

Immigrant Detention

Is the system too harsh?

In 2014, 425,000 undocumented immigrants — far more people than are held in federal prisons — were held in the 250 detention centers run by U.S. Immigration and Customs Enforcement (ICE). Most of the detainees were awaiting deportation or a ruling on their eligibility to remain in the United States, including thousands of Central American mothers and children seeking asylum from gang violence at home. While most detainees move through the system in days or weeks, some are held for months or even years waiting for backlogged immigration courts to settle their cases. Critics say the detention system leads to physical and mental abuse, the breakup of immigrant families and, in some cases, death by suicide or neglect. Most detainees pose no risk of flight or criminal behavior and should be free pending their hearings, immigrant supporters contend. But groups seeking tighter curbs on immigration say detention is necessary to protect public safety and to ensure that undocumented immigrants do not disappear into the general population before their cases are decided.



An immigrant facing deportation awaits a ruling at a U.S. Immigration and Customs Enforcement (ICE) detention facility in Florence, Ariz. More people are held in the federal government's 250 detention centers than in federal prisons.

THIS REPORT

**I
N
S
I
D
E**

THE ISSUES	891
BACKGROUND	897
CHRONOLOGY	899
CURRENT SITUATION	902
AT ISSUE.....	905
OUTLOOK	907
BIBLIOGRAPHY	910
THE NEXT STEP	911

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THE ISSUES

- 891 • Does mass detention deter illegal migration?
• Is mass detention of undocumented immigrants necessary for public safety?
• Should women and children be detained while awaiting deportation?

BACKGROUND

- 897 **The 'Golden Door'**
Americans' attitudes toward immigrants have always been ambiguous.
- 898 **Growth of Detention**
Federal legislation passed in 1996 expanded the use of immigrant detention.
- 900 **Rise of Private Facilities**
Critics question the role of for-profit detention companies.

CURRENT SITUATION

- 902 **Family-Detention Battle**
An independent commission wants families released because of poor living conditions.
- 904 **Obama Actions Halted**
Courts blocked executive orders allowing 4 million undocumented immigrants to remain in the United States.
- 906 **Shift in Priorities**
The administration hopes to reduce deportations of illegal immigrants who don't pose a threat.

OUTLOOK

- 907 **Stalled and Deadlocked**
Experts say executive actions or court rulings, rather than congressional action, most likely will yield policy changes.

SIDEBARS AND GRAPHICS

- 892 **Deportations Soared in Past Decade**
Removals rose 82 percent from 2004 to 2013.
- 893 **Detainee Count Rose in Past Decade**
Detention centers held more than 33,000 immigrants daily in 2014.
- 896 **Child Apprehensions Down Sharply**
Number of detained children fell nearly 50 percent in 2015.
- 899 **Chronology**
Key events since 1952.
- 900 **Deaths in Detention Facilities Raise Alarms**
"Why has the government allowed this to happen?"
- 902 **Behind the Headlines, Support for a More Humane Policy**
But a sharp partisan divide persists on illegal immigration.
- 903 **Most Americans Support Path to Citizenship**
Nearly two-thirds want undocumented immigrants to become citizens.
- 905 **At Issue:**
Is U.S. immigrant-detention policy justified?

FOR FURTHER RESEARCH

- 909 **For More Information**
Organizations to contact.
- 910 **Bibliography**
Selected sources used.
- 911 **The Next Step**
Additional articles.
- 911 **Citing *CQ Researcher***
Sample bibliography formats.



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EXECUTIVE EDITOR: Thomas J. Billitteri
tjb@sagepub.com

ASSISTANT MANAGING EDITORS: Maryann Haggerty, maryann.haggerty@sagepub.com,
Kathy Koch, kathy.koch@sagepub.com,
Chuck McCutcheon,
chuck.mccutcheon@sagepub.com,
Scott Rohrer, scott.rohrer@sagepub.com

SENIOR CONTRIBUTING EDITOR:
Thomas J. Colin
tom.colin@sagepub.com

CONTRIBUTING WRITERS: Brian Beary,
Marcia Clemmitt, Sarah Glazer, Kenneth Jost,
Reed Karaim, Peter Katel, Barbara Mantel,
Tom Price, Jennifer Weeks

SENIOR PROJECT EDITOR: Olu B. Davis

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INTERN: Molly McGinnis

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Immigrant Detention

BY REED KARAIM

THE ISSUES

Like prison inmates, the 1,550 detainees in Eloy, Ariz., wear gray uniforms and are held under guard behind high fences topped by concertina wire.

"The conditions are very depressing," says Marjorie King, a university associate at the University of Arizona in Tucson who visits the Eloy detainees on behalf of Casa Mariposa, a faith-based group that advocates for immigrants. "There's no freedom of movement. They're supervised everywhere they go. They're constantly being yelled at. It very much resembles a prison."

But the Eloy facility isn't a prison. It's a detention center operated by Corrections Corporation of America (CCA), the nation's largest private prison company, for undocumented immigrants who are awaiting deportation or a ruling on their eligibility to remain in the country.

The men and women at Eloy are part of a national immigrant detainee population that shot up from 85,000 in 1995 to 425,728 in 2014. Detainees are held for varying amounts of time, but on any given night in 2014, 33,227 immigrants, on average, were being held in federal custody. More people now pass through the immigrant detention system each year than through federal Bureau of Prisons facilities.¹ The growth has occurred despite a slowdown in illegal border crossings into the United States since 2007 and a leveling off in the nation's undocumented immigrant population, which has held steady at about 11.3 million for five years.²

The U.S. government's widespread use of detention of would-be immi-



Honduran immigrant Maria Celeste Castro and her daughter await processing by U.S. Border Patrol officers after crossing the Rio Grande River near Mission, Texas. Severe criticism of detention conditions for immigrant families prompted the Obama administration in September to announce it would allow most women and children to be released pending asylum rulings.

