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Immigration Law Enforcement Since the Creation of ICE

A recent President of the United States broke several records in the arena of immigration law enforcement during his first year in office. In that year, the largest number of people ever were deported from within the United States. In that same year, the largest number of non-custodial ICE arrests in one month ever on record happened. In that same month, ICE arrested over 15,000 people directly from local jails - the largest number of jail-based arrests on record.

In July 2009, as the African American community continued to celebrate the historic first Black President of the United States, the immigrant community was under siege by an agency that was largely unheard of at the time: Immigration and Customs Enforcement (ICE).

ICE - an agency that has only recently come under public scrutiny - was established in 2003, as part of the newly created Department of Homeland Security (DHS). In response to the terrorist attacks on the United States on September 11, 2001, President George W. Bush launched the War on Terror and created DHS - a new government agency designed to cover all aspects of national security. Several smaller agencies including the Immigration and Naturalization Services (INS), the Secret Service, the Federal Marshall Service, and the U.S. Coast Guard were subsumed under this new agency. The creation of the DHS led to the funneling of unprecedented amounts of money into immigration law enforcement. In 2019, the DHS budget was \$75 billion. Most of this money was allocated to immigration law enforcement - 22% to Customs and Border Patrol (CBP), 12% to ICE, and 16% to the US Coast Guard. Although the mission of DHS is to prevent terrorism, the agency's budgetary commitments are primarily directed at immigration law enforcement.

When ICE was created in 2003, deportations had been rising steadily for nearly two decades - due to laws passed in 1996 when another Democrat was in office: Bill Clinton. The massive infusion of funds into immigration law enforcement gave deportations a boost and there was a 27% increase in the number of deportations from 2002 to 2003. Deportations continued to rise for the remainder of the Bush administration. When Barack Obama took office in 2009, he inherited a well-oiled deportation machine. Obama appointed Janet Napolitano to head DHS, and she kept the deportation machine going full speed ahead. Soon, activists labeled Obama the "deporter-in-chief." In the first five years of his administration, deportations reached a total of two million people - more than the sum total of all deportations prior to 1995.

Calls to "Abolish ICE" were heard in immigrant rights communities during the Obama Presidency, but they did not make mainstream news until the

election of Donald Trump to the Oval Office. Trump campaigned on a promise to build a wall and to keep Mexican criminals and rapists out of the United States. One of his first actions as President was to implement a ban targeting people from Muslim-majority nations. His overtly racist words and actions have galvanized his supporters and made racism acceptable again. His vitriol has also led to a resurgence of anti-racist and pro-immigrant activism. Trump's anti-immigrant and racist rhetoric has enhanced fear and vulnerability in immigrant communities.

Yet, Trump's immigration law enforcement apparatus is not nearly as robust as that of Barack Obama. Trump's anti-immigrant rhetoric and actions have led to outcry among Democratic activists – many of whom are unaware of the intensity of immigration law enforcement prior to Trump's election. A change in the party affiliation of the U.S. President will not necessarily lead to significant changes in how immigrants are treated in the United States as Democratic and Republican leaders alike have created terror in immigrant communities.

A Home Raid in 2003

Maximo woke up early one morning in San Juan, Puerto Rico to loud banging on his door. He tried to ignore it as he wanted to sleep in and wasn't expecting anyone. When the banging persisted and became increasingly louder, Maximo got out of bed and made his way towards the door. When he arrived in the entryway, he heard what sounded like a blast and saw the door bust open from the outside.

The people who knocked down his front door were Immigration and Customs Enforcement (ICE) agents. They pointed their weapons at Maximo and his two roommates. Maximo was from the Dominican Republic. One of his roommates was Puerto Rican and the other Venezuelan. The agents told the three men to sit on the floor. One by one, they let them get up and get their IDs and put on their clothes. Maximo gave the agents his Dominican passport. They asked if he was in the country illegally, and he said he was.

The agents arrested Maximo and his Venezuelan roommate and took them to an immigration detention center. Maximo, who had been working in construction for four years, signed a voluntary departure form and was deported to Santo Domingo two days later. This raid happened in 2003, the same year ICE was created. I spoke to Maximo in Santo Domingo in 2010 as I was conducting research for my book: *Deported: Immigrant Policing, Disposable Labor, and Global Capitalism*.

