



DISMANTLE, DON'T EXPAND: THE 1996 IMMIGRATION LAWS

**Why ramping up a zero-tolerance immigration system
will destroy lives and waste billions of dollars**

The Immigrant Justice Network

The Immigrant Justice Network is a collaboration between the Immigrant Defense Project, the National Immigration Project of the National Lawyers Guild and the Immigrant Legal Resource Center. IJN engages in advocacy, education, technical assistance, training, communications and litigation to address the needs of those caught in the intersection of the criminal justice and immigration systems.

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NYU School of Law
Immigrant Rights Clinic

INTRODUCTION

President Donald Trump has pledged to be very harsh on noncitizens, proposing strict and broad-reaching plans to expand the U.S. deportation system. He has said that anyone accused of a criminal offense will be prioritized for deportation.¹ These proposals will ramp up enforcement of the 1996 Laws, the framework for America's current immigration enforcement system.

The 1996 Laws are shorthand for two laws passed in 1996 that dramatically changed the U.S. immigration system for the worse: the Antiterrorism and Effective Death Penalty Act (AEDPA)² and the Illegal Immigration Reform & Immigrant Responsibility Act (IIRIRA).³ The 1996 Laws make the immigration system so severe that a single marijuana offense can be sufficient to deport many green card holders, regardless of their time in the country or any positive facts about their lives.⁴

It took several years for policymakers to realize the unintended and devastating consequences of the 1996 Laws. But once their impact became clear, Republicans and Democrats alike called for care and restraint in their enforcement.

This report explains the 1996 Immigration Laws, why it would be a mistake to build upon them in the new administration, and why they should be dismantled instead.



CREATION OF THE '96 LAWS


In the years following the 1996 Laws' passage, there was bipartisan agreement that they were passed without careful thought. Numerous Congress members soon called for reform of the 1996 Laws so the U.S. could have a more just immigration system.⁵

The 1996 Laws made three broad changes to the U.S. immigration system. **First**, they vastly expanded the criminal grounds of deportation.⁶ **Second**, many of the newly deportable offenses trigger mandatory detention and deportation. This bars immigration judges from considering people's life circumstances before ordering them to a foreign country.⁷ **Third**, the 1996 Laws significantly reduce the power of the courts to ensure the laws are fairly enforced.⁸

The 1996 Laws also make relief from deportation extremely difficult in two major ways. First, they create fast-track deportation procedures that allow low-level Department of Homeland Security officers to bypass the immigration court system.⁹ This means that many noncitizens will never see an immigration judge before they are deported. Second, even if a noncitizen is lucky enough to see an immigration judge, the 1996 Laws severely restrict the relief that the judge can grant.¹⁰ By reducing the power of judges, the laws also make it more difficult to obtain a green card or another legal status.¹¹

Many provisions of the laws were added at the last minute. IIRIRA was largely rewritten when it was undergoing conference committee review, and the committee never actually met.¹² It was passed as part of an omnibus bill to prevent a government shutdown.

Because consideration of the 1996 Laws was so rushed,¹³ many Congress members did not realize that they would have such horrendous effects. After the laws, **noncitizens convicted of even a misdemeanor drug offense could be subject to mandatory detention and deportation** regardless of their rehabilitation, family ties to the U.S., or length of stay in the U.S.¹⁴



Together, AEDPA and IIRIRA enable the government to deport immigrants who have been in the U.S. for years, based only on mistakes they made decades ago.





AEDPA: A HURRIED RESPONSE TO TERRORISM

On April 19, 1995, two American citizens destroyed the Alfred P. Murrah federal building in Oklahoma City, Oklahoma, killing 168 people. Days later, Sen. Bob Dole introduced the Antiterrorism and Effective Death Penalty Act (AEDPA).¹⁵ AEDPA makes it more difficult for death row prisoners to challenge their convictions. It also makes it easier for immigrants to be put into deportation proceedings, and together with IIRIRA, subjects many to mandatory detention and deportation.¹⁶ This means many immigrants cannot be released on bond or petition to stay in the country, regardless of flight risk or dangerousness.

In his signing statement for AEDPA, President Clinton noted that “[t]his bill also makes a number of **major, ill-advised changes in our immigration laws** having nothing to do with fighting terrorism [that] eliminate most remedial relief for long-term legal residents.”¹⁷

Unfortunately the law has never been fixed, despite bipartisan efforts to do so.

AEDPA departed from its mission and unnecessarily restricted immigrant rights.

IIRIRA: A CLOSED-DOOR PROCESS

Five months after the passage of AEDPA, Congress passed IIRIRA. IIRIRA further expanded the grounds for mandatory detention and removal.

Many of the bill’s most notable provisions appeared for the first time in its Conference Committee report.¹⁸ This was written just days before IIRIRA was voted on and without a Conference Committee meeting. Many committee members also refused to sign onto the bill.¹⁹

IIRIRA was nonetheless passed by Congress several days later as part of an omnibus funding bill to avoid a government shutdown.

IIRIRA did not undergo the meaningful debate that should characterize such a consequential bill.





REPUBLICAN AND DEMOCRATIC CONGRESS MEMBERS HAVE ATTEMPTED TO REFORM THE '96 LAWS

For many Congress members at the time, the 1996 Laws may have seemed like a necessary response to national security concerns.²⁰ However, because of the rushed and secretive manner of their enactments, many Congress members voted for them without fully understanding the damage that they would cause.

In the twenty years following the 1996 Laws, Congress members from both parties have expressed regret about their passage. In 1996, Rep. Bill McCollum (R-FL), forcefully spoke of the need to expel "criminal aliens" from the U.S.²¹ However, a few years later he proposed the Fairness for Permanent Residents Act of 1999 to reform the 1996 Laws. In Congress, he argued that, "[The 1996 Laws] made several modifications to our country's immigration code that have had a harsh and unintended impact on many people living in the United States."²²

Other Congress members who initially supported the 1996 Laws have also said that, if applied to their fullest extent, they would create absurd consequences without making the country safer.