Getty Images/John Moore

grants is highly controversial, with defenders saying it's a way to dissuade other undocumented immigrants from coming to the United States and critics saying it unnecessarily imprisons thousands of people, including women and young children and sometimes even U.S. citizens.

Many centers are run by for-profit prison companies, some of which pay detainees as little as \$1 a day to do janitorial work and other menial labor at the centers.³ The Obama administration announced in June that it was taking steps to limit the detention of women and children, many of whom have arrived over the last two years seeking asylum from violence-plagued Central America.⁴ Last November, President

Obama also said the government would refocus its immigration enforcement on individuals who present a threat to national security or public safety.

"Felons, not families. Criminals, not children," will be the priority, Obama said.⁵

But immigrant advocates believe the administration's effort is falling short of the president's rhetoric. "Mostly, I think it's failed," says Silky Shah, co-director of the Detention Watch Network, a national coalition working to challenge what it considers the injustices of the U.S. immigrant detention and deportation system. "We're still seeing families in detention. We still have a really high rate of detention generally."

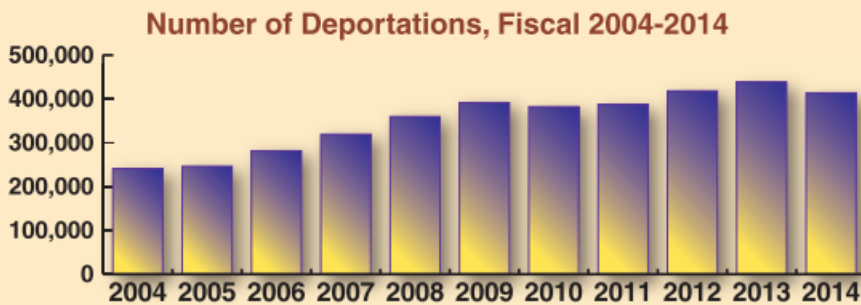
The debate over immigrant detention centers on a complicated system in which noncitizens can end up being held through a variety of circumstances. Undocumented immigrants caught trying to cross the U.S. border often

spend a short period in detention before being deported. But people who show up at border crossings requesting asylum, such as thousands of Central American families trying to escape gang violence at home, also can be detained while their claims are investigated.⁶

And immigrants who have lived legally in the United States for decades can end up in detention after serving time in the United States for certain crimes, including misdemeanors. After completing their sentences, the immigrants may be turned over to U.S. Immigration and Customs Enforcement (ICE), a federal agency within the Department of Homeland Security (DHS), for detention while the government determines whether their record merits deportation.

Deportations Soared in Past Decade

Federal authorities deported 414,000 undocumented immigrants in fiscal 2014, roughly 24,000 fewer than in 2013. Deportations rose by 82 percent from 2004 to 2013, when they peaked at 438,000. The share of deported immigrants with criminal backgrounds rose from 29 percent in 2008 to 45 percent in 2013. The background information on 2014 deportees was not available.



Source: 2014 data from "DHS Releases End of Year Statistics," U.S. Department of Homeland Security, Dec. 19, 2014, <http://tinyurl.com/pglvoe6>; data for 2004 to 2013 from Table 41, "Yearbook of Immigration Statistics: 2013 Enforcement Actions," Office of Immigration Statistics, U.S. Department of Homeland Security, January 2014, <http://tinyurl.com/q8hrzgp>

But those are not the only ways in which immigrants have ended up in detention. Under an ICE program called Fugitive Operations, the agency sends teams out to find dangerous fugitive migrants. But a 2009 study by the Migration Policy Institute, a non-partisan Washington think tank that studies the movement of people worldwide, found that three-fourths of the undocumented immigrants rounded up through the program had no criminal record.⁷

On occasion, even American citizens have been mistakenly detained and deported, without having had access to legal counsel. Jacqueline Stevens, a professor of political science at Northwestern University in Evanston, Ill., has documented more than 40 cases of U.S. citizens held in detention and believes, that on any given day, up to 1 percent of detainees could be citizens.⁸

In one case, Mark Lyttle, a North Carolinian with bipolar disease, was detained for 51 days in 2008 and de-

ported to Mexico after an ICE official concluded his name was an alias, despite his repeated claims he was a U.S. citizen. Lyttle tried to return to the United States but was denied entrance and spent four months wandering through Mexico and Central America before a police officer in Guatemala found him sleeping on a park bench and took him to the U.S. Embassy, where officials called Lyttle's brother in the United States and quickly determined he was a U.S. citizen.⁹

Detainees do not have a right to legal counsel — the government does not provide them a lawyer — or to a speedy trial. And due to a backlog in the immigration courts, some detainees spend years in custody while their case is resolved. ICE says the average stay as of Sept. 12, 2015, was 34.6 days, but the mostly volunteer lawyers who work with detainees say many are held much longer.

"We've seen many examples of people detained for far longer periods — three,

five and sometimes seven years," says Michael Tan, a staff attorney at the Immigrants' Rights Project of the American Civil Liberties Union (ACLU) in New York. "Unfortunately, there's no shortage of examples."

