

10 REASONS WHY CONGRESS SHOULD DEFUND ICE'S DEPORTATION FORCE

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Calls to abolish ICE, the Immigration and Customs Enforcement agency tasked with deportations, are growing.¹ ICE consists of two agencies – Homeland Security Investigations (HSI), which investigates transnational criminal matters, and Enforcement and Removal Operations (ERO), which deports non-citizens. The calls to abolish ICE focus on the latter, the ERO deportation force.

Defenders proffer that the idea is silly,² that abolition could harm public safety,³ or that advocates of abolition must first explain what, if anything, would replace the agency.⁴ Those reasons are not persuasive. The first ignores that federal agencies are not eternal and have been created and eliminated as our country's priorities change.⁵ The second reason is refuted by numerous studies establishing that immigrants are less—not more—likely to be involved in criminal activity than citizens.⁶ And of great import, the third reason has not stopped Congress from

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¹ See, e.g., Elliot Hannon, *House Democrats Preparing Legislation That Would Abolish ICE*, SLATE (Jul. 10, 2018, 9:05 PM), <https://slate.com/news-and-politics/2018/07/house-democrats-preparing-legislation-that-would-abolish-ice.html> [<https://perma.cc/EW3B-EFC9>].

² See, e.g., Matt Fuller, *Paul Ryan Says "Abolish ICE" Is "Craziest Position I've Ever Seen"*, HUFFINGTON POST, (July 12, 2018, 1:53 PM), https://www.huffingtonpost.com/entry/paul-ryan-abolish-ice-craziest-position_us_5b477f38e4b0e7c958f90ab1 [<https://perma.cc/U4CR-5AYL>].

³ See, e.g., Jeh Charles Johnson, *Abolishing ICE is Not A Serious Policy Proposal*, WASH POST (Jul. 6, 2018), https://www.washingtonpost.com/opinions/ice-needs-reform-not-abolition/2018/07/06/5d2cec0e-8133-11e8-b658-4f4d2a1aeef1_story.html?utm_term=.63610a080072 [<https://perma.cc/4PXV-7Q9Y>].

⁴ See, e.g., Bill Scher, *The Problem with "Abolish ICE"*, REAL CLEAR POLITICS (Jul 2, 2018), https://www.realclearpolitics.com/articles/2018/07/02/the_problem_with_abolish_ice.html [<https://perma.cc/3RY2-9Q9K>].

⁵ Amy Gottlieb, *It Is Time To Abolish ICE. It Cannot Be Reformed*, THE GUARDIAN (Jun. 23, 2018, 6:00 AM) <https://www.theguardian.com/commentisfree/2018/jun/23/it-is-time-to-abolish-ice-it-cannot-be-reformed> [<https://perma.cc/HAM6-62R5>] (“Suggesting the abolition of a government agency may seem like a radical idea, but it’s actually not that uncommon. Donald Trump himself proposed eliminating 19 government agencies in his first federal budget blueprint, even though those agencies actually benefited our communities. Both Democrats and Republicans have proposed eliminating the Commerce Department. And dozens of federal agencies have been created and dissolved as conditions and politics have changed over time.”).

⁶ See Philip Bump, *Surprise! Donald Trump Is Wrong About Immigrants and Crime*, WASH. POST (July 2, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/07/02/surprise-donald-trump-is-wrong-about-immigrants-and-crime/> [<https://perma.cc/U8PN-TFLQ>] (citing data from multiple sources showing that there is “no correlation” between immigration and violent crime and that incarceration rates among young men are lowest for immigrant populations); Alex Nowrasteh, *Immigration and Crime — What the Research Says*, CATO INST. (July 14, 2015, 11:49 AM),

similarly defunding the federal enforcement of marijuana laws in states that have legalized medical marijuana.⁷ This example shows that Congress does not need “an actual proposal for what should replace [enforcement], or even if it should be replaced at all” before defunding enforcement that is no longer a policy priority.⁸

This essay enters the debate by proposing a middle ground to the calls to abolish ICE. While Congress is likely to continue funding HSI agency functions, as they are understood as matters of actual public safety, Congress should defund the arrests, detentions, and deportations of millions of people *just* for being without status. This call, then, is to defund all functions of the ERO deportation force. By stopping short of ICE abolition, the agency could be funded when, and if, Congress creates a legitimate mandate for the agency to follow; a purpose that the agency now lacks.

Here are 10 reasons why Congress should defund the unnecessary, detrimental, and escalating deportations that the ERO deportation force is undertaking.

First, the ERO deportation force does not arrest “violent criminals,”⁹ and therefore is not contributing to America’s safety.

<http://www.cato.org/blog/immigration-crime-what-research-says> [<https://perma.cc/J7RL-BCN2>] (“[I]mmigrants are less crime prone than the native-born population.”)

⁷ See Tom Angell, *Congressional Committee Protects Medical Marijuana From Jeff Sessions*, FORBES (May 17, 2018, 12:38 PM), <https://www.forbes.com/sites/tomangell/2018/05/17/congressional-committee-protects-medical-marijuana-from-jeff-sessions/#722004e11e55> [<https://perma.cc/9XTY-NMY7>].

⁸ *Id.*

⁹ Throughout this piece, I used terms such as “violent criminals” to reflect the language used by proponents of ICE. The term “violent criminals” is problematic for many reasons, the first is that the term does not have a clearly-defined meaning. ICE attempts to track the types of crimes committed by those whom they arrest, but the “violent crimes” category is an overinclusive one that sometimes includes assault offenses that criminal courts deemed punishable as misdemeanors. See *e.g.*, *Maya-Cruz v. Keisler*, 252 Fed. App’x 136, 138 (9th Cir. 2007) (“A crime is an aggravated felony under 8 U.S.C. § 1101(a)(43) without regard to whether, under state law, the crime is *labeled* a felony or a misdemeanor.”) (internal citations and quotation marks omitted). In this article, I respond to the argument put forth by supporters of ICE that the ERO deportation force is needed to keep “violent criminals” at bay by demonstrating that the ERO deportation force does not in fact apprehend “violent criminals.” But, it is also worthwhile to question the premise that criminal convictions should be the basis for deportation at all. Banishment from the country as a criminal punishment is unconstitutional for U.S. citizens, yet it survives as a collateral consequence for long-term residents and green card holders who are convicted of crimes. The collateral consequence of deportation for criminal convictions seems particularly excessive given that people with criminal convictions are rehabilitated and reintegrated into the community. Deportation then has a devastating, and unnecessary, impact on the community members, spouses, and children of the deported individual, many of whom are U.S. citizens. See generally, Stephen H. Legomsky, *The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms*, 64 WASH. & LEE L. REV. 469, 477-480 (2007) (criticizing IIRIRA’s expansion of acts that constitute federal immigration crimes); Rebecca Sharpless, *Clear and Simple Deportation Rules for Crimes: Why We Need Them and Why It’s Hard to Get Them*, 92 DENV. U. L. REV. 933, 936 (2015) (arguing to “repeal the current crime-based grounds of removal”); Daniel Kanstroom, *Smart(er) Enforcement: Rethinking Removal, Structuring*

A common concern is that if the ERO deportation force is defunded, “violent criminals” will run amok. For example, President Donald Trump claimed at a rally, “Democrats want to abolish ICE. They want to turn America into one giant sanctuary city for violent criminals.”¹⁰

Transnational criminal enterprises that traffic in drugs, guns, and human beings exist, and it is well within the police powers of the state—and federal government—to intervene and apprehend individuals engaged in those crimes. But HSI is the agency responsible for investigating and prosecuting criminal enterprises, not the ERO deportation force.

By contrast, the ERO deportation force apprehends people without any criminal convictions, or people who have been convicted for a crime that was minor or committed years ago, or who have demonstrated rehabilitation. During the first two months of Trump’s administration, one third of non-citizens arrested by the ERO deportation force had no criminal conviction.¹¹ But just as important, having a prior criminal conviction does not mean that a person is a present danger to society. By ICE’s own statistics, 1% or fewer of those swept up in ERO deportation force arrests had prior convictions for the serious crimes of “[s]exual assault, kidnapping and homicide.”¹² Rather, the vast majority of those arrested and deported by the ERO were convicted of more minor offenses relating to “driving under the influence, drugs, other traffic offenses and immigration violations.”¹³

Proportionality, and Imagining Graduated Sanctions, 30 J. L. & POL. 465, 487 (2015) (“Most fundamentally, one might first ask why we deport long-term legal residents who commit crimes, instead of simply punishing them in the criminal justice system as we do citizens.”); Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE W. RES. L. REV. 993, 1001-1002 (2016) (arguing against criminal conviction as deportation grounds due to the “racially disparate impacts” of the criminal justice system); Kari Hong, *The Absurdity of Crime-Based Deportation*, 50 U.C. DAVIS L. REV. 2067, 2107-30, 2130-44 (June 2017) (recognizing recent Supreme Court cases that reduce and eliminate the nature and type of convictions that have immigration consequences and providing normative policy reasons to support this result).

¹⁰ See Jane C. Timm, *Fact Check: 7 Things Trump Got Wrong About the Border and Immigration*, NBC NEWS (Nov. 27, 2018), <https://www.nbcnews.com/politics/politics-news/fact-check-7-things-trump-got-wrong-about-border-immigration-n940516> [<https://perma.cc/5S35-AQRC>].