In 1999, Rep. Lamar Smith (R-TX) and 27 other Congress members wrote a letter to the Clinton administration advocating for more prosecutorial discretion in enforcement.²³ They observed that fully enforcing the 1996 Laws would be "unfair" and "unjustifiable" and reminded the Clinton administration that prosecutorial discretion was an important responsibility of the executive branch.

The letter was signed by prominent supporters of the original 1996 Laws, including current Representative Jim Sensenbrenner (R-WI).



"There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardship... we must ask why INS pursued removal in such cases."

Rep. Lamar Smith (R-TX) and 27 other members of Congress in a 1999 letter to then Attorney General Janet Reno²⁴

**PROSECUTORS AND MEMBERS OF CONGRESS HAVE
CRITICIZED THE TREMENDOUS HARDSHIP
CAUSED BY THE 1996 LAWS**



"Crime prevention and community safety demand a more nuanced approach, one that appreciates the ripple effect caused by mandatory deportations that leave communities depleted by unemployment and single parent households struggling to feed their families."

Steve Jansen, Vice-President of the Association of Prosecuting Attorneys²⁵



"A disturbing number of cases have arisen in which the deportation of legal permanent resident aliens have seemed exceedingly harsh responses."

Rep. Jim Sensenbrenner (R-WI), reporting H.R. 1452, the 2002 Family Reunification Act²⁶

THE CURRENT STATE OF THE 1996 LAWS



HOWARD BAILEY was a green card holder who served in the Persian Gulf War for the U.S. Navy.²⁷ After his honorable discharge, he ran a successful trucking business to support his wife and young children. In 2005, he applied for U.S. citizenship, thinking he was taking the next step to provide stability for his family. He reported his single marijuana conviction from 10 years prior and supplied all the case records.

After five years of delays, Howard's application for citizenship was denied. Soon after, in front of his wife and children, immigration officers arrested Howard and threw him into deportation proceedings. For nearly two years, Howard was held in various immigration jails across the country, where his family could not easily visit him.

Howard vigorously tried to see a judge so he could argue why he should stay in the U.S. However, because of the 1996 Laws, a judge could not consider his life circumstances, and deportation was a mandatory minimum.


Despite living 23 years in the U.S. and being a U.S. veteran, Howard was deported. His home was foreclosed on and his business was shut down. His wife struggles financially without Howard's financial support, and his children are forever separated from their loving father.

DEPORTATION OPERATES AS A MANDATORY MINIMUM FOR THOUSANDS OF PEOPLE

Before the 1996 Laws, U.S. veteran Howard Bailey, a green card holder with a single marijuana conviction, could have appeared before an immigration judge to demonstrate why he should stay in the U.S. He could have pointed to his length of residence in the U.S., his military service, and the hardship to family upon his deportation.²⁸

However, thousands of noncitizens like Howard are now annually deported from the U.S. for a range of offenses that happened long ago. They often have no opportunity to present evidence about why they should stay. After they are deported, many are permanently barred from returning to the U.S.²⁹

The 1996 Laws' zero-tolerance policies changed the consequences of a vast range of criminal activities from what could have been a misdemeanor penalty into mandatory deportation.



The 1996 Laws violate
fundamental American values
of fairness and due process.

The 1996 Laws expanded the term **"aggravated felony"** to include twenty-one new offenses that are neither aggravated nor felonies under some state laws.³⁰ A green card holder who has resided in the U.S. for decades will face mandatory detention and mandatory deportation if he or she has a conviction that falls under the 1996 Laws' expansive "aggravated felony" definition.³¹

The 1996 Laws also act as **one-strike laws**. Noncitizens who commit certain crimes can be subject to mandatory deportation even when there is **no jail sentence** imposed.³² In other cases, noncitizens can face mandatory deportation based on the maximum sentence that could be imposed for their offense, rather than what was actually imposed.³³ The 1996 Laws also allow the federal government to **ignore state expungement laws** and treat suspended sentences as if they were served.³⁴

Over 77 million people in the U.S. have criminal records.³⁵ Many of them have convictions that are grounds for deportation under the 1996 Laws if they are noncitizens. The government has argued that crimes like riding the subway in New York without paying or stealing a \$10 video game are grounds for deportation.³⁶

THOUSANDS ARE DETAINED WITHOUT OPPORTUNITY FOR BAIL

The 1996 Laws require the government to detain thousands of people without a right to a bail hearing.³⁷ This severely hurts American families and communities. Mandatory detention frequently causes detainees to lose their jobs and homes because they cannot go to work or pay their bills from jail. As such, they lose their ability to support their loved ones, many of whom are

U.S. citizens who economically and emotionally depend on them. The over-burdened federal, state and local governments often must step in to provide for the families left behind.

Mandatory detention also wastes billions of dollars. The fiscal cost of detention includes the immediate cost of enforcement and maintaining jail space. It also includes huge long-term collateral costs of supporting family members of the detained.