These home raids have continued unabated since. Home raids create profound fears in immigrant communities. Immigrant rights organizations have started organizing "know your rights" trainings which explain what you

should do if ICE comes knocking at your door. These organizations have also organized rapid response teams – groups of people who commit to showing up and recording ICE agents if a raid happens in their town.

Know Your Rights and Rapid Response Networks

Immigrant rights organizations advise undocumented migrants and their family members to avoid opening the door if ICE agents show up. Since ICE agents almost never have a warrant signed by a judge, if you don't open the door, they cannot legally break in and arrest you. In Maximo's case, they broke the door down. In immigration cases, there is no such thing as inadmissible evidence. Thus, Maximo was not able to prevent his deportation by arguing that immigration agents acted illegally. One goal of the rapid response teams is to show up and record these home raids and prevent ICE agents from acting illegally.

Maximo had entered Puerto Rico illegally. However, he had never been apprehended by immigration authorities. Thus, it is highly unlikely that ICE agents were looking for him when they knocked on his door. It is next to impossible that they would have had a warrant for his arrest. Instead, they may have been looking for his roommate from Venezuela. Or, they may have been looking for a previous occupant. They may simply have had the wrong address. Since Maximo was not the direct target of this raid, his arrest was a collateral arrest. Once Maximo told the ICE agents he was not in the United States legally, they could arrest him. One goal of the Know Your Rights trainings is to teach immigrants not to answer these questions. Of course, when armed federal agents are in your house, it is difficult if not impossible to avoid answering their questions, no matter how well you know your rights.

In July 2019, I attended a rapid response meeting at a church in Washington, DC. There were over 100 people present – all there to learn how to help if and when there was an ICE raid in the community. I signed up for the text messaging service to be notified when an ICE raid happened. A week later, I received a text message indicating there was ICE activity near downtown Washington, DC. Twenty minutes later, I received another message that ICE had left the scene. As of this writing in September 2019, I have not received any additional messages about ICE activity in DC. This is likely because home raids are relatively uncommon.

ICE Arrests

ICE home raids evoke deep fear in communities, yet they are one of the least common ways immigrants are apprehended in the United States. TRAC Immigration – an agency based out of Syracuse University that tracks immigration enforcement actions – lists 25 different kinds of ICE arrests. They break the 143,604 ICE arrests in 2018 down into three main categories:

1) Cooperation with law enforcement (69%); 2) Community arrests (25%); and 3) Other arrests (6%). ICE home raids are a kind of community arrests, but community arrests refer to any arrest that involves a person who is not in custody of another agency. Thus, home raids are only a fraction of non-custodial or community arrests.

The number of community arrests has fluctuated – but has not steadily risen or decreased – since TRAC first began tracking these arrests in 2009. The largest number of community arrests recorded in a single month occurred in July 2009, when there were 6,001 community arrests. The lowest number was in February 2015, when there were 1,676 community arrests. In the first few months of 2018, when Trump took office, the number of community arrests remained steady at just over 3,000 per month – which is about equal to the average of 3,219 per month during the Obama administration. The data do not point to an increase in the number of community arrests during the Trump administration.

Custodial arrests usually involve cooperation with local and state law enforcement. The data show a decline in the number of arrests that involve cooperation with law enforcement. In July 2009, for example, ICE arrested 15,283 people directly from local jails. That is the largest number of jail-based arrests in the past decade and is three times as many as there were each month in the first six months of the Trump administration.

Overall, arrests that happen through cooperation with law enforcement are by far the most common. Nearly two-thirds of the 143,604 ICE arrests in 2018 involved people apprehended directly via the Criminal Alien Program at local, state, and federal jails and prisons. The Criminal Alien Program is a mechanism by which authorities at jails and prisons let ICE know they plan to release a person. If ICE believes the person is in the United States illegally or is deportable due to their criminal conviction, instead of releasing them, the jail or prison hands the person over to ICE.

These arrests at local jails have garnered some attention from activists, although a convening on getting ICE out of local jails does not attract the same number of people as trainings on preventing home raids. Notably, arrests at local jails also involve people who – like those involved in home raids – may not have been convicted of a crime. Nationwide, about half of all people in jails are pre-trial detainees – people who have been charged yet not convicted of a crime.

Arrests at Local Jails

I met Sergio in Guatemala City in 2009, about a month after he had been deported. Prior to his deportation, Sergio had been living in Nebraska with his wife, their two children, and two children that she had before they met.