¹¹ Charles Reed, *Deportation Officers Are Increasingly Arresting People With No Crime Records*, NBC NEWS (Feb. 26, 2018), <https://www.nbcnews.com/news/latino/us-deportations-targeting-more-people-no-crime-records-n851196> [<https://perma.cc/29FL-RY8D>] (reporting that 65% of the non-citizens arrested by the ERO deportation force had a criminal conviction).

¹² Kristen Bialik, *Most Immigrants Arrested By ICE Have Prior Criminal Convictions, A Big Change from 2009*, PEW RESEARCH CENTER (Feb. 15, 2018, 12:10 PM), <http://www.pewresearch.org/fact-tank/2018/02/15/most-immigrants-arrested-by-ice-have-prior-criminal-convictions-a-big-change-from-2009/> [<https://perma.cc/6YLK-G8GS>].

¹³ Reed, *supra* note 11. See also, e.g., Emily Verdugo, *Trump’s “Tough on Crime” Policies Won’t Make Us Safer—They’ll Make Corporations Richer*, AMERICAN FRIENDS SERVICE COMMITTEE (Mar. 16, 2017), <https://www.afsc.org/blogs/news-and-commentary/trumps-tough-crime-policies> [<https://perma.cc/J7FL-V67B>]. As Verdugo’s article demonstrates, the “tough on crime” approach to immigration is not helpful. However, because the “tough on crime” approach is commonly used as a justification for ICE, this article demonstrates that, regardless of one’s views of the approach, the facts show that the ERO deportation force is simply not needed in order to combat actual crime.

In the case of a present threat to public safety—for example, an active shooter or serial sexual predator—the local police department and, in some cases, the FBI would be responsible for responding to the situation, investigating the crime, and arresting the person suspected of committing the crime. The person arrested for the crime would then be held in custody or released on bail by the state or federal criminal court, depending on where the charges are filed. The ERO is not involved in any way in the investigation of the crime or the detention of those accused of crimes pending criminal prosecution. The people whom the ERO targets are not the “dangerous” criminals that proponents of ICE would have the public believe. Examples of the so-called “dangerous” people swept up by the ERO deportation force include a doctor and green card holder who had two misdemeanors that were twenty-six years old,¹⁴ a business owner who volunteered to sift through the rubble of 9/11 who had an old drug offense,¹⁵ and countless combat veterans who were convicted of drug crimes or offenses that criminal courts often did not punish with much or even any prison time.¹⁶

Supporters of ICE argue that we need the ERO deportation force to keep us safe. But the ERO deportation force does not go after people who commit serious crimes, nor does it target people who pose a present danger to our communities. Defunding the ERO will have no negative impact on our safety.

Second, the MS-13 gang is not an immigration problem, and it is not an actual nationwide threat.

President Trump repeatedly contends that ICE, and the ERO deportation force, is needed to protect Americans from the MS-13 criminal gang. This is false.¹⁷

To understand the significance of the MS-13 gang—a transnational criminal gang operating primarily in Central America and Los Angeles¹⁸—it is important to understand the gang’s origins and contemporary functions. Ironically, unintended consequences from U.S. actions created the perfect storm for the MS-13 gang to

¹⁴ Samantha Schmidt, *ICE Detains A Polish Doctor And Green-Card Holder Who Has Lived In the U.S. For Nearly 40 Years*, WASH POST (Jan. 22, 2018),

https://www.washingtonpost.com/news/morning-mix/wp/2018/01/22/ice-detains-a-polish-doctor-and-green-card-holder-who-has-lived-in-the-u-s-for-nearly-40-years/?utm_term=.8dab17e416ce [<https://perma.cc/B2Z4-48SV>].

¹⁵ Sarah Maslin Nir, *To Stave Off A Deportation, Cuomo Pardons A 9/11 Volunteer*, N.Y. TIMES (Jun. 21, 2017), <https://www.nytimes.com/2017/06/21/nyregion/cuomo-pardon-deportation-carlos-cardona.html> [<https://perma.cc/UD7Q-B8KN>].

¹⁶ See, e.g., Rafael Bernal, *Army Vet Slated For Deportation For Drug Charges*, THE HILL (Mar. 20, 2017, 6:40 PM), <http://thehill.com/latino/324899-army-vet-slated-for-deportation-over-drug-charges> [<https://perma.cc/6X6W-8QNB>].

¹⁷ See Miriam Valverde, *Immigration, MS-13 and Crime: The Facts Behind Donald Trump’s Exaggerations*, POLITIFACT (Feb. 7, 2018), <https://www.politifact.com/truth-o-meter/statements/2018/feb/07/donald-trump/immigration-ms-13-and-crime-facts-behind-donald-tr/> [<https://perma.cc/4MJ4-NX9J>].

¹⁸ *Id.*

become as powerful as it is. Stated another way, “MS-13 was a gang fueled by deportation, not immigration.”¹⁹

First, the Reagan administration’s foreign policy in the 1980s destabilized the Salvadoran government by supporting a right-wing military dictatorship to prevent the Marxist opposition from gaining power.²⁰ Second, in the 1990s, the Clinton administration’s fast-track deportation program targeted members of the MS-13 gang, deporting 31,000 members of the gang to Central America and 12,000 members to El Salvador alone.²¹ While the United States has a functioning criminal justice system that can arrest, prosecute, and incarcerate members of gangs who commit crimes,²² El Salvador, Honduras, and Guatemala are plagued by corruption and lack the resources and ability to apprehend sophisticated criminal enterprises. According to WOLA, a research organization focusing on human rights in the Americas, “Gang members deported from Los Angeles took advantage of these conditions and leveraged their professional and unified structure to ramp up recruitment, consolidate small local youth gangs into more violent and more organized groups, and expand into the street gangs that control neighborhoods throughout Central America today.”²³ One-sixth of the El Salvadoran population is

¹⁹ Sahil Chinoy, Jessica Ma & Stuart Thompson, *MS-13 Is Far From the ‘Infestation’ Trump Describes*, N.Y. TIMES (Jul. 3, 2018), <https://www.nytimes.com/interactive/2018/06/27/opinion/trump-ms13-immigration.html> [<https://perma.cc/3HN9-X7QC>].

²⁰ See, e.g., Raymond Bonner, *Time For A US Apology To El Salvador*, THE NATION (Apr. 15, 2016), <https://www.thenation.com/article/time-for-a-us-apology-to-el-salvador/> [<https://perma.cc/SFK3-R3WR>]. Among the most egregious human rights violations were the assassinations of Archbishop Oscar Romero, rape and murder of four American nuns, and the massacre of 700 people in El Mozote. *Id.* The Reagan administration knew the Salvadoran military was responsible for these atrocities and did not condemn or sanction them, but continued to provide support and training to them. A United Nations report “found that more than 85 percent of the killings, kidnappings, and torture had been the work of government forces, which included paramilitaries, death squads, and army units trained by the United States.” *Id.*

²¹ See Patrice Taddonio, *How The US Fueled The Rise of MS-13*, PBS (Feb. 13, 2018), <https://www.pbs.org/wgbh/frontline/article/how-the-u-s-fueled-the-rise-of-ms-13/> [<https://perma.cc/S3Q4-P7JM>]; Sarah Kinoshian, *Seven Facts About MS-13 and How To Combat The Gang*, WOLA, (July 18, 2017), <https://www.wola.org/analysis/ms-13-not-immigration-problem/> [<https://perma.cc/L9TC-5A8Z>].

²² See generally, Matt Zapotosky, *As El Chapo Trial Opens, Attorneys Offer Conflicting Portraits of ‘Mythological’ Drug Lord*, WASH. POST (Nov. 13, 2018), https://www.washingtonpost.com/world/national-security/el-chapo-trial-begins-drug-kingpin-faces-life-in-prison/2018/11/12/52846f2a-e466-11e8-b759-3d88a5ce9e19_story.html?utm_term=.e282a859880c [<https://perma.cc/MJ5V-8EWE>] (discussing “El Chapo,” the alleged leader of a notorious Mexican drug ring who escaped from two Mexican prisons and is now being tried in the United States because our criminal justice system is not plagued by the same level of corruption and graft that led to his prior escapes).

²³ Kinoshian, *supra* note 21 (first citing Sarah Kinoshian, *El Salvador’s Gang Violence: Turf Wars, Internal Battles and Life Defined by Invisible Borders*, SECURITY ASSISTANCE, (Feb. 10, 2016), <http://securityassistance.org/blog/el-salvador%E2%80%99s-gang-violence-turf-wars-internal-battles-and-life-defined-invisible-borders> [<https://perma.cc/NB2U-PYB2>]; and then citing *Transnational Organized Crime in Central America and the Caribbean*, 2012, UNODC, http://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf [<https://perma.cc/E73J-SHFB>]).

believed to be involved in a criminal gang, resulting in El Salvador having the highest homicide rate in the world and with the MS-13 operating with impunity.²⁴

As much as the MS-13 gang is a serious threat to those living in Central America,²⁵ the gang is not a meaningful threat to those in the United States. In the United States, the MS-13 gang numbers 10,000 members, which is “less than 1 percent of the approximately 1.4 million gang members [in the United States] according to F.B.I. estimates.”²⁶ The gang is not a national scourge, but is concentrated in Los Angeles, Long Island, and outside Washington D.C.²⁷

In addition, the vast majority of the MS-13 gang's members in the United States are U.S. citizens.²⁸ About 70% of the gang members who ICE arrested in two major raids in 2016 and 2017 were in fact U.S. citizens.²⁹ These raids, when undertaken by ICE, were wasted efforts because the ERO deportation force has no authority to lawfully arrest or detain U.S. citizens.³⁰ Rather, it is local police forces and the FBI who are responsible for investigating and arresting citizens who are affiliated with gangs for their crimes.³¹

For fiscal year 2018, ICE's total budget was 8.6 billion dollars.³² If ICE's role were to apprehend MS-13 gang members, as President Trump repeatedly claims, tax payer dollars would be better spent elsewhere. From 2012 to 2017, ICE deported only 38 MS-13 gang members who had been arrested for murder (compared to 169 citizen MS-13 members who were arrested for murder in that

²⁴ *E.g.*, Molly O'Toole, *El Salvador Gangs Are Targeting Young Girls*, ATLANTIC (Mar. 4, 2018), <https://www.theatlantic.com/international/archive/2018/03/el-salvador-women-gangs-ms-13-trump-violence/554804/> [<https://perma.cc/8Z54-2WNK>].