The system has come in for intense criticism from analysts and immigration advocates. A joint report by the U.S. Conference of Catholic Bishops and the Center for Migration Studies, a New York-based research institute that supports immigrants' rights, noted the size of the detention population and concluded, "The numbers only hint at the toll that this system exacts in despair, fractured families, human rights violations, abandoned legal claims and diminished national prestige."¹⁰

But advocates of stricter enforcement of immigration laws say detention is a necessary tool for controlling the influx of noncitizens and ensuring that undocumented immigrants or those who pose a threat to public safety do not disappear into the general population before U.S. officials can determine whether they should be deported.

"Detention is appropriate, and the law allows it for cases of public safety risk or a flight risk," says Jessica Vaughan, director of policy studies for the Center for Immigration Studies, a Washington think tank that supports lower immigration levels. Vaughan describes detention as "a last resort in the enforcement process" and adds, "The reality is that once people are here in the country, they are not going to comply with immigration law willingly on their own if they think they can get away with it."

The federal government's use of detention grew in the early 1980s after Cubans and Haitians showed up in unprecedented numbers along the Florida coast. But detention exploded in 1996 after Congress passed an immigration law that greatly expanded the mandatory use of detention in immigration cases. (See "Background," p. 898.)

ICE determines who gets detained, depending on circumstances. ICE says 96 percent of its detainees are “Priority 1 or Priority 2 aliens.” The first category covers anyone caught crossing into the United States illegally and any immigrant, here legally or not, considered a terrorist threat, guilty of a felony or convicted of an offense tied to gang activity. Priority 2 includes immigrants convicted of repeated misdemeanors or what ICE calls “significant misdemeanors,” such as most drug possession or driving under the influence convictions. It also includes visitors to the United States who, in ICE’s judgment, have abused or overstayed their visa privileges.¹¹

Caitlin Patler and Emily Ryo, University of California researchers, provide a fuller, more human portrait of longer-term detainees. They interviewed 562 immigrants — 88 percent of them Hispanic males — who had been detained for longer than six months in Southern California. Patler and Ryo found that, on average, the detainees had been in the United States 20 years, and more than half spoke English well. Nearly 70 percent had a spouse or child who was a U.S. citizen or lawful permanent resident.¹²

About 30 percent of those in the sample were lawful permanent residents or had a valid visa when they were detained. Eighty-six percent had one or more misdemeanor convictions, and 25 percent had committed one or more felonies. The most common convictions were for drug offenses and traffic violations, including driving under the influence.¹³

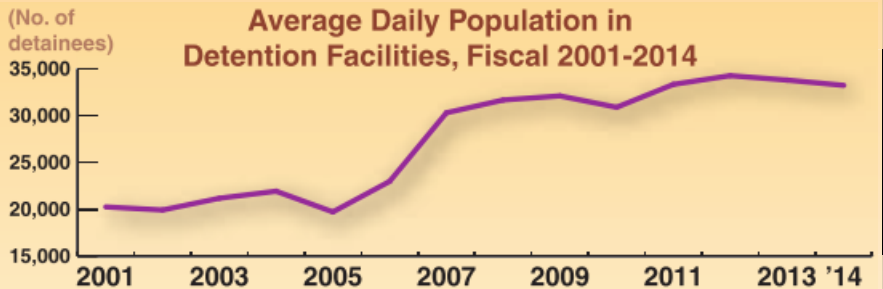
As policymakers, immigrant advocates, law enforcement officials and others debate immigrant detention policies, here are some of the questions being considered:

Does mass detention deter illegal migration?

Last year, when the Obama administration found itself facing a sudden influx of Central American families re-

Detainee Count Rose in Past Decade

Federal immigration authorities held more than 33,000 immigrants daily in detention centers in 2014. The average daily detainee population rose from fewer than 20,000 in 2005 to a peak of more than 34,000 in 2012.



Source: U.S. Immigration and Customs Enforcement (ICE)

questing asylum at U.S. border crossings, it responded by placing them in detention. The move was necessary, the administration said, to discourage other would-be Central American immigrants from making the attempt.

The families were detained even after they had passed the “credible fear” test for being granted asylum — if sent home, they feared they would face persecution. DHS Secretary Jeh Johnson said the policy was intended to send a message to other families contemplating the same journey. “If you come, it is likely you will be detained and sent back,” he said.¹⁴

The ACLU challenged the policy in a class-action lawsuit, and early this year federal District Judge James E. Boasberg ruled the government’s use of detention as deterrence violated the individual rights of those being held in custody. He issued a preliminary injunction barring the administration from detaining immigrants solely as a deterrent to future immigration.¹⁵

“Detention has to be justified in each individual case,” explains Joanne Lin, a legislative counsel with the ACLU who works on immigration issues.

Johnson subsequently announced several changes in detention policies for women and children. Deterrence would no longer be considered a factor

in detention decisions, he said, and ICE would work to expedite the hearing process to determine whether asylum seekers met the credible fear test for being allowed to stay in the country. If they did, Johnson indicated, most would be released on a reasonable monetary bond while awaiting a formal asylum hearing.¹⁶

Immigrant advocates hailed the court ruling and the administration’s decision. “To detain somebody in order to ensure that another person thousands of miles away will not come to the U.S. — not only is it completely unjustified and inhumane, it’s not working,” says Shah, co-director of the Detention Watch Network.

Despite the ruling and policy change, however, anti-immigration activists say detention remains a way to make the country less attractive as a destination for those trying to enter the United States illegally. “Detention is an absolutely indispensable component of deterrence,” says Dan Stein, president of the Federation for American Immigration Reform (FAIR), a citizens group that wants less immigration.