One evening, Sergio came home from work after having had a few beers with his fellow workers. His partner was upset he had been drinking and they began to argue. The argument got heated, and she called the police, hoping they would calm the situation down. Instead, the police arrested Sergio. And, once he was in jail, the authorities realized he was undocumented and informed ICE he was in their custody. Sergio's wife came to the police station to try and get him released, but it was too late. ICE had already placed a hold on him due to his immigration status. She had not realized that her call to the police would lead to his deportation. Once Sergio was deported to Guatemala, his wife faced significant financial and emotional challenges as she had to raise four children on her own. Sergio had been the sole breadwinner in their household. Fully half of all ICE arrests over the past decade have been these kinds of arrests at jails.

People who are arrested at jails include people with a wide variety of criminal backgrounds. In some cases, they are arrested and handed over to ICE without ever being charged with a crime. In other cases, people are arrested and found to have a serious past criminal conviction, which leads to an ICE hold even in so-called sanctuary states such as California. Yet, the majority of people who pass through jails are those who are arrested and convicted of misdemeanors such as driving under the influence, disorderly conduct or drug possession. When the local police cooperate with immigration authorities, arrest on suspicion of any crime can lead to deportation.

Deportation Trends

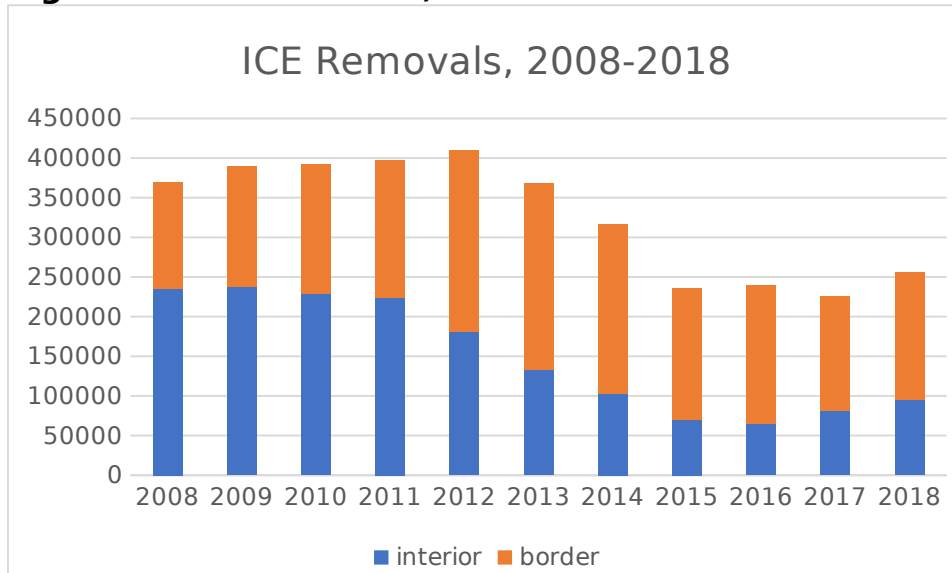
ICE arrests lead to what ICE calls an "interior removal" - the kind of deportation that happens to a person living in the United States. This is in contrast to a "border removal" which involves the deportation of someone trying to enter the United States. In 2013, the number of removals reached an all-time peak of 433,034 removals. Some supporters of Obama have argued that the number of deportations during his presidency was not actually that high because many of these removals were border removals. However, the data reveal that interior removals also reached an all-time peak during the Obama administration.

Statistics from the Department of Homeland Security do not break down removals prior to 2003 into "interior" and "border." Nevertheless, we do know that there had never been more than 50,000 removals of any kind in any given year prior to 1995. In 1984, for example, there were 18,696 removals. The number of removals increased steadily thereafter, reaching 189,026 in 2001 - ten times the number of removals in 1984.

The number of removals has decreased since its apex in 2013 and was down to 256,085 in 2018. The figure below provides a visual representation of interior versus border removals between 2008 and 2018. Note that these

numbers are for ICE removals, which are slightly lower than overall DHS removals. I use ICE removals for this figure because DHS data do not break down removals into border versus interior. The data only go up to 2018 because, as of this publication, fiscal year 2019 has just ended, and data are not yet available for interior and border removals for 2019.