²⁵ *See id.*

²⁶ Chinoy, Ma & Thompson, *supra* note 19.

²⁷ *Id.*

²⁸ *E.g.*, Kristian Ramos, *The Majority of MS-13 Members Are US Citizens*, DEFINE AMERICAN (Jan. 31, 2018), <https://defineamerican.com/blog/ms-13/> [<https://perma.cc/LG7E-KJMK>].

²⁹ Kinoshian, *supra* note 20.

³⁰ *See, e.g.*, Mike Davis, *Know Your Rights If ICE Agents Stop You*, USA TODAY (Mar. 23, 2017, 4:49 PM), <https://www.usatoday.com/story/news/politics/2017/03/23/immigration-citizens-know-your-rights/99534722/> [<https://perma.cc/W677-PHQK>]; *see also* Morales v. Chadbourne, 793 F.3d 208, 220 (1st Cir. 2015) (upholding denial of ICE agent and ICE supervisor's request for qualified immunity when mistakenly arresting and detaining a U.S. citizen, and discussing the regulations that authorize ICE to arrest and deport only “aliens” who are defined by statute as not being citizens).

³¹ *See* KRISTIN FINKLEA, CONG. RESEARCH SERV., R45292, *MS-13 IN THE UNITED STATES AND FEDERAL LAW ENFORCEMENT EFFORTS* (2018), <https://fas.org/sgp/crs/homesecc/R45292.pdf> [<https://perma.cc/E2DF-GHR6>].

³² DEPARTMENT OF HOMELAND SECURITY, *U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, BUDGET OVERVIEW FISCAL YEAR 2018*, <https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf> [<https://perma.cc/7C2E-23D7>].

time).³³ That means ICE deports on average fewer than eight non-citizens who are members of the MS-13 gang each year for committing murder.

Keep in mind that the ERO deportation force is further limited to arresting and deporting MS-13 gang members—and all people for that matter—only for immigration violations. Arrests for the underlying crimes of murder, drug dealing, assault, and conspiracy are made by HSI, the FBI, or the local police.³⁴

But rather than simply being irrelevant to the apprehension of transactional criminal enterprises, the ERO deportation force often is thwarting the investigation and prosecution of gang members. In some cases, the ERO deportation force arrests and deports government informants who have provided law enforcement with information on members of MS-13. In my work as a solo practitioner, I have represented two clients from Mexico and El Salvador asserting asylum claims based on their fear of gang retribution against them. Both have volunteered to be U.S. government informants. One client provided information that assisted in the arrest and conviction of over 200 members of the MS-13 gang, and the other provided information for the arrest and conviction of over 100 people involved in drug trafficking. The ERO deportation force had arrested both clients for immigration violations and attempted to deport them. Due to the intervention of the Ninth Circuit, one received legal status, and the other has a hearing scheduled for later this year.

Lastly, Trump's endless drumbeat of the dangers of MS-13 gangs to justify ICE's existence undermines public safety by diverting our attention away from harms for which potential government solutions are neither pursued nor realized. As Professor Patricia Williams noted, racism does not simply entail erroneously misidentifying one group of people as dangerous, but it also renders true sources of likely harm invisible.³⁵ To illustrate her point, Williams highlighted the irrationality of presuming Black teenagers on public streets to be violent threats when statistics bear out that most white people are likely to be victims of crimes perpetuated not just by other white people, but by white family members or close friends. "[T]he general white population seems, in the process of devaluing its image of black people, to have blinded itself to the horrors inflicted by white people."³⁶

Likewise, the outsized attention President Trump and the ERO deportation force place on the MS-13 gang in particular and immigrants in general elide the real dangers Americans face: gun violence kills 100 Americans each day,³⁷ a rate 25 times higher than other Western countries, which have stricter gun control laws.³⁸

³³ Mike Brest, *How Many MS-13 Gang Members Have Been Arrested For Murder In the US?*, THE DAILY CALLER (May 17, 2018), <http://dailycaller.com/2018/05/17/how-many-ms-13-gang-members-been-arrested-murder/> [<https://perma.cc/W34D-2382>].

³⁴ See Finklea, *supra* note 31.

³⁵ PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 72-74 (Harv. U. Press 1991).

³⁶ *Id.* at 74.

³⁷ *Gun Violence in America*, EVERYTOWN (Feb. 1, 2019), <https://everytownresearch.org/gun-violence-america/> [<https://perma.cc/X2CK-8XMD>].

³⁸ *Id.*

Domestic violence results in three American women being killed each day by former or current partners.³⁹ Attention and policies spent on funding “solutions” to the false threats of dangerous immigrants is pursued at the cost of inattention and inaction on real sources of violent—and preventable—threats that Americans face.⁴⁰

Third, the ERO's deportations are actively interfering with prosecuting criminal enterprises.

The ERO deportation efforts are not only a waste of resources, but they are also interfering with prosecution of criminal enterprises. In June 2018, nineteen HSI agents asked for HSI to be completely separated from the ERO deportation force because, among other reasons, an association with the ERO causes local police not to cooperate with HSI.⁴¹ The ERO deportation force has further soured relationships with local police departments by asking local jails to hold and turn over U.S. citizens for deportation, without regard to evidence of citizenship.⁴² The lies are costly to tax payers, as the ERO deportation force does not indemnify local police departments that are found liable for monetary damages from individuals whom the police wrongfully arrested or detained based on ICE's assurances.⁴³

Moreover, the ERO deportation force is raiding HSI's funding that is used to investigate and apprehend those involved in actual ongoing crimes. Whereas the ERO deportation force is targeting people who were convicted of crimes decades

³⁹ *E.g.*, Chris Nichols, *Fact-Checking Sad Statistic on Women Murdered By Intimate Partners in U.S.*, POLITIFACT (Feb. 19, 2018, 1:04 PM), <https://www.politifact.com/california/statements/2018/feb/19/jackie-speier/fact-checking-sad-statistic-number-women-murdered/> [<https://perma.cc/ZQ36-WQHE>].

⁴⁰ *See* Jenny Gathright, *The Violence Against Women Act Expires Because of Government Shutdown*, NPR (Dec 24, 2018, 3:21 PM), <https://www.npr.org/2018/12/24/679838115/violence-against-women-act-expires-because-of-government-shutdown> [<https://perma.cc/3V4E-VZCK>]; Katie Zezima, *The Government Shutdown Has Drawn Domestic Violence Shelters To The Brink, Imperiling Life-Or-Death Services to Women*, WASH. POST (Jan. 20, 2019), https://www.washingtonpost.com/national/the-government-shutdown-has-drawn-domestic-violence-shelters-to-the-brink-threatening-life-or-death-services-to-women/2019/01/19/ea09296-1b28-11e9-8813-cb9dec761e73_story.html?utm_term=.72baddcdaad [<https://perma.cc/W3WY-WKP7>].

⁴¹ Letter to Kirstjen Nielsen, Secretary Department of Homeland Security, from 19 Agents from Homeland Security Investigations (Jun. 2018) (on file at <https://www.documentcloud.org/documents/4562896-FILE-3286.html> [<https://perma.cc/M2S2-QKZM>]) (“[T]he perception of HSI's investigative independence is unnecessarily impacted by the political nature of ERO's civil immigration enforcement. Many jurisdictions continue to refuse to work with HSI because of a perceived linkage to the politics of civil immigration.”).

⁴² *See, e.g.*, Spencer Amdur, *Florida Sheriff Worked with ICE to Illegally Jail And Nearly Deport US Citizen*, ACLU (Dec. 3, 2018, 12:30 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/florida-sheriff-worked-ice-illegally-jail-and> [<https://perma.cc/LS2H-4L3N>] (“In recent years, ICE has asked local jails to hold hundreds (if not thousands) of U.S. citizens for deportation. . . . By facilitating these efforts, local sheriffs are putting themselves on the hook for enormous financial liability. Dozens of them have faced costly litigation and been forced to pay six-figure settlements because of their collaboration with ICE. Monroe County is just the latest in a long string of counties that have violated people's rights at ICE's request. And ICE does not reimburse any of these expenses.”); *see also infra* notes 70–72 and accompanying text.

