE officers and categorized these records as “immigration-related” or “other” and also identified whether the recorded criminal history was a prior conviction or a pending criminal charge. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aFor the purposes of our report, immigration-related convictions or charges include those charges identified in ICE data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and those that cited specific immigration-related criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

^bOther includes charges and convictions for assault, burglary, domestic violence, drug offenses, larceny, and theft, among others.

Appendix IX: Review of Available Criminal Charges for Detentions of Selected Populations Resulting from ICE Arrests

Table 16: Enforcement and Removal Operations Detentions of Individuals with Mental Disorders at ICE Health Service Corps (IHSC)-staffed Facilities Resulting from U.S. Immigration and Customs Enforcement (ICE) Arrests by Criminal Charge Type, Calendar Years 2015 through 2018

Calendar Year	Charges									No recorded criminal history.
	Immigration-related ^a			Other ^b			Both Immigration and other			
	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	
2015	89	21	110	2942	117	3059	752	5	757	118
2016	112	23	135	2842	199	3041	727	4	731	199
2017	106	41	147	3432	718	4150	702	19	721	372
2018	100	29	129	2799	800	3599	747	24	771	337

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: IHSC provides direct medical, dental, mental health care, and public health services to detainees in 20 facilities authorized to house detainees for over 72 hours. Facilities serviced by IHSC include service processing centers, contract detention facilities, dedicated intergovernmental service agreement facilities, and family residential centers. Detention data represent the number of detentions of individuals with mental disorders detained at IHSC-staffed facilities, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. The number of detentions represents those for which we were able to match ICE data on convictions and charges with the unique detainee records and may not represent total detentions of individuals with mental disorders at IHSC-staffed facilities resulting from ICE arrests.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens with criminal convictions known to ICE as “convicted criminals.” To identify which convictions or charges were immigration-related for detentions of aliens with mental disorders at IHSC-staffed facilities resulting from ICE arrests, we reviewed the criminal history information recorded in ICE’s data system by ICE officers and categorized these records as “immigration-related” or “other” and also identified whether the recorded criminal history was a prior conviction or a pending criminal charge. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aFor the purposes of our report, immigration-related convictions or charges include those charges identified in ICE data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and those that cited specific immigration-related criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

^bOther includes charges and convictions for assault, burglary, domestic violence, drug offenses, larceny, and theft, among others.

Appendix IX: Review of Available Criminal Charges for Detentions of Selected Populations Resulting from ICE Arrests

Table 17: Enforcement and Removal Operations Detentions of Nursing Women at ICE Health Service Corps (IHSC) -staffed Facilities Resulting from U.S. Immigration and Customs Enforcement (ICE) Arrests by Criminal Charge Type, Calendar Years 2015 through 2018

Calendar Year	Charges									No recorded criminal history
	Immigration-related ^a			Other ^b			Both Immigration and other			
	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	
2015	0	0	0	1	0	1	0	0	0	0
2016	0	0	0	2	0	2	0	0	0	5
2017	0	0	0	3	0	3	0	0	0	5
2018	0	0	0	0	5	5	0	0	0	3

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: IHSC provides direct medical, dental, mental health care, and public health services to detainees in 20 facilities authorized to house detainees for over 72 hours. Facilities serviced by IHSC include service processing centers, contract detention facilities, dedicated intergovernmental service agreement facilities, and family residential centers. Detention data represent the number of detentions of women who were nursing detained at IHSC-staffed facilities, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. The number of detentions represents those for which we were able to match ICE data on convictions and charges with the unique detainee records and may not represent total detentions of nursing women at IHSC-staffed facilities resulting from ICE arrests.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens with criminal convictions known to ICE as “convicted criminals.” To identify which convictions or charges were immigration-related for detentions of nursing aliens at IHSC-staffed facilities resulting from ICE arrests, we reviewed the criminal history information recorded in ICE’s data system by ICE officers and categorized these records as “immigration-related” or “other” and also identified whether the recorded criminal history was a prior conviction or a pending criminal charge. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aFor the purposes of our report, immigration-related convictions or charges include those charges identified in ICE data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and those that cited specific immigration-related criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

^bOther” includes charges and convictions for assault, burglary, domestic violence, drug offenses, larceny, and theft, among others.

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Table 18: Enforcement and Removal Operations Detentions of Elderly Individuals Resulting from U.S. Immigration and Customs Enforcement (ICE) Arrests by Criminal Charge Type, Calendar Years 2015 through 2018

Calendar Year	Charges									No recorded criminal history
	Immigration-related ^a			Other ^b			Both Immigration and other			
	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	Convicted Criminal	Pending Criminal Charges	Total	
2015	7	3	10	446	9	455	95	1	96	60
2016	10	1	11	365	9	374	85	0	85	46
2017	15	2	17	419	24	443	79	0	79	36
2018	14	2	16	518	57	575	107	0	107	45

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. The number of detentions represents those for which we were able to match ICE data on convictions and charges with the unique detainee records and may not represent total detentions of elderly individuals (those over 65 years) resulting from ICE arrests.

For the purposes of this report and our presentation of ICE data, we refer to potentially removable aliens with criminal convictions known to ICE as “convicted criminals.” To identify which convictions or charges were immigration-related for detentions of elderly aliens resulting from ICE arrests, we reviewed the criminal history information recorded in ICE’s data system by ICE officers and categorized these records as “immigration-related” or “other” and also identified whether the recorded criminal history was a prior conviction or a pending criminal charge. According to ICE, ICE officers electronically request and retrieve criminal history information about an alien from the FBI’s National Crime Information Center database, which maintains a repository of federal and state criminal history information, and other sources. We used ICE’s determination of criminality for our analysis.

^aFor the purposes of our report, immigration-related convictions or charges include those charges identified in ICE data as immigration fraud, illegal re-entry, illegal entry, false citizenship, alien smuggling, and those that cited specific immigration-related criminal offenses such as 8 U.S.C. §§ 1325 (improper entry by alien) and 1326 (reentry by alien after removal).

^bOther includes charges and convictions for assault, burglary, domestic violence, drug offenses, larceny, and theft, among others.

Appendix X: Length of Detentions of Selected Populations

This appendix presents the length of U.S. Immigrations and Customs Enforcement (ICE) Enforcement and Removal Operations detentions of selected populations—aliens who are: transgender, individuals with disabilities, pregnant, individuals with mental disorders, women who are nursing, or individuals who are elderly.¹ Available ICE data varied for each of these populations because ICE began collecting these data at different time periods. In addition, the length of some detentions from a particular year may be undetermined because they were still ongoing at the time of our review (as of May 15, 2019). We present available data for each of the populations.²

Detentions of Transgender Individuals. Based on available records each year from 2016 through 2018, the majority of detentions of transgender individuals were 90 days or less (ranging from 62 to 70 percent), as shown in table 19.

Table 19: Length of Enforcement and Removal Operations Detentions of Transgender Individuals, Calendar Years 2016 through 2018

Calendar Year	0 -1 day	2 -7 days	8 -15 days	16 -30 days	31- 90 days	91 - 180 days	181 - 270 days	271- 365 days	366- 450 days	451- 592 days	Undetermined or ongoing ^a	Total Detentions
2016	50	29	11	14	62	40	20	7	3	1	0	237
2017	39	35	7	24	52	40	29	10	7	5	5	253
2018	22	19	12	27	109	45	9	4	3	1	33	284

Source: GAO analysis of U.S. Immigration and Customs Enforcement (ICE) data | GAO-20-36

Notes: Detention data represent the number of detentions of transgender individuals, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. Transgender data only include individuals who voluntarily disclosed their gender identity to ICE. Our analysis is based on the 228 unique transgender detainee records for 2016, 241 for 2017 and 277 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

^aThe length of detention was undetermined for these detentions because the book-out date and book-out reason were missing for these records which is generally due to an ongoing detention.

¹ICE is responsible for detaining aliens awaiting decisions about their removal from the United States as well as aliens ordered removed, including aliens transferred to ICE from U.S. Customs and Border Protection who were apprehended at or between ports of entry.

²We used ICE detention data on detention start date (initial book-in date) and the last release date (book-out date) to calculate the length of stay. A release date (book-out date) may be entered to record multiple actions, including release from detention, transfer to another detention facility, or removal.

Appendix X: Length of Detentions of Selected Populations

Detentions of Individuals with Disabilities. Based on available records in calendar years 2017 and 2018, the majority of detentions of individuals with disabilities were 90 days or less (56 and 65 percent, respectively), as shown in table 20.

Table 20: Length of Enforcement and Removal Operations Detention of Individuals with Disabilities, Calendar Years 2017 and 2018

Calendar Years	0 -1 day	2 -7 days	8 -15 days	16 -30 days	31 -90 days	91 - 180 days	181 - 270 days	271 - 365 days	366 – 450 days	451- 734 days	Undetermined or ongoing ^a	Total Detentions
2017	2	10	22	56	151	94	45	24	11	15	4	434
2018	1	20	34	90	201	90	35	18	4	1	36	530

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions of individuals with disabilities—i.e., those with communication and mobility impairments—, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. These data only include individuals who disclosed their impairment or who were identified by facility staff as having an impairment. Our analysis is based on the 429 unique detainee with disabilities records for 2017, and 516 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

^aThe length of detention was undetermined for these detentions because the book-out date and book-out reason were missing for these records which is generally due to an ongoing detention.

Detentions of Pregnant Women. From calendar years 2016 through 2018, the majority of detentions of pregnant women were 15 days or less (ranging from 71 to 93 percent), as shown in table 21.

Table 21: Length of Enforcement and Removal Operations Detentions of Pregnant Women, Calendar Years 2016 through 2018

Calendar Year	0 -1 day	2 -7 days	8 -15 days	16 -30 days	31 - 90 days	91 - 180 days	181 - 270 days	271 -334 days	Undetermined or ongoing ^a	Total Detentions
2016	627	600	61	42	41	9	0	0	0	1380
2017	328	449	117	144	108	14	0	0	0	1160
2018	523	644	316	338	261	13	1	1	1	2098

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions of pregnant women, rather than the number of detainees since these women could have multiple detentions in the same calendar year. Our analysis is based on the 1,377 unique pregnant detainee records for 2016, 1,150 for 2017 and 2,094 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

^aThe length of detention was undetermined for these detentions because the book-out date and book-out reason were missing for these records which is generally due to an ongoing detention.

Detentions of Individuals with Mental Disorders at ICE Health Service Corps-staffed facilities. Based on available records each year from calendar years 2015 through 2018, the majority of detentions of individuals with mental disorders at ICE Health Service Corps (IHSC)-staffed facilities were 90 days or less (ranging from 59 to 71 percent), as shown in table 22.³

Table 22: Length of Enforcement and Removal Operations Detentions of Individuals with Mental Disorders in ICE Health Service Corps (IHSC)-staffed Facilities, Calendar Years 2015 through 2018

Calendar Year	0 -1 day	2 -7 days	8 -15 days	16 -30 days	31 -90 days	91 - 180 days	181 - 270 days	271 - 365 days	366 - 450 days	451- 1518 days	Undetermined or ongoing ^a	Total Detentions
2015	20	296	643	988	3237	1467	719	392	216	528	7	8513
2016	43	416	1100	1221	3216	1804	869	510	262	440	22	9903
2017	20	292	598	1548	2916	1657	883	477	255	310	82	9038
2018	27	263	720	1598	3609	1497	503	160	33	10	376	8796

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions of individuals with mental disorders at IHSC-staffed facilities, rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. These data only include individuals with mental disorders detained at IHSC-staffed facilities. Our analysis is based on the 8,138 unique detainee with mental disorders records for 2015, 9,466 for 2016, 8,643 for 2017, and 8,501 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

^aThe length of detention was undetermined for these detentions because the book-out date and book-out reason were missing for these records which is generally due to an ongoing detention.

Detentions of Nursing Women at IHSC-staffed facilities. From calendar years 2015 through 2018, most detentions of nursing women at IHSC-staffed facilities were 30 days or less (ranging from 77 to 97 percent), as shown in table 23.

³ICE Health Service Corps (IHSC) provides direct medical, dental, mental health care, and public health services to detainees in 20 facilities authorized to house detainees for over 72 hours. Facilities serviced by IHSC include service processing centers, contract detention facilities, dedicated intergovernmental service agreement facilities, and family residential centers.

Appendix X: Length of Detentions of Selected Populations

Table 23: Length of Enforcement and Removal Operations Detentions of Nursing Women in ICE Health Service Corps (IHSC)-staffed Facilities, Calendar Years 2015 through 2018

Calendar Year	0 -1 day	2 -7 days	8 -15 days	16 -30 days	31 - 90 days	91 - 180 days	181 - 270 days	271 -365 days	366-534 days	Total Detentions
2015	0	4	54	63	28	5	0	1	2	157
2016	2	7	227	150	10	1	3	1	0	401
2017	2	12	140	392	19	0	2	0	0	567
2018	0	20	103	245	13	0	0	0	0	381

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions of nursing women at IHSC-staffed facilities, rather than the number of detainees since these women could have multiple detentions in the same calendar year. Our analysis is based on the 157 unique nursing detainee records for 2015, 399 for 2016, 564 for 2017 and 381 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

Detentions of Elderly Individuals. Based on available records each year from calendar years 2015 through 2018, most of the detentions of elderly individuals were 90 days or less (ranging from 80 to 84 percent), with the majority being of 30 days or less, as shown in table 24.

Table 24: Length of Enforcement and Removal Operations Detentions of Elderly Individuals, Calendar Years 2015 through 2018

Calendar Year	0 -1 day	2 -7 days	8 -15 days	16 -30 days	31 -90 days	91 - 180 days	181 - 270 days	271 - 365 days	366 - 450 days	541- 1,323 days	Undetermined or ongoing ^a	Total Detentions
2015	205	156	57	103	210	84	35	12	5	15	0	882
2016	161	109	55	91	193	91	27	12	6	4	0	749
2017	134	127	64	110	222	80	22	9	6	2	2	778
2018	165	175	89	164	334	149	30	7	1	0	46	1159

Source: GAO analysis of U.S. Immigration and Customs Enforcement data | GAO-20-36

Notes: Detention data represent the number of detentions of elderly individuals (those over 65 years), rather than the number of detainees since these individuals could have multiple detentions in the same calendar year. Our analysis is based on the 863 unique elderly detainee records for 2015, 736 for 2016, 763 for 2017 and 1,132 for 2018 that we were able to match to the detention data. The number of detainees may not equal the number of detentions because an individual may have been detained multiple times during a calendar year.

^aThe length of detention was undetermined for these detentions because the book-out date and book-out reason were missing for these records which is generally due to an ongoing detention.

Appendix XI: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

November 4, 2019

Gretta Goodwin
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-20-36, "IMMIGRATION ENFORCEMENT: Arrest, Detentions, and Removals and Issues Related to Selected Populations"

Dear Ms. Goodwin:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's reporting confirms that the U.S. Immigration and Customs Enforcement (ICE) prioritizes the arrest and removal of criminal aliens. Specifically, ICE prioritizes the arrest and removal of unlawfully present aliens who received criminal convictions, have pending criminal charges, are a national security or public safety threat, or are immigration fugitives. GAO's analysis verified the clear majority of ICE arrests within these populations are convicted criminals or individuals with pending criminal charges.

In addition, the Department welcomes GAO's positive recognition that ICE has developed and implemented policies that consider the special needs of specific vulnerable populations, including individuals with mental disorders or disabilities, and those who are transgender, parents of minors, pregnant, or juveniles. GAO reporting acknowledges that ICE has dedicated personnel to serve as field liaisons for many of these populations and releases certain aliens on parole for humanitarian reasons, medical emergency, or other reasons on a case-by-case basis. Further, GAO reported that ICE generally does not target or detain these and other vulnerable populations, such as nursing women and the elderly, unless they have criminal records, a practice which aligns with ICE's priorities for the arrest and removal of criminal aliens.

These efforts demonstrate that the Department treats the individuals in its custody with respect and compassion. DHS remains committed to smart immigration enforcement, preventing terrorism, and combatting the illegal movement of people and trade.

The draft report contained one recommendation with which the Department non-concurs. Attached find our detailed response to the recommendation. DHS previously provided technical comments under a separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,



JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendation
Contained in GAO-20-36**

GAO recommended that the Director of ICE:

Recommendation 1: Implement a process to collect and maintain data in a readily available format on detained parents or legal guardians of U.S. citizen and legal permanent resident minors to ensure that information on this population is entered into ICE's data system as required by policy.

Response: Non-concur. ICE Enforcement and Removal Operations (ERO) agrees that it must collect and maintain data on detained parents or legal guardians of U.S. citizen and legal permanent resident minors, which it already does in accordance with ICE Policy Number 11064.2, "Detention and Removal of Alien Parents or Legal Guardians," dated August 29, 2017. This policy provides guidance for performing operations and managing individual cases, including tracking event-based data.

Once ICE determines a detained alien is a parent or legal guardian of a U.S.-born citizen or legal permanent resident minor, ERO officers enter and maintain the data in the ENFORCE Alien Removal Module (EARM) and the EAGLE [EID (Enforcement Integrated Database) Arrest GUI for Law Enforcement] systems (in the Relatives tab of these two systems) to facilitate appropriate actions specific to individual cases. Approved EARM users, including Child Welfare Coordinators, have ready access to this data and can use or share it with appropriate staff to ensure compliance with ICE policy and guidance. This includes making arrangements for the care of children, such as arranging transportation for parents to attend child welfare proceedings and to accommodate visitation. Data collected is also readily available for consideration, as appropriate, when determining whether to detain or release an alien.

Parents or legal guardians are considered adult detainees who, unlike other populations GAO reports on (e.g., lesbian, gay, bisexual, transgender, and intersex; individuals with disabilities; individuals with mental disorders; pregnant women who are nursing, etc.) do not require unique considerations as a group. For example, being a parent or legal guardian, in and of itself, does not necessitate an added health screening or placement consideration, which a transgender person or pregnant woman would require. As previously mentioned, ICE collects and maintains information on whether an alien is a parent or legal guardian only to take actions specific to individual cases. For parents or legal guardians, this case-specific information is what is necessary and is readily available. ICE does not have any requirement nor need to aggregate data on this particular group and doing so would not better inform ICE's decision making processes.

ICE's sole aggregate reporting requirement related to data concerning parents or legal guardians is a statutory requirement that began in Fiscal Year 2016 as part of the DHS Appropriations Act, which mandates that ICE submit semiannual reports to the House and Senate Committees on the removal of parents of U.S. Citizen minors. The data that ERO already collects and maintains is used to prepare ICE's semiannual report titled "Deportation of Aliens Claiming U.S.-Born Children," to satisfy this requirement, and is something ICE will continue to do. ICE has no requirement nor need to report any other aggregate data.

ICE officials and GAO personnel have met multiple times to discuss the intent of this recommendation and how having aggregate data on the parent or legal guardian population might contribute to improved ICE mission effectiveness. GAO has not identified any problem with the quality of the data in ICE's systems nor been able to articulate compelling reasons how implementing this recommendation could enhance ICE mission effectiveness.

ICE already collects and maintains the data needed in a format that is readily available to successfully fulfill its operational mission, remain appropriately cognizant of the impacts of enforcement actions on alien parents and legal guardians, and satisfy statutorily-mandated reporting requirements. Given current funding constraints and competing mission requirements, ICE cannot consider making system enhancements not directly tied to improving mission outcomes.

We request that GAO consider this recommendation resolved and closed as implemented.

Appendix XII: GAO Contact and Staff Acknowledgments

GAO Contact

Gretta L. Goodwin, (202) 512-8777, goodwing@gao.gov

Staff Acknowledgments

In addition to the contact name above, Meg Ullengren (Assistant Director), Carissa Bryant (Analyst-in-Charge), Hiwotte Amare, Michele Fejfar, Eric Hauswirth, Dainia Lawes, Marycella Mierez, Heidi Nielson, and Claire Peachey made key contributions to this report.

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Human Rights Fiasco: The Trump Administration's Dangerous Asylum Returns Continue

In January 2019, the Trump Administration started forcibly returning asylum seekers to Mexico under a new policy farcically dubbed the “Migrant Protection Protocols” (MPP). Waiting months in Mexico for their hearings, asylum-seeking men, women, and children from, among other countries, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, and Venezuela face life-threatening dangers. Despite overwhelming evidence that this illegal policy is a human rights catastrophe, Trump Administration and Department of Homeland Security (DHS) officials continue to implement, defend, and expand it.

In October, DHS expanded MPP returns from Arizona and began forced returns through Eagle Pass, Texas to Piedras Negras, Mexico. There and in other dangerous border cities, including Tijuana, Mexicali, Ciudad Juárez, Nuevo Laredo, and Matamoros, asylum seekers and migrants returned under MPP face peril wherever they turn. They have been beaten, kidnapped, and raped in shelters, on the way to and from U.S. immigration court hearings, and on the street while looking for work, housing, and food.

Trump Administration and DHS officials are turning a blind eye to these human rights abuses, touting MPP as an alternative to family separation, a way to reduce “overcrowding” in detention facilities, and one of DHS’s “most successful initiatives,” which has “achieved operational effectiveness” by reducing the number of asylum seekers arriving at the southern border. These claims of “success” by DHS officials ignore the severe harms inflicted on the asylum seekers and migrants returned to Mexico under MPP. Mark Morgan, acting Commissioner of U.S. Customs and Border Protection (CBP), has even dismissed the hundreds of public reports of cases of torture, rape, kidnapping, and assault against people in the MPP program as “anecdotal stuff.”

MPP is not only immoral; it’s also illegal. Both U.S. law and treaties ratified by the United States prohibit the government from returning asylum seekers to persecution and torture. At the same time, the policy flouts asylum laws and due process protections Congress adopted for refugees seeking protection at the border.

The administration is using MPP in tandem with other illegal policies, including turn-backs and the third-country transit asylum ban, to subvert U.S. law. The result is effectively a near-ban on asylum. DHS has forced more than 60,000 asylum seekers and other migrants to wait in Mexico under MPP. In addition, some 21,000 are stranded in Mexico due to metering—the illegal policy of turning back asylum applicants at ports of entry. In November, the administration also began to take steps toward implementing asylum-seeker transfer agreements with Guatemala, Honduras, and El Salvador.