Figure 1: ICE Removals, 2008-2018



Border removals fluctuate in relation to the flows of migrants attempting to cross into the United States. In contrast, interior removals fluctuate according to how many resources the federal government decides to allocate to deporting people who live in the United States and how much cooperation they are able to secure from local and state agencies. Interior removals reached a peak of 237,941 in 2009, and have declined since, reaching a low of 65,332 in 2016. When Donald Trump stepped into the Oval Office, he vowed to increase deportations. The Trump administration has not been able to achieve the all-time highs of the Obama administration. However, interior removals increased to nearly 100,000 in 2018.

These broad trends show that interior removals reached a peak during the first term of the Obama presidency and are experiencing a new uptick since the election of Donald Trump. Interior removals involve people like Maximo and Sergio who are living in the United States. When news of these arrests spreads through immigrant communities, this enhances the fear and vulnerability of these communities.

The largest number of interior removals on record was 237,941 in 2009. If the federal government were able to achieve these record-breaking numbers again, it would take 42 years to remove the ten million undocumented migrants living in this country. At the current rate of 100,000 interior

removals a year, it would take 100 years. Thus, despite the rhetoric spouted by anti-immigrant politicians, the goal of interior enforcement is not to remove all undocumented migrants. Instead, it is to promote fear in immigrant communities. This fear enhances the vulnerability of undocumented migrants.

Targeting Black and Latinx Immigrants

The tactics the federal government currently uses to apprehend undocumented migrants disproportionately target Black and Latino immigrants. Nearly all deportees - 98% - are from Latin America and the Caribbean. Even though about 25% of undocumented migrants in the United States are from Asia and Europe, people from these countries are rarely deported. The vast majority - 90% - are men. Although about half of all non-citizens are women, women are much less likely to be deported than men. There are clear racial and gendered dimensions to this increased intensity of immigration law enforcement.

There are historical precedents to this - the massive raids in Mexican communities in the 1930s and Operation Wetback in the 1950s were overtly directed at Mexicans. Today, not only Mexicans are being deported. Mass deportation is affecting Central Americans, South Americans, and people from the Caribbean. Instead of mass raids in central plazas in Los Angeles, we witness raids in meat-processing plants in Mississippi. ICE can't raid a factory just because everyone who works there is Mexican. But, it can with reports that the workers are all undocumented, and just happen to nearly all be Guatemalan.

Cooperation between local law enforcement and ICE not only enhances the vulnerability of vulnerable communities; it also leads to disproportionate targeting of Black and Latinx migrants. This is because police officers spend more time patrolling Black and Latinx communities, stop and frisk Black and Latinx people more than they do Whites or Asians, and are more likely to arrest Black and Latinx people than Whites or Asians. This disparate treatment - which is baked into policing in the United States - leads to disparities in deportations.

Racial disparities in policing lead to racial disparities in deportations because most deportations are the result of some level of cooperation between ICE and local law enforcement. In some cases, this cooperation is direct - for example, some local law enforcement officers are deputized by ICE under the 287(g) program and can question anyone arrested by their local law enforcement agency about their citizenship status. In other cases, local law enforcement agencies share all arrestee' fingerprints with the Federal Bureau of Investigation (FBI), which in turn shares them with ICE. ICE uses this information to arrest people when they are released from local custody.

Home raids are carried out directly by ICE, but they often rely on information from law enforcement to target immigrants with criminal convictions. Thus, nearly all immigration law enforcement relies on some level of cooperation with police. This creates a situation where the disparities in policing have translated into disparities in deportations.

Criminal Justice Reform

Insofar as the majority of people deported from the United States are first apprehended by police officers, reforms to the criminal justice system are the most promising avenue for keeping immigrant families together.

In terms of immigrant rights, criminal justice reform is two-fold. On the one hand, it is necessary for local law enforcement to cease cooperating with ICE. California recently passed a law called the TRUST Act that limits cooperation between local law enforcement and immigration authorities. If a law similar to the TRUST Act had been in place in Nebraska, Sergio could have avoided deportation. Under the TRUST Act, the Sheriff is not permitted to hold people for ICE unless they have been convicted of a serious offense. This has led to a reduction in the number of people deported from California since its implementation in 2014.

In addition to ending cooperation with ICE, local law enforcement agencies need to stop using arrests and jail stays as their primary ways of ensuring safety in communities. Arresting Sergio may have seemed like the best way to resolve the argument he was having with his wife, but it is likely that Sergio needs help with his drinking problem and with his relationship - something the jail is ill-equipped to solve.

Jail populations are disproportionately made up of people who are homeless, mentally ill, and dealing with substance abuse and poverty. Jails are not the solutions to any of these societal problems and neither is deportation.