⁴³ *See Id.*

ago, HSI arrests those who it suspects pose an existing threat to the public. The ERO deportation force is taking away resources from the HSI. According to the HSI, “the ebbs and flows of ERO detention priorities have directly impacted HSI operations and infrastructure, including the reprogramming of HSI funds to ERO (specifically \$5M in FY11, \$10M in FY13, and \$34.5M in FY16).”⁴⁴ Restated, ERO is taking away funding from the agency that focuses on active transnational criminal matters—including human trafficking—to instead target, arrest, and deport people without criminal records and who are not a threat to public safety.

The ERO deportation force is also lurking at state courthouses,⁴⁵ arresting witnesses to crimes and victims of human trafficking.⁴⁶ As unbelievable as it sounds, the ERO deportation force is deporting crime victims, including those who have agreed to cooperate with prosecutors and who are willing to serve as witnesses at trial. Under Trump, ICE arrests at courthouses, which include victims and witnesses to crimes, has risen 1,700%.⁴⁷ The Chief Justice of the California Supreme Court repeatedly has asked ICE to stop this policy, an extraordinary request that the ERO deportation force ignores.⁴⁸

In June 2018, former Attorney General Sessions attempted to unilaterally change asylum law so that those who assist U.S. law enforcement in apprehending and arresting members of gangs will no longer be able to ask for asylum.⁴⁹ Although a district court has blocked this policy change, it reveals that this administration is so blinded by its anti-immigration agenda that it is pursuing goals that undermine legitimate law enforcement efforts.⁵⁰

⁴⁴ Letter to Kirstjen Nielsen, *supra* note 41, at 3–4.

⁴⁵ See, e.g., James Queally, *ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court*, L.A. TIMES (Mar. 16, 2017, 10:40 AM), <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html> [https://perma.cc/2KTJ-ZQ58].

⁴⁶ See, e.g., Beth Fertig & Tina Luongo, *ICE Agents are Showing Up in Human Trafficking Courts*, WNYC (Jun. 26, 2017), <https://www.wnyc.org/story/uptick-ice-agents-showing-courthouses-detain-people/> [https://perma.cc/G4M5-VMAG].

⁴⁷ Scott Bixby, *ICE Courthouse Arrests Up 1700% Since Trump’s Inauguration: Report*, (Jan. 28, 2019, 3:02 PM), <https://www.thedailybeast.com/report-ice-arrests-at-courthouses-up-1700-since-trumps-inauguration?ref=home> [https://perma.cc/2752-X8ET].

⁴⁸ Angela Hart, *Speaking Out Against Immigration Raids Is Her Duty, California Justice Says*, SACRAMENTO BEE (Aug. 23, 2017, 7:23 AM) <https://www.sacbee.com/news/politics-government/capitol-alert/article168714487.html> [https://perma.cc/KMA2-8NQW] (“Since President Donald Trump took office in January [2017], people – those here legally and undocumented immigrants – are less likely to report crimes, to come forward as witnesses to crimes and to seek help if they are victims of crimes, [California Supreme Court Chief Justice] Cantil-Sakauye said. That impedes public safety, infringes the constitutional rights of individuals and their access to justice and has led to a ‘tide of rising violence,’ she said.”).

⁴⁹ Memorandum from Tracy Short to OPLA Attorneys, *Litigating Domestic Violence-Based Persecution Claims Following Matter of A-B-* (July 11, 2018) (on file with the N.Y.U. Review of Law & Social Change).

⁵⁰ See Ted Hesson, *Judge Strikes Down Trump Policy Blocking Domestic Violence Victims From Asylum*, POLITICO (Dec. 19, 2018, 12:30 PM), <https://www.politico.com/story/2018/12/19/trump-policy-domestic-violence-victims-asylum-1069107> [https://perma.cc/JSZ4-6X3L].

The ERO deportation force is taking the funding that HSI would otherwise use to combat gang violence and is tainting the entire ICE agency with a reputation for overzealousness, dishonesty, and racism, thus interfering with ICE's ability to cooperate with police. The ERO deportation force has been deporting crime victims and witnesses, as well as those who risked their lives helping the United States apprehend criminal gangs, thus preventing state prosecutors from convicting those charged with crimes. Not only is the ERO deportation force unnecessary to keep us safe, but there are reasons to believe that our communities would actually be *safer* if it were defunded.

Fourth, the ERO deportation force has lost all sense of proportionality and is arresting parents, workers, neighbors, green card holders, and now citizens.

Because HSI is targeting transnational criminal enterprises,⁵¹ the ERO deportation force is left arresting those who are not suspected of any current criminal conduct. Rather, the ERO deportation force is arresting parents, workers, neighbors, family members of citizens, and even those with green cards⁵² and citizenship.⁵³ The ERO deportation force has arrested fathers dropping off their citizen children at school,⁵⁴ snatched a mother off a public street leaving her three citizen children alone,⁵⁵ and even detained those married to citizens who showed up at their green card interviews.⁵⁶ These are not aberrations, but are the direct result of the agency's current mandate.⁵⁷

⁵¹ Finklea, *supra* note 31.

⁵² See, e.g., Brittny Mejia, *It's Not Just People In the U.S. Illegally—ICE is Nabbing Lawful Permanent Residents Too*, L.A. TIMES (Jun. 28, 2018, 4:00 AM), <http://www.latimes.com/local/lanow/la-me-ln-lawful-resident-20180628-htmllstory.html> [<https://perma.cc/UWE5-Z22B>].

⁵³ See, e.g., Alisa Chang, *White House Launches Effort to Take Citizenship from Those Who Lied to Get It*, NPR (Jul. 4, 2018, 4:03 PM), <https://www.npr.org/2018/07/04/625980910/white-house-launches-effort-to-take-citizenship-from-those-who-lied-to-get-it> [<https://perma.cc/3BSF-4HY5>].

⁵⁴ Christie Duffy, *2 Dads Nabbed by ICE as They Drop Off Kids at NJ School; 3rd Takes Shelter in Church*, PIX11 (Jan. 25, 2018, 10:16 AM), <https://pix11.com/2018/01/25/2-dads-nabbed-by-ice-as-they-drop-off-kids-at-nj-school-3rd-takes-shelter-in-church> [<https://perma.cc/F9CY-EW5Q>].

⁵⁵ *Immigration Agents Detain Mother in Front of Screaming Children*, BBC (Mar. 9, 2018), <https://www.bbc.com/news/av/world-us-canada-43350249/immigration-agents-detain-mother-in-front-of-screaming-children> [<https://perma.cc/GN4S-2Q34>].

⁵⁶ Noah Lanard, *Married Immigrants Seeking Green Cards Are Now Targets for Deportation*, MOTHER JONES (Apr. 20, 2018, 5:26 PM), <https://www.motherjones.com/politics/2018/04/married-immigrants-seeking-green-cards-are-now-targets-for-deportation/> [<https://perma.cc/M8X4-F5HC>].

⁵⁷ See Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02095.pdf> [<https://perma.cc/2DSQ-36PG>] (directing the Secretary of Homeland Security to, among other things, immediately build a wall along the southern border, construct new detention facilities, detain all non-citizens who are without status, take actions against states and cities who refuse to cooperate with immigration enforcement, limit eligibility for asylum, direct federal prosecutors to prosecute illegal entry offenses, and hire more Customs and Border Patrol and ICE officers); Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf> [<https://perma.cc/M62W-J6Y9>], (eliminating the Obama administration's priorities for deportation, subjecting all who have

ICE maintains roadside checkpoints during hurricane evacuations; it roams buses, airports, and public streets across the country asking for papers—a scene from a World War II movie, not a slice of Americana.⁵⁸ The ERO deportation force also is apparently lying to non-citizens, falsely claiming to be the police force to secure immigration arrests of people who are not even accused of crimes.⁵⁹

Supporters of ICE argue that we need the ERO deportation force to keep us safe, but the ERO deportation force is not even pretending to go after people who commit serious crimes. Rather, the agency devotes its excessive government resources to harass immigrants and citizens alike and surveil those who advocate for social justice.

For example, in October 2018, ICE’s Office of Professional Responsibility subpoenaed Daniel Kowalski, a U.S. citizen who is a journalist, immigration attorney, and editor of a website used by practitioners to stay informed on immigration law.⁶⁰ Mr. Kowalski had published on his website an ICE internal memorandum that provided guidance to government attorneys regarding the recent rule changes made by former Attorney General Sessions that make it harder for those fleeing domestic violence and gangs to qualify for asylum.⁶¹ The ICE Special Agent demanded information from Mr. Kowalski about who had sent the memorandum. The “summons” was issued by ICE (not a judge), lacked the force of law, and violated the First Amendment and state laws protecting journalists from revealing their sources.⁶² It is unclear how and why targeting a citizen for information about a government leaker is in the mandate of the ERO deportation force.

violated a condition of their immigration status to be subject to arrest, detention, and deportation—regardless of the seriousness of the violation or other factors such as ties to citizen children).