Stein says maintaining detention as a deterrent is particularly important in light of what FAIR considers the Obama administration’s pro-immigrant stance. The organization believes the administration has not been aggressive enough

in securing the border and has encouraged further immigration through its support of the Development, Relief and Education for Alien Minors (Dream) Act, which would allow undocumented immigrants who arrived as children to remain in the United States.

"The last remaining deterrent feature they had was the detention facilities," says Stein. "Once you have a breach in your last remaining defensive line, it's basically a free-for-all, and that's where we are now."

The question of whether the Obama administration has been lax or overly aggressive in enforcing immigration laws is bitterly contested by activists who favor more restrictive policies and those who would like to see the nation be more welcoming to immigrants. (*See "Current Situation," p. 904.*) Nevertheless, policy analysts say the evidence does not support the idea that detention deters immigrants determined to escape violence in their Central American homelands.

In a declaration to the District Court in support of the ACLU's lawsuit, Cecilia Menjivar, a professor in the School of Social and Family Dynamics at Arizona State University, Mesa, said she has interviewed hundreds of migrants and potential migrants from Central America about their motives. They were driven largely by fear of the drug gangs and chaos in their home region, she said. Their fears were serious enough to overcome worries about what might happen to them during the trip north (extortion, rape and even murder are significant risks) or once they arrived in the United States.

"It is difficult to overstate the violence that has become endemic to the region," said Menjivar.¹⁷

She cited a conversation with a Guatemalan woman as emblematic of migrants' motivations. "We spoke of the dangers of the journey, enforcement at the border and the possibility of spending time in detention in the United States," Menjivar said. "She responded,

'I know that very well, everyone here knows that, but what's the difference between dying on the road and dying little by little here?' " ¹⁸

But even if the detention threat factors little into the thinking of those fleeing violence, some experts say it would still weigh on other would-be immigrants. In congressional testimony, Jan C. Ting, a Temple University law professor and former Immigration and Naturalization Service official in the George H. W. Bush administration, said people inevitably measure the potential costs and benefits of trying to get into the United States.

"If we wish to deter persons immigrating to the United States illegally in violation of our legally imposed limits, we should increase the costs of illegal immigration and lower the benefits," Ting said. "People are not stupid, and will use cost-benefit analysis to act on what they believe is in their best interest." ¹⁹

To dissuade potential immigrants, he added, efforts must extend beyond the border and include additional costs. "Deterrence is important . . . because border security alone cannot prevent large numbers of persons from illegally entering the country if they are determined to do so," Ting said. "For one thing, as many as half the illegal population of the U.S. may have entered legally on temporary visas and simply overstayed" their visas. ²⁰

However, many experts who track the flow of undocumented immigrants from Central America and elsewhere or have surveyed immigrants on their motives say economic opportunity is the overwhelming consideration of most. The rise and fall of undocumented immigration "is much more consistent with labor market conditions [in the United States and immigrants' home countries] than it is in any changes in U.S. immigration enforcement regimes," says Frank Bean, a sociology professor and director of the Center for Research on International Migration at the University of California, Irvine. "That's what we've

seen over and over again. Based on that, I don't think there's any likelihood that [detention] is much of a deterrent."

In fact, he says, detention paradoxically could be making immigration enforcement more difficult. "Given the threat of deportation and the reliance on the detention program, it's entirely possible that a lot of people have gone underground," Bean says. "I don't think people have stopped coming, but they've started hiding more."

Is mass detention of undocumented immigrants necessary for public safety?

On July 1, Kathryn Steinle, 32, was walking along a pier on San Francisco's waterfront with her father when police say she was shot by Juan Francisco Lopez-Sanchez, an undocumented immigrant and felon previously deported to Mexico five times. ²¹

Steinle died of the wound later that day. ²² Lopez-Sanchez's attorneys contend the shooting was accidental. ²³ But many Americans expressed outrage that Lopez-Sanchez wasn't in government custody or hadn't been redeported before Steinle's killing. The U.S. government had an outstanding deportation order for Lopez-Sanchez, but local authorities released him without notifying ICE. ²⁴ San Francisco is what critics call a "sanctuary city," where city employees are prohibited from helping ICE detain or investigate immigration cases in many circumstances. ²⁵

The idea that undocumented immigrants, particularly from Mexico or other Latin American countries, pose a public safety risk became a central topic of the Republican presidential campaign when candidate Donald Trump, the billionaire developer and reality TV star, began his campaign by attacking immigrants as dangerous. "When Mexico sends its people, they're not sending their best," Trump declared. "They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime.

They're rapists. And some, I assume, are good people.”²⁶

Trump's outspoken stance, which includes a promise to deport all 11.3 million undocumented immigrants believed to be living in the country, has been widely credited with helping to boost him to the top of Republican presidential polls.

But policy analysts say statistics show noncitizens pose less of a crime threat than citizens. Researchers who looked at cities with particularly high concentrations of legal and undocumented immigrants found those urban areas did not have higher crime rates. In fact, murder and robbery rates actually declined, according to at least two studies.²⁷

Immigrants also are less likely to end up in jail or prison than citizens, according to another study that found that roughly 1.6 percent of immigrant males, ages 18-39, are incarcerated, compared with 3.3 percent of native-born males of the same age range. The researchers said the difference has existed for decades, and that native-born men were two to five times as likely to be in jail as male noncitizens.²⁸

“Immigrants just don't commit crimes at as high a rate as natives do,” says the University of California's Bean. “If you think about it, it makes sense. They're marginal; they're frightened; they keep a low profile.”

However, other analysts say the immigrant population in detention is different from the general immigrant population. “With the exception of the families and children who came from Central America, more than 85 percent of ICE's interior caseload [cases involving detainees not apprehended at the border] are convicted criminals and people with felonies or multiple misdemeanors,” says the Center for Immigration Studies' Vaughan. “Obviously, the vast majority of these people you would have to consider a public threat.”