**"By prioritizing so-called criminals,
the government is failing to consider
anything else about our lives before
automatically banishing us
from our homes."**

Howard Bailey, U.S. War Veteran³⁸

BILLIONS OF DOLLARS WASTED

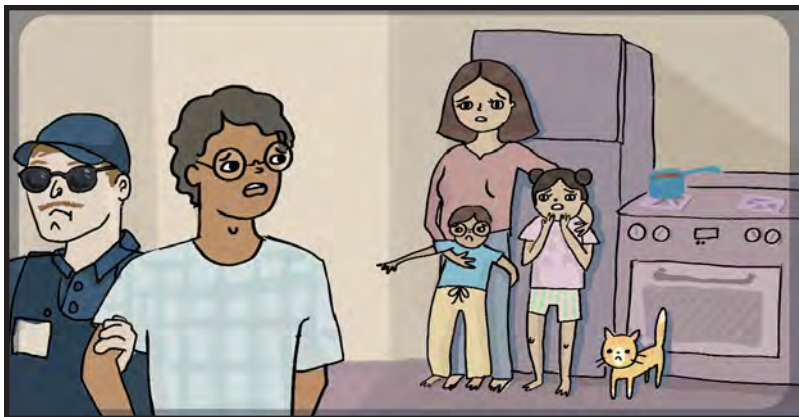
For FY 2017, the Department of Homeland Security requested \$2.2 billion for ICE to maintain about 31,000 detention beds in hundreds of detention centers nationwide.³⁹ The request will fund 29,953 adult beds at a per diem rate of \$126.46 per bed, and 960 family beds at a per diem rate of \$161.36 per bed.⁴⁰ Since Trump's election, the government has already requested additional funds to expand its detention bed capacity to 45,700.⁴¹ The expected increase of detainees under Trump's administration will only demand more money and resources.

**THE 1996 LAWS CAUSE THE
GOVERNMENT TO SPEND
BILLIONS TO DETAIN AND REMOVE
COMMUNITY MEMBERS.**

SPIRALING COSTS OF DETENTION AND DEPORTATION



Mr. Campo has been a U.S. green card holder for 20 years. He is the family breadwinner and works as an administrative assistant at a hospital. His wife and two children are U.S. citizens. He coaches his daughter's basketball team and his insurance covers his son's Type 1 diabetes treatment.



One day, Immigration and Customs Enforcement (ICE) takes Mr. Campo away from his home. Because of the 1996 Laws, his single drug offense from 1998 makes him subject to mandatory deportation. Even though Mr. Campo already served time in 1998 for his offense, he is locked up far away in immigration detention.



LOSS OF INCOME

In six study sites, **family income dropped an average of 70%** during the six months following a parent's arrest. If the annual Campo household income were \$43,000, after Mr. Campo's arrest this income will likely drop to just \$12,900 -- not enough to support a family of three.^a



CHILDREN'S HEALTH DETERIORATES

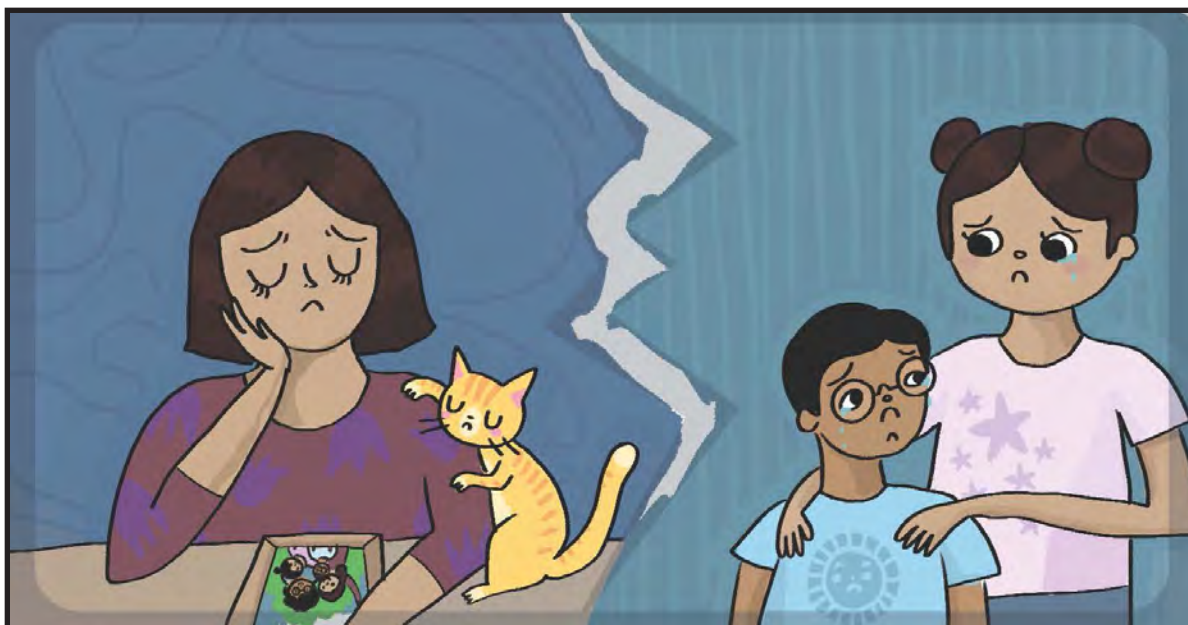
Family separation has immediate negative effects on the children of immigrants. Research shows that children with an incarcerated parent are **2.5 times more likely to experience mental health problems** like anxiety and depression.^b



FOOD INSUFFICIENCY

When a breadwinner is deported, the children left behind often experience food insufficiency and are forced to turn to programs like the Supplemental Nutritional Assistance Program (SNAP). If Mr. Campo's children enroll in SNAP, it will **cost the government about \$3,012.24 per year.**^c

SPIRALING COSTS OF DETENTION AND DEPORTATION



LOST TAX REVENUE

Green card holders like Mr. Campo pay an estimated \$1,064 in annual state and local taxes. If ICE's deportation capacity is tripled, this would result in an **estimated loss of over \$700 million in annual state and local tax revenue**. If he were deported, the federal government would lose an estimated \$6,579 in annual social security revenue. In total, even if only 2/3 of those deported were family breadwinners, tripling deportation rates would result in an **estimated loss of over \$3 billion annual state and federal tax revenue**.^d

HOMELESSNESS

If Mr. Campo is deported and can't contribute to the family income, Mrs. Campo might be unable to continue paying the mortgage or rent for their home. If Mrs. Campo were forced to go into a homeless shelter, it would cost the **federal government about \$40,000 per year**.^e