⁵⁸ See generally Julia Conley, “Positively Evil”: *Immigration Checkpoints To Remain Open As Harvey Forces Evacuations*, COMMON DREAMS (Aug. 25, 2017), <https://www.commondreams.org/news/2017/08/25/positively-evil-immigrant-checkpoints-remain-open-harvey-forces-evacuations> [<https://perma.cc/ZT6S-XP76>] (“Border Patrol officials said late Thursday they were not planning to close roadside immigration checkpoints north of the affected area as tens of thousands made their way out of several coastal counties, where Harvey was expected to make landfall by early Saturday.”); Ray Sanchez, *Border Patrol Agents Are Stopping People On Highways in New England to Check Their Citizenship*, CNN, (Jun. 24, 2018, 2:17 AM), <https://www.cnn.com/2018/06/23/us/maine-new-hampshire-border-patrol-checkpoints/index.html> [<https://perma.cc/UN3P-EQ9T>] (reporting on new Border Patrol checkpoints in New England, which were last used over five years prior); Raul Reyes, *Immigration Agents Do Not Belong On Greyhound Buses*, THE HILL (Mar. 27, 2018, 4:00 PM), <http://thehill.com/opinion/immigration/380514-immigration-agents-do-not-belong-on-greyhound-buses> [<https://perma.cc/7L2A-77WC>] (arguing that when ICE and Customs and Border Patrol agents stop passengers on buses to ask about citizenship status without prior suspicion of crimes, they engage in unconstitutional racial profiling).

⁵⁹ See, e.g., Betsy Woodruff, *DREAMer: ICE Used an Elaborate Ruse to Arrest Me*, DAILY BEAST (Nov. 14, 2018, 4:46 AM), <https://www.thedailybeast.com/dreamer-ice-used-an-elaborate-ruse-to-arrest-me?ref=scroll> [<https://perma.cc/MNG3-YWYU>].

⁶⁰ See Tale Kopan, *ICE Subpoenas Immigration Lawyer In Leak Hunt*, SF CHRON. (Oct 17, 2017, 3:49 PM), <https://www.sfchronicle.com/politics/article/ICE-subpoenas-immigration-lawyer-in-leak-hunt-13314928.php> [<https://perma.cc/AP6Z-66EV>].

⁶¹ *Id.*

⁶² See Dina Francesca Haynes, *Government Abuse of Power*, NEW ENGLAND L. REV. FACULTY BLOG (Nov. 26, 2018), <https://newenglrev.com/2018/11/26/government-abuse-of-power/>

Similarly, in November 2018, it was revealed that the ERO deportation force had embedded informants in a Vermont-based labor organizing group. Using tactics that law enforcement agencies typically employ to disrupt organized crime, ICE targeted labor organizers who were undocumented for arrest and deportation.⁶³

The ERO deportation force is responding to criticisms of irrationality and excess by doubling down and investigating lawful permanent residents and even naturalized citizens in the hopes of deporting even more people. This list will also shortly include the DREAMers, hundreds of thousands of those who had legal status for decades under the Temporary Protected Status programs, and veterans who were promised citizenship.⁶⁴

Fifth, Americans are losing—not gaining—jobs from this overly aggressive deportation strategy.

ICE's deportation efforts are hurting American workers. One Bush-era ICE raid in Postville, Iowa resulted in an entire factory shutting down and the decimation of the town due to loss of renters, homeowners, and customers who had previously supported the local economy.⁶⁵ More recently, mom and pop businesses cannot open

[<https://perma.cc/3LAW-8LSB>]; *see also* Colo. Rev. Stat. § 13-90-119 (2017). The Colorado Press Shield Law “provides a qualified privilege for materials and information obtained by a newsperson in the course of newsgathering activities. The shield laws’ qualified protections extend to both confidential and non-confidential sources, and apply to civil and criminal actions as well as administrative proceedings.” David M. Giles, *Colorado: Reporters Privilege Compendium*, REPORTERS COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/privilege-compendium/colorado/#i-introduction-history-background> [<https://perma.cc/WGE7-8W6Q>]. The Shield Law broadly defines a newsperson as “any member of the mass media and any employee or independent contractor of a member of the mass media who is engaged to gather, receive, observe, process, prepare, write or edit news information for dissemination to the public through the mass media.” § 13-90-119(1)(c).

⁶³ *See* Amanda Holpuch, *Immigration Activists File Lawsuit Saying They Were Targeted By US Government*, THE GUARDIAN (Nov. 14, 2018, 1:35 PM), <https://www.theguardian.com/us-news/2018/nov/14/vermont-migrant-justice-immigration-activists-lawsuit-dhs-ice> [<https://perma.cc/TRH7-BFQM>].

⁶⁴ *See, e.g.*, Martha Mendoza, *U.S. Army Quietly Discharging Immigrant Recruits*, ASSOCIATED PRESS (Jul. 5, 2018), <https://www.armytimes.com/news/your-army/2018/07/05/us-army-quietly-discharging-immigrant-recruits/> [<https://perma.cc/JM6R-U5PX>].

⁶⁵ *See* Annie Baxter, *How an Immigration Raid Threw a Small Iowa Town Into Economic Crisis*, MARKETPLACE (Aug. 3, 2017, 1:00 PM), <https://www.marketplace.org/2017/08/03/economy/postvilles-long-recovery-after-raid> [<https://perma.cc/VCK7-SP9L>].

during tourist season,⁶⁶ racetracks cannot find workers,⁶⁷ and deportations threaten the dairy industry, which is largely supported by immigrant labor.⁶⁸

Deportations are not protecting jobs for American workers. To the contrary, deportations of workers result in the loss of U.S. jobs and economic well-being. Indeed, our economic prosperity requires that we welcome more immigrants, not fewer. As Shikha Dalmia has argued, “[T]he idea that America is experiencing mass immigration is a myth. The reality is that we desperately need to pick up the pace of immigration to maintain our work force and economic health.”⁶⁹

Sixth, the ERO deportation force has a toxic culture that resists reform, and thus must be brought to an end.

Since its inception in 2002, ICE has been repeatedly caught making mistakes, lying to the public, acting outside its legal authority, acting overzealously, causing preventable deaths, targeting law-abiding community members, and making decisions tainted by racism.⁷⁰ The Obama administration was unable to rein in and reform the internal culture of ICE that aggressively—and at times unlawfully—abused discretion, norms, and immigrants themselves.⁷¹ As a result, it stands to

⁶⁶ See Taylor Blatchford, *NC Businesses Feel the Pain of Cuts To Seasonal Worker Visas*, CHARLOTTE OBSERVER (Jul. 3, 2017, 9:32 AM), <https://www.charlotteobserver.com/news/business/article159412859.html> [<https://perma.cc/7BJJ-83K5>].

⁶⁷ See Kate Morrissey, *Lack of Immigrant Workers Could Hobble Racing Industry*, SAN DIEGO UNION-TRIBUNE (Nov. 7, 2017, 4:40 PM), <http://www.sandiegouniontribune.com/news/immigration/sd-me-horseracing-workers-20171106-story.html> [<https://perma.cc/G8PA-JHSL>].

⁶⁸ See Karole Honas, *Is A Dairy Crisis Looming In Idaho*, LOCAL NEWS 8 (Jan. 25, 2018, 10:43 PM), <https://www.localnews8.com/news/agriculture/is-a-dairy-crisis-looming-in-idaho/691108108> [<https://perma.cc/P9DC-TZVU>].

⁶⁹ Shikha Dalmia, *Actually The Numbers Show That We need More Immigration, Not Less*, N.Y. TIMES (Jan. 15, 2019), <https://www.nytimes.com/2019/01/15/opinion/trump-immigration-myth.html?action=click&module=Opinion&pgtype=Homepage> [<https://perma.cc/6NP9-JHEW>].

⁷⁰ See generally Kelly E. Papst, *Protecting the Voiceless: Ensuring ICE’s Compliance with Standards That Protect Immigration Detainees*, 40 MCGEORGE L. REV. 261, 264 (2009), https://www.mcgeorge.edu/documents/Publications/13_Papst_Master1MLR40.pdf [<https://perma.cc/W9SG-G8BU>] (discussing ICE’s refusal to release full information about those who die in their care and custody arising from detainee deaths that occurred in 2006 and 2007 and arguing for legal oversight of the agency); Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform*, 44 U.S.F. L. REV. 307, 310 (2009) (focusing on “a few egregious ICE raids” that occurred in 2004 that demonstrate that racism has tainted ICE’s practices and policies); Tucker Higgins, *Watchdog Slams ICE Detention Practices: Problems Went Unaddressed for ‘Years’*, CNBC (Jun. 29, 2018, 7:04 PM), <https://www.cnbc.com/2018/06/29/inspector-general-report-ice-dhs.html> [<https://perma.cc/75JZ-N93B>] (discussing numerous violations arising from ICE’s inadequate supervision at detention facilities including unlawful strip-searches, no emergency exit plans, and inadequate responses to sexual assault allegations).

⁷¹ See Bill Ong Hing, *The Failure of Prosecutorial Discretion and the Deportation of Oscar Martinez*, 15 SCHOLAR 437, 504–508 (2013), <https://repository.usfca.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1294&context=usflawreview> [<https://perma.cc/EWS6-SAYY>] (discussing ICE officers who refused to follow the directive for reasonable exercise of prosecutorial discretion and suggested a “cultural difference in enforcement philosophies” embedded in the agency that are not being

reason that the problems with ICE and the ERO deportation force will not end when the Trump Administration is over.

Regardless of who has held the presidency, ICE officials have publicly engaged in political activity advocating more aggressive enforcement actions against non-citizens. In 2012, ICE officers sued President Obama, asserting in part that the DACA program and the Obama administration's policy to exercise discretion in deportation were illegal (neither claim was vindicated).⁷² In the 2016 presidential election, the union representing ICE officers endorsed Donald Trump.⁷³ Going one step further, some ICE agents created a website to communicate directly to the American people.⁷⁴ The content chosen included nativist propaganda from Breitbart.com and articles critical of President Trump's failure to end all "illegal immigration."⁷⁵ It would be unimaginable for a group of career officers at the State Department to tell the American people who they should vote for and against while selectively highlighting and omitting facts to further an internal political agenda; yet, this is exactly what ICE agents did in support of Donald Trump.