This report is based on interviews with asylum seekers stranded in Mexico, attorneys, court monitors, academic researchers, and Mexican government officials; field research in October and November in Ciudad Juárez, Nuevo Laredo, Piedras Negras, and Tijuana; observation of MPP immigration court hearings in November and December; and reports from human rights organizations, legal monitors, and the media. Human Rights First observed proceedings at the Laredo MPP tent court remotely from the San Antonio immigration court because CBP denied Human Rights First’s requests for access to the facility, just as it denied us access to the Brownsville tent court in September. This report builds on our March 2019, August 2019, and October 2019 reports. Human Rights First found:

- Trump Administration and DHS officials continue to direct the forced return of men, women and children seeking refuge to some of the most dangerous areas of Mexico despite**

widespread reports that they are targeted for kidnapping, torture, rape, and other violent attacks. Those harmed include: a 9-year-old disabled girl and her mother kidnapped near the Tijuana port of entry and repeatedly raped; an asylum seeker kidnapped and raped in front of her three-year-old son after being sent by DHS to Matamoros; and a 7-year-old Honduran girl abducted from the Mexican migration office in Nuevo Laredo after an MPP tent court hearing. On hearing kidnappers threaten to murder migrants whose families failed to pay ransom, the girl said, “**Mommy, I don’t want to die.**” Instead of briefly passing through these dangerous regions to reach the U.S. border to request refugee protection, thousands of asylum seekers are stranded in peril for months. DHS now acknowledges that the wait is at least two to four months for an initial hearing, much longer for a final merits hearing.

- ☑ **There are now at least 636 public reports of rape, kidnapping, torture, and other violent attacks against asylum seekers and migrants returned to Mexico under MPP** – a sharp increase from October when Human Rights First identified 343 attacks. On November 13, U.S. Senator Ron Johnson entered Human Rights First’s prior report on MPP into the Congressional record apparently as proof, in his view, that only 343 of the thousands of returned asylum seekers had been targets of violence. But our count of kidnappings and violent assaults is only the tip of the iceberg. The overwhelming majority of returned individuals have not spoken with human rights investigators or journalists, so the actual number of attacks is certainly much higher. A recent study by the U.S. Immigration Policy Center at UC San Diego found that one in four people in MPP in Tijuana and Mexicali have been threatened with physical violence. The study did not include the extremely dangerous MPP return locations of Ciudad Juárez, Matamoros, or Nuevo Laredo.
- ☑ **Human Rights First’s tally of attacks includes at least 138 publicly reported cases of kidnapping or attempted kidnapping of children in the MPP program.** The extreme dangers children in MPP face while waiting months in Mexico have pushed some desperate parents to send them alone into the United States at ports of entry.
- ☑ **Despite claims by DHS officials that returned asylums seekers in MPP are safe in migrant shelters in Mexico, they are targeted for kidnapping, rape, robbery, and assault in these very shelters**, as well as: immediately after DHS returns them; as they go to and return from MPP hearings in the United States; and while they search for shelter, food, and work. They are attacked because of their race, gender, sexuality, nationality, and status as migrants.
- ☑ **The MPP screening process, which returns asylum seekers to wait in grave danger despite credible fears of persecution, appears to be increasingly cursory and adversarial.** Asylum officers, now potentially including border agents allowed by the Trump Administration to act as asylum officers, aggressively question victims of violence, including children, in an apparent effort to undermine their accounts. In other cases, interviews last only a few minutes and consist principally of yes-or-no questions. As a result, virtually everyone is sent back to Mexico regardless of the danger or the trauma they have faced. Returned asylum seekers include a sexual assault survivor who had bruises on her body and sobbing children who had been kidnapped. An investigation by U.S. Senator Jeff Merkley’s office found it “virtually impossible” for asylum seekers to pass MPP fear screenings.
- ☑ **DHS is returning and attempting to return some of the very few refugees who manage to receive asylum or other protection back to danger in Mexico with fake hearing notices.** In late November, the agency returned to notoriously dangerous Nuevo Laredo four Cuban and Venezuelan refugees granted asylum by U.S immigration judges where they remain at risk of kidnapping and attack, as of the date this report was published.

- In violation of its own policy, DHS returns vulnerable individuals, including those with serious medical issues, pregnant women including those with late-term pregnancies, LGBTQ persons, and Mexican nationals.** A pregnant asylum seeker suffered a miscarriage while trying to run away from persecutors after DHS returned her to Ciudad Juárez. An internal DHS report acknowledged that CBP has been illegally placing Mexican nationals into MPP.
- Refugees and other migrants are stranded in Mexico in often inhumane and horrific conditions.** As winter temperatures begin to drop, conditions for the many individuals stranded without proper shelter, particularly in Matamoros, have grown ever more desperate. Helen Perry, a nurse practitioner and Global Response Management's operations director, said: "Speaking from having seen other humanitarian crises in the world, this is one of the worst situations that I've seen. It's only going to get worse, and it's going to get worse rapidly." Despite claims by DHS that Mexico provides housing and humanitarian aid, shelters are minimal and dangerous.
- MPP and the tent courts are a due process charade** that effectively denies nearly all asylum seekers legal representation in immigration court removal proceedings. Ninety-eight percent of all returned individuals were unrepresented through September, according to data from the immigration courts. MPP endangers the safety not only of refugees, but also American lawyers and volunteers who are forced to cross into areas of Mexico plagued by kidnappings and other violence.
- Asylum seekers who miss MPP court hearings because of kidnappings are being ordered deported.** A pregnant Salvadoran woman in Laredo court told an immigration judge that her husband had gone missing in Mexico and couldn't attend court. The judge ordered him deported. A 9-year-old disabled girl and her mother missed their immigration court hearing while being held captive and raped. They were ordered removed by an immigration judge in San Diego.

Human Rights First urges the Trump Administration to:

- Cease MPP and all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations,** including the third-country transit asylum ban, turn-backs and orchestrated reductions on asylum processing at ports of entry, and all attempts to send asylum seekers to countries, including El Salvador, Honduras, Guatemala, and Mexico, that do not meet the legal requirements for safe-third country agreements under U.S. law. Instead, the United States should employ effective and humane strategies that uphold U.S. laws and treaties.
- Direct CBP to restore timely and orderly asylum processing at ports of entry and ensure humane conditions for those held temporarily under CBP custody,** meeting all legal standards, including the Flores Settlement Agreement and DHS internal detention policies.

Human Rights First recommends that Congress:

- Withhold appropriations to DHS and the Department of Justice (DOJ) used to carry out MPP and other forced return programs;**
- Adopt the Refugee Protection Act;**
- Hold MPP oversight hearings; and**
- Conduct official visits to Mexican border towns, CBP facilities and Border Patrol stations on the southern border, and immigration courts including tent facilities to monitor the massive human rights violations caused by MPP.**



At Least 636 Publicly Reported Cases of Rape, Kidnapping, and Assault

Instead of allowing asylum seekers to remain safely in the United States while their asylum claims are decided, as required by the U.S. Refugee Act and subsequent immigration law, the Trump Administration – through MPP – delivers asylum seekers and migrants to rape, kidnapping, torture, and other violent assaults in Mexico. **From the moment that asylum seekers are dumped in Mexico under MPP, they are forced to risk their lives daily to remain in Mexico waiting for U.S. immigration court hearings.** Vulnerable asylum seekers and migrants, including pregnant women, children, and people with disabilities, are kidnapped, raped, and assaulted in shelters, in taxis and buses, on the streets, on their way to U.S. immigration court, and even while seeking help from Mexican police and migration officers. There is virtually no escape from the violence: asylum seekers who flee border cities to wait elsewhere in Mexico for MPP hearings are attacked in those regions, on their journeys there, as well as on their way to and returning from immigration courts in the United States.

During its most recent research, Human Rights First researchers identified an additional 201 previously unreported cases of individuals in the MPP program who were harmed in Mexico. Although likely a gross underestimate of the harm to returned asylum seekers and migrants given the limited monitoring and investigation of the program to date, review of published media accounts, human rights reports, court filings, and other publicly available information reveal that **at least 636 individuals subject to MPP have been violently attacked or threatened in Mexico** – a sharp increase from early October when Human Rights First identified 343 publicly reported attacks against individuals in MPP.

There are certainly well over 636 cases of kidnappings, rape, torture, and assault as the vast majority of asylum seekers and migrants returned under MPP have not been interviewed by reporters or human rights organizations. This count is only the tip of the iceberg. For example, a recent [study](#) by the U.S. Immigration Policy Center at UC

San Diego found that one in four people in MPP in Tijuana and Mexicali have been threatened with physical violence while waiting for court hearings. The study did not include the extremely dangerous MPP return locations of Ciudad Juárez, Matamoros, or Nuevo Laredo. Human Rights First will continue to periodically update the number of reports of kidnappings and assaults it has tracked on www.deliveredtodanger.org, a new initiative launched in collaboration with the American Immigration Lawyers Association, Instituto para las Mujeres en la Migración, Latin America Working Group, Physicians for Human Rights, Refugees International, Washington Office on Latin America, and Women's Refugee Commission.

Children Kidnapped and Vulnerable Individuals in Grave Danger

Children have not been spared from the kidnappings, sexual assault, and other violent attacks on asylum seekers and migrants DHS returns to Mexico through MPP. Among the overall number of attacks, **Human Rights First has tracked at least 138 children in the MPP program who were kidnapped, or subjected to kidnapping attempts, in Mexico to date.** Given the limited monitoring of MPP returnees, the number of children targeted as they wait in danger in Mexico is certainly much larger. Over 16,000 children have been returned to Mexico under MPP, as [Reuters](#) reported in October. Children kidnapped or otherwise harmed in MPP include:

- **A disabled nine-year-old girl was twice kidnapped and repeatedly sexually assaulted** after DHS sent the child and her asylum-seeking mother, Lucia, to Tijuana, according to a statement submitted by the American Immigration Council (AIC) to Congress. Lucia said that the men who kidnapped them the second time “tied my daughter up in a sheet so she could not move. They beat us repeatedly. They took off all of our clothes, touched us sexually, raped us, and masturbated in front of us.”
- **A two-year-old boy was kidnapped in September from a house in Ciudad Juárez while his mother was doing chores in another room**, according to Tania Guerrero of Catholic Legal Immigration Network's (CLINIC) Estamos Unidos Project. DHS had sent the family to Mexico under MPP.
- **A Honduran boy and his asylum-seeking father were abducted the same day DHS returned them to Nuevo Laredo by kidnappers who threatened to take the boy's kidneys**, according to an account first published by [Vice News](#) and recently included on an episode of [This American Life](#).
- **Seven and ten year-old-girls were threatened with rape by kidnappers** who also abducted their brother and father, an asylum seeker from Honduras, after DHS returned the family to Nuevo Laredo.
- **A three year-old-boy was kidnapped along with his mother, who was raped in front of him**, when DHS sent the family to Matamoros.
- **A 12-year-old Salvadoran girl was nearly abducted from her mother in Monterrey** after they were sent by DHS to Nuevo Laredo under MPP then dumped by Mexican authorities in Monterrey. Armed men chased the family and grabbed the girl, but her mother managed to wrestle her back and escape.
- A seven-year-old Honduran girl returned by DHS to Nuevo Laredo told her asylum-seeking mother “**Mommy, I don't want to die**” after overhearing the men who kidnapped them discussing murdering migrants who could not pay ransom.
- Some parents are so terrified for the safety of their children that some have begun to send them alone to ports of entry to be treated as unaccompanied minors and taken to shelters in the United States. Government data reported by [CNN](#) indicates that at least 135 children who were returned to Mexico under MPP are now in the care of the U.S. Department of Health and Human Services, the agency

charged with the care of unaccompanied minors. Taylor Levy, an immigration attorney representing asylum seekers returned to Ciudad Juárez under MPP, said that since at least July she has been fielding inquiries from parents desperate to protect their children by sending them into the United States alone.

DHS continues to return vulnerable asylum seekers and migrants to Mexico in violation of internal MPP policy. DHS claims “individuals from vulnerable populations may be excluded on a case-by-case basis;” yet, the agency returns vulnerable individuals including those with “known physical/mental health issues,” LGBTQ persons, and Mexican nationals who are not eligible for MPP. Those returned in violation of the policy include:

- A disabled nine-year-old girl who was subsequently kidnapped with her mother and repeatedly raped and a 16-year-old Cuban boy diagnosed with lupus and heart and kidney disorders;
- **LGBT asylum seekers**, including a 20-year-old gay Honduran man who is HIV+ and was separated from other asylum-seeking family members and returned to Nuevo Laredo, an LGBT Cuban woman who had been robbed and threatened in Nuevo Laredo while waiting on the metering list, and a gay asylum seeker from Cuba who was robbed and threatened in Mexico but subsequently returned to Matamoros;
- **Pregnant women**, including several with late-term pregnancies, such as a pregnant Honduran asylum seeker under MPP suffered a miscarriage when she fell while trying to escape from persecutors who had followed her from Honduras, a Venezuelan asylum seeker who suffered serious post-natal complications after giving birth to twins in Mexico who DHS had returned in late September to Nuevo Laredo while eight months pregnant, a Salvadoran woman whose husband had gone missing months earlier who was returned again to Mexico after an MPP hearing in early November while eight-and-a-half months pregnant, and a 28-week pregnant Nicaraguan woman with a six-year-old child who told the judge she was afraid to be in Mexico but was not referred for a non-refoulement interview;
- **Indigenous asylum seekers** particularly from Guatemala who are not native-speakers of or fluent in Spanish, including Rosalía, a native Mam speaker sent by DHS to Mexicali; and
- At least 57 **Mexican nationals**, according to immigration court data analyzed by Syracuse University’s Transactional Records Access Clearinghouse (TRAC) – in clear violation of MPP, which explicitly exempts “citizens or nationals of Mexico.” An internal DHS review reportedly found CBP places some Mexican nationals in MPP and acknowledged the need to “address situations where families are placed in MPP and returned to Mexico despite having at least one immediate family member who is Mexican.”

Asylum Seekers Risk Their Lives to Appear in U.S. MPP Courts

Asylum seekers in MPP are at great risk of kidnapping while going to and from U.S. ports of entry to attend immigration court hearings because they are easily identifiable as migrants. Asylum seekers, many of whom spend months waiting on metering lists at ports of entry are forced to wait months more to attend MPP hearings. Wait times for initial hearings are far longer than the 45 days that DHS had initially claimed, with the agency now acknowledging that asylum seekers are waiting between two and four months just for a first hearing. Government data analyzed by TRAC shows that 25 percent of asylum seekers in MPP whose cases were filed with the immigration court in May (1,204 out of 5,080) were still waiting for an initial hearing – four months later – in September. Forty-eight percent of MPP cases filed in June (2,854 out of 5,973) had already been waiting three months for an initial hearing, as of the end of September. Some asylum seekers have already been in Mexico under MPP for nine months waiting for final merits hearings. In early December 2019, asylum seekers appearing in the Laredo MPP tent court, who had already been waiting in Mexico for months due to metering and months

more for their initial hearings, were scheduled for final merits hearings in March 2020 – another three months away. Asylum seekers who have been attacked before or after appearing for MPP hearings include.

- **Lucia and her disabled nine-year-old daughter**, as discussed above, **were returned by DHS to Tijuana following an MPP hearing in San Diego, they were kidnapped just blocks from the port of entry, held for nearly two weeks and repeatedly raped.**
- **A Honduran asylum seeker and his two children, a 12-year-old boy and a 16-year-old girl, were kidnapped while returning from a Laredo MPP tent court hearing in September.** During another hearing in November, observed by a Human Rights First researcher, the family begged not to be sent to Mexico. The girl, sobbing, said that when they return to court “bad people” approach them. The boy said to the judge, “I hope you can help us, please. I don’t want to return to Mexico. We run a lot of risk.”
- In late October, **a Venezuelan asylum seeker was kidnapped while returning to Nuevo Laredo for an MPP hearing at the port of entry tent court in Laredo.** Immediately after getting off of a bus from Monterrey five men approached him and a Guatemalan asylum seeker traveling with him. The two were taken from the bus station in separate vehicles. “I started to cry in the truck. One guy told me to calm down and shut up or he would beat me.” The man was taken to two different houses where the cartel held a dozen other migrants including a Colombian man with a toddler and Nicaraguan family with a nine-month-old baby. The kidnapers punched the Nicaraguan mother in the neck, as they forced her to call family members to beg for a ransom to be paid. The kidnapers released the man after several days of captivity. He fears returning to Nuevo Laredo for his next hearing in December, as his abductors recorded his details from his passport into a notebook and took a photograph of him.
- A 13-year-old boy and his mother were nearly kidnapped in Nuevo Laredo while walking from the bus station toward the port of entry to attend an MPP hearing in Laredo in late September. An armed man and woman approached the family, took photos of them and tried to force them into a waiting vehicle. They escaped on foot to the office of the Instituto Nacional de Migración (National Migration Institute – INM) but so feared leaving that they missed the hearing. A Mexican migration officer eventually ordered the family to get out, saying “it wasn’t [INM’s] problem.” A local pastor, who happened to arrive, hid the family in the back of a passenger van and spirited them from the parking lot of INM building to a shelter.
- A Venezuelan refugee returned by DHS to Mexico after an immigration judge granted him withholding of removal at the Laredo MPP tent court was nearly kidnapped in November while returning to the port of entry to request to be allowed to enter the United States. At the Nuevo Laredo bus station, a group of around ten men surrounded the Venezuelan man. He managed to push his way through, jump into a waiting taxi, and immediately walk onto the international bridge to Laredo, Texas, to escape.
- In mid-October, a Honduran asylum seeker and her daughter told an immigration judge at the Laredo MPP tent court that they had been kidnapped and assaulted in Nuevo Laredo. According to a court monitor attending the hearing from San Antonio, the woman said that if she didn’t return for her next court hearing, “[i]t’s because something happened to me in Nuevo Laredo.”

Asylum Seekers Targeted at Shelters

Asylum seekers returned by DHS to Mexico under MPP are under serious threat of kidnapping and assault, even inside of migrant shelters, which overwhelmingly lack protection from Mexican authorities.

Further asylum seekers in MPP are attacked outside of migrant shelters when the very limited beds in these facilities are full as well as when asylum seekers go out in search of work, food, and other necessities.

Despite widely available evidence of the dangers facing asylum seekers forced to wait in Mexico, acting CBP Commissioner Morgan claimed that migrant shelters in Mexico have “persistent law enforcement present” and that “safety was okay.” Yet since August, at least three individuals who reportedly attempted to prevent organized criminal groups from kidnapping or assaulting migrants in Nuevo Laredo shelters, including pastors Aaron Mendez and Ricardo Alcaraz, were abducted and remain missing. Attacks against migrant shelters in Guadalajara and Tlaxcala have also recently taken place. Many incidents go unreported because of fears of reprisal, as in the case of pastor Alcaraz whose family received threats after they publicly denounced his kidnapping. In Ciudad Juárez, Uber and taxi drivers reportedly refuse to pick up migrants at shelters because of the danger that kidnapers and extortionists will target them and their passengers.

- Despite claims by DHS of “persistent law enforcement” presence, **only one of the 14 shelters with MPP returnees visited by Human Rights First researchers in Tijuana, Mexicali, Ciudad Juárez, Piedras Negras, and Nuevo Laredo had government-provided security.**
- In Nuevo Laredo, **asylum seekers returned by DHS under MPP described attacks and/or threats against at least five migrant shelters since MPP began there.**
 - Human Rights First reviewed several reports that armed cartel members opened fire outside of a church-based shelter that they later entered, threatening to kidnap migrants. A Venezuelan asylum seeker returned by DHS to Nuevo Laredo reported that cartel members threatened a pastor at the same shelter.
 - Asylum seekers in MPP at a Nuevo Laredo church-run shelter housing some 70 individuals, including many children, told Human Rights First researchers in November that armed cartel members had recently broken in, terrifying those at the shelter.
 - A Cuban asylum seeker returned by DHS to Mexico stated that in August cartel members had robbed him inside of a church offering shelter to migrants in Nuevo Laredo.
 - MPP returnees at another religiously affiliated shelter in Nuevo Laredo visited by researchers said that cartel members were frequently outside and that they were to go outside fearing abduction. Even though the shelter is near the port of entry, the pastor drives asylum seekers there to attend MPP immigration court hearings to reduce the risk of kidnapping. An asylum seeker in MPP at a shelter run by a Catholic priest reported that he had seen men he believed were cartel lookouts circling the building.
 - Another pastor was threatened by cartel members while transporting migrants to a shelter in Nuevo Laredo.
 - A 25-year-old Honduran woman and her three young children – all under 5 – who crossed the border near Piedras Negras were kidnapped upon exiting a taxi in front of a shelter in Nuevo Laredo after DHS returned them there in mid-October. Men in white vans intercepted the family, held them captive for five days, and demanded money from family members, according to an academic researcher who spoke with the relatives.
- Migrant shelters in Ciudad Juárez have also been targeted. In September, armed, masked men attacked a church-based shelter in Ciudad Juárez housing mainly Cuban migrants, according to a Cuban asylum seeker who was sleeping in the shelter with his partner and nine-year-old daughter at the time. The men shouted: “asshole Cubans, open up,” as they forced their way into the shelter. The armed men threatened to “kill one of these asshole Cubans” and fired their weapons indiscriminately, nearly hitting the Cuban man. At another shelter on the outskirts of Ciudad Juárez, a Honduran asylum seeker who DHS had

returned under MPP was nearly abducted by four masked men in a black van who repeatedly came to the shelter where she was staying and interrogated other migrants about her whereabouts.

- A Honduran asylum seeker returned by DHS to Nuevo Laredo with her 10-year-old daughter was forced to flee a church shelter in Monterrey in September because cartel members had demanded that the church make an extortion payment for each Honduran migrant staying in its facility.

Asylum seekers in MPP who cannot find space in or avoid migrant shelters, which have been targets of attacks, are also at risk of kidnapping and assault in migrant hotels and other accommodation.

- **A disabled nine-year-old girl was sexually assaulted after she and her mother, Lucia, were placed in MPP by DHS and sent to Tijuana,** according to AIC. The family were forced from a migrant shelter demanding payment and had moved into the house of a local man in exchange for Lucia doing domestic work. The man, who turned out to work for a cartel, locked them in the house, forced Lucia to work without pay, and sexually assaulted the girl.
- **A 12-year-old Salvadoran girl was nearly raped after she, her father, and younger brother were returned by DHS to Ciudad Juárez under MPP.** After the Casa Migrante told the family that they could not extend their stay due to limited capacity at the shelter, the family rented a room in a local home. While the girl's father was out purchasing food, the husband of the house's owner tried to rape the girl. The man threatened to have the girl's father arrested and deported, if she reported him to the police.
- In early July, armed cartel members attacked a home where several Cubans were renting rooms while waiting for permission to approach the port of entry at Laredo to request asylum. The cartel members announced they were searching for "foreigners," roughed up the elderly Mexican couple renting out the home, beat several of the men and placed rifles to their heads, robbed the group, took their photos and ordered them to leave the city. **DHS returned these asylum seekers to Nuevo Laredo through MPP, telling one man that his fear of the cartel was "outside their [CBP's] jurisdiction."**
- While waiting on CBP's metering list at the Laredo port of entry, **a Venezuelan asylum-seeking family with a 7-year-old daughter reported that armed men kidnapped numerous individuals from the migrant hotel where they were staying in July.** In the early hours of the morning, a group of men abducted migrants from the rooms on either side of theirs, firing guns into the air outside. The family fled to a shelter but did not remain there long because the pastor running the shelter was kidnapped.
- An asylum-seeking Venezuelan family with 16- and 11-year-old girls and 10- and 3-year-old boys were robbed in a migrant hotel after DHS returned them to Nuevo Laredo. A hotel manager said he was powerless to stop the cartel from entering the hotel. Men had previously tried to kidnap one of the girls, as the family passed through the Nuevo Laredo bus station.