But a 2011 study by the Migration Policy Institute found that in recent years the federal efforts to detain and

deport immigrants with criminal records had not been “targeted primarily or even mostly toward serious offenders.”²⁹ Many detainees had been convicted of nonviolent drug offenses or repeated misdemeanors, says Randy Capps, the institute's director of research, U.S. programs. “The immigration enforcement priorities were so broad that a lot of people were picked up on very minor

Tan says relatively minor crimes can land even a legal immigrant in detention. “A permanent resident who has a green card could be put in deportation proceedings based on a marijuana conviction,” he says. *

But FAIR's Stein says one goal of detention is to hold immigrants who could be dangerous while authorities determine whether they are a threat to the public,



AFP/Getty Images/Frederic J. Brown

Donald Trump launched his campaign for the Republican presidential nomination in June by attacking immigrants as dangerous and vowing that if elected he would deport the 11.3 million undocumented immigrants living in the United States. “When Mexico sends its people, they're not sending their best,” the billionaire developer declared. “They're sending people that have lots of problems. . . . They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.”

civil or criminal violations,” Capps says.

The Detention Watch Network's Shah notes that convicted immigrants must serve their time in the regular U.S. penal system before they can be placed in detention while the government determines whether they should be deported. “Anybody who's in detention, if they are somebody who has been convicted of a crime, they've already paid their debt to society,” she says.

Despite Obama's announcement last year that the administration was shifting its immigration enforcement focus to recent undocumented border crossers and dangerous noncitizens, the ACLU's

a process he considers essential to prevent tragedies like Steinle's killing.

“Are they criminals? The answer is maybe. . . . You want to make sure that the government has the time and the space to actually verify who the folks are [in detention],” Stein says. “If you don't, how do you explain that [decision] to an American citizen whose mother or son or daughter got murdered by someone who's in the country illegally?”

* A green card holder is a non-U.S. citizen who has been granted authorization to live and work in the United States on a permanent basis.

Child Apprehensions Down Sharply

Border Patrol officers apprehended more than 35,000 unaccompanied children at the Southwest border in the first 11 months of fiscal 2015, down nearly 50 percent from the 2014 total. Apprehensions more than quadrupled between 2011 and 2014 because of turmoil in Central America. The nonpartisan Migration Policy Institute said the apprehensions slowed in 2015 because Mexico stepped up border patrols.

Apprehensions of Unaccompanied Children at Southwestern U.S. Border, Fiscal 2010-15



* 2015 total is for 11 months.

Sources: 2015 data from "Southwest Border Unaccompanied Alien Children," U.S. Customs and Border Protection, undated, <http://tinyurl.com/p6talth>; 2010-2014 data from "U.S. Border Patrol Total Monthly UAC Apprehensions by Month, by Sector (FY 2010-FY 2014)," U.S. Customs and Border Protection, undated, <http://tinyurl.com/nmt2lhn>; caption information from Rodrigo Dominguez Villegas and Victoria Rietig, "Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile," Migration Policy Institute, September 2015, pp. 8-9, <http://tinyurl.com/pe2ccmz>

Should women and children be detained while awaiting deportation?

Perhaps nothing in immigration policy has aroused as much controversy as the Obama administration's decision in recent years to detain tens of thousands of women and children.

The situation began with last year's surge in the number of people from Central America, which included both unaccompanied children and families with children, who arrived at U.S. border stations seeking asylum. In 2014, the U.S. Border Patrol detained nearly 140,000 unaccompanied children and families traveling with children, more than double the number in 2013. That number declined in 2015, according to press reports, although women and

children from the region continue to arrive at the border.³⁰

Under a 1997 court order and U.S. law, most unaccompanied children are not held in long-term detention. Instead, they are placed in the care of a sponsor, often family members or close relatives already in the United States, while the government determines whether they should be deported.³¹

The administration, however, originally reacted to the surge in Central American families by detaining nearly all of them. But this June, DHS Secretary Johnson announced a new approach. "I have reached the conclusion that we must make substantial changes in our detention practices with respect to families with children," Johnson said. "In short, once a family has established el-

igibility for asylum or other relief under our laws, long-term detention is an inefficient use of our resources and should be discontinued."³² Shortly thereafter, a federal judge in California ruled the detention of the children and their mothers was illegal and said they should be released as soon as possible.³³

But the administration has appealed the ruling, and thousands of families remain in detention awaiting hearings, which immigrant advocates say is unnecessary. "This is the category that is the least likely to flee. These are moms with babies and kids. These are people who were presenting themselves to the government voluntarily, saying, 'I'm here. I need your help,'" says the ACLU's Lin. "This population is as vulnerable, as sympathetic and as safe as you can find. In our view, there's no reason they should have been detained."

Brian Hoffman, who heads a pro-bono legal effort for detainees at the South Texas Family Detention Center in Dilley, Texas, says detention takes a toll on women and children already traumatized in their home country or on their journey to the United States. Because adult men are held separately from women and children, detention can break up families, adding to the anxiety of women and children.

"I don't think people realize how psychologically damaging detention is, especially for refugees, and for refugee children," he says. "Worse, it's completely unnecessary. None of these people are dangerous or flight risks. They're refugees."