FOSTER CARE

Thousands of children are in foster care because their parents are detained. If Mr. Campo's two children were forced to go into foster care because Mrs. Campo can no longer take care of them by herself, this would **cost the federal government about \$57,232 per year**.^f

CHILDREN LIKELY TO ENGAGE IN HIGH RISK BEHAVIORS

Following the deportation of a parent, the children left behind are at an elevated risk for a multitude of problems, such as emotional and physical disorders and educational failure. Researchers also predict an increased likelihood of substance abuse and delinquent behavior. Children with an incarcerated parent are **3 to 4 times more likely to engage in delinquent behavior**.^g

FAMILIES & COMMUNITIES ARE BROKEN APART FOREVER

For the past twenty years, the 1996 Laws have mercilessly shattered the lives of millions. The **number of deportations since 1996 has exploded from about 70,000 to over 400,000** in recent years.⁴² Every year thousands of families, many of which have U.S. citizen children, are hurled into the trauma of having a parent undergo deportation proceedings. In 2013, ICE removed 72,410 noncitizens who had at least one U.S.-born child.⁴³ An estimated 4.5 million U.S. citizen children have at least one parent who is undocumented, and many more have parents who are green card holders.⁴⁴

The costs of the 1996 Laws and their associated arrests, detentions, and deportations are brutally borne by the family left behind. Children whose parents are deported often suffer from hunger or homelessness because of the sudden loss of a breadwinner.⁴⁵ They are also more likely to exhibit psychological trauma and behavioral problems that could have been avoided had their families been kept intact.⁴⁶ Today, thousands of children are in foster care because their parents have been detained or deported.⁴⁷ These consequences impose enormous fiscal costs on all levels of government.



COMMUNITIES OF COLOR ARE DISPARATELY AFFECTED

The 1996 Laws exacerbate racial inequalities associated with criminal justice contact. A Black person is 3.73 times more likely to be arrested for marijuana possession — often a deportable offense — than a white person even though Black and white individuals use marijuana at similar rates.⁴⁸ Because the criminal grounds of deportation are so vast, these disparities lead to more removals of people of color. For instance, while 29% of other immigration deportations are based on old convictions, 78% of Southeast Asian American immigrants are in deportation proceedings because of old criminal convictions.⁴⁹

Further, racial profiling can lead to aggressive enforcement of mostly minor offenses in communities of color.⁵⁰ For example, racial profiling disproportionately impacts Latinos living in border areas and subjects them to increased law enforcement scrutiny.⁵¹

The impact of zero-tolerance deportation laws is especially hard on Black immigrants, who amongst all immigrants are more likely to be detained and deported because of an alleged criminal offense.⁵² For instance, while Black immigrants make up only 7.2% of the unauthorized population in the U.S., they make up over 20% of all immigrants facing deportation on criminal grounds.⁵³

IN THE ERA OF BROKEN WINDOWS POLICING, THE 1996 LAWS BREAK APART COMMUNITIES OF COLOR BY ALLOWING A SINGLE CONTACT WITH LAW ENFORCEMENT TO RESULT IN BANISHMENT FROM THE COUNTRY.



COMMUNITY LEADERS

FACE REMOVAL

RAVI RAGBIR has lived in the U.S. since 1991 and has been a green card holder since 1994.⁵⁴ Ravi is the Executive Director of the New Sanctuary Coalition, a group of over 20 faith-based organizations in New York City that advocates for immigrant rights. Ravi has dedicated his life to the dignity and well-being of immigrants.

Ravi was detained and ordered deported in 2006 because of a single fraud conviction in 2001 for which he already served time.⁵⁵ Because of the 1996 Laws, Ravi was not granted any hearing and could not present evidence about his character and community ties. For almost two years, he was mandatorily detained without bail, including time spent halfway across the country in Alabama.⁵⁶

Since his release from immigration detention, Ravi has challenged the immigration judge's order. He has also become one of New York's most prominent immigrant rights activists. He trains hundreds of volunteers to accompany immigrants to ICE check-ins, meets with elected officials to discuss detention and deportation policy, and organizes other immigrants. Ravi was recently recognized with the Immigrant Excellence Award by the New York State Association of Black and Puerto Rican Legislators, given to those who show "deep commitment to the enhancement of their community."⁵⁷

Despite his commitment to his family and community, Ravi remains under a deportation order.⁵⁸ Every time he checks in with ICE, his family and friends hope that it will not be the last time they see each other.



NO CONSIDERATION FOR REFUGEE FAMILIES

LUNDY KHOY was born in a refugee camp in 1980 after her parents fled the Khmer Rouge genocide in Cambodia. She came to the U.S. at age one with her family, and they were granted green cards.⁵⁹ When she was 19, Lundy was arrested for carrying ecstasy tabs for a few friends. She served three months in jail before being released for good behavior.

Four years after her arrest, Lundy checked in to a regular probation appointment. Without notice, she was suddenly thrown in jail by ICE. She was detained for nine months—three times the time she served for her actual offense.⁶⁰ In April 2012, after years of limbo and government monitoring, Lundy was to be deported to Cambodia, a country completely foreign to her.⁶¹

Lundy received a governor's pardon 16 years after her first and only mistake. However, Lundy still faces and is fearful of deportation under the Trump administration.⁶²



**IF KHOY WERE
A U.S. CITIZEN,
HER REHABILITATION
WOULD BE CELEBRATED.
INSTEAD, DESPITE DOING
EVERYTHING SHE CAN,
LUNDY REMAINS A TARGET
FOR DEPORTATION**