Returned asylum seekers forced to venture onto the streets or take public transportation to purchase food or in search of work to support themselves and hire attorneys to represent them are also targets of attack because of their nationality, race, gender, and status as migrants.

- **Nicole, a pregnant asylum seeker from Honduras suffered a miscarriage after she fell while escaping from her persecutors** who had tracked her and her husband to where the family was attempting to hide while waiting for their MPP hearing in El Paso, according to Tania Guerrero, an attorney with CLINIC.
- A 28-year-old Salvadoran asylum seeker sent to Nuevo Laredo by DHS under MPP went missing in September after leaving a shelter in Nuevo Laredo to work for the day. The man was still missing at the

time his 8-year-old son and wife, who was due to give birth in mid-November, appeared at their master calendar hearing in early November at the Laredo MPP tent court.

- In November, a Salvadoran asylum seeker and her two young children, who DHS returned to Matamoros, were abducted in a taxi while trying to reach a nearby store to purchase food. The taxi driver handed the family over to kidnapers who held them for seven days while attempting to extort the woman's relatives, according to Charlene D'Cruz, an immigration attorney heading the Lawyers for Good Government project at the Matamoros tent encampment. **D'Cruz said that abductions are so common in Matamoros that "most people expect that they're going to be kidnapped at some point."**
- A Cuban asylum-seeking couple were robbed and pushed to the ground while walking to a store in Mexicali, where the pair had moved after DHS returned them to Nuevo Laredo. The couple had previously been abducted, robbed, and threatened in Reynosa. Another couple seeking asylum from Cuba were abducted from the street in Mexicali in August, according to their attorney Margaret Cargioli from the Immigrant Defenders Law Center. The family is afraid to venture outside now because the kidnapers took their phones and recorded their biographical information.
- A 51-year-old member of a Cuban opposition party said that he and his adult sons, who were returned to Nuevo Laredo by DHS, have been repeatedly targeted because of their nationality. In one incident, men shouted at them on the street: "asshole Cubans, you're fucked." Then **in late October, a group of men cornered the family in the street, beating the older man with a board.**
- Lizbeth, a Salvadoran asylum seeker who was returned by DHS to Mexico through MPP, was savagely beaten in the street by two men with a belt while returning from a convenience store to the home where she had found accommodation on the outskirts of Tijuana, according to her attorney Siobhan Waldron.
- After being returned to Ciudad Juárez by DHS, a Venezuelan asylum seeker was robbed while walking in downtown Juárez. The assailant used the woman's stolen phone to threaten and extort her family members in the United States claiming he knew where the woman lived. When the woman's family stopped answering the calls, a man with a photo of the woman appeared near her home in Juárez asking about her. She reported the incident to authorities, but the police did not conduct any investigation.
- Armed men cut a 33-year-old Venezuelan asylum seeker with a knife as he was searching for a migrant shelter in Nuevo Laredo when the man refused to get in their truck. DHS later returned the man under MPP despite the attack. A former police officer, the man stated that fears going outside the shelter where he is staying. "You cannot understand how bad it is," he said.
- In November, a female asylum seeker from Honduras returned by DHS to Matamoros was kidnapped near the tent camp just feet from the local INM office and the building where Lawyers for Good Government is assisting MPP returnees with asylum applications, according to attorney Charlene D'Cruz.
- In September, the 18-year-old son of a Venezuelan asylum seeker returned by DHS to Nuevo Laredo was nearly kidnapped while working at a fruit and vegetable stand where he and his mother had found work. A passerby intervened to stop five men from kidnapping the young man when they began interrogating him about whether he was a foreigner. The young man had previously received a graze wound on his neck during a shooting near the stand.
- **Kidnappings of asylum seekers in MPP from the bus station in Nuevo Laredo are common**, including: a family seeking asylum from Venezuela with daughters ages seven and two; two Honduran asylum-seeking sisters and their three children held captive for five days and threatened with death if their

family did not pay ransom; and, a Guatemalan family with two boys who were kidnapped from the station while waiting for a bus to Monterrey while on the port of entry asylum metering list.

Individuals and families who attempt to relocate away from the border region are still kidnapped and attacked – sometimes in transit to these regions or on return to MPP hearings, as well as in cities like Monterrey, where Mexican authorities dump returned asylum seekers without assistance.

- A 4-year-old Honduran boy and his 23-year-old asylum seeker mother were kidnapped in Monterrey after being bused there following their return to Nuevo Laredo by DHS. On the second night of their captivity, one of the kidnapers began to sexually assault the woman but was interrupted by another of the kidnapers who set the family free.
- A 3-year-old Salvadoran boy and his mother were kidnapped while attempting to reach Monterrey after DHS returned them to Nuevo Laredo. Family members were forced to pay a ransom to secure their release. The family went into hiding in the house of Good Samaritan who is providing them with food because they fear going outside.
- A group of men stopped and threatened a Venezuelan asylum seeker traveling from Nuevo Laredo, where she had been returned by DHS under MPP, to Toluca. The men asked whether the woman was Venezuela or Cuban and gave a “first warning” to the minister traveling with the woman at the time.
- An asylum seeker from Ecuador was abducted in September while traveling to Monterrey after being returned to Nuevo Laredo by DHS. The kidnapers removed her from a car and took her to a series of houses where they demanded money for her release.
- A group of men beat and robbed a Salvadoran asylum seeker returned by DHS to Nuevo Laredo in July when he stepped out of the migrant shelter in Monterrey to purchase food for himself and his daughter.
- A Venezuelan asylum seeker in MPP, who was later granted withholding of removal at the Laredo tent court facility, was beaten by a group of men with sticks in Monterrey. On another occasion armed men in a vehicle nearly kidnapped him while he was traveling in a taxi in Monterrey.
- Cartel members in Monterrey sent extortion demands and threatening messages to a Cuban asylum seeker placed in MPP by DHS and returned to Nuevo Laredo in July. The man was forced to relocate again to another part of Mexico. He had previously been assaulted three times while in Reynosa.
- Another Cuban asylum seeker sent by DHS to Nuevo Laredo who had moved to Monterrey was kidnapped there and released only after he and his family paid a significant ransom.

Mexican Authorities Complicit

Mexican migration and police officers are responsible for and/or complicit in the kidnapping, rape, assault, and extortion of asylum seekers and migrants returned by DHS to Mexico under MPP. Some attacks have been carried out inside of Mexican migration installations and police stations, as discussed below. In fact, the U.S. Department of State reported in its 2018 assessment of human rights in Mexico that migrants are victimized by police, immigration officers, and customs officials. Mexican authorities also consistently fail to investigate or prosecute reported crimes against migrants.

Trump Administration officials when questioned about the dangers facing those returned to Mexico by DHS have repeatedly asserted that Mexico shelters and ensures humanitarian assistance for asylum seekers in MPP

(though no written agreement with Mexico detailing specific responsibilities – including for safety and security in notoriously dangerous areas – has been publicly released). But the mere assertion that Mexico is responsible does not relieve the United States of its responsibility to protect refugees seeking asylum at and within its borders. This attempt to evade and shift responsibility for refugee protection to Mexico is particularly disingenuous given the documented history of kidnappings, killings, and disappearances in Mexico and along the border, the targeting of refugees and migrants in Mexico, and the extensive documentation of corruption among Mexican authorities – including migration officials. The Mexican government should and must do more, but the United States must uphold its asylum laws and treaty commitments and stop refouling asylum seekers and migrants to places where they face persecution, torture, and other human rights abuses. Some example of Mexican officials' complicity and collaboration in these attacks, include:

- In mid-September, **cartel members openly kidnapped returned asylum seekers inside the INM building in Nuevo Laredo** following U.S. immigration court hearings, including the seven-year-old Honduran girl and her mother mentioned above. The woman overheard a Mexican migration officer tell the kidnappers the number of migrants returned from court that day and the men counting victims to abduct. The family tried to escape in the car of local pastor, but cartel members forced the vehicle to stop a few blocks away, abducted them, and held them in a house with some 20 other kidnapped migrants. A cartel member threatened to kill the woman if she reported the kidnapping to the police and **bragged “the man from migration gave you to us.”**
- In late July, **a woman with a baby girl in her arms, who DHS had just returned to Mexico under MPP, were abducted from the parking lot behind the INM building in Nuevo Laredo.** According to a Venezuelan asylum seeker returned the same day, armed men entered the parking lot, which is enclosed by a concrete wall and metal fencing, and forced the family into their vehicle. INM officials and a patrol of Mexican soldiers who passed by shortly afterwards did nothing to investigate or respond to the abduction.
- DHS returned a Salvadoran asylum seeker, her husband, and three young children to Mexico in October even though they had been kidnapped and threatened by Mexican federal police in Ciudad Juárez. **The officers brought the family to what appeared to be a police station, demanded ransom from the woman’s family in the United States saying that they “would never see them again,” if they failed to pay, and even threatened to take away the woman’s children and put them up for adoption.**
- **In Ciudad Juárez, Mexican police attacked a Salvadoran asylum seeker, throwing him to the ground, kicking and robbed him in front of his two children as they approached the port of entry to attend an MPP court hearing in August.** The man was walking with his children in the early morning hours to report to CBP at the port of entry by 4:30 am for their hearing. When the man was able to show the police his MPP court documents, they released him but stole his money.
- Mexican migration agents in Nuevo Laredo also appear to have been involved in the near kidnapping of a Honduran asylum seeker, her husband, and son in late September after DHS sent them to Nuevo Laredo. As the family and other migrants were walking from the INM building after Mexican migration told them to leave or get on a bus for the southern Mexican border, men in vans abducted more than a dozen migrants, including the Honduran woman. Her husband and son managed to run back to the INM office. **Mexican immigration officers were either directly participating in or permitting the men to kidnap asylum seekers from the INM building because the kidnappers showed the woman a photo of her family crying inside the building to pressure her to convince them to come out.** The family managed to escape with a pastor who spirited them to a shelter in Monterrey, according to an academic researcher who interviewed migrant families in Monterrey in mid-October.

- In mid-October, a **Venezuelan asylum-seeking family of five including two girls ages eight and ten were nearly kidnapped at the Nuevo Laredo airport while returning for an MPP hearing**. The family had moved to another Mexican city after nearly being kidnapped outside of a shelter in Nuevo Laredo. As they passed through internal migration controls, a Mexican migration official took photos of the family and their documents with what appeared to be her personal cell phone. When the family challenged the official, they were allowed to proceed. However, upon exiting the terminal a group of men immediately approached them and tried to force the family into a waiting vehicle – indicating to the family that the migration official had sent their photos to the kidnappers. The family narrowly managed to escape abduction by pushing their way back into the terminal.
- **Mexican police asked for a bribe when a former judge seeking asylum from Cuba and her husband attempted to report an assault against the man in southern Mexico**, according to their immigration attorney Natalie Cadwalader-Schultheis of Justice for Our Neighbors. The couple refused to pay and the police failed to investigate the attack even though it had been captured on a film by a nearby security camera. The couple were also robbed and threatened at gunpoint with other Cuban asylum seekers in Reynosa, but DHS returned them to Matamoros under MPP nonetheless.
- **Mexican police have repeatedly threatened, wrongfully detained, and extorted the clients of Constance Wannamaker**, an immigration attorney representing asylum seekers returned to Ciudad Juárez under MPP. Police there threatened to beat a Honduran asylum-seeking client and demanded money from him. Two Cuban asylum-seeking clients, one of whom was pregnant, were also repeatedly detained and extorted by Mexican police in Juárez and in Tapachula in southern Mexico.
- Lisa Knox, an immigration attorney who represents asylum seekers in MPP said she had been alerted by her clients to **multiple instances of physical assault and abuse by Mexican police in Tijuana against returned asylum seekers**. One Honduran asylum seeker told her that he been attacked in Tijuana, and in another incident, Mexican police had detained him and called him a “dirty Honduran.”
- A Cuban asylum-seeking client of Kenna Giffen, an immigration attorney working with asylum seekers returned to Matamoros, told Giffen that **Mexican police had entered a church in Reynosa sheltering migrants and demanded money**. The police detained those who refused to pay from the church.

U.S. Officials Continue MPP Returns Despite Widespread Human Rights Abuses

Despite extensive reports of attacks on asylum seekers in Mexico, Trump Administration officials continue to deny the massive human rights fiasco that has resulted from MPP. In November, CBP’s acting Commissioner Morgan referred to the hundreds of reports of violence against asylum seekers from human rights organizations, academic researchers, and journalists, as “**anecdotal stuff**.” In late October, outgoing acting DHS Secretary McAleenan denied hearing any “verified incident” of Mexican authorities handing migrants to cartels nor of the widely reported abduction in August of Pastor Mendez, who was reportedly attempting to protect migrants in his shelter from cartels.

Public denials by DHS officials of the grave harms suffered by asylum seekers in Mexico fly in the face of warnings and evidence from the U.S. Department of State of the deadly dangers in the regions where DHS is returning individuals through MPP. The Tamaulipas region, which encompasses Nuevo Laredo and Matamoros, is designated as a Level Four threat, the same level threat assigned to Afghanistan, Iran, Libya, and Syria. In mid-

November, as cartel violence in the region spiked while the Trump Administration continued to expand its dangerous forced return policy, the U.S. Consulate in Nuevo Laredo issued a travel warning advising U.S. citizens and personnel to avoid public places. The State Department has also indicated that Mexican police officers and security forces have been implicated in kidnappings, rape, and other human rights abuses against migrants.

In the past two years, violence across Mexico has reached renewed highs. This year has seen some 90 murders daily, many linked to drug cartels, which places the country on track to repeat the record high of nearly 36,000 homicides in 2018. That year a quarter of all murders were concentrated in five cities, including Tijuana and Ciudad Juárez, where DHS is forcibly returning asylum seekers under MPP. In November, gang warfare in Ciudad Juárez escalated with pitched gun battles in the city's streets. Overall, federal crimes in Mexico, including kidnapping, increased by 18 percent in 2018. In September of this year, there were 65 reported kidnappings in Nuevo Laredo, likely a small fraction of the total given factors that deter reporting, including the ineffectiveness of the Mexican police and their complicity in human rights abuses.

Refugee protection professionals implementing MPP have warned that the policy delivers asylum seekers to death, kidnapping, and rape. An asylum officer who resigned in protest condemned MPP, writing that by participating in sham fear-screening interviews he was “**literally sending people back to be raped and killed.**” Michael Knowles, president of a union representing employees of the U.S. Citizenship and Immigration Services (USCIS) and a longtime asylum officer, testified before Congress that MPP is an “**unmitigated disaster**” and stated that “[t]hese policies are . . . the basis for human rights abuses on behalf of our nation.” He said: “**I don’t know a single asylum officer in this country who believes [MPP] is a good policy.**” Asylum officers and government officials reportedly told the L.A. Times that asylum officers across the country are requesting transfers, retiring early, and quitting to avoid enforcing inhumane immigration policies, including MPP.

Notwithstanding extensive, publicly available information (including from U.S. government sources) of the extreme danger migrants in Mexico face, there is no publicly available information showing that the Trump Administration assessed the potential level of harm to asylum seekers before initiating forced returns to Mexico under MPP. Over the last two months, DHS officials have continued to expand these returns, yet have declined when asked by members of Congress to say whether they are reviewing the forced return program in light of these extensive reports of harm. When asked by Representative Nanette Barragán at an October 30 hearing whether DHS had assessed harms asylum seekers might suffer under MPP, then acting DHS Secretary McAleenan dodged the question ultimately offering only that, “[a]ssessments were done on Mexicans’ ability to manage this program jointly with the United States.” A DHS “assessment” of MPP dated October 28 fails to even mention the extensive reports of kidnappings and assaults in MPP, or any assessment of harms suffered by asylum seekers. The document absurdly claims that MPP is an “indispensable tool in . . . restoring integrity to the immigration system.” In contrast, a November report by Senator Merkley found that “[t]he administration’s MPP program put[s] thousands at risk as they await their asylum hearings in dangerous Mexican border towns.”

At a November 13 Senate Homeland Security and Governmental Affairs hearing, Senator Gary C. Peters asked acting CBP Commissioner Morgan whether DHS was considering revisiting its use of MPP in light of the very troubling reports of kidnappings, sexual assaults, and other harms to asylum seekers. In response, Morgan did not indicate that DHS officials would reconsider their use of MPP, instead testifying that “those things” are not happening when people stay in shelters, but only when they leave shelters. Taylor Levy, an El Paso based immigration attorney who has represented asylum seekers in Ciudad Juárez, reported that she had informed Morgan’s staff of the violence and kidnappings right outside of a Juárez shelter they were visiting – including that people had been raped and beaten in front of their children. Many asylum seekers, as detailed in this report and other accounts, have been attacked at shelters in Mexico, and while traveling back and forth to shelters to attend MPP hearings, buy food or conduct other essential activities. Morgan also attempted to dismiss reports of

kidnappings, assaults, and other attacks by stating that “the data is not substantiated by the Mexican military or national guard.” However, efforts to pretend these attacks are not happening – on the grounds that Mexican authorities have not provided data on them to DHS – is both disingenuous and absurd given the well-documented failures of Mexican officials to protect migrants and refugees, their complicity in attacks against migrants and refugees, and the extensive criminal activities of cartels more broadly in border and other regions of Mexico.

Sham Protection Interviews Increasingly Cursory and Adversarial

DHS’s MPP screenings appear rigged against asylum seekers at every stage. Screening interviews have become increasingly cursory, farcical, and hostile. DHS officials overrule some asylum officers’ decisions that MPP returnees face serious danger in Mexico. In addition, CBP officers also continue to fail to refer individuals who express fear of return for fear-screening interviews, and immigration judges routinely do not ask asylum seekers if they are afraid to return to Mexico and sometimes do not refer them for screenings. Some asylum seekers even report being restrained in handcuffs during MPP fear-screening interviews. As a result, very few asylum seekers have been removed from MPP, even when they suffer serious harms and/or threats in Mexico.

The MPP screening process is a sham that lacks the basic safeguards Congress created to prevent the deportation of asylum seekers to persecution through the credible fear screening process and other safeguards to assure access to asylum hearings. In an amicus brief submitted in the suit challenging MPP, the U.N. Refugee Agency made clear that MPP fear-screening procedures “lack key safeguards required by international law” as “applicants do not have access to counsel in the screening procedure; a decision is not appealable by the applicant; and applicants cannot meaningfully prepare their refugee status determination claims by meeting with lawyers and/or receive notice of upcoming court dates, or otherwise be assured of due process in their full asylum hearings.” An amicus brief by the union for asylum officers from USCIS, who conduct these screenings, states that “MPP fails to provide even the basic procedural protections available to asylum applicants subject to [expedited removal].” The design and implementation of the MPP screenings makes clear that they are not intended to protect asylum seekers and migrants at risk in Mexico but to expedite their return despite these risks.

DHS has publicly defended the small percentage of individuals who pass MPP fear screenings by audaciously suggesting that asylum seekers – who are fleeing violence in their home countries are unlikely to harbor legitimate fears of return to Mexico because they “voluntarily entered Mexico en route to the United States” – disingenuously ignoring the difference between passing through a dangerous area with the much greater risk faced by those placed in MPP who are forced to remain in a highly dangerous area for many months.

Fear-screening interviews conducted by asylum officers have become increasingly farcical, cursory, adversarial, and seemingly rigged against asylum seekers.

- **Some MPP fear interviews last just minutes, consist of yes-or-no questions, and/or focus on issues not relevant to fear of Mexico.** Credible fear interviews conducted by trained asylum officers generally take several hours to complete. Yet two unrepresented asylum seekers from Honduras and Venezuela returned to Tijuana told attorney Lisa Knox in late November that their MPP fear interviews lasted about five minutes. An Ecuadoran asylum seeker kidnapped in September in Nuevo Laredo with her daughter, told her attorney Esmeralda Sosa, that she was asked only a few questions even though she had presented evidence in the form of text messages from the kidnappers during an MPP screening. Sosa was not permitted to attend or monitor. A Salvadoran asylum seeker, who had nearly been kidnapped in Nuevo Laredo, indicated that the officer conducting her 15-minute-long interview principally asked about the route she and her children took to the United States and “why they had come illegally.”

The aggressive questioning made her afraid to fully recount what had happened, in part, because she feared her responses might be shared with Mexican migration officials who she had seen speaking to one of the men who tried to kidnap her.