Asylum-seekers, a specific category of refugees, are noncitizens who are unable or unwilling to return to their home country because of persecution or a well-founded fear of persecution. Under U.S. law, if asylum seekers are found to have credible cases, they are given the right to stay in the United States.³⁴

But supporters of stricter immigration restrictions say the evidence indicates many of these families will likely disappear into the general population if

they are not held by ICE. As an example, they cite congressional testimony last year by Juan P. Osuna, director of the Executive Office for Immigration Review at the U.S. Justice Department, who said 46 percent of unaccompanied minors released into the custody of sponsors failed to show up for their immigration court hearings.³⁵

However, some of those failures appear due to a lack of understanding. Osuna said a “legal orientation” program to educate the children’s caretakers about the immigration hearing process had reduced the no-show rate by 40 percent.³⁶

Still, Dan Cadman, a former ICE official and current research fellow at the Center for Immigration Studies, said he expects the percentage of no-shows to grow “because many released aliens attend hearings up to the point at which they are ordered deported or directed to depart, after which they abscond rather than report for removal if they are not being held in detention.”³⁷

Cadman also said government statistics indicate more than 84 percent of the undocumented families who arrived at the height of the Central American surge and who were placed under some alternative to detention fled before completing the hearing process.³⁸

But research by the American Immigration Council, a nonpartisan organization in Washington that supports immigrants’ rights, cited two government-sponsored studies that found the opposite. The most recent, a 2014 Government Accountability Office (GAO) report, indicated 95 percent of immigrants who arrived from 2011 to 2013 who were provided supervised release instead of detention showed up for their asylum hearings.³⁹

The council said research has found that applying for asylum was an “expression of faith in the legal process” and that asylum seekers released while awaiting their hearing are compelled to follow the asylum process in part to avoid the possibility of being placed in detention.⁴⁰



Juan Francisco Lopez-Sanchez faces murder charges following the July 1 shooting death of Kathryn Steinle, 32, a San Francisco woman who was killed while walking with her father along the city’s popular Embarcadero waterfront.

Sanchez is an undocumented immigrant and felon previously deported to Mexico five times. The U.S. government had an outstanding deportation order for Sanchez, but local authorities released him without notifying immigration authorities. Many Americans expressed outrage that Sanchez wasn’t in custody or hadn’t been redeported before Steinle’s killing.

BACKGROUND

The ‘Golden Door’

The United States is a nation founded by immigrants. The idea that it welcomes the foreign-born who arrive hoping to build a new life is enshrined on a plaque inside the Statue of Liberty: “Give me your tired, your poor,/Your huddled masses yearning to breathe free,/The wretched refuse of your teeming shore./Send these, the homeless, tempest-tossed to me,/I lift my lamp beside the golden door!”

But Americans’ attitudes toward those huddled masses have always been more ambiguous than the statue’s greeting. From the beginning, Americans have simultaneously welcomed immigrants and worried that they would change the nation. At various times, Germans, Catholics, Irish, Italians, Chinese, Mex-

icans and others have been villified and portrayed as threats to the national identity. Politically, periods of openness have alternated with periods of restriction.

The fear even predated U.S. independence. In 1751, Benjamin Franklin worried that an influx of German immigrants would debase his adopted city, using language that is still echoed in today’s immigration debate: “Why should Pennsylvania, founded by the English, become a Colony of *Aliens*, who will shortly be so numerous as to Germanize us instead of us Anglifying them, and will never adopt our Language or Customs, any more than they can acquire our Complexion.”⁴¹

The first mass anti-immigrant movement in the United States developed in the 1850s, when a secret Protestant fraternal organization, often called the “Know-Nothings,” attracted more than a million members. The Know-Nothings took an oath to resist the “insidious policy of the Church of Rome [the Catholic Church] and all other foreign

influences against the institutions of our country.”⁴²

The Know-Nothing movement eventually formed the American Party and ran ex-President Millard Fillmore for president in the election of 1856. The American Party would split over the question of slavery, and much of the anti-immigrant fervor dissipated during the Civil War as recent immigrants served in both the Union and Confederate armies.⁴³

The detention of immigrants, usually for reasons of disease or ill health, began on a limited basis at Ellis Island in New York harbor, which served as the main port of entry for immigrants from Europe from 1892 to 1954. Most passed through in a matter of hours; only 2 percent were denied entry.⁴⁴ However, a small percentage were detained for days or weeks while their status was determined or before they were sent home.⁴⁵

Ironically, the first mass detention in the United States of “foreign” individuals and families involved mostly U.S. citizens. During World War II, President Franklin D. Roosevelt signed Executive Order 9066, which forcibly relocated all people of Japanese ancestry, both citizens and noncitizens, to special internment camps located mostly in remote areas in the West. With the United States at war with Japan, the decision was made out of concern for national security, but two-thirds of the 117,000 people affected by Roosevelt’s order were native-born American citizens.⁴⁶

After the war, the 1952 Immigration and Nationality Act established a standard that immigrants awaiting deportation could be held no more than 90 days after the final ruling concerning their status. The law also authorized the U.S. attorney general to hold immigrants longer if he deemed it necessary.⁴⁷

Still, the “immigration detention system had remained minimal and mostly out of public sight throughout the post-war period,” according to Stephanie J. Silverman, author of a paper on the

history of U.S. detention for the Centre on Migration, Policy and Society at the University of Oxford in England.⁴⁸

This changed in 1979 and 1980, when the United States found itself dealing with hundreds of thousands of Cubans and Haitians fleeing their countries by boat for U.S. shores. When Cuban President Fidel Castro refused to take most of the Cuban migrants back, public concern grew that many were criminals or otherwise a threat to public safety.