THE RISING PRICE OF IMMIGRATION ENFORCEMENT

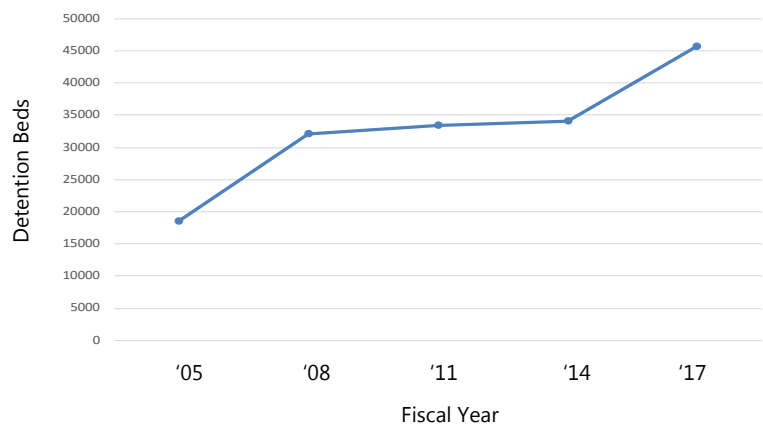
FOR-PROFIT PRISONS

Immigration detention **yields huge profits for private prison companies.** Private prison stocks ballooned after Trump's election. As of February 24, 2017, CoreCivic's (formerly known as Corrections Corporation of America [CCA]) stock had risen 140% and Geo Group's had risen 98%.⁶³

In September 2016, 65% of detained immigrants were housed in privately-run detention facilities.⁶⁴ Much of the profit from these detention facilities goes to CoreCivic, which in 2014 received a four year, \$1 billion contract with the U.S. government.⁶⁵ CoreCivic has a long history of labor violations and human rights abuses.⁶⁶

INCREASE IN MANDATORY DETENTION BED MAINTENANCE

The **"Bed Quota"** costs the government billions by mandating tens of thousands of detention beds be maintained every year.⁶⁷



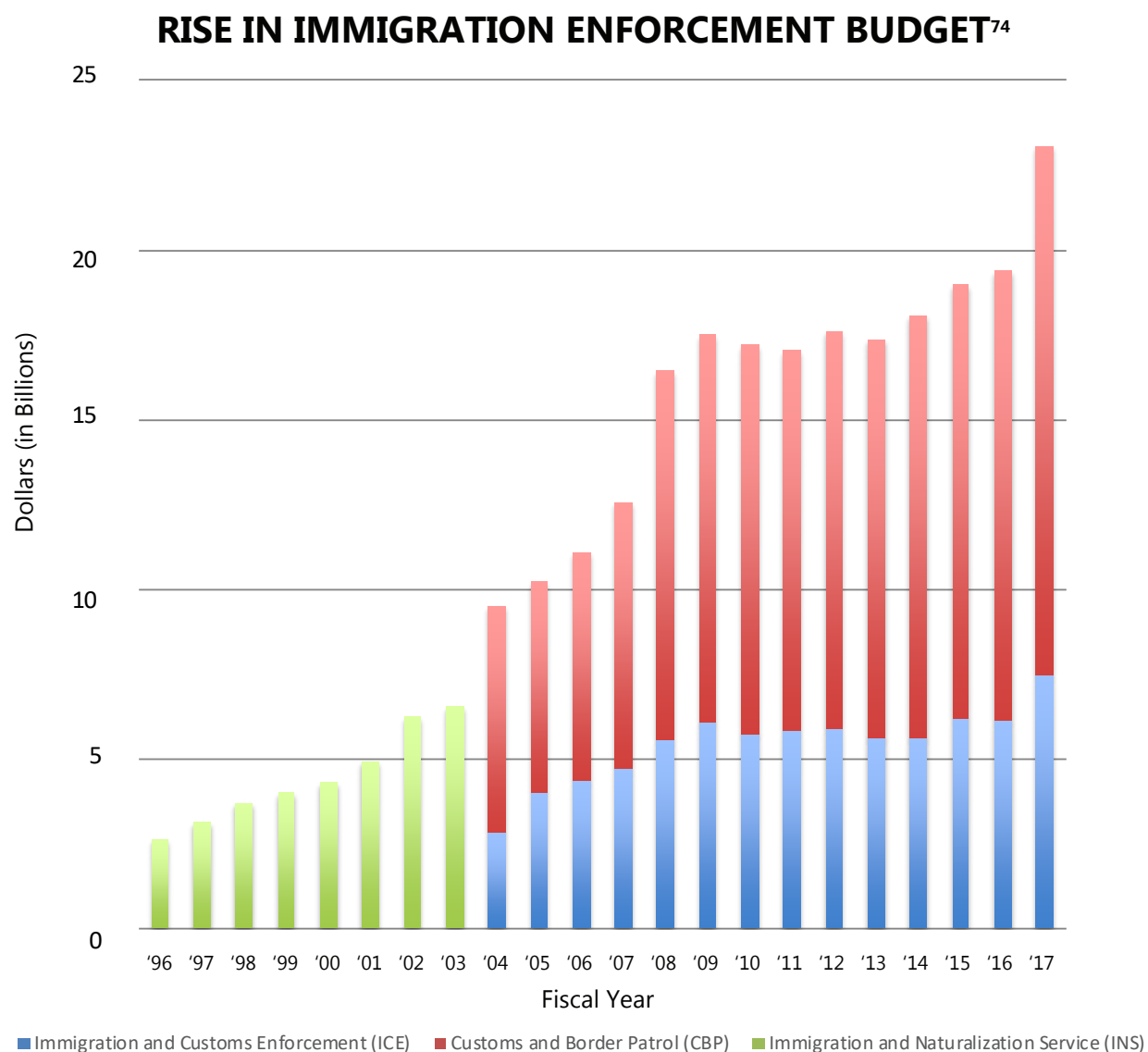
"It doesn't make sense to have a numerical requirement... [t]he goal is not to see how many people are detained."

Julie Myers Wood, former Assistant Secretary for Immigration and Customs Enforcement under George W. Bush.⁶⁸

DID YOU KNOW?