In addition, ICE has lied to the public and even federal judges about its true mandate and actual accomplishments. In March 2018, an ICE spokesperson resigned

addressed). Admittedly, the Obama administration also gave ICE harsh enforcement directives. Under the Obama administration's deceptively-named "felons not families" deportation policy, 56% of people deported had no criminal record. *E.g.*, Elliot Young, *The Hard Truths About Obama's Deportation Priorities*, HUFFINGTON POST (Mar. 1, 2017), https://www.huffingtonpost.com/entry/hard-truths-about-obamas-deportation-priorities_us_58b3c9e7e4b0658fc20f979e [<https://perma.cc/A2GX-UFVU>]. Less than 20% of those deported in the program were labeled as having committed "serious crimes." *E.g.*, *Secure Communities and ICE Deportation: A Failed Program?*, TRAC IMMIGR. (Apr. 8, 2014), <http://trac.syr.edu/immigration/reports/349/> [<https://perma.cc/6LRA-HKRP>]. One of my clients who fell in this category had stolen a \$4 can of beer.

⁷² See *Crane v. Obama*, 920 F. Supp. 2d 724, 731 (N.D. Tex. 2013) (finding no standing for ICE officers to sue to stop President Obama's immigration policy that directed ICE officers to exercise prosecutorial discretion in not pursuing actions against certain non-citizens who later were the beneficiaries of the DACA regulation); see also, Carol Cratty, *Ten ICE Agents Target Obama Deportation Policy With Lawsuit*, CNN (Aug. 23, 2012, 10:53 PM), <https://www.cnn.com/2012/08/23/us/ice-agents-lawsuit/index.html> [<https://perma.cc/3E5H-LYGM>].

⁷³ See, e.g., Heather Timmons, *ICE's Union Thinks Donald Trump Doesn't Know What He's Doing On Immigration*, QUARTZ (July 10, 2018), <https://qz.com/1324214/abolishice-why-ices-union-no-longer-supports-trumps-immigration-strategy/> [<https://perma.cc/65B9-48ZN>].

⁷⁴ See *id.*; and see *About Us*, JIC REPORT, <https://jicreport.com/about-us/> [<https://perma.cc/27LQ-JFPM>] (last visited Jan. 24, 2019) ("The JIC Report is a revolutionary new website that allows employee whistleblowers from within Immigration and Customs Enforcement (ICE) to communicate directly with the American people in an effort to create public awareness, provide oversight and transparency, and seek an end to corruption and mismanagement within ICE and the Department of Homeland Security (DHS).").

⁷⁵ See Timmons, *supra* note 73. As of January 24, 2019, the ICE website's "top article" is entitled "ICE Agents See 'Gaping Holes' in Trump Immigration Plan," which criticizes the Trump administration's provision of any legal status to immigrants as "amnesty" and argues that any legal immigration is misguided policy. Stephen Dinan, *Ice Agents see "Gaping Holes" in Trump Immigration Plan*, JIC REPORT (Feb. 5, 2018), <https://jicreport.com/ice-agents-see-gaping-holes-in-trumps-immigration-plan/> [<https://perma.cc/T5SC-T77Q>].

after refusing to follow his superiors' instructions to falsely report that the agency had arrested 800 "dangerous people" when it had done no such thing.⁷⁶ ICE responded by sending agents to interrupt his television interview, an act the former official described as an "intimidation technique."⁷⁷ Additionally, in November 2018, a federal judge released 120 Iraqi nationals and indicated that he would sanction ICE attorneys who gave the court "demonstrably false" information about the conditions they would face if deported.⁷⁸

The intimidation tactics and lies speak to an agency infected with a culture that eschews good governance. The military, by contrast, subjects its officers and members to court-martials if they obey an unlawful order. The military has a code of honor and discipline to incentivize courage and integrity. ICE seems to revel in the contrary. Congress cannot reform what is rotten, but Congress can end the rot by defunding it.

Seventh, the ERO deportation efforts are theatrics of intimidation. When the ERO makes an arrest, there is a cognizable likelihood that the non-citizen will get legal status.

The ERO deportation force's theatrical tactics to communicate force—from the state court arrests of crime victims and witnesses, to the dramatic kidnappings off of public streets, to roadside checkpoints—suggest an urgency of mission and a dangerousness of those arrested, that in fact does not exist. The theatrics are completely unnecessary and falsely suggest that ICE is targeting "violent criminals." This conceals the reality that the ERO deportation force merely targets parents, children, and people who are integrated into communities. Of most import, the dramatic arrests hide the reality that many of those arrested people will, after their arrest, receive legal status and be released to the community.

As an example of the ERO deportation force engaging in theatrics rather than legitimate enforcement activity, ICE makes an effort to arrest people in the moments before they are able to obtain legal status by targeting people at green card interviews. Recently, ICE arrested the pregnant wife of a citizen at her green card interview and detained her knowing that she had a high risk pregnancy. ICE also denied her hypertension medication for two days while she was detained.⁷⁹ If ICE

⁷⁶ E.g., Dan Simon, *ICE Spokesman in SF Resigns and Slams Administration Officials*, CNN (Mar. 13, 2018, 7:35 AM), <https://www.cnn.com/2018/03/12/politics/ice-spokesman-resigns-san-francisco/index.html> [<https://perma.cc/H7D2-P8LC>].

⁷⁷ *CBS News Interview with ICE Whistleblower Interrupted by Surprise Visit from Government Agents*, CBS NEWS, (Jun. 28, 2018, 7:45 AM), <https://www.cbsnews.com/news/former-ice-spokesman-james-schwab-opens-up-about-resignation-trump-administration/> [<https://perma.cc/F2FB-S7LX>].

⁷⁸ See, e.g., Erik Larson, *Trump Administration Lied to Federal Judge to Deport Iraqis, He Rules*, BLOOMBERG (Nov. 20, 2018), <https://www.bloomberg.com/news/articles/2018-11-20/judge-orders-ice-to-free-iraqis-says-it-gave-false-information> (last visited Mar. 5, 2019).

⁷⁹ Chantal Da Silva, *ICE Agents Detain Woman Despite "High Risk" Pregnancy And Deny Her Medication For Days, Immigration Lawyer Says*, NEWSWEEK (Jan. 21, 2019, 12:29 PM),

had waited for the interview to end, she would have had a green card and would not have been subject to arrest. The arrest and detention appeared to be just for show. ICE released her within four days, after the media learned of her senseless arrest.⁸⁰

It is intellectually dishonest to justify the ERO deportation force's mass disruptions to our families and communities because "they" are supposedly "illegal." The use of the term "illegal immigrant" is an unconvincing justification for this wasteful and irrational policy because the term "illegal immigrant" is a fictitious term at best, and a slur at its worst. It is not a technical term used by any immigration court and has no meaning in immigration law.⁸¹

You do not hear of "immigration violators." This is because immigration violations are civil matters, which include minor and unintentional conduct such as volunteering on the wrong visa and overstaying a visa. Immigration violations involve conduct that is not akin to criminal activity and is not a serious breach of public safety.

Because of that, even where immigration violations are proven, the second phase of every immigration hearing, and immigration interview, begins with the question: What remedies nonetheless are available that will provide the non-citizen with lasting legal status such as a green card or asylum?⁸²

These remedies are readily available and freely given, even after immigration violations are proven. When non-citizens are given an attorney, as many as 77% of those arrested by ICE with proven immigration violations walk out of immigration court with legal status.⁸³ It is unimaginable for someone after being convicted of a crime to be given a good citizenship certificate instead of a sentence. But that is what happens in immigration court every single day. "Pre-legal

<https://www.newsweek.com/ice-agents-arrest-high-risk-pregnant-woman-during-her-green-card-interview-1299295> [<https://perma.cc/6H3C-76GU>].

⁸⁰ *Id.*

⁸¹ See Kari Hong, *The Ten Parts of 'Illegal' in 'Illegal Immigration' That I Do Not Understand*, 50 UC DAVIS L. REV. ONLINE 43 (2017), <https://lawreview.law.ucdavis.edu/online/vol50/50-online-Hong.pdf> [<https://perma.cc/G9LW-5VHQ>].

⁸² See, e.g., *Sauceda v. Lynch*, 819 F.3d 526, 534 (1st Cir. 2016) ("Our holding does not relieve an alien applying for relief of any burden. Indeed, an alien who is found, as a matter of law, not to have been convicted of a disqualifying offense must still prove continuous physical presence, good moral character, and "exceptional and extremely unusual hardship."); see also *Moncrieffe v. Holder*, 569 U.S. 184, 204 (2013) ("[H]aving been found not to be an aggravated felon, the noncitizen may seek relief from removal . . . assuming he satisfies the other eligibility criteria.").