- A former asylum seeker who resigned in protest over MPP decried the fear interview process as “practically ensur[ing]” the violation of international law. He wrote, “[t]he current **process places on the applicants the highest burden of proof in civil proceedings in the lowest quality hearing available . . .** we are conducting the interviews telephonically, often with poor telephone connections, while at the same time denying applicants any time to rest, gather evidence, present witnesses, and, most egregious of all, denying them access to legal representation.” Another asylum officer speaking to Vox reportedly stated that the standard for fear of Mexico screenings is “all but impossible to meet.”
- **DHS continues to generally refuse access to attorneys during MPP screening interviews even where it has the physical capacity to do so.** Several attorneys representing asylum seekers at the Laredo and Brownsville MPP facilities told Human Rights First that CBP had not permitted them to be present with their clients during MPP fear-screening interviews; only two attorneys reported that after repeated requests to the Houston Asylum Office and local CBP officers that they were permitted to sit in on interviews conducted at the Brownsville tent facility. DHS has generally maintained that it cannot provide access to counsel during fear screenings because of “limited capacity and resources at ports-of-entry and Border Patrol stations.” But this inadequate claim does not explain why attorneys are excluded from monitoring interviews telephonically and does not account for why the agency chose to conduct MPP fear-screening interviews in CBP facilities where attorneys are routinely barred. In November, a **federal district court issued a temporary restraining order** in a suit brought by Jewish Family Services and the ACLU of San Diego and Imperial Counties, **finding that the Administrative Procedure Act “provides a right of access to retained counsel for [MPP] interviews”** and requiring DHS to grant the plaintiffs, a family of Guatemalan asylum seekers returned to Tijuana under MPP, access to their lawyers before and during MPP fear-screening interviews while in CBP custody.
- **Although asylum seekers frequently report being told by DHS that they cannot pass MPP fear screenings without corroborating evidence, which is often difficult for many to secure at that stage, even those who have evidence are blocked from presenting it, as DHS lacks processes to allow individuals or their attorneys to submit evidence.** Attorney Kenna Giffin reported that DHS would not allow her to submit medical and other documentary evidence of behalf of a Cuban asylum seeker who had been sexually assaulted in Mexico because she had made the request for interview in court and they would not accept a same-day submission of evidence. An attorney representing a Cuban asylum seeker who was gang raped in Mexico and returned to Nuevo Laredo was told by an asylum officer that medical evidence regarding the assault was “not needed.” The officer conducting the interview telephonically was uncertain as to how to receive documents at the time of the interview from an MPP tent court. Neither woman passed the MPP screening interview. In early December, a lawyer representing an asylum seeker in the Laredo MPP court requested during the hearing an MPP fear interview for her client and inquired as to where she could send documentary evidence. Neither the immigration judge nor the DHS attorney could explain how to submit evidence for the telephonic MPP screening interview.
- **The percentage of individuals who pass DHS’s farcical fear of Mexico screenings remains very low.** Figures from DHS published in late October indicate that fewer than 1,000 people were found by asylum officers to meet the unduly high Mexico fear standards – 13 percent of the 7,400 individuals actually provided MPP fear screenings. It is also unclear how many of the asylum seekers referred for fear-screening interviews were referred by an immigration judge, or whether the passage rate has shifted

over time as MPP has expanded. But the overall percentage of individuals removed from MPP with genuine fears of remaining in Mexico is likely much lower than the 13 percent calculated by DHS given CBP's widespread failure to refer the majority of individuals who indicate a fear of return, as the UC San Diego [study](#) found, and efforts by CBP to dissuade or punish asylum seekers who request such interviews, likely many asylum seekers who fear return to Mexico have not been referred for interview at all. For instance:

- A Venezuelan asylum seeker said that after a negative MPP fear-screening decision a CBP officer at the Laredo port of entry told him to not bother requesting another interview because “they’re not taking anyone out” of MPP.
 - Another Venezuelan asylum seeker told attorney Lisa Knox that she was held in isolation for two days in a CBP cell in San Ysidro without access to drinking water after requesting a fear interview.
 - One immigration attorney, who represents clients returned to Matamoros, reported that she does not request MPP fear screenings for some clients with legitimate fears of returning to Mexico because those returned after interview, which the vast majority do not pass, are often released at night, heightening the dangers they face.
- [TRAC](#) data shows that as of September only **one percent** of individuals (659 out of 47,313) scheduled for MPP immigration court hearings had been removed from the program (this figure includes those who were removed at the discretion of CBP for reasons other than passing the MPP fear screening).

DHS officials have overturned positive MPP fear-screening determinations and pressured USCIS asylum officers to determine that asylum seekers and migrants do not meet the MPP fear-screening standard.

- The Merkley [report](#) on MPP found that **DHS political appointees interfere in MPP fear screenings, overturning decisions by professional asylum officers** that individuals have met the high screening threshold. According to the report's findings, “decisions that migrants should remain in the U.S. for their safety were forwarded on to supervisors, and in some cases all the way up to headquarters,” where they were frequently reversed. One whistleblower said getting final approval to remove asylum seekers who face harm in Mexico from the MPP program requires “Herculean efforts.”
- The internal DHS [review](#) of MPP reported on by BuzzFeed reportedly concluded that “**some CBP officials pressure USCIS to arrive at negative outcomes when interviewing migrants on their claim of fear of persecution or torture**” in Mexico under MPP.

The vast majority of individuals have been returned after MPP screening interviews even when they have been previously targeted in Mexico. Indeed, the Merkley report concluded that is “**virtually impossible for any asylum-seeker—regardless of the actual danger they face—to be granted permission to leave Mexico.**”

Some of those returned by DHS after screening despite having suffered serious harms in Mexico include:

- DHS returned [a nine-year-old disabled girl and her mother](#) after failing an MPP fear screening even though they had been held against their will, subject to labor exploitation, and the girl sexually assaulted. After failing the screening, the girl and her mother were abducted blocks from port of entry in Tijuana by armed men, who repeatedly raped them over the course of nearly two weeks in captivity.
- In mid-November, an asylum-seeking woman who had been raped in front of her three-year-old son was returned to Matamoros after she did not pass an MPP fear-screening interview, according to attorney Jennifer Harbury. The woman and her son had previously been kidnapped in Reynosa and returned to Mexico under MPP without being referred for a fear screening.

- A Cuban woman kidnapped and gang raped in Nuevo Laredo when she first arrived there to seek asylum at the port of entry did not pass an MPP fear-screening interview. The attackers said, “this is what we do to Cubans here.” After DHS initially returned her to Nuevo Laredo, the woman lived in hiding, only leaving to receive treatment for her trauma and to attend an MPP court hearing. During a fear-screening interview in November after that hearing, an asylum officer asked the woman for proof that “the attackers believed they were targeting [her] because [she is] Cuban” and concluded that despite the serious harm she suffered in Mexico that her fear of return to Mexico was insufficient to justify removing her from MPP.
- A Guatemalan man and his nine-year-old son, who were twice nearly kidnapped in Mexico, did not pass an MPP fear screening after aggressive questioning of the boy by an asylum officer. The officer questioned the nine-year-old child about details of the kidnapping attempts, one of which occurred just a day after the family was returned to Mexico, resulting in the nine-year-old becoming confused, overwhelmed, and crying, according to an attorney who spoke with Human Rights First.
- An asylum seeker from El Salvador and his six-year-old son who were kidnapped, robbed, and extorted multiple times, including by Mexican police, were returned by DHS to Mexico after failing to pass an MPP fear screening, according to their attorney Constance Wannamaker. Though the family’s account was deemed credible, as indicated by the interview worksheet, the asylum officer found that they did not meet the standard to establish a more likely than not probability of harm in Mexico.
- A Cuban asylum seeker, who was the victim of two kidnappings in Reynosa and who was physically abused and sexually assaulted after being returned under MPP, did not pass a fear screening in November, according to her attorney Kenna Giffen. The woman who was referred for interview following a hearing in the Brownsville tent court fainted in terror of being returned to Mexico and was put into a wheelchair. DHS did not permit the woman to be represented by counsel during the interview.
- A Honduran asylum seeker who did not pass an MPP fear screening had been repeatedly stripped and searched for money by men in Mexican police uniforms who threatened to kidnap her older son and had been followed and threatened by men in Mexicali. The woman was found not credible and the family returned to Mexico. The woman reported to her attorney Troy Elder of Immigrant Defenders Law Center, who DHS did not allow to be present during the interview, that the asylum officer interviewing her and her sons questioned the boys about whether they “like” Mexico in what appeared to her to be an attempt to contradict her fear of remaining there.

CBP officers continue to routinely fail to even refer asylum seekers and migrants for fear screenings, even if they affirmatively express a fear of return to Mexico. In a survey of individuals returned by DHS to Tijuana and Mexicali, the [U.S. Immigration Policy Center](#) at UC San Diego found in a report published in an October 2019 that 60 percent of those who expressed a fear of return to Mexico to a CBP officer were not referred for a fear screening with an asylum officer. An internal DHS [report](#) by senior officials charged with reviewing the implementation of MPP found – according to a November 14 BuzzFeed article – that CBP officers fail to refer asylum seekers for fear screenings and that asylum officers. Asylum seekers returned to Mexico without screenings include:

- **An asylum-seeking woman was not referred by CBP for an MPP fear interview before being sent to Matamoros even though she was kidnapped and raped in front of her three-year-old son.** The woman was still bleeding days after the attack and in need of additional medical attention when she met with attorney Jennifer Harbury in November. Before being returned to Mexico, the woman had tried to explain that she and her son had been kidnapped in Reynosa before crossing into the United States to seek asylum, but CBP sent them back without referring them to an asylum officer for an MPP screening.

- **CBP officers in Laredo failed to refer a Guatemalan family with two children for a fear-screening interview even though they explained that they had been kidnapped from the Nuevo Laredo bus station, held for days, and threatened that they would have to pay to remain in the city.** The CBP officer processing the family when they were allowed to enter the port of entry after waiting on a metering list said kidnapping was immaterial to fear of Mexico unless the person was raped or seriously injured.
- Immigration attorney Lisa Knox reported that **CBP officers refused to refer her asylum-seeking client from Honduras for an MPP fear-screening interview after he had been attacked and robbed in Mexicali by men with machetes.** The man also informed the private security guards transporting him back to Mexico from the immigration court that he feared return but was not referred for an MPP fear interview. Similarly, a Salvadoran asylum seeker who had been kidnapped in Ciudad Juárez and escaped by climbing out of a window after DHS sent her to Juárez under MPP was not referred for a fear-screening interview even though she specifically requested one.
- **CBP officers accused a 32-year-old Nicaraguan woman fleeing political persecution of lying about having been kidnapped and raped by cartel members** in Nuevo Laredo after DHS returned her there in July. After a ransom was paid, the cartel had forced her to cross the river. When she attempted to express her fear of return to Mexico, a CBP officer accused her of lying and sent her to Nuevo Laredo.
- A Salvadoran asylum seeker abducted with her three children in Monterrey was not referred by CBP for an MPP screening despite the woman describing her fear of being returned to Mexico. A CBP officer told the woman that, “everyone has to go back.” After being returned by DHS to Tijuana in October, the woman received a death threat in November from men involved in her family’s kidnapping.
- **A teenage Venezuelan girl was returned with her father and brother to Ciudad Juárez even though she had been the victim of an attempted sexual assault in Mexico,** which has left her symptoms of continued trauma, according to attorney Tania Guerrero of CLINIC. Despite explaining their fear of return to Mexico, CBP sent them to Ciudad Juárez in September.
- An asylum-seeking woman from Cuba reported that CBP refused to listen when she recounted having been kidnapped with her husband in Nuevo Laredo and held with other migrants who were being beaten by cartel members. After being forced to wait on the metering wait list at the Laredo port of entry, **a CBP officer told the woman in response to her fear of Mexico: “I don’t want to hear it. You can tell it to the judge at your hearing.”**

Immigration judges often fail to ask asylum seekers if they are afraid to return to Mexico during hearings and sometimes fail to refer them for an MPP screenings even when they express fear of return:

- During MPP hearings in November and December at the San Antonio immigration court, where immigration judges conduct remote proceedings for asylum seekers returned to the notoriously dangerous city of Nuevo Laredo, **Human Rights First observed only one judge in November affirmatively ask whether asylum seekers in court feared return to Mexico.** However, that judge was not inquiring about fear of return to Mexico in December hearings. Researchers monitored the hearings of 185 individuals before seven different immigration judges. Some asylum seekers may be reluctant to raise their fear of return for fear that they will be asked to share details of violence and threats they have suffered in front of their children and to do so via video-teleconference from a remote courtroom where they cannot see who may be listening to their statements in the judge’s courtroom.
- **DHS attorneys offer specious legal arguments in an attempt to block non-refoulement interviews and return asylum seekers to danger.** For example, a family of three asylum seekers from El Salvador,

who had previously failed an MPP fear screening, told an immigration judge from the Laredo MPP tent court that they had received new threats and feared return to Mexico. The DHS trial attorney argued that new threats were not a “changed circumstance” warranting another non-refoulement interview, as they had been threatened on prior occasions.

■ **Some immigration judges fail to refer asylum seekers for non-refoulement interviews despite expressed fears of harm.**

- A 28-week pregnant Nicaraguan asylum seeker with a six-year-old child in the Laredo MPP court in November told an immigration judge that she feared remaining in Mexico. Because she had not passed a prior MPP screening, the judge did not request that DHS refer her for interview.
- An asylum seeker from Honduras with a toddler in her arms told an immigration judge during her MPP hearing in November that she was afraid to be returned again to Nuevo Laredo, but the judge merely asked the woman when she would prefer her next hearing and did not ask DHS to ensure she received an MPP fear screening.
- A woman kidnapped from the Nuevo Laredo INM office in mid-September after being returned to Mexico following an earlier MPP hearing reported that she was not referred for a fear interview even after explaining to an immigration judge in October that she had been kidnapped. She recalled that the judge told her, “this happens and there’s nothing we can do.”
- A Honduran asylum seeker with a seven-year-old daughter told an immigration judge during a Laredo MPP hearing in December monitored by Human Rights First that she feared return to Mexico. The judge disregarded her fear and scheduled another hearing. Only after the asylum seeker repeated that she was afraid of going back to Mexico did the judge refer her for an MPP screening.

Third-Country Transit Ban Blocks MPP Asylum Seekers

In July, the Trump Administration issued as an interim final rule that bars individuals seeking protection at the southern U.S. border on or after July 16, 2019, from receiving asylum if they have transited through third countries en route to the United States. Given the rule’s extremely narrow and essentially insurmountable exceptions, the vast majority of asylum seekers, including many of those in the MPP program are barred from receiving asylum in the United States if they did not apply for asylum in a transit country – even if they would have been in danger and at risk of return to persecution. This new regulatory asylum bar is an attempt to contravene the law established by Congress that merely passing through a third country is not a basis to deny asylum. U.S. immigration law bars refugees who transit through other countries from asylum only if they “firmly resettled” in the transit country, or if the United States has a formal return agreement with a country where refugees are both safe from persecution and would have access to a full and fair procedure to seek asylum.

With the third country transit asylum ban in place, even if an immigration judge finds that a refugee subject to the transit ban has a well-founded fear of persecution (the standard for asylum), that refugee will be ordered deported unless they meet the much more stringent requirements for withholding of removal or protection under the Convention against Torture (CAT). In FY 2017, only about seven percent of withholding and five percent of CAT applications were granted. Effectively cut off from attorneys in the United States by MPP, few will meet the excessively high requirements to receive these protections. Refugees who are granted these highly deficient forms of protection face barriers to a stable life in the United States, have no pathway to legal permanent

residence or citizenship, and are often left separated from their families, as these limited deportation protections do not allow the refugee's children or spouse to be brought to, or remain in, safety in the United States. For example:

- A Venezuelan refugee was denied asylum at the Laredo MPP tent court in October solely because he entered the United States to apply for asylum days after the third-country transit ban was implemented. An immigration judge ruled the man, a former police officer who refused to comply with an order to arrest opposition protestors, was a refugee entitled to withholding of removal – a form of relief from deportation that will leave him permanently separated from his three children in Venezuela who remain at risk.
- A Venezuela woman was granted withholding of removal and CAT protection in late November at the Laredo MPP tent court by an immigration judge. Determining the woman was a refugee entitled to protection, the immigration judge would have granted the woman asylum but for the third-country transit asylum ban, according to her attorney David Robledo. The woman had sought asylum based on political persecution in Venezuela in late July just after the ban went into effect.

DHS was initially applying the third country transit asylum ban even to asylum seekers who arrived at the U.S. border to seek protection prior to July 16 who had been turned away by CBP officers or forced to place their names on waiting lists at a U.S. port of entry. However, in mid-November, a federal district court hearing a challenge to the government's practice of metering asylum seekers at the southern border entered a preliminary injunction, prohibiting the government from applying the asylum ban to those who tried to seek asylum at ports of entry before the rule went into effect. The Executive Office for Immigration Review, the office within DOJ in charge of the immigration courts issued guidance to immigration judges several days later. Nonetheless, some immigration judges appear unaware of the district court ruling and continue to deny asylum to those who should be covered by the injunction. For asylum seekers in MPP, 98 percent of whom are unrepresented, there is a particularly high risk of erroneous denials of asylum given that these individuals are unlikely to be aware of the evidence they must provide to demonstrate that they attempted to request asylum prior to July 16.

- At the Laredo MPP tent court in early December, a Cuban woman and her one-year-old son were determined by an immigration judge to be refugees were denied asylum on account of the third-country transit ban even though they had attempted to apply for asylum before July 16. The immigration judge, who appeared confused about the scope of third-country asylum transit ban and incorrectly stated that the ban applies to asylum *applications* filed on or after July 16 (rather than considering the date of the asylum seeker attempted seek protection at southern U.S. border), granted the family withholding of removal instead of asylum. The government attorney reserved the right to appeal the judge's decision and the family was transferred to a family detention center in Texas.
- During another Laredo MPP hearing in December the same immigration judge denied asylum to an unrepresented Cuban refugee and her two sons because of the third-country asylum transit ban. Although the family had gone to request asylum at the Laredo port of entry in late June and had been told by an official to register on the metering list, the immigration judge found the family ineligible for asylum under the mistaken understanding that the third-country transit asylum ban depends on the date an asylum seeker files their asylum application in court. This refugee family was denied asylum and given only the limited relief of withholding of removal as a result.
- In Laredo MPP master calendar hearings observed by a Human Rights First court monitor in December, an immigration judge advised all asylum seekers present that they were ineligible for asylum under the transit ban without inquiring whether they had attempted to request asylum prior to July 16, thus entirely disregarding the preliminary injunction.

Stranded in Appalling Conditions

Under the Trump Administration's MPP policy, DHS dumps asylum seekers in Mexico to wait for months even though they do not have access to adequate shelter, food, healthcare, or other humanitarian necessities. Acting CBP Commissioner Morgan has stated that the U.S. government does not track what happens to individuals the agency returns to Mexico under MPP. A recent study by the U.S. Immigration Policy Center at UC San Diego found that one out of every three people in MPP have been homeless after being returned to Tijuana and Mexicali while waiting for MPP hearings. The governor of Baja California recently scrapped plans to open a government-supported shelter in Mexicali after protests by local residents. An internal report by DHS reportedly concluded that some asylum seekers lose their space at shelters when they travel to MPP court hearings, leaving even more stranded and in danger. Wait times for initial hearings are far longer than the 45 days that DHS had initially claimed, with the agency now acknowledging that asylum seekers are waiting between two and four months for a first hearing. The lack of safe shelter leaves thousands homeless and exacerbates the already high risk of kidnapping, extortion, assault, and exploitation in border areas in Mexico.

- In Matamoros, the tent encampment visited by Human Rights First in October has grown to an estimated 1,500 to 2,000 people sleeping in hundreds of tents in the port of entry plaza and surrounding sidewalks. Some tents are patched together with garbage bags. Asylum seekers live in unsanitary and deteriorating conditions. According to a November article from the Associated Press, “near the wooden toilets, the air smells like feces. Flies buzz around toilet paper discarded on the ground. A volunteer uses a shovel to remove waste that has pooled in front of a set of toilets.” Asylum seekers and migrants in the tent camp lack access to adequate, safe drinking water, and are forced to bathe and wash clothes in the Rio Grande, which is contaminated with bacteria. In mid-November temperatures dropped to near freezing, making conditions in the tent camp even worse. Helen Perry, a nurse practitioner and Global Response Management's operations director, said: “[H]aving seen other humanitarian crises in the world, this is one of the worst situations that I've seen. It's only going to get worse, and it's going to get worse rapidly.”
- Many children have fallen sick as a result of the conditions in the Matamoros tent camp. A Nicaraguan asylum seeker living in a damaged tent with her eight-year-old daughter told the Associated Press that her daughter had been diagnosed with pneumonia but was running out of antibiotics. In November, a gravely ill two-year-old toddler diagnosed with possible sepsis by a volunteer doctor in Matamoros and was left by CBP outside in the cold rain for hours because the Brownsville port of entry refused to remove the child and her parents from MPP to enter the United States to seek emergency medical care. Only after the intervention of five attorneys, an additional medical evaluation by a CBP nurse practitioner, and coverage by the media did CBP relent.
- Despite these conditions, many asylum seekers prefer to remain in the plaza camp near the port of entry, which they believe is safer than venturing into Matamoros, where many have been kidnapped, according to attorney Charlene D'Cruz who works with unrepresented asylum seekers there. They also fear moving away from an area where attorneys from the United States can cross into in order to provide legal counsel without venturing into even more dangerous areas. Trust in local authorities among returned asylum seekers is low, particularly after an incident in early November when a video of a Mexican child welfare officer threatening to separate children from families in the camp circulated widely. While some asylum seekers have relocated to a municipal shelter recently opened in Matamoros, with capacity of just 300 it is reportedly already full, according to the Washington Post.

- The Mexican government has also bused asylum seekers in MPP from Matamoros and Ciudad Juárez among other MPP return locations to southern Mexico – with some abandoning their requests for asylum given the dangers in Mexico, while others are unaware that these one-way tickets will likely prevent them from returning for MPP hearings.

MPP and Tent Court Due Process Farce Continues

The Trump Administration is eviscerating asylum protections for refugees at the southern U.S. border with its MPP policy, port of entry asylum turnbacks, the third-country transit asylum ban, and the implementation of asylum seeker transfer agreements with El Salvador, Guatemala, and Honduras.

MPP is a due process charade that restricts access to counsel, legal information, and the ability of asylum seekers to attend and participate in immigration hearings. Immigration judges have ordered asylum seekers deported when they have missed court because they were kidnapped in Mexico. DHS even returns some asylum seekers to Mexico *after* immigration judges grant them asylum or other protection in the United States. Refugees with legitimate protection needs are giving up on their cases because of the grave dangers they face in Mexico and risking further persecution and torture by returning to their home countries. With immigration courts instructed by DOJ to speed up MPP cases, immigration judges are under pressure to make rapid rulings. One frustrated immigration judge in San Antonio was overheard by a Human Rights First researcher in November telling a courtroom assistant: “You’re going to hear me scream every day that I can’t get through these dockets.” Another judge with 92 people on his docket in early December conducted a group master calendar hearing for 12 people simultaneously, raising concerns about their ability to understand the removal proceedings against them.

In yet another attack on U.S. due process, DHS continues to use secretive tent courts in Laredo and Brownsville, Texas, for MPP hearings. Referring to these tent courts, immigration judge Ashley Tabaddor, president of the National Association of Immigration Judges, said: “We don’t do stuff behind closed doors. That is not what America is about. . . . **we are moving closer and closer to a model that doesn’t resemble anything in the American judicial system.**”

Stranding asylum seekers in Mexico creates fundamental barriers to attend U.S. immigration court hearings that can result in asylum seekers being ordered deported and terrifies some asylum seekers into abandoning their asylum claims. Some asylum seekers are being ordered removed *in absentia* because they were kidnapped at the time of hearings or were otherwise unable to arrive at the port of entry at the precise time designated by CBP. Other asylum seekers, having been kidnapped, assaulted, or otherwise terrorized in Mexico, are withdrawing their claims for asylum and risking their lives to return to their home countries.