- Under the 1996 Laws, people who have a green card can be subject to mandatory deportation.⁶⁹
- Marriage to a U.S. citizen is not a defense to mandatory deportation.⁷⁰
- There is no statute of limitations for deportation. People can be removed based on minor criminal convictions from 20 to 30 years ago.⁷¹
- ICE routinely pulls people who have been summoned in removal proceedings out of their homes.⁷²
- Once taken from their homes, people may be thrown into detention for prolonged periods of time without knowing when they will be released.⁷³

THE RISING PRICE OF IMMIGRATION ENFORCEMENT



DID YOU KNOW?

- You do not have to be a U.S. citizen to serve in the U.S. military. Service in the U.S. military does not grant U.S. citizenship or protect veterans from mandatory deportation.⁷⁵
- Despite internal policy against it, ICE still deports people without travel documents (such as passports), often sending them to countries to which they have no connection.⁷⁶
- A person can face mandatory detention and deportation even if he or she has never spent time in jail.⁷⁷
- Hundreds, if not thousands of U.S. citizens have been detained or deported.⁷⁸
- Most immigrants are removed without getting to see an immigration judge.⁷⁹

CONCLUSION



The Trump Administration calls for heightened immigration enforcement and harsher laws on “criminal aliens.” This rhetoric will not make good immigration policy and only adds to the already overburdened immigration court dockets and overcrowded detention centers. The cost—both human and fiscal—is too high.

Keeping or expanding the 1996 Laws will automatically force people into deportation proceedings for offenses committed decades ago. It will tear families and communities apart, and waste billions of taxpayer dollars.

Immigration laws should bring people together as Americans, as well as make our country safe. The 1996 Laws do neither. The 1996 Laws cast an impossible enforcement net that captures community leaders, fathers, and mothers. They should be dismantled—not expanded.

DISMANTLE, DON'T EXPAND THE 1996 LAWS

SPIRALING COSTS OF DETENTION AND DEPORTATION:

CITATIONS AND METHODOLOGICAL NOTES

a. Loss of income

The report multiplies \$43,000 by .3 to represent a 70% decrease in income. See Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, THE URBAN INSTITUTE 28 (2010). In the absence of a reliable figure for the average green card holder's income, the report relies on \$43,000, the estimated midpoint between an average undocumented individual's income and an average household income nationwide. See Lisa Christian Gee, et al., *Undocumented Immigrants' State and Local Tax Contributions*, INST. FOR TAX'N AND ECON. POL'Y 12 (2017) (estimating that the average annual income for undocumented individuals was \$30,700); United States Census Bureau, *Table H-17, Households by Total Money Income, Race, and Hispanic Origin of Householder*, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html> (estimating that the median household income nationwide is \$56,516).

b. Children's Health Deteriorates

See Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, THE URBAN INSTITUTE 42 (2010), <http://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.pdf>.

c. Food Insufficiency

The report estimates the cost of SNAP enrollment by multiplying the cost per person by two to reflect Mr. Campo's two children. See United States Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program Participation and Costs*, <https://www.fns.usda.gov/sites/default/files/pd/SNAPsummary.pdf>.

d. Lost Tax Revenue

Working immigrants pay significant amounts in state and local taxes. The Institute on Taxation and Economic Policy estimates that undocumented immigrants pay about \$11.74 billion in state and local taxes annually. See *Undocumented Immigrants' State and Local Tax Contributions*, *supra* note a, 3-4 (2017). This tax rate of 8% increases to 8.6% for green card holders, for an average tax revenue of \$1,064 per green card holder *Id.* at 2. To determine the total amount in lost tax revenue, the authors multiplied \$1,064 by three times the 2016 deportation rates to account for estimated increased enforcement capacity. See U.S. Immigration and Customs Enforcement, *Fiscal Year 2016 ICE Enforcement and Removal Operations Report 2* (2017) (ICE removed 240,255 immigrants in FY 2016 and would thus remove an estimated 720,765 with tripled enforcement capacity). Trump called for the increase in ICE enforcement capacity in his January 25 Executive Order, see Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

To estimate Mr. Campo and his employer's contributions, we multiplied his income (\$43,000) by .153, or 15.3%. This number accounts for both his 7.65% individual contribution and his employer's 7.65% matching contribution. See United States Social Security Administration, Fact Sheet: 2017 Social Security Changes, <https://www.ssa.gov/news/press/factsheets/colafacts2017.pdf>.

To determine the total annual loss amount, we multiplied the estimated numbers of individuals who could be deported annually with tripled enforcement capacity (720,765) by \$7,643, the sum of state, local and social security revenue. We then multiplied this number by .67 to account for the fact that some deportees may not be their family's primary source of income.

e. Homelessness

The \$40,000 estimate was first given by then-HUD Secretary Shaun Donovan in 2012. It was fact-checked by political fact-checking site Polifact, which found that the figure was credible and would "surely be higher now." See Molly Moorhead, *HUD Secretary Says a Homeless Person Costs Taxpayers \$40,000 a year*, POLIFACT (March 12, 2012), <http://www.politifact.com/truth-o-meter/statements/2012/mar/12/shaun-donovan/hud-secretary-says-homeless-person-costs-taxpayers/>.

f. Foster Care

The 5,100 estimate is conservative. See Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, APPLIED RESEARCH CENTER 22 (2011) (estimating 5,100 children in foster care whose parents had been detained or deported as of 2011). We estimate that the federal government spends about \$28,616 per child on foster care costs based on the FY 2017 request for Title IV-E foster care funding. In this request, then-President Obama requested \$4.992 billion in funds for 174,450 children. See Child Welfare League of America, *President Fiscal Year 2017 Budget Request* (Feb. 14, 2016), <http://www.cwla.org/wp-content/uploads/2016/02/CWLA-Summary-of-Presidents-FY-2017-Childrens-Child-Welfare-Budget.pdf>. We then multiplied this figure by two for each of Mr. Campo's children.

g. Children Likely to Engage in High Risk Behaviors

For research on behavioral and educational issues, see Ajay Chaudry et al., *supra* note 1, 42-53; Sara Satinsky, et al., *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families*, HUMAN IMPACT PARTNERS 11-16 (June 2013), <http://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf>. For a discussion of these and other potential risks, including substance abuse and behavioral issues, see generally Kalina M. Brabeck, M. Branton Lykes and Cristina Hunter, *The Psychological Impact of Detention and Deportation on U.S. Migrant Children and Families*, 84(5) AM. J. OTORHYNOLARYNGIATRY 496 (2014).