⁸³ Dara Lind, *A New York Courtroom Gave Every Detained Immigrant a Lawyer. The Results Were Staggering*, VOX (Nov. 9, 2017, 9:10 AM), <https://www.vox.com/policy-and-politics/2017/11/9/16623906/immigration-court-lawyer> [<https://perma.cc/S48P-VDSS>]. See also Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 49 (2015), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9502&context=penn_law_review [<https://perma.cc/2JTP-Y2EL>] ("Both detained and nondetained immigrants with counsel had higher success rates [than without].")

immigrant”—not “illegal immigrant”—is the more accurate term for those being targeted by the ERO deportation force.

Eighth, the ERO deportation force is antithetical to fundamental democratic ideals.

We are a nation of laws, but we do not enforce all of them, especially the minor and outdated ones. The ERO deportation force’s escalating campaign to arrest and deport millions cannot be justified simply because people without status—or those who are green card holders and citizens who are convicted of minor or remote matters—are breaking some sort of law. That logic—we just lock them up—is antithetical to how we prosecute laws and how our country operates. Unlike totalitarian regimes or police states, in a democracy, we do not arrest everyone for every single crime they commit. It is likely that the vast majority of Americans have, at one time or another, exceeded the speed limit, jaywalked, consumed alcohol before the age of majority, stolen office supplies from an employer, used illegal drugs, or committed other similarly pedestrian violations.

Moreover, pursuing minor and silly crimes comes at a cost. Sixteen states still criminalize adultery,⁸⁴ but not a single prosecutor is lying in wait outside divorce court to lock adulterers up. That is because if our courts and jails are clogged with adulterers, police and prosecutors will not be able to investigate more serious crimes such as murder, robberies, and violent assaults.

The very premise that we should have a roaming government agency that arrests, detains, and deports anyone with a minor immigration violation violates our democratic norms and depletes resources that could be more strategically and effectively targeting actual sources of harm.⁸⁵

Ninth, the ERO deportation force’s overly-aggressive deportation strategy dehumanizes immigrants, which undermines public support for needed immigration reform.

As a candidate and president, Donald Trump has called immigrants, “rapists,” “criminals,” “thieves,” “MS-13” gang members, “murderers,” “terrorists,” and “animals.”⁸⁶ President Trump’s claims that immigrants have bad character and

⁸⁴ See, e.g., Christina Oehler, *16 States Where You Can Get That Cheating Jerk Thrown in Jail*, *WOMAN’S DAY* (Jun. 23, 2015), <https://www.womansday.com/relationships/dating-marriage/a50994/adultery-laws/> [<https://perma.cc/QCJ2-LHGE>].

⁸⁵ See *supra* notes 41-50, and accompanying text.

⁸⁶ See, e.g., Katie Reilly, *Here Are All The Times Donald Trump Insulted Mexico*, *TIME* (Aug. 31, 2016), <http://time.com/4473972/donald-trump-/> [<https://perma.cc/S39S-T3WJ>] (discussing then-candidate Trump’s kick-off to his presidential bid with his false accusation against Mexican immigrants: “They’re bringing drugs. They’re bringing crime. They’re rapists,” and mentioning tweets by President Trump suggesting that some immigrants are “terrorists”); Julie Hirschfeld Davis, *Trump Calls Some Unauthorized Immigrants ‘Animals’ In Rant*, *N.Y. TIMES* (May 16, 2018), <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html> [<https://perma.cc/4BGB-7Y57>] (quoting President Trump, discussing immigrants, saying “You

have committed criminal acts are more akin to propaganda than terms within reasonable parameters of a policy debate.⁸⁷ It is critical to recognize that President Trump's repeated defense of—and call for the expansion of—ICE's powers is premised on the same falsehoods that immigrants are criminals and undocumented immigration threatens our nation's safety.

President Trump is defining his presidency with this rhetoric, but he did not start it. In 1996, Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), which eliminated numerous avenues that people previously had to legalize their status.⁸⁸ This law also codified the wrongful conflation of immigration and crime by using the term “Illegal Immigration” in its title.⁸⁹ IIRIRA's irrational end to providing legal status to immigrants created the size and permanence of the undocumented population,⁹⁰ and its false reification of “illegal immigration” as a matter needing the intervention of criminal law enforcement laid the foundation for ICE to come into being.⁹¹ When ICE was created in 2002, its mandate was to deport all people who were deportable.⁹²

If the government suddenly made it very difficult to obtain driver's licenses and then described anyone who drove without a license as “illegal drivers,” the public might be more inclined to spend billions of dollars each year to arrest and jail the drivers—which has been our country's immigration policy for the past 20 years. The term “illegal” would distract the public from realizing that it is not the drivers

wouldn't believe how bad these people are. These aren't people, these are animals.”); Bart Jansen and Alan Gomez, *President Trump Calls Caravan Immigrants “Stone Cold Criminals.” Here's What We Know*, USA TODAY (Nov. 26, 2018, 2:00 PM), <https://www.usatoday.com/story/news/2018/11/26/president-trump-migrant-caravan-criminals/2112846002/> [<https://perma.cc/WES3-VFUW>]; Ellen Cranley, *Trump Says “Thieves And Murderers” Are Coming Into The US As He Responds To Outrage Over Immigration Policy*, BUSINESS INSIDER (Jun. 18, 2018, 1:43 PM), <https://www.businessinsider.com/trump-thieves-and-murderers-coming-into-the-us-immigration-2018-6> [<https://perma.cc/PPF4-AJFA>]; Salvador Rizzo, *A Caravan Of Phony Claims From The Trump Administration*, WASH. POST (Oct. 25, 2018), https://www.washingtonpost.com/politics/2018/10/25/caravan-phony-claims-trump-administration/?utm_term=.d233c2d14242 [<https://perma.cc/4GFY-YD4B>] (reporting that President Trump told reporters that if they looked in the caravan of migrants that was then making its way from Central America, they would “find MS-13” gang members).

⁸⁷ Christopher Ingraham, *Two Charts Demolish The Notion That Immigrants Here Illegally Commit More Crime* WASH. POST (Jun. 19, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/06/19/two-charts-demolish-the-notion-that-immigrants-here-illegally-commit-more-crime/?utm_term=.8d597cbcd493 [<https://perma.cc/YFK7-JVEE>]; see also *supra* note 6.

⁸⁸ See Hong, *supra* note 81, at 43–44.

⁸⁹ Dara Lind, *The Disastrous, Forgotten 1996 Law That Created Today's Immigration Problem*, VOX (Apr. 28, 2016, 8:40 AM), <https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration> [<https://perma.cc/B6J8-6NCQ>].

⁹⁰ *Id.*

⁹¹ See Katie McDonough, *A Short, Brutal History of ICE*, SPLINTER (Feb. 2, 2018, 12:23 PM), <https://splinternews.com/a-short-brutal-history-of-ice-1822641556> [<https://perma.cc/S9NA-M2HX>].

⁹² See *id.*

who are lacking good character, but it is the government that suddenly and irrationally stopped issuing driver's licenses.

The ERO deportation force brings into full view the impact of this false rhetoric that dehumanizes all immigrants as criminals. Hannah Arendt observed that Nazi Germany achieved its goals in part because it had convinced the public that if a group of people were criminal, they deserved whatever punishment the government meted out. She wrote, "[T]he inclusion of criminals [among the targeted groups of undesirables] is necessary in order to make plausible the propagandist claim of the movement that the institution exists of asocial elements."⁹³

Stated another way, if our government is spending billions of dollars each year on a hammer that is the ERO deportation force, few will question why every single immigrant is treated as a nail, a criminal and dangerous element for which removal is warranted.

Most Americans support immigration reform.⁹⁴ This fact is not surprising when people understand who in fact is immigrating, regardless of whether their entry is by plane or swimming the Rio Grande. In one of his last formal speeches, President Ronald Reagan eloquently paid tribute to how immigration shapes and renews our country's values. In his words,

We lead the world because unique among nations, we draw our people, our strength, from every country and every corner of the world. . . . Thanks to each wave of new arrivals to this land of opportunity, we're a nation forever young, forever bursting with energy and new ideas, and always on the cutting edge; always leading the world to the next frontier.⁹⁵

But ICE's tactics of force perpetuates myths of dangerousness and obscures the reality that immigration, and policies that welcome immigrants, are among our nation's critical underpinnings. The ERO deportation force's theatrics of force and the dehumanization of immigrants give the ERO a false legitimacy. Moreover, the excessive and relentless arrests of immigrants distract Americans from the truth, which is that it is irrational of our government to refuse to offer legal status to those who contribute to our country. This distraction further keeps our politicians from pursuing the needed, common sense immigration reform that will legalize status of the undocumented. The sooner the ERO deportation force is defunded, the sooner we can achieve real immigration reform. As demonstrated by President Reagan's words, a president lionized by the contemporary Republican party, embracing immigrants is not a new or trendy liberal idea. It is an American one, deeply rooted in our past and critical to our country's future.

⁹³ Hannah Arendt, *The Origins of Totalitarianism* 448 (Harcourt Brace Jovanovich 1973).

⁹⁴ See Osita Nwanevu, *Is Donald Trump Winning on Immigration?* SLATE (Jul. 5, 2018, 11:40 AM), <https://slate.com/news-and-politics/2018/07/the-latest-polling-offers-good-news-and-bad-news-for-immigration-advocates.html> [<https://perma.cc/8XUX-V4LQ>].

⁹⁵ *Watch Ronald Reagan's Moving, Pro-Immigrant, Final Speech*, RELEVANT (Dec. 27, 2018), <https://relevantmagazine.com/current/watch-ronald-reagans-moving-pro-immigrant-final-speech/> [<https://perma.cc/9XB6-5AXM>].