- **Immigration judges have publicly stated that they are under pressure from DOJ to order asylum seekers deported who do not appear for hearings.** According to reports from immigration court staff to Human Rights First, some immigration judges are even instructing court clerks to pre-print *in absentia* removal orders for all of their MPP cases in anticipation of ordering the vast majority deported. Those ordered removed after missing court include:
 - Asylum-seeker Elizabeth, missed an MPP hearing in El Paso and was ordered removed *in absentia* because she was searching for her two-year-old son who had been kidnapped.
 - Rosalia and her two-year-old daughter, who were returned to Mexicali, missed court in San Diego in October because they arrived a few minutes after 3:30 in the morning – the time CBP had

- instructed them to present at the port of entry. CBP officers refused to transport them to the immigration court and the family was ordered removed in absentia.
- The children and mother of a Colombian asylum seeker who did not appear at the Laredo MPP court with her for their hearing in December were ordered removed *in absentia*. The woman explained that she could not afford to bring her family from Guadalajara because she had to hire an attorney to file charges against a man who had sexually abused her daughter and that she could not even afford to see a doctor for cancer treatment.
 - At a Laredo MPP hearing in December an immigration judge informed a Guatemalan asylum seeker that her daughter's *in absentia* removal order was unlikely to be reopened on the basis that her daughter was afraid to traveling through the border region to attend her MPP hearing in Brownsville. The judge told her, "to be blunt, being afraid is probably not going to cut it."
- **Even individuals who have been reported to immigration judges as having been kidnapped at the time of their hearings are being given *in absentia* removal orders.** In early November, an eight-and-a-half-month pregnant Salvadoran woman appeared in the Laredo MPP tent court with her eight-year-old son. While crying, she told the judge that her husband was supposed to appear in court as well but he had gone missing in Mexico in September and she hadn't seen him since. DHS asked for him to be deported *in absentia*, claiming that they were asking for a deportation order because it would not be possible to give notice to the husband regardless. The husband was subsequently ordered deported.
- **The extreme dangers faced in Mexico push some asylum seekers to risk persecution and torture in their home countries.**
- Two Venezuelan men – who were kidnapped as they attempted to approach the Laredo port of entry to seek asylum, beaten, ransomed, forced across the border by their abductors, and again threatened with kidnapping by the same men on the bridge just after DHS returned them to Nuevo Laredo – are so afraid for their lives that they have been forced to abandon their U.S. asylum claims. According to immigration attorney David Robledo who unsuccessfully requested that DHS provide the men a remote MPP fear screening, the men have relocated to another city in the interior of Mexico but are too afraid to return to the border region to attend MPP court.
 - A 36-year-old Venezuelan woman seeking asylum said she is so afraid to remain in Mexico under MPP that she wants to formally withdraw her asylum application and leave as soon as possible. However, the woman fears risking the safety of her 11- and 13-year-old sons to pass through Nuevo Laredo, after previously having been threatened with kidnapping. Given the dangers, she was uncertain if she would attend their MPP immigration court hearing to inform the court of her decision.
 - In November, a Honduran woman with a two-year-old boy, who DHS returned to Nuevo Laredo under MPP, told an immigration judge during a hearing monitored by a Human Rights First researcher that she had been kidnapped with her baby, and said, "If I am to be deported, I would like to be deported to my own country, not Mexico."
 - Another Honduran woman appearing in the Laredo MPP tent court with her two-year-old daughter in November, burst into tears, and asked an immigration judge for voluntary departure because she "never imagined the road would be difficult." The government attorney asked for a removal order instead, which the immigration judge ultimately entered.

MPP seriously interferes with the right, guaranteed under Section 292 of the Immigration and Nationality Act, to be represented by a lawyer.

- **Nearly 98 percent of MPP returnees did not have lawyers, as of the end of September, according to immigration court data analyzed by TRAC.** Only 939 out of 46,654 individuals in MPP court proceedings have legal counsel registered with the immigration court.
- Very few asylum seekers appearing at the Laredo tent court were represented by an attorney during the first week of November and the first week of December when Human Rights First observed MPP hearings from the San Antonio immigration court. Only 42 of the 185 individuals who attended court had a lawyer.
- At two shelters Human Rights First visited in Nuevo Laredo in November only three individuals out of more than 30 returned under MPP were represented by counsel. At another makeshift shelter researchers visited in Nuevo Laredo, a pastor working with the shelter said that to his knowledge none of the approximately 70 MPP returnees in the shelter, many of them Central Americans, had a lawyer.

These abysmal representation rates are the predictable consequence of a policy that effectively prevents asylum seekers from searching for attorneys in the United States as well as the acute safety concerns that prevent many U.S.-based legal services organizations and individual immigration attorneys from representing asylum seekers returned to Mexico. In December, an immigration judge hearing cases at the Laredo MPP tent court acknowledged to an unrepresented asylum seeker that MPP “makes it difficult for attorneys to represent people.”

- U.S.-based attorneys attempting to represent asylum seekers in MPP face severe dangers to travel to regions where DHS returns asylum seekers including Nuevo Laredo and Matamoros in Tamaulipas. In mid-November, as cartel violence in the region spiked, the U.S. Consulate in Nuevo Laredo issued a travel warning advising U.S. citizens and personnel to avoid public places.
- The few lawyers willing to enter dangerous regions in Mexico to meet with clients risk their lives to do so. A shooting half a block from the port of entry in Ciudad Juárez prevented a Cuban asylum seeker returned to Mexico through MPP from reaching the international bridge where her immigration attorney, Constance Wannamaker, had arranged to meet. The client later told her attorney that a dead body had been dumped from a car directly in front of her house. John Anthony Balli, an attorney representing a Cuban client in Nuevo Laredo in MPP reported that because of escalating violence there in November, neither he nor his staff could risk visiting the city to obtain crucial evidence needed for a merits hearing scheduled only two weeks away.
- Asylum seekers appearing for hearings in the Laredo MPP tent court in November told immigration judges that efforts to search for attorneys were fruitless. A woman with two sons told an immigration judge that from the list of phone numbers for legal services providers distributed by CBP only one attorney had answered her many calls but had told her he could not accept her case because she was in Mexico. Another asylum seeker noted that, “no one will take our cases.” When asked if he wanted more time to find representation, the man said that after a month and a half of searching he had concluded that finding a lawyer willing to represent him in Mexico was impossible. **“I’ve run out of time. I’m exhausted. Whatever happens to me should happen now,”** he said.
- **The terror of remaining in Mexico pushes some unrepresented asylum seekers to ask for earlier hearings rather than accept additional time to find an attorney or prepare evidence in support of their asylum claims.** During hearings monitored by a Human Rights First researcher, an unrepresented Venezuelan asylum seeker said he wanted the next available hearing even though an immigration judge

offered him time to gather documents in support of his case. An unrepresented Honduran asylum seeker with a toddler told an immigration judge she feared remaining in Nuevo Laredo and asked for an earlier hearing to get out of Mexico, rejecting the judge's offer of additional time to search for an attorney.

MPP immigration court proceedings implemented by DHS and DOJ create fundamental barriers to due process. Restrictions by DHS and the immigration courts on access to attorneys, who could help prepare asylum applications, collect and submit evidence, and represent them in court, as well as the use of tent court hearings undermine asylum seekers' right to legal representation and to understand and participate in their own removal proceedings. The failure of DHS and DOJ to provide proper notice of immigration hearings to asylum seekers returned to Mexico can result in immigration judges issuing removal orders or terminating proceedings where asylum seekers miss hearings. As a result, few returned asylum seekers are likely to win their cases, despite many having valid claims.

- **DHS restrictions at MPP courts severely limit access to counsel for asylum seekers.** Then acting DHS Secretary McAleenan claimed in September that the agency “built space for aliens to meet with their attorneys to protect [the] right [to counsel]” at the MPP tent courts in Brownsville and Laredo. However, the very few attorneys representing clients in MPP hearings at these facilities said that DHS allows at most one hour for client meetings before hearings, even when attorneys represent multiple individuals with hearings on the same day and frequently denies requests to meet with clients after hearings, citing capacity constraints. An attorney representing an MPP client before the San Diego immigration court said lawyers often have only around twenty minutes to meet with clients before hearings because of delays in processing the individuals appearing for MPP hearings. This time is completely insufficient to consult with clients and prepare their asylum applications. Human Rights Watch found in September that the El Paso immigration court had prevented lawyers from meeting with clients prior to MPP hearings.
- **None of the MPP courts permit legal services providers and volunteer attorneys to offer legal information or meet with unrepresented individuals to assess their cases for representation.** For many asylum seekers forced to wait in Mexico, these immigration court hearings are the only opportunity to meet in person with attorneys, as many lawyers cannot travel to Mexico because of safety and other concerns. By barring legal presentations and consultations at these initial MPP hearings, DHS officials are further limiting the ability of unrepresented asylum seekers to secure legal representation and legal assistance.
- In MPP hearings observed by Human Rights First and other court monitors, **unrepresented asylum seekers struggle to understand how to complete asylum applications in English and submit certified English translations of evidence in support of their cases.** For instance, an immigration judge hearing cases for the Laredo MPP court refused in December to accept evidence that an asylum seeker had tried to request asylum prior to the July implementation of the third-country transit ban because it had not been translated to English. In November, a judge presiding in a case at the Laredo MPP tent court told a family: “These [asylum] applications are in English, and neither of you read or write English. And you’re in a country where most people speak Spanish. So all I can tell you is to do your best.” Another judge hearing cases for the Brownsville tent court encouraged asylum seekers to reach out to family or friends for help. Given the lack of access to legal representation and translation help, many have no choice but to have asylum applications and documents translated by individuals who will understandably make many mistakes – mistakes which government attorneys may subsequently cite as evidence of “inconsistencies” or a lack of credibility.
- While stranded in Mexico, **asylum seekers also face barriers to gather and submit evidence to support their asylum applications.** For instance, during an MPP hearing observed by Human Rights

First, an immigration judge told an asylum seeker with a video in support of his case that he had to submit a translated transcript of the video and still shots. For unrepresented asylum seekers sleeping in makeshift tents on the streets, gathering evidence, translating it, and printing it is often an insurmountable obstacle. Even immigration judges hearing MPP cases are aware of the difficulty asylum seekers face in submitting evidence to the court when they are required by DHS to remain in Mexico. An immigration judge in San Antonio in November explained that she was not requiring a Cuban asylum seeker to submit evidence in advance of his next hearing because she recognized it would be almost impossible for him to access the MPP tent court prior to his hearing in order to submit it.

- **DHS issues faulty immigration documents to asylum seekers in MPP with erroneous hearing dates and/or without an address, which may cause some asylum seekers to miss their hearings.** In November, Human Rights First observed an immigration judge in San Antonio tell an asylum seeker who had attempted to appear at the Laredo MPP tent court on the date DHS had instructed to return the next day because the hearing date in DHS and DOJ's records did not correspond. For asylum seekers in MPP, many of whom are sleeping in shelters, living on the streets, or moving from place to place due to threats and attacks, DHS has been listing the addresses of shelters, even shelters where they have never been, as well as using "Facebook" as an address and claiming to contact asylum seekers through social media. Other documents list no address at all. An internal DHS report that BuzzFeed reported on in November reportedly found that some people are forced to give up their space in their shelters when they travel to the United States for court hearings, leaving them with no address to receive important notices from the immigration court. Asylum seekers returned to Mexico under MPP who miss hearings because of faulty notices may be ordered removed *in absentia* and are physically prevented by DHS from going to court later (because they are not allowed to enter the United States from Mexico) to explain their absence and request to re-open their cases. While some immigration judges in San Diego appear to be terminating proceedings in cases with faulty DHS hearing notices, this practice can leave asylum seekers stuck in Mexico and in legal limbo, unable to pursue their asylum applications.
- **Requests by some asylum seekers for additional time to consult with an attorney were denied** during Laredo MPP hearings observed by Human Rights First in December. One judge forced asylum seekers to respond to the removal charges lodged by the government against them despite their requests for more time to find a lawyer, undermining asylum seekers' due process rights.
- **The use of video conferencing (VTC) for immigration hearings threaten the due process rights of asylum seekers.** All hearings conducted in the tent courts in Laredo and Brownsville are conducted remotely with immigration judges in permanent courthouse facilities. Already human rights monitors and journalists watching these hearings via VTC have reported flaws in translations and interruptions in video feeds. A 2017 report commissioned by the immigration courts found that VTC may be so disruptive that "due process issues may arise." Judges reported that it is difficult to interpret body language and nonverbal communication, which some judges consider in making credibility determinations.

DHS is returning some asylum seekers to danger in Mexico even after they win their cases – typically issuing false hearing notice documents. Since August, when DHS attempted to return to Mexico the first person granted asylum under MPP – an Evangelical Christian church leader from Honduras and Human Rights First client – the agency has returned numerous individuals *after* they have won asylum or other protection in U.S. immigration court, including:

- A Cuban asylum seeker and three Venezuelan asylum seekers granted asylum at the Laredo MPP tent court in late November were returned by CBP to notoriously dangerous Nuevo Laredo. Their attorneys were told that CBP policy is now to return to Mexico all individuals who win asylum pending appeal.

- A Venezuelan asylum seeker ruled by a U.S. immigration judge to be a refugee entitled to withholding of removal in October was returned by CBP to Nuevo Laredo despite this favorable ruling. When he attempted to return to the U.S. port of entry in early November to request that CBP allow him to enter the United States through the Laredo port of entry he was nearly kidnapped at the Nuevo Laredo bus station.
- A Guatemalan woman who was granted asylum without an attorney by an immigration judge in San Diego in September was returned by CBP to Tijuana along with her 6-year-old son.

An article in the San Diego Union Tribune previously reported that DHS had returned to Mexico at least 14 others whose immigration proceedings had already concluded. Those returned to Mexico have typically been issued MPP hearing notices purporting to schedule them for additional proceedings in immigration court even though no such hearing is set to take place. The agency appears to issue these fake notices to convince Mexican officials at ports of entry that these individuals have active MPP cases, as the Mexican Foreign Affairs Ministry has said Mexico will only accept individuals through MPP with upcoming hearing dates. CBP has acknowledged that the date on these documents does not correspond to an additional hearing but claims that these notices are issued to allow individuals returned to Mexico to check whether the government has appealed the decision of the immigration judge. However, these claims fail to explain why the document CBP is issuing is titled “subsequent hearings information,” states “[a]t your last court appearance, the immigration judge ordered you return to court for another hearing,” and fails to mention an appeal status check-in. Moreover, individuals determined by an immigration judge to be refugees entitled to protection under U.S. law should NOT be returned to Mexico by CBP but instead should be released into the United States, even if their cases should go on to appeal.

DHS’ categorical denial of public and press access to MPP tent courts in Brownsville and Laredo interferes with court monitoring efforts to ensure that hearings are conducted fairly and consistently.

- Immigration court regulations provide that “[a]ll hearings . . . shall be open to the public” except in limited circumstances as determined by the presiding immigration judge. Yet CBP is denying public and press access to hearings at the tent courts in Laredo and Brownsville. In late October, a CBP public liaison officer informed Human Rights First via email that “these [tent court] facilities are not to in-person public access at this time” and that “[i]n upcoming weeks . . . we will explore opportunities to allow for NGOs to request access to view the space outside of hearing hours.” To date, the agency has not granted Human Rights First, despite repeated requests, access to the facilities, let alone to monitor immigration hearings inside the Laredo and Brownsville tent courts.
- While hearings at these facilities may be observed from the courtroom of the judge presiding via VTC, the schedule of hearings and judges assigned to them has not been made public, making it difficult for court monitors and journalists to determine from where to watch MPP proceedings. For instance, in November, immigration court personnel at times declined to provide a Human Rights First researcher the names and courtroom locations of the immigration judges hearing MPP cases at one of two San Antonio immigration court locations. Other court monitors have reported arriving late to hearing observations because they have needed to check both locations for MPP hearings.
- It is crucial that the public and human rights monitors have access to the tent courts. Observing hearings remotely is not equivalent to monitoring in the physical courtroom with the asylum seekers and migrants. Given the size and angle of the television screens linked to the remote hearing location, as well as the distance to the observation area, it can be difficult for observers to see how many people are attending the hearing and to gather other crucial information.

ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Houston, Los Angeles, New York, and Washington D.C.

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September 25th, 2019¹

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RE: Failure to provide adequate medical and mental health care to LGBTQ people and people living with HIV in immigration detention facilities

Dear Dr. Smith, Mr. Albence, Mr. Morgan, Ms. Quinn, and Mr. Cuffari:

We, the undersigned organizations, file this complaint on behalf of current and formerly detained lesbian, gay, bisexual, transgender, and queer individuals and people living with HIV (LGBTQ, PLWHIV) in immigration detention facilities. This complaint details recent accounts of Immigration and Customs Enforcement's (ICE) and Customs and Border Protection's (CBP) provision of egregiously inadequate medical and mental health care, jeopardizing the health, safety, and lives of individuals in federal custody while they exercise their legal right to pursue their immigration claims and seek protection in the United States. ICE and CBP's continued failure to provide such basic care is in clear violation of the U.S.

¹ Amended on October 15th, 2019 to add more signees

Constitution, statutory law, and applicable detention standards.² This failure has led to the deaths of multiple LGBTQ, PLWHIV migrants, and continues to cause irreparable harm.

In light of the substantial evidence of ICE's inability to safely house and adequately care for LGBTQ, PLWHIV individuals in its custody, we call for ICE to exercise its parole authority and release all LGBTQ, PLWHIV individuals on their own recognizance. We also urge the Office of Inspector General (OIG) to work with the Office for Civil Rights and Civil Liberties (CRCL) to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE and CBP custody. We call on ICE to comply with the OIG's January 29, 2019 recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet the applicable standards of care by ending their contracts and imposing financial penalties. Finally, we call on DHS to strengthen its oversight of all facilities to identify and promptly remedy abuses and medical neglect within these centers.

The Abuse of LGBTQ, PLWHIV Individuals in DHS Custody Is Well-Documented

The widespread abuse and mistreatment of LGBTQ, PLWHIV individuals in ICE custody is well-documented. The Department of Homeland Security (DHS) has already received countless reports of LGBTQ, PLWHIV individuals' experiences with verbal, sexual and physical violence, medical negligence, inhumane housing conditions, and overuse of solitary confinement in both public and private detention centers.³ Rather than being confined to a few detention centers, these reports are widespread and consistent, demonstrating the systemic inability of DHS to meet even basic standards of care for LGBTQ, PLWHIV migrants.

For example, just two months prior to Johana Medina's death, a complaint was sent to DHS detailing the rampant discrimination and violence inflicted on LGBTQ individuals at Otero County Processing Center, the detention center where Johana Medina died as a result of the substandard care she received in DHS custody.⁴ Even after this complaint was received and after Johana Medina's death, ICE continues to deny transgender women and gay and bisexual men at Otero basic health care and provides misinformation on how to access hormone therapy. In fact, an investigative report published in 2018 demonstrated that DHS has received more than 200 complaints of abuse and mistreatment from individuals housed at Otero

² The United States is additionally obligated under international law to provide adequate health care for detained immigrants. Namely, the United States is a signatory to the International Covenant on Economic, Social, and Cultural Rights, which guarantees everyone a right to physical and mental health. United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Art. 12, December 16, 1966, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

³ See National Immigrant Justice Center, Submission of Civil Rights Complaints Regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody, available at <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf>; Sharita Gruberg, "Dignity Denied: LGBT Immigrants in U.S. Immigration Detention," (Center for American Progress 2013) available at <https://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>; Human Rights Watch, "Do You See How Much I'm Suffering Here? Abuse Against Transgender Women in US Immigration Detention," (Human Rights Watch 2016) available at https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf; Letter from Rep. Kathleen Rice to DHS Secretary Kirstjen Nielsen (May 30, 2018)(available at https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf).

⁴ ACLU New Mexico, Santa Fe Dreamers Project, and Las Americas: Immigrant Advocacy Center; Detention Conditions Impacting the Safety and Well-Being of LGBTQ Immigrants in the Otero County Processing Center, https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_americas_santa_fe_dreamers_project_aclu_nm_letter_to_dhs_re_otero.pdf

County Processing Center, and yet, Otero continues to operate today and DHS has failed to take adequate actions to improve conditions at the facility.⁵

Another complaint filed by the American Immigration Council (Council) and the American Immigration Lawyers Association (AILA) in 2018 detailed the lack of access to basic medical care and mental health care at the Denver Contract Detention Facility in Aurora, Colorado.⁶ DHS failed to meaningfully address the concerns raised in the complaint, and one year later, in June 2019, the Council and AILA supplemented the complaint with additional evidence of inadequate medical and mental health care.⁷ Specifically, the complaint includes the case of a transgender woman who reported she was denied access to hormone treatment, and was subjected to serious sexual and verbal harassment by facility guards and other detained individuals.

On July 9th, 2019, twenty-nine transgender women and non-binary individuals held at Cibola County Correctional Center in New Mexico called for an investigation into poor medical services—including HIV care—and mistreatment at the facility.⁸ In April, 2019, seven organizations, including the American Civil Liberties Union, investigated Cibola and reported that the center had inadequate medical and mental health care, abuses related to solitary confinement, discrimination and verbal abuse, and inappropriate meals, among other issues.⁹

The OIG’s own investigation of five ICE facilities, including Santa Ana City Jail where the previous transgender housing pod was located and Otero County Processing Center, “identified problems that undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment” and “potentially unsafe and unhealthy detention conditions.”¹⁰ In an earlier inspection of the Essex County Correctional Facility, the OIG noted the “serious issues” it identified “not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety.”¹¹

Rather than take effective action to address the numerous complaints of abuse and mistreatment of LGBTQ, PLWHIV individuals in detention, DHS has focused on subjecting an increasing number of people to these horrific conditions. The number of individuals in immigration detention is at a historical

⁵ Craig, Nathan, and Margaret Brown Vega. “‘Why Doesn’t Anyone Investigate This Place?’: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports.” El Paso, TX: Detained Migrant Solidarity Committee (DMSC) and Freedom for Immigrants (FFI), 2018.

⁶ Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf

⁷ SUPPLEMENT—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf

⁸ Laura Gomez, “Migrants held in ICE’s only transgender unit plead for help, investigation in letter,” *AZ Mirror*, July 9, 2019 <https://www.azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter/>.