ENDNOTES

1. Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).
2. Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in various sections of the U.S. Code).
3. Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in various sections of the U.S. Code).
4. *See, e.g.*, 8 U.S.C. § 1101(a)(43)(B) (listing drug sale offenses as aggravated felonies); 8 U.S.C. § 1229b(a)(3) (barring individuals with aggravated felony convictions from cancellation of removal, which allows judges to consider immigrants' equities before ordering them removed); *see also* 8 U.S.C. § 1229b(a)(1) (requiring seven years continued residence after lawful admission in the United States to receive cancellation of removal); § 1229b(d)(1) (stopping the calculation of an immigrant's period of continued residence if they commit specified crimes, including marijuana offenses, thus making such individuals ineligible for cancellation of removal if their offense conduct occurred within seven years of continuous residence after their admission). Together, 8 U.S.C. § 1229b(a)(1) and § 1229b(d)(1) are known as the "clock stop rule," because certain offenses, including many marijuana convictions, freeze the calculation of immigrants' length of residency for immigration relief purposes, denying them the chance to argue their cases before an immigration judge.
5. *See Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, HUMAN RIGHTS WATCH 16-18 (July 16, 2007), <http://hrw.org/reports/2007/us0707/us0707web.pdf> (hereinafter "Human Rights Watch").
6. *Id.* at 18-24.
7. 8 U.S.C. § 1226(c) (listing grounds for mandatory detention); 8 U.S.C. § 1229b(a)(3) (barring cancellation of removal, the main form of equitable relief from deportation, for green card holders who have aggravated felony convictions); § 1229b(b)(1)(C) (creating bars to cancellation of removal for other criminal offenses). *See also* Human Rights Watch, *supra* note 5 at 25-28 (discussing the impact of the 1996 Laws' elimination of the § 212(c) waiver). *See also supra* note 4 (discussing the clock stop rule).
8. *See, e.g.*, 8 U.S.C. § 1252 (stripping federal courts of jurisdiction to review many immigration judge decisions).
9. *See* 8 U.S.C. § 1225 (provision authorizing expedited removal for inadmissible immigrants); 8 U.S.C. § 1228 (provision authorizing administrative removal for people with aggravated felony convictions).
10. *See* 8 U.S.C. § 1229b(a)-(b) (limiting individuals eligible for cancellation of removal). The 1996 laws also eliminated the former INA § 212(c) waiver, which gave immigration judges much more discretion to grant relief; *See* Immigration and Nationality Act (INA) of 1952, Pub. L. No. 82-414, § 212(c), 66 Stat. 181, 187 (codified at 8 U.S.C. § 1182(c) (repealed 1996)).
11. 8 U.S.C. § 1229b(b).
12. *See* Eric Schmitt, *Conferees Approve a Tough Immigration Bill*, N.Y. TIMES (Sept 25, 1996), <http://www.nytimes.com/1996/09/25/us/conferees-approve-a-tough-immigration-bill.html>.
13. John H. Blume, *AEDPA: The 'Hype' and the 'Bite'*, 91 CORNELL L. REV. 259, 261 (1996), (noting that "the use of new statutory language combined with the speed with which Congress enacted AEDPA left the Supreme Court, and lower federal courts, with little guidance regarding Congress's intent.").
14. *See supra* note 4.
15. S.735, 104th Cong. (1995), available at <https://www.congress.gov/bill/104th-congress/senate-bill/735>.
16. Pub. L. No. 104-132, 110 Stat. 1214, *supra* note 2, at § 435 (expanding deportability grounds for certain crimes). In IIRIRA, passed soon after ADEPA, many of these newly deportable offenses became grounds for mandatory detention. *See* Pub. L. No. 104-208, 110 Stat. 3009 §303 (codified at 8 U.S.C. § 1226(c)).
17. William J. Clinton, *Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996*, THE AM. PRESIDENCY PROJECT (April 24, 1996), <http://www.presidency.ucsb.edu/ws/?pid=52713>.
18. Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936, 1955 n.106 (2000).
19. Schmitt, *supra* note 12.
20. *See* Zoe Lofgren, *A Decade of Radical Change in Immigration Law: An Inside Perspective*, 16 STAN. L. & POL'Y REV. 349, 351 (2005).
21. 104 Cong. Rec. H2259 (daily ed. Mar. 14, 1996) (statement of Rep. McCollum).
22. 145 Cong. Rec. E2020 (daily ed. Oct. 4, 1999) (statement of Rep. McCollum); *see also* Human Rights Watch, *supra* note 5, at 35.