As the U.S. government tried to determine among the flood of immigrants who should be granted asylum, it set up detention centers to hold them in Florida, Arkansas, Pennsylvania and at the Atlanta Penitentiary in Georgia.⁴⁹

Attorney General William French Smith paroled most of the Cubans within a year in 1981, determining they were not a threat to public safety. But to discourage further Haitian immigration, President Ronald Reagan ordered the detention of all interdicted Haitians trying to enter the United States. Thousands were held at the U.S. military base at Guantanamo Bay, Cuba, and most eventually were returned to Haiti.⁵⁰

Despite these incidents, sustained detention remained relatively infrequent until the mid-1990s.

Growth of Detention

America’s most recent period of large-scale immigration began in the 1970s and included both illegal and legal entries into the country. In the mid-1980s, the number of undocumented immigrants living in the United States was estimated at 3 million to 5 million. To address the issue, President Reagan backed and Congress passed the Immigration Reform and Control Act of 1986 that established penalties for employers who knowingly hired undocumented immigrants and that greatly expanded border security.⁵¹

However, the act also granted legal status to undocumented immigrants who

had been living in the country for five years. An estimated 2.7 million immigrants eventually took advantage of the law’s “amnesty” provision, as it was commonly called.⁵² The act was the last successful legislative effort to combine amnesty for longtime undocumented immigrants with stronger enforcement to keep new entrants out.

But the law failed to stanch the flow of illegal immigration, and as public frustration grew, the federal government strengthened enforcement along the border and empowered authorities to deport undocumented immigrants.⁵³

In 1996 Congress passed two watershed laws, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The AEDPA required the mandatory detention of noncitizens convicted in the United States of a wide range of offenses, including minor drug crimes. The IIRIRA mandated detention for additional offenses and expanded the definition of “aggravated felonies” to include crimes considered misdemeanors under state law. This shift was significant because, under a 1990 law, noncitizens guilty of aggravated felonies could be detained indefinitely.⁵⁴

Overall, the expansion of mandatory detention was broad enough that a noncitizen could end up in federal custody facing deportation for a crime that hadn’t warranted any jail time under state law.⁵⁵ The IIRIRA was “responsible for the massive expansion of the immigration detention system in the late 1990s,” wrote Silverman.⁵⁶

In just five years, from 1995 to 2000, the average number of detainees held daily roughly tripled to just under 20,000. It continued to grow steadily, reaching 34,260 in 2012.⁵⁷ (See *graph*, p. 893.)

Analysts say the creation of the Department of Homeland Security (DHS) following the terrorist attacks on the United States on Sept. 11, 2001, also played a role in the expansion of ag-

Continued on p. 900

Chronology

1950-1980

The United States establishes the foundations of today's immigration law as well as temporary large-scale detention centers to deal with a Cuban refugee crisis.

1952

The Immigration and Nationality Act, which still underlies today's law, establishes the grounds for which an alien can be blocked from entering the United States or deported, including a criminal history or radical political views.

1965

Congress amends the 1952 law, clarifying immigrant detention by establishing that anyone clearly not allowed into the country will be detained for further investigation.

1980

A wave of Cubans arrives on U.S. shores in the "Mariel Boatlift," followed by a similar wave of Haitians. The United States resorts to mass detention while it sorts out who should be allowed to stay.

1980-1996

Alarmed by rising illegal immigration, the United States strengthens border security and wrestles with how to treat undocumented immigrants.

1984

President Ronald Reagan draws greater attention to illegal immigration by warning, "We've lost control of our own borders, and no nation can do that and survive."

1986

The Immigration Reform and Control Act doubles the size of the Border

Patrol and creates penalties for businesses that hire undocumented immigrants; it also offers amnesty for many immigrants in the United States illegally.

1994

Operation Gatekeeper intensifies U.S. efforts to control undocumented immigration from Mexico near San Diego.

1995

The total number of immigrants held in detention over the course of the year by the federal government hits 85,000.

1996

A sweeping immigration law adds new grounds for deporting immigrants, expedites removal procedures and expands the detention of noncitizens for previous crimes.

2000-Present

The Sept. 11, 2001, terrorist attacks launch an era of heightened concern about foreign visitors and U.S. security.

Sept. 11, 2001

Al Qaeda terrorists legally in the United States hijack four airliners and kill nearly 3,000 people.

2002

In the wake of the 9/11 attacks, Congress transfers immigration control to the newly created Department of Homeland Security (DHS), prioritizing national security in border enforcement.

2003

U.S. Immigration and Customs Enforcement (ICE), a new agency within DHS, becomes responsible for immigrant detention.

2006

Secure Fence Act calls for more than 700 miles of double-reinforced fence on U.S.-Mexico border.

2008

ICE introduces Secure Communities Program, in which police turn the fingerprints of apprehended individuals over to ICE to check whether they are immigrants who should be detained. Many communities eventually stop cooperating with the effort.

2013

The number of immigrants detained during the year tops 440,000, a five-fold increase in less than 20 years.

2014

To deter illegal immigration, ICE detains thousands of Central American women and children who have shown up at U.S. border points seeking asylum because of gang violence at home. . . . President Obama announces changes in enforcement procedures in an effort to end the targeting of longtime, law-abiding undocumented immigrants.

2015

Federal judge rules in February that the use of detention for deterrence violates the rights of detainees. . . . DHS in June revises detention policies for women and children; DHS Secretary Jeh Johnson says the changes will mean most will be held only short-term. . . . Billionaire businessman Donald Trump begins his campaign for the Republican presidential nomination in June by attacking immigrants as dangerous and vowing that if elected he will deport the nation's 11.3 million undocumented immigrants. . . . In July, a federal judge in California declares the detention of mothers and children illegal and says they should be released as soon as possible.