⁹ Detention Conditions Impacting the Safety and Well-Being of Immigrants in the Cibola County Correctional Center in Milan, New Mexico. April, 2019 https://www.aclu-nm.org/sites/default/files/field_documents/2019_04_15_nm_stakeholders_letter_to_crcl_re_cibola_county_correctional_center.pdf

¹⁰ OIG-18-32

¹¹ OIG-19-20

high and keeps rising, despite the fact that many of these individuals are eligible for release. By the department's own count, 300 individuals who identify as transgender have been in the custody and supposed care of ICE since October of 2018 alone. This is the highest number of transgender migrants in the care of the U. S. government ever recorded. At the same time, DHS has failed to take measures to ensure the basic health and safety of this population. It is unjustifiable for the U.S. Government to subject an increasing number of individuals, including those qualified as vulnerable populations such as LGBTQ, PLWHIV individuals, to these dangerous conditions.

DHS Has Consistently Demonstrated It Is Incapable of Providing Adequate HIV Care

The stories included in this complaint shed light on the effects of growing roadblocks in access to basic healthcare as well as lifesaving HIV care in detention due to chronic, systemic medical neglect and lack of oversight in detention. While ICE has adopted three sets of detention standards, including PBNDS 2011, it does not require contractors to adopt any recent standards when it enters into new contracts or contract extensions. The result is a “patchwork system in which facilities are subject to differing standards and some are subject to no standards at all”¹², and people are outright denied access to care, delayed in receiving medical attention, and are left in conditions that exacerbate their physical and mental health ailments.

The risks that accompany substandard HIV care are serious, and they arise from the inconsistent or delayed access to treatment. This is why 2011 PBNDS standards have aimed—without success—to secure uninterrupted access to HIV/AIDS medication for people in detention.

The U. S. government recognizes that poor adherence to HIV treatment is associated with less effective viral suppression. The U. S. Department of Health and Human Services underscores that strict adherence to antiretroviral therapy is key to sustained HIV suppression, reduced risk of drug resistance, and survival, as well as decreased risk of HIV transmission.¹³ An unsuppressed viral load may risk the immediate health of HIV positive individuals and it will also risk creating treatment resistance. If patients fail to respond to their given drug regimen, they are moved to second line drugs, which may be more expensive or difficult to manage.^{14,15}

Evidence has shown that individuals with HIV who keep adherence to HIV medicine as prescribed can stay virally suppressed and thus have effectively no risk of transmission. In fact, the Centers for Disease Control and Prevention's (CDC) HIV Treatment as Prevention Technical Fact Sheet reports a 96% reduction in HIV transmission risk among heterosexual mixed-status couples where the HIV-positive partner started antiretroviral therapy (ART) immediately versus those delaying ART initiation.¹⁶ Far too

¹² <https://immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability>

¹³ US Department of Health and Human Services, “Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents”. Revised July 2019. <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/>

¹⁴ Kenneth L. Schaecher, Addressing Adherence Challenges Associated With Antiretroviral Therapy: Focus on Noninfectious Diarr, The Importance of Treatment Adherence in HIV, September 29, 2013. https://www.ajmc.com/journals/supplement/2013/a472_sep13_hiv/a472_sep13_schaecher_s231

¹⁵ Jane Mwangi, CDC Kenya (Centers for Disease Control and Prevention), Our Research in Kenya: Finding Ways to Improve HIV Treatment Access and Outcomes, <https://blogs.cdc.gov/global/2012/07/26/our-research-in-kenya-finding-ways-to-improve-hiv-treatment-access-and-outcomes/>

¹⁶ Centers for Disease Control and Prevention CDC, Evidence of HIV Treatment and Viral Suppression in Preventing the Sexual Transmission of HIV. HIV Treatment as Prevention Technical Fact Sheet. <https://www.cdc.gov/hiv/pdf/risk/art/cdc-hiv-art-viral-suppression.pdf>

many people in detention are outright denied access to HIV-related care or experience significant delays. This delay of treatment is cruel, counterintuitive to ending HIV transmission, and causes irreparable harm.

Reports of Deficient Medical and Mental Health Care for LGBTQ, PLWHIV Individuals

Below are multiple accounts of medical negligence and mistreatment of LGBTQ, PLWHIV individuals in detention centers across the country. This by no means represents all of the stories of abuse and mistreatment, but rather provides a glance at the systemic harms and inadequate care provided to LGBTQ, PLWHIV individuals under the care of DHS and CBP. There are many stories not included here for fear of reprisal.

Detention Centers Managed by CoreCivic

Cibola County Correctional Center - Milan, New Mexico

A. is a transgender woman from El Salvador who has been detained in Cibola County Detention Center for almost 20 months. A.'s medical records indicate she suffered from advanced syphilis and, according to a pro bono medical evaluation, her medical records indicate that her condition has progressed to neurosyphilis, increasingly affecting her cognitive abilities. Despite this evidence and her counsel's advocacy, ICE has continuously failed to provide her penicillin, a well-known and easily accessible medication. ICE has also repeatedly refused to release A. from detention so she can get the medical treatment she requires.

Otay Mesa Detention Center - San Diego, California

G. is a 34-year-old HIV positive Salvadoran trans woman and activist who worked to advance trans rights in Latin America and the Caribbean prior to applying for asylum and was detained in male housing for more than 6 months in Otay Mesa in 2017. During this time, her HIV medication was withheld. Additionally, she was misdiagnosed with tuberculosis. Rather than treating her HIV, she was over-medicated in attempts to treat tuberculosis she did not have.

Otay Mesa Detention Center - San Diego, California

Y.E. is a transgender woman from Mexico. She was brutally raped, tortured, beaten and kept hostage by the cartels for months because she dressed as a woman. Again and again she was gang raped. The rapes caused tears in her anus and rectum. The rapes also resulted in her contracting HIV. After she presented herself at the border, lawfully asking for asylum, she was placed in a detention center and was taken off medication for HIV for a significant amount of time. In addition to requesting treatment for HIV, she repeatedly asked for help with the tears in her anus/rectum. The medical staff at the detention center refused to address it because the tearing did not happen at the facility and because they believed it to be too invasive. Because no treatment was given, she caught an infection that resulted in anal bleeding. She was held in custody for months before finally being released on parole.

Otay Mesa Detention Center - San Diego, California

S.A.G.C. is an HIV positive transgender woman who has been repeatedly abused and raped because of anti-transgender bias in her home country of El Salvador. The severity of the abuse in her country was such that during the credible fear interview both the asylum officer and the translator needed a moment because of the horrors she described. Although her health was deteriorating in detention and she felt harassed for being a transgender woman in an all-male pod, she was kept in custody until she was granted a \$2500 bond—even though she had letters of support from her sponsor and the community that would be

accepting her. That bond amount was prohibitive to SA.G.C. and it was only after a bond fund paid for her release that she was able to get out of detention.

Otay Mesa Detention Center- San Diego, California

B.C.H. is an asylee from El Salvador. He fled El Salvador after his life was threatened by gangs on account of his sexual orientation and political opinion. B.C.H. entered Otay Mesa Detention Center in May of 2018 weighing 220 pounds. When he was released in September of 2018, he weighed only 190 pounds. B.C.H. required serious psychological support due to his traumatic history of sexual abuse and assault. While at Otay Mesa, he mentioned to Al Otro Lado that he was seeing a psychologist, but at one point, despite the threat of imminent death should he return to El Salvador, he was certain he wanted to stop fighting his case and return to El Salvador due to the conditions at Otay Mesa. We are unsure what, if any, psychological treatment he was receiving, and his unaddressed trauma combined with his extreme weight loss raised serious red flags regarding the adequacy of medical care at the facility. Despite his severe weight loss and mental trauma, his parole bond was set at \$10,000, an amount impossible for him to pay.

Otay Mesa Detention Center- San Diego, California

S.Y.M.M. is a 47-year-old gay man from Honduras. He is blind in one eye and suffers from a myriad of health conditions, including hypertension and the growth of a cyst on his head. S.Y.M.M.'s ICE Medical Records indicate that the pain in his head resulting from the cyst on his scalp worsened significantly while detained. Additionally, at one point, one of his teeth became severely infected, and he was never treated for that ailment. S.Y.M.M.'s parole request was denied, and he was only able to leave the facility when Al Otro Lado submitted a new request. Even so, his bond was set at a prohibitively high \$5,000. He was only released when a community organized to pay his bond.

Otay Mesa Detention Center- San Diego, California

R.E.P.L. is a transgender woman from Guatemala who was sexually abused by her father and her uncles. When she tried to escape the constant sexual abuse of the men in her family, local police tracked her down, assaulted her, and returned her to them. When she finally escaped her family, R.E.P.L. was taken in by a woman who was affiliated with the 18th Street Gang. This woman forced her under duress to be a sex worker, and R.E.P.L. was held captive for two years. Police gang-raped R.E.P.L. when she tried to escape that woman's house and she had no choice but to flee Guatemala to seek protection in the United States. En route to the United States, R.E.P.L. was again violently gang-raped while in Mexico and believes she contracted HIV. R.E.P.L. requested asylum in January of 2019 and was subsequently detained at Otay Mesa Detention Center. She expressed her concern to staff at the facility that she was HIV positive, making countless requests in writing for an HIV test. Al Otro Lado staff reached out on numerous occasions to R.E.P.L.'s deportation officer to ensure she received the necessary testing but never received a response. While R.E.P.L. was detained at Otay, there was an outbreak of several infectious diseases, including mumps and chicken pox. Therefore, it was critical for her to know whether she had HIV or not, as her immune system may have been severely compromised. The lack of any initiative by the facility to ensure she was tested for HIV put her health at serious, life-threatening risk. Despite her traumatic past and serious health concerns, the immigration judge refused to grant her release on her own recognizance and set a bond in the amount of \$1,500. She was only released after a community organized to pay her bond.

Cibola County Correctional Center- Milan, New Mexico

C.L. is a transgender woman from Peru who was in detained for nearly five years. She was transferred from Santa Ana Jail in California to Cibola County Correctional Center when Cibola first opened its

transgender unit. While in Cibola, she repeatedly requested medical care for Hepatitis C, which she'd been denied at Santa Ana, and continued to be denied treatment after the transfer. She was in need of urgent medical care several times while in detention, and recalls once being in the hospital for two weeks. She was shackled by her ankles and her wrists and two guards were posted outside her door. She wondered why they would do this when she was in no condition to escape.

Otay Mesa Detention Center- San Diego, California

Y is a transgender HIV-positive woman from Mexico. Upon her arrival at the border, Y was detained in San Ysidrio, where immigration officials confiscated her HIV medicine and kept her in a freezing room for nine days. Y asked three times for her HIV medication back and was denied each time. Y was later transferred to Otay Mesa Detention Center, where she was once again denied her life-saving medication for an entire month. Furthermore, the Otay Mesa medical staff refused to provide adequate treatment for the injuries Y suffered during a brutal sexual assault in Mexico. In Otay Mesa, Y was housed with the male population and was harassed by two detained men and an ICE official. When she tried to make complaints about the harassment to the facility manager, the manager dismissed her by referring to her complaint as "gossip."

Otay Mesa Detention Center - San Diego, California and Hudson County Correctional Facility - Kearny, New Jersey

E is a gay man from Honduras. Upon arrival to the United States, E was detained at the Otero County Processing Center and, later, at the Hudson County Correctional Facility. E faced continuous harassment in both detention facilities from guards and other detained individuals because of his sexual orientation. In Hudson, the officers and other individuals in detention constantly referred to E as "gay" instead of his name or other appropriate forms of address. E also had serious dental problems while he was in Hudson. However, the medical staff refused to provide E with the necessary medical treatment, in contradiction to the applicable Performance-Based National Detention Standards.

Otay Mesa Detention Center- San Diego, California

P is a 38-year old Honduran citizen and transgender woman living with HIV. She entered without inspection at the southern border in California on February 2, 2019, and was detained at Otay Mesa for about 6 months. In Honduras, local police stopped P because she was dressed in women's clothes and then they raped her. P's employer in Honduras continuously harassed and threatened her until one day they hired people to beat her up in front of several witnesses who came forward. While she was detained at Otay Mesa, her HIV medication was delayed and she never received hormone therapy. As a result, her mental and physical health deteriorated.

Detention Centers Managed by GEO Group, Inc.

Adelanto Detention Center - Adelanto, California

J. is a transgender man from El Salvador who has been detained in Adelanto Detention Center for about nine months. Before being detained, J. had been receiving gender-affirming hormone therapy for many years. Since he has been detained, however, J. has not received gender-affirming hormone treatment despite numerous requests. J.'s mental and physical health have significantly deteriorated as a result.

Adelanto Detention Center - Adelanto, California

J. is a gay man, a national of Mexico, and a Franco-Gonzalez class member, who was deemed -- by an immigration judge -- as non-competent to represent himself during his removal proceedings due to his mental health. J. was diagnosed with the following mental health disorders: major neurocognitive disorder

due to multiple etiologies with behavioral disturbance; amphetamine-type substance use disorder, severe, in a controlled environment; major depressive disorder, recurrent, severe with psychotic symptoms; unspecified neurodevelopmental disorder (history of a learning disability). Due to signs of his deteriorating health, in January 2018 his legal representative requested HIV testing for J. Despite being court ordered, the HIV test was not performed for more than seven months. J.'s medical records indicate that in August of 2018 he received a positive HIV diagnosis, and that GEO medical staff began antiretroviral treatment, over eight months after his legal representative first requested it.

Adelanto Detention Center - Adelanto, California

I.S.I identifies as LGBTQ and has a diagnosis of bipolar disorder. She has been in ICE custody since September of 2018. Despite complications with her mental health, she was found competent by an immigration judge and denied a free appointed immigration attorney. Since then, she has attempted to die by suicide at least four times. Her attorney at the Los Angeles LGBT Center was unable to locate her client for over two weeks during one of these periods. She is not safe in ICE Custody and does not feel safe. She reports that the medical care she is receiving is not helping her.

South Texas Detention Facility - Pearsall, Texas

A. is an HIV+ transgender woman asylum seeker who has been detained at the South Texas Detention Center ("STDC") since December 2014. A. has suffered from severe medical problems and improper treatment since her arrival at STDC. She has lost more than 25 pounds (and is now severely underweight at 89 pounds) since the start of detention, and has been suffering from insomnia, nausea, and loss of appetite because of the side effects of her medication, and possible incompatibility of her hormone therapy and antiretroviral drugs administered by the detention center. She only gets 3 hours of sleep each night, or sometimes none at all. Because of the symptoms from her medication, she struggles to consume and retain food, and relies on vitamins purchased with her own funds from the commissary to obtain nutrition and sustenance.

Although A receives nutritional shakes to supplement her meals, she continues to experience nausea, and the underlying problems of her medication possibly interfering with each other, or mis-prescribed medication has yet to be sufficiently addressed.

In June and July, 2019, she experienced two incidents where she fainted and lost consciousness for hours. In the first incident, other individuals in detention asked the guards for medical help, but either because of a delay in dispatch or response, medical services providers did not reach A. until hours later. In the second incident, which occurred in the late morning, she was taken to an outside facility, where she was told that her lungs were swollen and that she had a sinus infection, and merely given acetaminophen and returned to the facility in the afternoon. Unfortunately, even though A has raised these issues with the facility and with ICE, her medical issues have not been comprehensively addressed, and she continues to rapidly lose weight as a result of her nausea and lack of sleep, and her health continues to deteriorate. She expresses a fear of dying at STDC.

Aurora Detention Facility - Aurora, Colorado

L.M. is a transgender woman who was detained for six months in Aurora, where she was detained with men and was harassed on a regular basis. Soon after her arrival, she reported to detention center staff that she needed to continue the hormone treatment she had been receiving. Staff responded that she would be put on a list to see a doctor. However, L.M. did not receive a doctor's appointment for over two months. At the appointment, the medical provider told her they would need to consult her medical records to find her hormone prescription, and if they could not find it, would need to refer her to a specialist. She did not

receive any updates for another two months, at which point she received an appointment with a specialist, which was then canceled. L.M. finally received the appointment and her prescription the day before her release but never received the hormones.

Due to the abrupt end to her treatment, L.M. experienced nausea, difficulty sleeping, lack of appetite, mood changes, and depression during the six months she was detained. Due to the harassment she faced for being a transwoman detained with men, she reported these incidents to the detention center guards but their only response was to put her in solitary confinement, claiming it was for her own safety. She was put in solitary confinement several times for up to a month at a time, a practice that can rise to the level of inhuman and degrading treatment and even torture.

Detention Facilities Managed by LaSalle Corrections

Irwin County Detention Center- Ocilla, Georgia

S. is a bisexual woman from Jamaica who is HIV positive and has been residing in the U.S. since she was four years old. She was abandoned and became homeless when she was around ten years old and was sexually exploited throughout her teenage years. Given her prostitution-related charges, she has been forced to remain in ICE custody throughout the pendency of her proceedings. Since being detained, she has frequently gone days without her HIV medication. She has to write a letter to the warden every month to receive her HIV medicine and if she does not write the letter, she does not receive her refill. Occasionally, she receives the wrong brand of HIV medication. The head of medical at the facility has also made it difficult for S. to receive blood work, leaving S. unable to monitor her levels. In addition, a nurse disclosed S.'s HIV status to the guards.

Irwin County Detention Center- Ocilla, Georgia

C, an east Asian trans man, has been held in immigration detention for almost two years. For the first 19 months, he was held in solitary confinement solely because he is a transgender man. While in solitary, his health suffered due to inadequate medical care, including not receiving his blood pressure medicine, being given the wrong treatment for a severe illness which led to weeks of extreme stomach pain, and being fed food that made his diabetes worse. At one point while he was getting a hormone shot, the person giving it to him was so incompetent that the syringe broke while inside his leg. Further, C has also been identified and confirmed to be a victim of trafficking by federal law enforcement. In fact, federal law enforcement confirmed that his convictions were tied to human trafficking but still, ICE refuses to release him because of his convictions. C was recently transferred out of Irwin Detention Center, but is still being held in immigration detention, despite ICE's awareness of his victim status.

Detention Centers Managed by ICE

Krome Service Processing Center- Miami, Florida

D. is a gay, HIV positive man from Russia. He had already applied for asylum, when he was unjustly detained in a Florida detention facility in 2017, while returning from a trip to the U.S. Virgin Islands. He went multiple days without access to antiretroviral medication and developed an opportunistic infection. Because he has a compromised immune system, this was life threatening. When he asked to see a doctor, D. was forced to spend multiple days in a freezing waiting room. ICE refused to release him until the Associated Press ran a story about his mistreatment.

DHS is Violating Legal Standards by Refusing Medical Treatment and Delaying Care

The inhumane and punitive conditions described above are in direct contravention of established law and norms. It is the responsibility of DHS to hold the detention facilities under its purview to the legal requirements and to appropriately penalize them when they continuously harm migrants in their care.

Constitutional Protections

The Fifth Amendment Due Process Clause of the U.S. Constitution protects substantive rights of “all persons” present in the United States, including detained immigrants.¹⁷ As such, people in detention are entitled to, at a bare minimum, adequate medical care, as well as adequate food, shelter, clothing, and reasonable safety.¹⁸

Immigration detention is civil, not criminal, in nature.¹⁹ Unlike criminal detention, civil detention cannot be punitive and any restriction on a person’s liberty must be rationally related to a legitimate governmental goal.²⁰ In the context of criminal detention, the Eighth Amendment clearly prohibits “deliberate indifference” on the part of the detention staff to a detained individual’s “serious medical need[s].”²¹ Courts have held that people in civil detention are entitled to a standard of care greater than – or at the very least, equal to – the standard of care afforded to people in criminal detention.²² Indeed, the Ninth Circuit has held that, unlike people in criminal detention, civilly confined individuals need not prove “deliberate indifference” to demonstrate a violation of their Constitutional rights.²³

The accounts of abuse and neglect detailed above describe profoundly deficient physical and mental health care, including the denial of life-saving HIV medication. As such, ICE and CBP have violated the higher Eighth Amendment standard, showing deliberate indifference to serious medical needs and failing to provide critical care. These failures on the government’s part, which have caused detained immigrants to endure debilitating pain, suffer serious injury and have placed them in mortal danger, amount to Constitutionally prohibited punishment. It is clear that LGBTQ, PLWHIV immigrants cannot be housed safely in detention and therefore should be released.

¹⁷ *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

¹⁸ *See Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (finding civil detainee entitled to adequate food, shelter, clothing, medical care and reasonable safety under the Fourteenth Amendment).

¹⁹ *Zadvydas*, 533 U.S. at 690 (acknowledging that immigration detention is civil).

²⁰ *Bell v. Wolfish*, 441 U.S. 520, 535-539 (1979).

²¹ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (“prison official’s deliberate indifference to an inmate’s serious medical needs is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment”).

²² *Jones v. Blanas*, 393 F.3d 918, 931-34 (9th Cir. 2004), *cert denied*, 546 U.S. 820 (2005) (a civilly detained person is entitled to “‘more considerate treatment’ than his criminally detained counterparts. . . . Therefore, when a [civil] detainee is confined in conditions identical to, similar to, or more restrictive than those in which criminal counterparts are held, we presume that the detainee is being subjected to ‘punishment.’” (internal citations omitted)); *see also Youngberg v. Romero*, 457 U.S. 307, 321-32 (1982) (“Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”).

²³ *Jones* 393 F.3d at 934; *see also Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007) (“[T]he Eighth Amendment provides too *little* protection for those whom the state cannot punish.” (emphasis in original, citations omitted)).

Statutory Law

Various federal and state statutes also protect detained immigrants. For instance, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 provide protections from discrimination and mandate access to adequate and reasonable accommodations for LGBTQ, PLWHIV immigrants with physical and mental disabilities who are detained by ICE and CBP.²⁴ Likewise, the Prison Rape Elimination Act imposes national standards for the prevention, reduction, and punishment of prison rape, including standards for the provision of physical and mental health services to individuals who have been the victim of sexual abuse.²⁵ The stories above illustrate that not only are detention centers failing to provide even the most basic care to LGBTQ, PLWHIV after experiencing sexual violence, they are placing people in inhumane segregation leading to a further deterioration of physical and mental health. This has forced many LGBTQ, PLWHIV individuals to abandon viable claims for asylum and return to the violent conditions from which they fled in the first place. This is the very outcome asylum protections were created to prevent.

Detention Standards

In addition to these legal obligations, ICE and CBP must comply with their own set of standards, which are designed to protect detained immigrants. Notably, as currently applied, these standards have failed to translate into adequate physical and mental health care for LGBTQ, PLWHIV individuals due to inconsistent application, insufficient oversight and lack of accountability. In other words, ICE and CBP are failing to comply with their own standards.