23. Letter from Rep. Lamar Smith et al., to Janet Reno, Attorney General of the United States, THE HUFFINGTON POST (Dec. 3, 1999), http://big.assets.huffingtonpost.com/Smith_to_Reno_1999.pdf.
24. *Id.*
25. Steven Jansen, *A Prosecutor's Call: Justice for All*, THE HILL (May 21, 2013), <http://thehill.com/blogs/congress-blog/judicial/300903-a-prosecutors-call-justice-for-all>.
26. H.R. Rep. No. 107-785, Pt. 1 at 39 (2002).
27. *The Bailey Family*, IMMIGRANT JUSTICE NETWORK, <http://immigrantjusticenetwork.org/?portfolio=howard-bailey> (last visited March 12, 2017).
28. See Human Rights Watch, *supra* note 5 at 6. (explaining that “US immigration law fails to [allow] immigration judges to balance the individual’s crime against his or her family relationships, length of time in the US, military service, economic ties to the US, likelihood of persecution, or lack of connections to the country of origin.”); see also *supra* note 10 (discussing the repeal of former INA 212(c) (repealed 1996)).
29. See 8 U.S.C. § 1182(a)(9)(A)(i) (stating that many noncitizens who have been convicted of an “aggravated felony” and have been previously ordered removed are inadmissible “at any time”).
30. Pub. L. No. 104-132, 110 Stat. 1214; Pub. L. No. 104-208, 110 Stat. 3009 § 321 (codified in 8 U.S.C. § 1101(a)(43)).
31. 8 U.S.C. § 1227(a)(2)(A)(iii) (listing aggravated felonies as a criminal ground for deportation); 8 U.S.C. § 1229b(a)(3) (making individuals convicted of an aggravated felony ineligible for cancellation of removal); 8 U.S.C. § 1226(c)(1)(B) (listing aggravated felonies as a ground for mandatory detention).
32. 8 U.S.C. § 1101(a)(43) *et seq.* (listing aggravated felony offenses, many of which do not require any sentence to jail time), 8 U.S.C. § 1229b(a)(3) (barring individuals with aggravated felony convictions from cancellation of removal). Permanent residents with less than 7 years of residence prior to a crime may also face mandatory deportation for other offenses under the clock stop rule, see *supra* note 4.
33. 8 U.S.C. § 1101(a)(48)(B) (defining an offense’s sentence as the length of incarceration ordered by a court, regardless of whether that sentence is suspended or actually served); see also 8 U.S.C. § 1227(a)(2)(A)(i)(II) (classifying some crimes for which a sentence of a year or longer may be imposed as deportable offenses); 8 U.S.C. §§ 1229b(a)(1); 1229b(d)(1) (triggering the “clock stop rule,” see *supra* note 4, for immigrants who commit such offenses, thus preventing judges from calculating their length of residence in the U.S. past the time such an offense is committed, often making them ineligible for relief); see also 8 U.S.C. § 1101(a)(43)(J) (making any RICO offense for which a sentence of a year or longer may be imposed an aggravated felony); 8 U.S.C. § 1101(a)(43)(T) (making any offense relating to failure to appear before a court an aggravated felony if a sentence of two years or longer may be imposed); 8 U.S.C. § 1229b(a)(3) (barring individuals with aggravated felony convictions from cancellation of removal).
34. 8 U.S.C. § 1101(a)(48). The statute makes no exception for expunged offenses and courts have consistently interpreted none to exist. See, e.g., *Murillo-Espinoza v. I.N.S.*, 261 F.3d 771, 774 (9th Cir. 2001) (affirming the BIA’s position that “conviction” encompasses expunged offenses for immigration purposes).
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37. 8 U.S.C. § 1226(c).
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67. The “bed quota” refers to the number of beds that ICE is required to maintain daily, which often appears in appropriations bills. Where enacted budget figures from Congress were not available, presidential budget requests were used. Since 2010, appropriations bills have explicitly mandated a minimum amount of beds to be maintained. For 2005 data, see *Audit Report: Detention and Removal of Illegal Aliens*, OFFICE OF INSPECTOR GENERAL (2006), https://www.oig.dhs.gov/assets/Mgmt/OIG_06-33_Apr06.pdf at 5; for 2008 data, see *Budget Documentation for Fiscal Year 2009*, DEP’T OF HOMELAND SECURITY (2009), https://www.dhs.gov/sites/default/files/publications/budget_fy2009.pdf at ICE-SC-3-4; for 2011 and 2014 data, see Jennifer Chan, *Immigration Detention Bed Quota Timeline*, NAT’L IMMIGRATION JUSTICE LAW CENTER, <https://www.immigrantjustice.org/staff/blog/immigration-detention-bed-quota-timeline> (linking to presidential budget requests) (last visited Apr. 20, 9:15 a.m.). The 2017 figure was requested by the Trump Administration in March 2017 as part of a supplemental appropriations request. See Letter from Mick Mulvaney, Director of the Office of Management and Budget to Donald Trump, President (Mar. 14, 2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/amendment_03_16_18.pdf.
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69. See 8 U.S.C. § 1229b(a) (outlining conditions for eligibility for cancellation of removal).
70. *Id.* While in some cases it is possible to receive a green card as a relative to a United States citizen, green card status does not prevent deportation in many cases.
71. See, e.g., *Matter of A-*, 6 I & N Dec. 540, 547 (BIA 1955).
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73. See 8 U.S.C. § 1226(c) (authorizing mandatory detention). Even in cases where mandatory detention is not authorized, federal policy does not require immigration judges to consider an immigrant’s ability to pay bond before setting it, frequently leaving indigent immigrants incarcerated because they cannot pay the bond set in their case. See *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (citing nine nonexhaustive factors to consider while making a bond determination, omitting ability to pay bond); UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, IMMIGRATION JUDGE BENCHMARK, BOND/CUSTODY 7 available at <https://www.justice.gov/eoir/file/830231/download> (last visited March 24, 2017, 6:06 P.M.) (noting in instructions to immigration judges that “ability to pay is not dispositive” and classifying it as a “less significant factor” in bond determinations). See also Andrew Becker, *Jailed Immigrants See Double Standard in US Bail Reform Stance*, THE CENTER FOR INVESTIGATIVE REPORTING (Nov. 23, 2016), <https://www.revealnews.org/article/jailed-immigrants-see-double-standard-in-u-s-bail-reform-stance/> (discussing the experiences of immigrants who are incarcerated because they cannot afford to pay their bond).
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