Tenth, there is existing precedent to defund misguided prosecutions to stop government waste without an identified replacement.

In 2018, former Attorney General Sessions directed all federal prosecutors to arrest marijuana users, including those who live in states where buying and selling marijuana is legal.⁹⁶ But there has been no national crackdown on pot—not because Congress repealed federal law—but rather, in a remarkable and quiet bipartisan effort, Congress took away all funding for any federal prosecutor to follow Attorney Sessions' directive.⁹⁷

Congress did not repeal the law criminalizing marijuana use, nor did it create a separate agency to enforce only necessary laws. Congress instead realized that the power of the purse is its most impactful power. In the immigration context, until it can reform the laws, Congress can disband an excessive, irrational, and wasteful agency that hurts more Americans than it protects.

Conclusion

ICE is a federal agency that has existed for only 18 years. Its financial waste, unjustifiable purpose, and detrimental impact are now in full view.

As a practical matter, ICE's dedicated deportation force, the ERO, is a very expensive waste of tax-payer dollars. The U.S. government spends more than \$18 billion each year to apprehend and detain immigrants, which is more costly than the billions spent apprehending people who commit actual crimes.⁹⁸ The arrest and detention of immigrants is a costly, wasteful, and cruel charade.

As an economic matter, our country is hurt when we deport immigrants. The ERO deportation force's aggressive deportation efforts are resulting in *Americans* losing their jobs, businesses, and income.⁹⁹ Moreover, ICE's mandate is at odds with

⁹⁶ See Angell, *supra* note 7.

⁹⁷ *Id.*

⁹⁸ Under President Obama, more than \$18 billion was spent each year apprehending immigrants, which is nearly \$4 billion more than the combined budgets of all other federal agencies—the FBI, DEA, ATF, Secret Service, and US Marshall Service—who were charged with apprehending criminals. See Doris Meissner, Donald M. Kerwin, Muzaffar Chishti & Claire Bergeron, Migration Pol'y Institute, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, 9 (Jan. 2013), <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery> [<https://perma.cc/2H9K-3AUX>]. President Trump's increased efforts to arrest, detain, and deport is even higher. See, e.g., Daniel Gonzalez, *Trump Plan to Hire 15K Immigration, Border Agents Could Cost Billions, Take Years*, ARIZ. REPUBLIC (Mar. 7, 2017, 6:02 AM), <http://www.azcentral.com/story/news/politics/border-issues/2017/03/07/president-donald-trump-plan-hire-immigration-border-agents-cost-billions/98651772/> [<https://perma.cc/8F5B-8YZ4>].

⁹⁹ See *supra* notes 65–69 and accompanying text. See also Rani Molla, *Trump's Election Really Has Sent U.S. Tech Workers to Canada for Jobs*, RECODE (Nov. 22, 2017, 10:07 AM), <https://www.recode.net/2017/11/22/16687056/donald-trump-us-tech-jobs-canada-2016-election> [<https://perma.cc/B2NS-FT9E>]; Julia Preston, *Immigrants Aren't Taking Americans' Jobs, New Study*

our country's short- and long-term needs. Economists agree that immigration is needed to sustain both economic prosperity for all, and social security for all retirees.¹⁰⁰ Numerous sectors such as hospitals, food production, small businesses, and tourism are fueled by immigrant workers (and immigrant business owners).¹⁰¹

As a good governance matter, the mandate of the ERO deportation force—to opt for deportation over legalization—lacks common sense and decency. And its fatal flaw is that the agency does not aspire to have either. Jim Kyu Park, who is a DACA recipient, Harvard graduate, and Rhodes Scholar could be arrested, detained, and deported when he returns to the United States after studying at Oxford.¹⁰² Any federal agency that would arrest and deport a Rhodes Scholar with the billions of dollars it claims is needed to protect the public against the MS-13 street gang is an agency that lacks the judgment needed to operate.

As a moral matter, President Trump's demonization of immigrants exposes the fallacy behind ICE's mandate. Our country is finally abandoning the misguided Tough on Crime policies of the 1990s, opting instead for criminal justice reform that saves money, protects the public, and rehabilitates those convicted of crimes.¹⁰³ The fallacy of Tough on Immigration policy finally is in plain view too. Scholars and politicians are giving voice to the morality in welcoming immigrants and

Finds, N.Y. TIMES (Sep. 21, 2016), <https://www.nytimes.com/2016/09/22/us/immigrants-arent-taking-americans-jobs-new-study-finds.html> [<https://perma.cc/A8GT-3CBE>]; Stephanie Saul, *As Flow of Foreign Students Wanes, U.S. Universities Feel the Sting*, N.Y. TIMES (Jan. 2, 2018), <https://www.nytimes.com/2018/01/02/us/international-enrollment-drop.html> [<https://perma.cc/2KRX-9S4D>]; Taylor Blatchford, *NC Businesses Feel the Pain of Cuts to Seasonal Worker Visas*, CHARLOTTE OBSERVER (July 7, 2017, 9:32 AM), <http://www.charlotteobserver.com/news/business/article159412859.html> [<https://perma.cc/MD6U-4373>].

¹⁰⁰ Heather Long, *Over 200 Economists Say Trump is Wrong on Immigration*, CNN (Mar. 6, 2017), <http://money.cnn.com/2017/03/06/news/economy/donald-trump-immigration/index.html> [<https://perma.cc/D45M-43T3>]. See also Hong, *supra* note 81, at 52–54 (discussing how U.S. economic growth is driven by immigrants and how social security will be insolvent without new young workers that only immigration can provide, not birth rates).

¹⁰¹ See, e.g., Parija Kavilanz, *Visa Ban Could Make Doctor Shortage in Rural America Even Worse*, CNN (Feb. 2, 2017, 3:48 PM), <http://money.cnn.com/2017/02/02/news/economy/trump-visa-ban-doctor-shortage/> [<https://perma.cc/Z5V6-WKME>]; Esther Yu Hsi Lee, *More Than 4 Out of 10 Farmworkers in These Three States Are Undocumented*, THINK PROGRESS (Mar. 27, 2015, 7:05 PM), <https://thinkprogress.org/more-than-4-out-of-10-farmworkers-in-these-three-states-are-undocumented-71b4fc4b7c3c/> [<https://perma.cc/M6XB-4TKA>]; Jeff Flake, *We Need Immigrants with Skills. But Working Hard is a Skill*, N.Y. TIMES (Aug. 18, 2017), https://www.nytimes.com/2017/08/18/opinion/jeff-flake-we-need-immigrants-with-skills-but-working-hard-is-a-skill.html?_r=0 [<https://perma.cc/L9R2-S7LQ>].

¹⁰² See Michael Burke, *DACA Recipient Becomes Rhodes Scholar*, THE HILL (Nov. 18, 2018, 3:38 PM), <https://thehill.com/blogs/blog-briefing-room/news/417350-daca-recipient-becomes-rhodes-scholar> [<https://perma.cc/AJ8Z-WK4N>]. And see National Immigr. Law Ctr., *Status of Current DACA Litigation*, (Nov. 9, 2018), <https://www.nilc.org/issues/daca/status-current-daca-litigation/> [<https://perma.cc/SH7U-P98Q>].

¹⁰³ German Lopez, *Congress Just Passed The Most Significant Criminal Justice Reform Bill In Decades*, VOX (Dec. 20, 2018, 1:55 PM), <https://www.vox.com/policy-and-politics/2018/12/20/18148482/first-step-act-criminal-justice-reform-house-congress> [<https://perma.cc/JZ7P-BGQB>].

condemning the immorality of deportation.¹⁰⁴ At the heart of this needed change—or more accurately, this needed return to prior norms—is the recognition that for most American citizens, our birthright as Americans was paid for by an immigrant ancestor.

Now is the time to question—and call for the end of—a project that threatens the core of our country, national identity, and future promise. Our country needs immigrants, immigrants contribute to America, and we are all better off together. Congress must provide a path to legalization, a compassionate and fair route that existed until 1996 when Congress enacted the IIRIRA, which eliminated numerous avenues that people had to legalize their status.¹⁰⁵

Until this happens, Congress must defund the ERO deportation force, and its wasteful, cruel, and senseless immigration enforcement practices. Just as Congress quietly ended former Attorney General Sessions' planned and misguided crackdown on marijuana, it must follow suit and end the senseless arrests and abuses by the ERO deportation force.

¹⁰⁴ See e.g., Michelle Alexander, *None Of Us Deserve Citizenship*, N.Y. TIMES (Dec. 21, 2018), <https://www.nytimes.com/2018/12/21/opinion/sunday/immigration-border-policy-citizenship.html> [<https://perma.cc/Q5RK-P7N9>] (“[N]one of us born here did anything to deserve our citizenship. On what moral grounds can we deny others rights, privileges and opportunities that we did not earn ourselves?”); Pramila Jayapal, *A New Moral Imagination On Immigration*, N.Y. REV. OF BOOKS (Dec. 3, 2018), <https://www.nybooks.com/daily/2018/12/03/a-new-moral-imagination-on-immigration/> [<https://perma.cc/3T9V-293B>] (“In our country’s history, immigration has never been just about policy. It has always been about who we are and what we are willing to stand up for.”)

¹⁰⁵ See Hong, *supra* note 81, at 43–44.