The most comprehensive of these standards, the 2011 Performance-Based National Detention Standards (2011 PBNDS), updated in 2016, set forth extensive medical care requirements for ICE. For instance, the 2011 PBNDS require appropriate physical, dental, and mental health care as well as pharmaceutical services, 24-hour access to emergency care, and timely responses to medical complaints for all detained people.²⁶ They also require language services for individuals with limited English proficiency during any physical or mental health appointment, treatment, or consultation.²⁷ The stories above illustrate that far too many LGBTQ, PLWHIV individuals are flat out denied access to care or are left waiting for months on end for treatment.

For PLWHIV, the facility has more specific requirements. For example, it must provide medical care consistent with national recommendations and guidelines disseminated through the U.S. Department of Health and Human Services, the CDC, and the Infectious Diseases Society of America, and must provide access to all medications for the treatment of HIV currently approved by the FDA.²⁸ Moreover, adequate supplies of such medications must be kept on hand to ensure newly detained individuals are able to

²⁴ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990), http://library.clerk.house.gov/reference-files/PPL_101_336_AmericansWithDisabilities.pdf; Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (1973), <https://www.gpo.gov/fdsys/pkg/STATUTE-87/pdf/STATUTE-87-Pg355.pdf>.

²⁵ 6 C.F.R. §§ 115.81 - 115.83 (2014).

²⁶ U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, 257-81 (2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

²⁷ *Id.* at 264.

²⁸ *Id.* at 263.

continue with their treatments without interruption.²⁹ Detained immigrants are entitled to request an HIV test at any time.³⁰ Clearly, this is not happening.

The 2011 PBNDS also mandate that special consideration be given to people at risk of sexual assault, including individuals who have self-identified as members of the LGBTQ community.³¹ With specific regard to transgender individuals, the 2011 PBNDS require that those individuals who were receiving hormone therapy when taken into ICE custody, maintain continued access to such therapy.³² The guidelines further demand that detained transgender people have access to “mental health care, and other transgender-related health care and medication based on medical need.”³³ Once again, this complaint and others demonstrate that DHS is failing to meet these standards and transgender people are experiencing immense suffering as a result.

The other two national ICE standards — the National Detention Standards (NDS), issued in 2000 and the 2008 PBNDS – while less comprehensive than the 2011 PBNDS, also provide guidelines to ensure the health and safety of detained immigrants. These guidelines include provisions that establish access to health services,³⁴ mental health screenings and treatment plans,³⁵ and suicide prevention protocols.³⁶ These standards also require detention facilities to provide medical treatment to PLWHIV.³⁷

In addition to these generalized detention standards, ICE also issued a memorandum concerning the care of detained transgender immigrants in 2015. The memorandum sets forth guidance to ensure the safety of transgender immigrants in ICE’s custody. More specifically, the memorandum includes contract modifications for facilities to ensure access to adequate healthcare, including access to hormone therapy. The memorandum also states that during initial processing or risk classification assessment of an

²⁹ *Id.*

³⁰ *Id.* at 263.

³¹ *Id.* at 135.

³² *Id.* at 273.

³³ *Id.* at 274.

³⁴ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 1 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

³⁵ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 3 (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 13-14 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

³⁶ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Suicide Prevention and Intervention (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/suciprev.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Suicide Prevention and Intervention, 1-2 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/suicide_prevention_and_intervention.pdf.

³⁷ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 7 (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 7-8 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

individual, the detention facility staff should inquire about a person's gender identity³⁸ and make an individualized placement determination to ensure person's safety, including whether detention is warranted. Where feasible and appropriate, ICE should house transgender immigrants in facilities that are equipped to care for transgender people.³⁹ ICE also has a Directive on Gender Dysphoria and Transgender Detainees which applies to all IHSC personnel and requires an IHSC medical provider to complete a physical examination for transgender individuals within two business days of intake and that a behavioral health provider must also perform a mental health evaluation for transgender patients within the same timeframe.⁴⁰ Furthermore, IHSC "must initiate and/or continue hormone therapy for [gender dysphoria] detainees as clinically indicated and in accordance with the IHSC Clinical Guidelines for the Treatment of GD."

Similarly, CBP has a set of standards to provide for the health and safety of individuals in its custody. These standards require CBP officials to inspect detained people for "any signs of injury, illness, or physical or mental health concerns . . .,"⁴¹ and in cases of emergency, CBP officials must immediately call medical services.⁴² The standards also note that individuals known to be on life-sustaining or life-saving medical treatment, LGBTQ people, and individuals with mental or physical disabilities may require additional care and oversight.⁴³ Additionally the standards require that during transportation of a detained person, CBP officials must be on alert for signs of medical symptoms, and provide or seek medical care in a timely manner.⁴⁴

While the strength of protections accorded by different detention standards varies, even the weakest standards set minimum requirements for the health and safety of detained people. Unfortunately, however, as the experiences of LGBTQ, PLWHIV individuals detailed in this letter demonstrate, ICE and CBP routinely fail to comply with the most basic requirements.

DHS Cannot Safely House LGBTQ, PLWHIV Individuals and Must Fix the Broken Oversight System that Allows These Offenses to Continue with No Accountability

ICE and CBP blatantly disregard the health of LGBTQ, PLWHIV individuals and repeatedly fail to not only meet legally required standards of care but even their own detention standards. The countless reports of outright denial of medical treatment and the continuous maltreatment clearly demonstrate that DHS cannot house LGBTQ, PLWHIV individuals safely. Furthermore, there is no reason to keep LGBTQ, PLWHIV people in detention in the first place.

Further, DHS is failing to meet their responsibility of oversight. DHS's own reports demonstrate that contracted agencies who are responsible for investigations do not take their responsibilities seriously. What's more, even when medical neglect and mistreatment is substantiated, DHS rarely uses its authority

³⁸ U.S. Dep't. of Homeland Security, *Further Guidance Regarding the Care of Transgender Detainees*, 2 (June 19, 2015)

<https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

³⁹ *Id.*

⁴⁰ IHSC Directive: 03-25 effective March 15, 2017.

⁴¹ U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, 14 (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁴² *Id.* at 17.

⁴³ *Id.* at 19.

⁴⁴ *Id.* at 6.

to implement penalties and address the conditions that led to the harm in the first place. For example, in a report looking at 2018 and 2019 inspection reviews of ICE detention facilities, the OIG concluded that ICE's monitoring systems do not ensure adequate oversight or systematic improvements in detention conditions, with some deficiencies remaining unaddressed for years.⁴⁵ Further, the OIG found that ICE did not adequately hold detention facility contractors accountable for their lack of compliance with performance standards because they failed to use contracting tools to hold them accountable.⁴⁶

With this in mind, we demand that:

- First and foremost, ICE release all LGBTQ, PLWHIV people that are currently detained on their own recognizance.
- ICE comply with the OIG's January 29, 2019, recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet these standards for care by imposing financial penalties and cancelling contracts for facilities that consistently fail to meet the standards.
- The DHS OIG work with the CRCL to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE custody
- DHS must strengthen its oversight of facilities and improve its audits of facilities, ensure timely cooperation of components with OIG and CRCL investigations, increase its use of unannounced inspections, and improve grievance procedures and take meaningful measures to end retaliation against individuals in custody who exercise their right to file a grievance.
- DHS must ensure that all people in detention are aware of their legal rights through developing and disseminating information that details the medical care that they are entitled to.
- Ensure that people are not held in CBP longer than the minimal amount of time it takes for processing, no longer than 24 hours.
- Ensure that CBP provide all persons in custody with timely medical screenings by a licensed health professional and require an EMT or other certified health professional to be on-duty and available to give medical attention at all times in CBP processing and holding stations. Ensure that the health professionals are competent on transgender and HIV related health care.
- Create a thorough, independent, and regular investigation process and standards to ensure that CBP is meeting designated standards and to document incidents of neglect and abuse. Develop specific policies that detail penalties for CBP facilities with documented cases of abuse and medical neglect.

Conclusion

We were deeply saddened and angered to learn of the death of Johana Medina Leon, who died on June 1st, 2019 after spending seven weeks in ICE custody. Her death came almost a year to the day of the death of Roxsana Hernandez, another transgender woman who should not have been detained and who died while in ICE custody. Both of these women experienced medical neglect and the stories in this complaint demonstrate that, tragically, the circumstances around their deaths are not outliers but in fact the norm for the treatment of transgender, as well as lesbian, gay, bisexual, and people living with HIV in ICE and CBP custody. The well-documented mistreatment of LGBTQ, PLWHIV individuals demonstrates that ICE and CBP are unable to adequately care for LGBTQ, PLWHIV people, or really any individuals, in their care.

⁴⁵ Office of Inspector General (OIG), ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

⁴⁶ OIG, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

Despite the frequent and ongoing complaints made to DHS, poor oversight and lack of accountability allows these conditions to continue. Neither DHS nor the detention centers that the department is responsible for overseeing are above the law and should receive appropriate consequences for these egregious offenses.

If you have any questions about the above information, please contact Ash Stephens at Ash@transgenderlawcenter.org or Sharita Gruberg at sgruberg@americanprogress.org.

Sincerely,

Transgender Law Center
Black LGBT Migrant Project
Familia Trans Queer Liberation Movement
Al Otro Lado
Las Americas Immigrant Advocacy Center
Center for American Progress
Los Angeles LGBT Center
Freedom for Immigrants
Santa Fe Dreamers Project
Southern Poverty Law Center
Immigration Equality
Center for Victims of Torture
National Immigrant Justice Center
National Center for Transgender Equality
Physicians for Human Rights
BIENESTAR
Equality California
Silver State Equality-Nevada
Positive Women's Network-USA
BiNet USA
National LGBTQ Task Force
Equality North Carolina
Movement Advancement Project
APAIT - Special Service for Groups
CenterLink: The Community of LGBT Centers
The LGBT Center OC
Council for Global Equality
Bridges Faith Initiative
Farmworker Justice
United We Dream
Immigrant Legal Resource Center
Irish International Immigrant Center
Southern Border Communities Coalition
Immigrant Defenders Law Center
Southern California Providers for Health Equity
Legal Aid Justice Center
Las Americas Immigrant Advocacy Center
Council for Global Equality
National Equality Action Team

Just Detention International
CENTRAL AMERICAN RESOURCE CENTER - CARECEN
Human Rights First
RAICES
API Equality-LA
Coalition for Humane Immigrant Rights (CHIRLA)
Center for Constitutional Rights
Modern Military Association of America
URGE: Unite for Reproductive & Gender Equity
Sexuality Information and Education Council of the United States (SIECUS)
The Trevor Project
Dolores Street Community Services
Athlete Ally
GLMA: Health Professionals Advancing LGBTQ Equality
AIDS United
The LGBT Bar Association of New York
Texas Civil Rights Project
Center for Gender & Refugee Studies
In Our Own Voice: National Black Women's Reproductive Justice Agenda
National Trans Bar Association
Lawyers' Committee for Civil Rights of the San Francisco Bay Area



	10/13/2011		On April 13, 2011, CRCL received email correspondence from [redacted] of Heartland Alliance's National Immigrant Justice Center (NIJC) on behalf of [redacted] who self identifies as gay and transgender, alleging mistreatment while in the U.S. immigration detention system nationwide, including sexual assault, physical assault, discrimination and misuse of segregation. [redacted] who prefers the name [redacted] is a detainee at [redacted], California, alleging that [redacted] was denied access to [redacted] denied access to [redacted] housed in the gay and transgender pod, and the officers discriminate against [redacted] on the basis of sexual orientation.	Referred - No Reply	NA	NA	NA
C11-ICE-SND-07389	4/22/2011	4/25/2011	Summary of new complaint for your review: On April 13, 2011, CRCL received email correspondence from [redacted] of Heartland Alliance's National Immigrant Justice Center (NIJC) on behalf of 13 complainants who self identify as gay and transgender, alleging mistreatment while in the U.S. immigration detention system nationwide, including sexual assault, physical assault, discrimination and misuse of segregation. [redacted] who prefers the name [redacted] a detainee at [redacted], California [redacted] -Present), alleges that [redacted] is denied [redacted]. Thank you.	Referred - No Reply	NA	NA	NA
C11-ICE-SND-07398	4/22/2011	4/25/2011	On April 13, 2011, CRCL received email correspondence from [redacted] of Heartland Alliance's National Immigrant Justice Center (NIJC) on behalf of 13 complainants who self identify as gay and transgender, alleging mistreatment while in the U.S. immigration detention system nationwide, including sexual assault, physical assault, discrimination and misuse of segregation. [redacted] who prefers the name [redacted] a detainee at [redacted], California [redacted] 2011-Present), alleges that [redacted] is denied [redacted].	Referred - No Reply	NA	NA	NA
C11-ICE-SND-07399	4/22/2011	4/25/2011	[redacted] Duplicate narrative from above	Referred - No Reply	NA	NA	NA
C11-ICE-SND-07684	7/13/2010	4/27/2011	On July 9, 2010, the Joint Intake Center (JIC), Washington, DC, received an email from [redacted] Immigration & Customs Enforcement [redacted] CA. [redacted] stated that [redacted] contracted [redacted] who was conducting a [redacted] interview of detainee [redacted] reported that detainee [redacted] claimed [redacted] was sexually assaulted by [redacted] cell-mate detainee [redacted] which occurred [redacted] earlier at the [redacted] Detainee [redacted] alleged detainee [redacted] had conducted oral sex on [redacted] while [redacted] was sleeping.	Referred - No Reply	NA	NA	NA
C11-ICE-SND-07921	4/27/2011	5/2/2011	On [redacted] 2011, [redacted] was interviewed by [redacted] and [redacted] Office of Professional Responsibility. [redacted] alleged [redacted] sexually assaulted [redacted] on [redacted] 2011. On [redacted] 2011, [redacted] contacted OPR, [redacted] but did not want to provide any information over the telephone because [redacted] believed [redacted] telephone was being monitored. [redacted] agreed to be interviewed in the OPR [redacted] office on [redacted] 2011. The following is a synopsis of the interview conducted of [redacted]	Referred - No Reply	NA	NA	NA
			[redacted] Non responsive				
C11-ICE-SND-14152	7/21/2011	7/22/2011	On September 17, 2010, the Joint Intake Center (JIC), Washington, D.C., received an allegation from [redacted] Enforcement and Removal Operation (ERO) [redacted] CA. [redacted] reported that [redacted] Detainee, [redacted] CA, was sexually assaulted by [redacted] Detainee, [redacted] CA. It was reported that Detainee [redacted] awoke in [redacted] cell and found Detainee [redacted]	Referred - No Reply	NA	NA	NA
C11-ICE-TUC-03583	12/29/2010	2/23/2011	On December 27, 2010, the Joint Intake Center (JIC), Washington, DC, received an allegation from [redacted] Supervisory Detention and Deportation Officer Immigration and Customs Enforcement (ICE), [redacted] AZ. SDDO [redacted] reported an allegation of sexual assault between [redacted] Detainees. It was reported that the alleged victim [redacted] Detainee [redacted] AZ, asserted that [redacted] Detainee, [redacted] AZ, sexually assaulted [redacted]	Referred - No Reply	NA	NA	NA
C11-ICE-TUC-07137	4/19/2011	4/20/2011	On April 13, 2011, CRCL received email correspondence from [redacted] of Heartland Alliance's National Immigrant Justice Center (NIJC) on behalf of 13 complainants who self identify as gay and transgender, alleging mistreatment while in the U.S. immigration detention system nationwide, including sexual assault, physical assault, discrimination and misuse of segregation. [redacted] a detainee at [redacted], Arizona [redacted] 2011), alleging that [redacted] was segregated for [redacted] verbally abused, denied access to results of medical test.	Referred - No Reply	NA	NA	NA

Dignity Denied

LGBT Immigrants in U.S. Immigration Detention

By Sharita Gruberg November 2013

Center for American Progress



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Introduction

As Congress debates immigration reform, a common refrain from congressional Republicans is the call for increased border security and increased resources for enforcement of immigration laws. While it is in the interest of national sovereignty and security to track those who come into and leave the United States, we cannot permit enforcement of immigration laws to trample immigrants' basic human rights. We must ensure that immigration enforcement is conducted in a humane manner that respects human dignity. Unfortunately, the current immigration enforcement system falls short of this goal, particularly in regard to the treatment of lesbian, gay, bisexual, and transgender, or LGBT, immigrants.

While the Department of Homeland Security, or DHS, does not keep data on the sexual orientation or gender identity of people in its custody, reports of treatment of LGBT detainees obtained through Freedom of Information Act, or FOIA, requests and through complaints filed by immigrant rights groups reveal that much like in the general prison population—where LGBT inmates are 15 times more likely to be sexually assaulted than the general population²—LGBT immigrants in immigration detention facilities face an increased risk of abuse in detention. The U.N. Special Rapporteur on torture and other cruel, inhuman or

Americans for Immigrant Justice provided a graphic example of how LGBT immigrants are mistreated. Advocates from this organization described incidents of transgender immigrants who were detained at the Krome Service Processing Center in Miami, Florida, and kept in administrative segregation—more commonly known as solitary confinement—for periods of up to six months at a time. The purported rationale for placing LGBT immigrants in solitary confinement is to protect them from the general detainee population. LGBT immigrants in immigration detention facilities are at increased risk of verbal abuse, sexual assault, and physical assault. In the case of Krome,

female transgender detainees are housed with the male population. Rather than providing a safe environment for immigrants who are particularly vulnerable to abuse—such as transgender people—Krome opts to place LGBT immigrants in administrative segregation. In addition to being held in isolation for 23 hours per day, LGBT immigrants in solitary confinement at Krome are further mistreated: They are released into a caged section within the facility's outdoor recreational area for one hour per day, frequently at the same time as the general population, while guards encourage other immigrants to verbally harass the caged immigrants.¹

degrading treatment or punishment went as far as finding the treatment of LGBT immigrants in U.S. detention facilities in violation of the Convention Against Torture after it received information on gay and transgender individuals who had been subjected to solitary confinement, torture, and ill-treatment—including sexual assault—while detained in U.S. immigration facilities.³

This report will examine the mistreatment LGBT immigrants face in immigration detention; the steps that Immigration and Customs Enforcement, or ICE, has taken in an attempt to address these issues; the impact that legislation pending before Congress would have on immigration enforcement; and recommendations for how to ensure enforcement of immigration laws is conducted in a manner that is effective and humane.

Abuse in immigration detention

Each day, a congressional mandate requires ICE to hold 34,000 immigrants who may be subject to removal for violations of administrative immigration law in more than 250 detention facilities nationwide, including county and private jails.⁴ Prior to 1996, immigrants in removal proceedings were not detained unless they were found to be a flight risk or pose a threat to national security.⁵ At that time, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.⁶ These laws greatly expanded the scope of who is subject to mandatory detention during removal proceedings without a hearing before an immigration judge to determine whether they should be detained. In 1996, the Immigration and Naturalization Service, or INS, held 8,500 immigrants in detention facilities. This number nearly doubled after the 1996 laws passed, as nearly 16,000 detainees were held in confinement in 1998.⁷ Today, DHS holds more than twice as many immigrants in detention each day as INS did during the entirety of 1998.⁸

Among those caught up in this mandatory detention are survivors of torture and asylum seekers—individuals whose past persecution makes them particularly vulnerable to the mental health strain brought on by conditions in detention. Numerous studies show that even in relatively well-run facilities, detention itself is a threat to the psychological health of detainees, exacerbating the severe psychological distress frequently found in survivors of torture and asylum seekers.⁹ Current law requires mandatory detention for all asylum seekers who enter the United States without proper documentation. Due to the complex nature of asylum cases, asylum seekers spend more time in immigration detention facilities than do other detainees. Whereas the average detainee length of stay is 30 days, the average stay for asylum seekers is 102.4 days.¹⁰ Since nearly 80 countries have laws criminalizing people who are LGBT, many LGBT asylum seekers in search of safety and security in the United States are instead locked away in our jail-like immigration detention facilities.¹¹

Today, DHS holds more than twice as many immigrants in detention each day as INS did during the entirety of 1998.

In addition to the baseline trauma that people face when detained and deprived of their liberty, abuse of LGBT immigrants has been well documented by immigration advocates nationwide. Heartland Alliance's National Immigrant Justice Center, or NIJC, filed 17 complaints in 2011 with DHS's Office for Civil Rights and Civil Liberties, or CRCL, and Office of Inspector General, or OIG, in response to reports of abuse against LGBT immigrants in DHS custody.¹² NIJC's complaints documented mistreatment in immigration detention facilities nationwide, indicating the systemic nature of the mistreatment of LGBT immigrants in immigration detention facilities.¹³

The complaints include incidents of sexual assault, denial of adequate medical care, long-term solitary confinement, discrimination and abuse, and ineffective complaints and appeals processes.

One complaint describes the treatment of an individual called T, who was sexually assaulted by a guard while placed in administrative segregation in the Eloy Detention Center in Eloy, Arizona. She was granted Withholding of Removal, a form of relief similar to asylum, which prevents enforcing an order of removal in cases where it is more likely than not that the individual would face persecution if returned to his or her country of origin. Despite this, T was not released from ICE custody for another three months, during which time she was sexually assaulted a second time.¹⁴

In addition to the incidents of abuse described in NIJC's complaints, other complaints have documented LGBT detainees being called names such as "faggot" by guards and being told to "walk like a man, not a gay man" and "act male."¹⁵ Furthermore, detainees are frequently housed with detainees of a gender with which they do not identify.¹⁶ This means that female transgender detainees are detained with men.

Bamby Salcedo came to the United States to escape persecution in Mexico on account of her gender identity. After she made her asylum claim, she was placed in an immigration detention facility while she waited for her claim to be adjudicated. Despite her gender identity, Bamby was placed in a male housing facility, where she was forced to shower alongside approximately 10 men who would verbally harass her in the bathroom.¹⁷ Once, a male detainee assaulted her in the bathroom, fracturing her nose. After the attack, the detention facility moved Bamby into administrative segregation in an attempt to protect her from further abuse. As Bamby notes, "as transgender people, we are placed in that unit because of who we are."¹⁸

Whereas the average detainee length of stay is 30 days, the average stay for asylum seekers is 102.4 days.

CAP FOIA request reveals dangerous conditions for LGBT immigrants in detention

On September 4, 2013, the Center for American Progress submitted a FOIA request to the DHS OIG. The complaints unearthed by the request reveal the systemic nature of abuse against LGBT detainees in ICE facilities. The request sought records of complaints and/or investigations involving ICE made by LGBT detainees in ICE facilities from fiscal year 2008 to the present. The request turned up nearly 200 reports of abuse. Unfortunately, ICE does not keep records of the sexual orientation or gender identity of immigrants in its custody; therefore, the FOIA request only turned up incidents in which the summary of the allegation mentions the immigrant's sexual orientation or gender identity. Additionally, these are only instances of abuse that were reported to ICE by attorneys and detainees. Since immigrants in ICE custody often fear retaliation if they submit a complaint, formal reports of abuse are rare.¹⁹ Thus, these complaints likely illustrate only a fraction of the actual instances of abuse against LGBT immigrants that occur nationwide.

The complaints obtained through this request include incidents of sexual assault by guards and fellow detainees, withholding of medical treatment, verbal and physical abuse by guards and fellow detainees, the use of solitary confinement based solely on the sexual orientation or gender identity of the immigrant, incidents of LGBT immigrants being humiliated by guards in front of other detainees, and inappropriate use of restraints in violation of ICE's Performance-Based National Detention Standards, or PBNDS.²⁰ The exact language of the verbal abuse, as well as the forms of physical abuse, was redacted in the FOIA results.

Taken together, the data from immigration advocates, attorney complaints, and the CAP FOIA request illustrate a number of issues faced by LGBT immigrants in immigration detention facilities, each reviewed below. We also offer an analysis of recent policy changes.

Sexual assault

In its 2009 report, The National Prison Rape Elimination Commission found that immigration detainees are especially vulnerable to sexual abuse because of the social isolation they face from being detained away from friends and family and because they may not speak the same language as other detainees or staff.²¹ Since immigration detainees are detained by DHS—the same agency that has the power

to deport them—guards in these facilities have a high degree of control over detainees, who may believe the guards are able to impact decisions concerning their deportation status.

After numerous complaints of abuse surfaced, a Department of Justice, or DOJ, investigation into Krome in 2000 found that nearly 10 percent of female detainees reported sexual misconduct by INS, the precursor to ICE, officers.²² Reports of sexual abuse at Krome continue to this day, including a 2011 incident in which an ICE officer abducted an immigrant during a transfer and raped her in his home.²³

A 2010 report by Human Rights Watch on sexual assault in immigration detention facilities concluded that “the problem cannot be dismissed as a series of isolated incidents” and “there are systemic failures at issue.”²⁴ In its work, NIJC found incidents of sexual assault against LGBT detainees by fellow detainees and by guards employed by detention facilities.²⁵ The American Civil Liberties Union, or ACLU, filed a lawsuit against ICE on October 19, 2011, after finding that nearly 200 incidents of sexual assault had occurred in its detention facilities since 2007.²⁶ An immigration attorney reported an incident to the ACLU of Arizona in 2009 of a client who was detained in the ICE facility in Florence, Arizona, while he awaited a decision in his asylum case. While in detention, another detainee raped the client in the bathroom. After the rape, the client was placed in isolation, where he relived his trauma. Whenever guards brought him out of isolation to meet with his attorney, he was shackled at his hands, feet, and waist.²⁷

Solitary confinement

In response to the sexual assault and harassment of LGBT immigrants in detention facilities, many facilities place LGBT immigrants in administrative segregation, or solitary confinement, in an attempt to protect them from the general population. The use of solitary confinement is commonly associated with a multitude of psychological effects, including hyper-sensitivity to external stimuli, hallucinations, panic attacks, obsessive thoughts, and paranoia.²⁸ The U.N. Special Rapporteur on torture concluded that solitary confinement becomes “prolonged” at 15 days, after which the psychological effects may become irreversible.²⁹

The misuse of solitary confinement for LGBT detainees has been well documented in reports by nongovernmental organizations and in a 2013 *New York Times* article that found that each day, nearly 300 individuals are kept in solitary

confinement in immigration detention facilities.³⁰ In a 2010 report, the Inter-American Commission on Human Rights stated that it was “deeply troubled by the use of confinement (‘administrative segregation’ or ‘disciplinary segregation’) in the case of vulnerable immigration detainees, including members of the LGBT community,” and reported that “using confinement to protect a threatened population amounts to a punitive measure.”³¹ NIJC found incidents of detainees being held in isolation for four months in a 9-by-13-foot cell simply because an individual presented “effeminately.”³² Solitary confinement is also used nationwide as a means of “protective custody” for LGBT detainees.³³ As mentioned above, the ACLU of Arizona found cases of LGBT detainees placed in solitary confinement in response to being sexually assaulted by fellow detainees.³⁴

Inadequate medical care

The inadequacy of medical care in immigration detention facilities has been well documented as a systemic problem throughout ICE detention facilities.³⁵ LGBT and HIV-positive detainees are at particular risk of lacking access to proper treatment. In 2007, Victoria Arellano, an HIV-positive female transgender migrant, died in the men’s mass detention cell of an ICE detention facility because authorities at the facility refused to give her medical attention and her medication.³⁶ NIJC also found that HIV-positive individuals detained by ICE were harassed and mistreated and encountered serious problems accessing HIV medication.³⁷

Another frequent medical issue faced by LGBT immigrants in ICE custody is the denial of hormone treatment to detained transgender individuals, a denial which many U.S. Circuit Courts have found to be in violation of the Eighth Amendment’s requirement that the incarcerated receive “adequate medical care.”³⁸ The 2011 PBNDS medical care standard provides for continued access to hormone therapy for transgender detainees who were already receiving hormone therapy prior to being taken into ICE custody; however, these standards are not mandatory.³⁹ Even at the dedicated LGBT protective-custody unit in the Santa Ana City Jail in Santa Ana, California, there have been instances of transgender asylum seekers whose medical records took from 35 to 45 days to arrive at the jail, delaying their access to hormone therapy for one to four months, treatment that the American Medical Association and American Psychological Association have affirmed is medically necessary.⁴⁰

ICE's attempts to address the needs of LGBT detainees

ICE has taken numerous steps to respond to the reports of abuse and mistreatment of LGBT immigrants in detention facilities; unfortunately, its efforts have proven to be inadequate to meet the particular needs of LGBT immigrants. This section details ICE's responses to date.

2011 Performance-Based National Detention Standards and ICE detention reform initiative

National Detention Standards were created in 2000 to govern the treatment of immigrants in detention facilities.⁴¹ These standards mostly mirror the American Correctional Association standards for pretrial felons and include guidance on permissible use of force, shackling, medical care, access to legal materials, provision of clothing and bedding, religious practices, and other areas of detention administration and detainee rights. An internal review of ICE detention practices conducted in 2009 found that the penal model the ICE standards were modeled on was inappropriate for the immigration detention population and that it imposed more restrictions than were necessary to effectively operate ICE facilities.⁴² Beginning in 2008, ICE enacted Performance-Based National Detention Standards to govern its detention facilities, and the 2009 review contributed to changes made in the 2011 PBNDS. The detention standards, however, are voluntary guidelines without the force of law behind them.⁴³ Since the standards are not mandatory, detention facilities are not required to adhere to them, and there is no judicial oversight to ensure adherence. This lack of accountability is troubling, as a 2009 assessment found that 50 percent of immigration detainees are housed in facilities that are not subject to detention standards.⁴⁴ Today, ICE monitors compliance with detention standards in 52 facilities, which house 84 percent of immigrants in ICE custody.⁴⁵

In 2011, ICE released PBNDS that included for the first time important safeguards for LGBT immigrants.⁴⁶ These protections include recognizing transgender detainees as a vulnerable population, conducting strip searches of transgender detainees in private, basing housing decisions for transgender detainees on the detainee's gender self-identification rather than solely on physical anatomy, and allowing transgender detainees who received hormone therapy before detention to have continued access.

ICE sexual abuse and assault prevention and intervention directive

In 2012, ICE created policies and procedures to address sexual assault in immigration detention facilities, including a mandatory training for staff on ICE's zero-tolerance policy for sexual abuse and assault, as well as on "communicating effectively and professionally with lesbian, gay, bisexual, and transgender individuals."⁴⁷ The guidance also requires an annual review and report of incidents of sexual assault of individuals in ICE custody; it does not, however, require data to be gathered on the sexual orientation or gender identity of victims, reducing its effectiveness.

ICE's directive is a welcome development, but a recent report by the Government Accountability Office, or GAO, found that ICE has not developed the controls necessary to ensure that field-office officials are in compliance with the guidance. The GAO examined 215 allegations of sexual abuse and assault in ICE detention facilities from October 2009 through March 2013. Its report found that 40 percent of sexual assault allegations were never reported to ICE headquarters and that not only do ICE field offices not comply with reporting requirements to headquarters, but immigration detainees also face barriers to reporting abuse. From 2010 to 2014, for example, 14 percent of calls placed to the DHS OIG hotline—one of the means for reporting abuse—from ICE detention facilities did not go through. Of the 215 investigations into allegations of sexual abuse and assault, only 7 percent were substantiated. In other words, investigators determined abuse had occurred in only 7 percent of cases. Frequently cited reasons for the low substantiation number are that the alleged victim chose not to cooperate with the investigation or that there was no evidence of the assault, and local law enforcement chose not to pursue the case.⁴⁸

In addition to these shortcomings in implementing ICE’s guidance on sexual assault, the particular vulnerability of LGBT immigrants to sexual violence in detention facilities—as described by the National Prison Rape Elimination Commission and graphically illustrated by advocates and attorneys working with this population—indicates that detention facilities are inherently unsafe spaces for LGBT immigrants.

Santa Ana City Jail protective-custody unit

In response to NIJC’s complaint on the deplorable treatment of LGBT immigrants in ICE detention facilities, ICE created a specialized facility to house LGBT immigrants at the Santa Ana City Jail.⁴⁹ The unit has 64 beds reserved for LGBT individuals to ensure that they are segregated from the rest of the jail’s population. ICE’s contract with the Santa Ana City Jail requires staff to undergo an eight-hour “specialized LGBT training.”⁵⁰ The staff underwent training conducted by NIJC in November 2012 and training conducted by professors at California State University, Fullerton, in July 2013.

Despite the training, however, visitor volunteers from the Community Initiatives for Visiting Immigrants in Confinement, or CIVIC, documented incidents of guards telling transgender, asylum-seeking women to “use their male voice” and “act male” and using male pronouns when speaking about them to others.⁵¹ The organization also found that transgender asylum seekers who were transferred to the facility did not have access to hormone therapy for one to four months, care that does not meet the PBNDS standard of providing treatment that follows accepted guidelines regarding medically necessary transition-related care.⁵² When Christina Fialho, CIVIC’s co-founder and executive director, went public with her findings in *The Huffington Post* in July 2013,⁵³ ICE responded by suspending CIVIC’s visitation program in three Southern California detention facilities.⁵⁴

ICE directive on solitary confinement

In September, the Department of Homeland Security released new rules on the use of solitary confinement that explicitly forbid placing immigrants in solitary confinement solely because of gender identity or sexual orientation.⁵⁵ This directive is a welcome step in the right direction; however, conversations with immigration attorneys have revealed that instead of automatically releas-

ing LGBT immigrants from solitary confinement, DHS only releases them upon their attorneys' requests. Approximately 84 percent of immigrants in detention facilities lack legal representation; therefore, while it is not yet clear how the new directive impacts unrepresented LGBT immigrants in solitary confinement, it is likely that there are considerable numbers of individuals who are not yet being released under the directive.⁵⁶ But with the directive having only gone into effect in September, facilities may still be becoming acquainted with the directive and may soon begin automatically releasing LGBT immigrants from solitary confinement without the intervention of an attorney.

ICE's directive falls short because it does not specify that solitary confinement should be used only for brief periods of time and in the least restrictive conditions possible. It also does not set specific limits for the total amount of time a vulnerable individual can be placed in solitary confinement.⁵⁷

While the directive does not solve every problem, it does require reporting about and oversight of the use of solitary confinement in immigration detention. Whereas the old rules required reporting only after an immigrant was placed in solitary confinement for more than a month, the new policy includes reporting requirements in which facilities must justify—in writing to DHS—why an immigrant is kept in solitary confinement for more than two weeks. This reporting requirement will allow ICE to monitor the use of solitary confinement in all of its detention facilities nationwide.⁵⁸

Impact of increased enforcement in pending legislation on LGBT immigrants

Senate Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, or S. 744

On June 27, the Senate passed the bipartisan Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 by a vote of 68 to 32.⁵⁹ Although the bill calls for dramatic increases in immigration enforcement spending, including \$46.3 billion to double the number of Border Patrol agents and build 700 miles of fencing across the southern border, it couples these measures with important safeguards for immigrants—safeguards that are especially critical in light of the particular vulnerabilities faced by LGBT immigrants in our immigration system detailed above.

The centerpiece of the Senate bill is an earned path to citizenship that would benefit more than 267,000 undocumented LGBT adults currently living in daily fear of being detained and deported from the United States.⁶⁰ Currently, they live in fear of being separated from their families and communities and returned to countries that they no longer consider their homes, countries where they may even be in danger because of their sexual orientation or gender identity. This practice violates a basic cornerstone of international asylum and refugee law: nonrefoulement, or the prohibition against returning a person to any country where he or she would be at risk of persecution.⁶¹ The Senate bill also includes an expedited path to citizenship for DREAMers—undocumented immigrants who were brought to the United States as children. The United States is the only home many of them know. This provision will be particularly beneficial to LGBT undocumented immigrants, since they tend to be younger than the general undocumented immigrant population, with undocumented adult immigrants under age 30 being twice as likely to identify as LGBT as the broader population.⁶²

In addition to providing a path to earned citizenship, the bill would protect LGBT asylum seekers fleeing persecution by eliminating the one-year filing deadline. This deadline bars asylum seekers from applying for asylum one year after their arrival in the United States unless they can demonstrate changed or extraordinary circumstances. A study by NIJC, Human Rights First, and Penn State Law estimates that one in five asylum applicants fail to meet the deadline.⁶³ The Senate bill would remove an administrative barrier that has put countless LGBT asylum seekers at risk of being returned to countries where they are in danger of persecution on the basis of their sexual orientation or gender identity. Applications for asylum based on persecution on account of sexual orientation or gender identity are difficult cases to make, since, for example, LGBT asylum seekers frequently must hide their sexual orientation or gender identity in their home countries and thus may have difficulty meeting evidentiary requirements to win asylum.

The Senate bill provides for additional immigration judges, staff, and training programs to improve adjudication of these complex claims. Under current law, immigrants in removal proceedings do not have a right to counsel if they cannot afford to pay for an attorney. The Senate bill seeks to rectify this by requiring a lawyer to be appointed to represent unaccompanied minor children, immigrants with serious mental disabilities, and other particularly vulnerable individuals. It also expands and funds Legal Orientation Programs, which educate immigrants in deportation proceedings on their rights, immigration court, and the detention process.

In addition to procedural safeguards, the bill contains numerous safeguards to protect LGBT immigrants from the abuses they face in immigration detention, including increased oversight of detention facilities. It explicitly prohibits the use of solitary confinement solely because of an immigrant's sexual orientation or gender identity, codifying DHS's new directive on solitary confinement. Furthermore, it provides for the use of humane alternatives to detention so that vulnerable populations such as LGBT immigrants are placed in secure alternatives to detention pending a decision in their cases, rather than confined in jail-like facilities where they are at risk of torture and abuse.

House Border Security, Economic Opportunity, and Immigration Modernization Act, or H.R. 15

On October 2, House Minority Leader Nancy Pelosi (D-CA) and several other Democrats introduced a bill to reform U.S. immigration laws.⁶⁴ The bill includes all of the provisions detailed above from the Senate bill that would benefit LGBT

immigrants, such as a path to citizenship for undocumented immigrants and elimination of the one-year filing deadline, but it differs in one significant way. The House version of the bill does not include the Senate bill's border-surge provisions. In other words, it provides necessary safeguards for vulnerable immigrants without risking the exposure of more LGBT immigrants to our immigration enforcement and detention system.

SAFE Act, or H.R. 2278

The Strengthen and Fortify Enforcement, or SAFE, Act was introduced by Rep. Trey Gowdy (R-SC) on June 6.⁶⁵ If enacted, the SAFE Act would do nothing to resolve the legal status of 11 million undocumented immigrants but would significantly expand immigration enforcement⁶⁶ practices by making mere unlawful presence—such as undocumented status and overstaying a visa—criminal acts punishable with jail time, and it would greatly expand the detention of immigrants. It would also allow state and local governments to create their own draconian immigration enforcement provisions, allowing them to enact their own criminal penalties for violations of federal immigration laws, much like the provisions in Arizona's immigration law that were recently overturned by the Supreme Court.⁶⁷

The SAFE Act would exacerbate the dangers faced by LGBT immigrants in our immigration system by vastly widening the category of immigrants subject to mandatory detention, potentially subjecting even more LGBT immigrants to the unsafe conditions of immigration detention facilities. It would allow local law enforcement to arrest individuals on the suspicion that a person has committed an immigration violation, increasing the risk of racial profiling, and would require ICE to detain anyone a state or local government identifies as being inadmissible or deportable, removing DHS's discretion over whether to detain or release the individual.

This legislation is particularly dangerous for LGBT asylum seekers who missed the one-year filing deadline. If a judge finds that an asylum seeker missed the one-year filing deadline but determines the risk of persecution if deported is more likely than not, the judge can grant the asylum seeker Withholding of Removal, which prevents enforcement of a final order of removal. Under current law, immigrants who cannot be deported are eligible to file a writ of habeas corpus in federal

district court if they have been detained for more than six months. This is because the Supreme Court determined that six months is a reasonable period of time for the government to remove a deportable immigrant.⁶⁸ The SAFE Act would enable DHS to hold immigrants with no significant likelihood of removal, such as LGBT asylum seekers granted Withholding of Removal, indefinitely in jail-like immigration detention facilities.

Recommendations

As this report details, when LGBT immigrants are detained by ICE, they are particularly vulnerable to abuse and mistreatment. Both the Senate's immigration reform bill and the SAFE Act would greatly expand the number of LGBT immigrants that will likely be detained by ICE under expanded immigration enforcement efforts. ICE's efforts to protect this vulnerable population, while appreciated, have not adequately addressed the problem. The following are CAP's recommendations for how to protect LGBT immigrants.

Increase the use of alternatives to detention

There are a number of alternatives to detention, including monitoring through the use of electronic ankle bracelets or through supervised-release programs. At the request of INS, the precursor to DHS, the Vera Institute of Justice implemented a pilot project, the Appearance Assistance Program, to study appearance rates in removal hearings for individuals released into a form of supervised release.⁶⁹ Ninety-one percent of participants in the pilot project appeared for all of their required hearings. The high rate of appearance in removal hearings under the Appearance Assistance Program suggests that mandatory detention is not necessary to ensure that appearance at hearings, the objective of mandatory detention, is met.

In addition, alternatives to detention provide a wide range of benefits for the state as well as individuals. They are safer for LGBT immigrants, allowing them to be released from jail-like detention facilities where they face abuse and discrimination. They are also more cost effective than detention. The Vera project cost \$12 per immigrant per day, while the average cost of detaining an immigrant in an ICE facility is \$122 per day, totaling \$2 billion per year.⁷⁰ Release into alternatives to detention also allows immigrants greater access to resources to build their cases, a very important additional benefit for LGBT immigrants seeking asylum.⁷¹

Eliminate the bed mandate from congressional appropriations language

The number of people detained by ICE should be determined by necessity, not by an arbitrary quota set by Congress. The decision to detain an individual should be based on a case-by-case assessment that can be reviewed by an immigration judge. Eliminating the bed mandate would not eliminate immigration detention, nor would it eliminate mandatory detention provisions in current immigration law. Without the bed mandate, however, ICE would have the flexibility to shift resources to less costly alternatives to detention as needed.

Codify PBNDS and make them mandatory for all facilities that ICE uses to detain immigrants, with independent oversight of detention conditions

ICE's PBNDS include important safeguards and protections for LGBT immigrants, such as guaranteeing that transgender detainees have access to hormone therapy. Unfortunately, these standards are not currently mandatory for detention facilities, and immigrants have no recourse for violations of detention standards.

If a transgender individual must be detained, ICE's policy should be to place the individual in housing that is consistent with the individual's gender identity, not the anatomy or sex assigned at birth.

Require Legal Orientation Programs in all immigration detention facilities

Immigration law is an extremely complex area of law. Unfortunately, approximately 84 percent of immigrants in detention facilities are not represented by a lawyer and must navigate these laws by themselves. For immigrants facing deportation, particularly LGBT immigrants at risk of being sent back to countries where their lives are at risk, the stakes are incredibly high. This makes access to Legal Orientation Programs critical for protecting the basic rights of immigrants in removal proceedings. These programs provide basic information to immigrants about forms of relief from removal, how to represent themselves in immigration court, and how to get legal representation.

Require access to counsel for immigrants in removal proceedings

A study by immigration law professors found that access to counsel is the single-biggest determining factor in the outcome of an asylum case.⁷² Furthermore, immigrant advocates, the American Bar Association, and even some immigration judges argue that providing attorneys in removal hearings would lower costs, lessen backlogs, and provide critical due-process protections.⁷³ For LGBT asylum seekers trying to establish a difficult claim before an immigration judge, the assistance of an attorney can make all the difference in ensuring that they are not deported to a country where their lives are at risk.

Restore discretion to immigration judges

Historically, immigration judges could have considered a range of individual factors in determining whether it was in the best interests of the United States to allow an immigrant to remain in the country. Congress drastically limited judicial discretion in the 1990s by creating a category of violations called aggravated felonies.⁷⁴ Not all of these offenses are aggravated or felonies in the criminal law context. Today, immigration judges have no discretion in the decision to detain immigrants who committed aggravated felonies, nor the ability to grant them relief to remain in the United States, regardless of how compelling their individual circumstance is or how minor or old their convictions are. Restoring judicial discretion in immigration cases would allow judges to consider the individual circumstances and particular vulnerabilities of immigrants, including LGBT immigrants who would be placed in harm's way if deported from the United States.

Enforce Prison Rape Elimination Act standards in immigration detention facilities

The Prison Rape Elimination Act, despite the National Prison Rape Elimination Commission's recommendation that preventing sexual abuse in immigration detention facilities requires precautions beyond those required in prisons, does not govern immigration detention facilities.⁷⁵ ICE created a standard on sexual assault in detention facilities, but comments by a number of LGBT advocacy organizations show that DHS's standards are not as comprehensive as DOJ's and fall short of what is needed to protect LGBT immigrants in detention facilities.⁷⁶

Conclusion

From sexual assault to lack of access to proper medical care, LGBT immigrants are particularly vulnerable to abuse and mistreatment in immigration detention facilities on account of their sexual orientation or gender identity. While we support DHS's efforts to better care for the LGBT immigrants in its custody, its efforts have not succeeded in adequately meeting the particular needs of this demographic. As Congress debates reforms to our broken immigration system, it is critical that these reforms protect LGBT immigrants in DHS custody, promote due process, and preserve human dignity.

Author bio

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