Deaths in Detention Facilities Raise Alarms

“Why has the government allowed this to happen?”

Jose de Jesus Deniz-Sahagun, a Mexican national who had been apprehended trying to cross the border, died on May 20 after two days in custody at the Eloy Detention Center in Eloy, Ariz. A medical examination determined that Deniz-Sahagun killed himself by stuffing a sock down his throat, making him at least the fifth suicide at the Eloy Center in the last 10 years.¹

Deniz-Sahagun had been on suicide watch at the center, which holds about 1,550 immigrants while they await disposition of their cases. But officers had taken him off constant watch and were instead checking on him every 15 minutes when he killed himself. His autopsy also found a plastic handle in his stomach, indicating a possible earlier suicide attempt.²

Deniz-Sahagun's death sparked renewed concern about the number of deaths that have occurred among immigrants held in detention by U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security that oversees immigration detention. From 2003 to 2013, 141 people died in ICE's custody, according to the agency's records.³ Pro-immigrant activists say the number has now topped 150.⁴

“Why has the government allowed this to happen? Immigrant lives are seen as worthless apparently,” said Francisca Porchas, an activist with Puente Arizona, a grassroots group that advocates for migrants, at a protest held in Phoenix on the three-month anniversary of Deniz-Sahagun's death.⁵

ICE said about the number of deaths: “ICE takes very seriously the health, safety and welfare of those in our care. The agency is committed to ensuring that individuals in our custody receive timely and appropriate medical treatment.”

The issue first came to public attention in 2008-10 through

government documents obtained by *The New York Times* and the American Civil Liberties Union (ACLU) that showed a pattern of medical neglect leading to deaths and that also detailed official attempts to hide the circumstances of those deaths.⁶ “Between 2007 and 2010, there were a series of truly horrifying revelations about medical care in detention,” says Carl Takei, an attorney at the ACLU National Prison Project in New York City.

One of the cases involved Hiu Lui Ng, 34, a Chinese computer engineer who had lived in the United States since he was 17 and who died in detention in 2008 from cancer. He also had a broken spine. Both conditions went undiagnosed until shortly before his death. Ng, who arrived legally on a tourist visa, had a wife and two sons who were U.S. citizens, but he was detained for having missed a court date years earlier to extend his visa after the hearing notice was sent to the wrong address.⁷

Thomas K. Wong, a political science professor at the University of California San Diego, who wrote about Ng's case in a book on U.S. detention policies, says officers at a Rhode Island detention center ignored Ng's repeated pleas for medical assistance and left him lying unconscious in his cell, in pain and having defecated and urinated on himself. Guards also were caught on a security camera ridiculing Ng and insisting he could walk as they dragged him from his cell and loaded him into a van a week before his death.⁸

A year after Ng's death and others, ICE revised its policies with the intention of improving access to medical and mental health care. Since 2009, “significant reforms have been made to the immigration detention system and health care management,” says Sarah Rodriguez, an ICE spokeswoman.

Continued from p. 898

gressive enforcement of immigration and detention laws. As the nation expanded its national security efforts, DHS was given authority over border and immigration enforcement through ICE.

“The foundation was set in 1996, and then 9/11 happens and you have a lot more money being funneled into the system,” says the Detention Watch Network's Shah.

In 2009, Congress required ICE to maintain the capacity to hold 34,000 immigrants in detention on any given night, a stipulation often referred to as “the bed mandate.” The mandate has been widely criticized in the press and by many pro-immigrant activists for establishing a de facto benchmark of how many noncitizens

should be in custody, regardless of whether it's legally warranted.⁵⁸

Some analysts believe the bed mandate also helped to increase ICE's reliance on privately run detention centers.

Rise of Private Facilities

As the number of detainees grew in the last 20 years, the federal government began contracting widely with state and local jails and with private correction companies to house detainees. Today, approximately 250 detention facilities around the country hold immigrants.⁵⁹

Capps, director of U.S. research at the Migration Policy Institute, says that

although detainees are not serving time for crimes, the system is largely built on the penal model. “Almost entirely with the exception of those families in detention, they're run like regular prisons because most of the facilities are state or local prisons, or they were built to be like them,” he says.

ICE has overall responsibility for the system, but “there are only a handful of detention facilities that are actually run by ICE,” says Tom K. Wong, a political science professor at the University of California, San Diego, and the author of *Rights, Deportation and Detention in the Age of Immigration and Control*. “The bulk of immigration detention in the United States is contracted out to publicly traded prison firms.”

But Wong says the U.S. government largely ignored the treatment of detainees until they were brought to light in the press. “Unfortunately, it took something like this to get ICE to write clearer guidelines for the treatment of individuals in detention that facilities have to follow,” he says.

The Eloy Detention Center, which is operated by Corrections Corporation of America (CCA) — a private contractor — has one of the worst records for immigrant deaths among ICE detention facilities. At least 14 detainees have died at Eloy since 2003, including five by suicide.

CCA did not respond to requests for an interview. In response to an inquiry about suicides at the center, ICE said that within 12 hours of being detained, “All detainees receive an initial mental health screening by a qualified health care professional or a health-trained correctional officer, who has been specially trained.”

ICE denied a request by *CQ Researcher* to tour the Eloy facility. The agency said the center has posted suicide-prevention posters in English and Spanish, as well as bilingual posters highlighting the phone number to report any concerns to the Department of Homeland Security Office of Inspector General. ICE also provided a link to the agency’s latest standards related to suicide prevention and intervention, which require all employees to be trained in detecting and dealing with individuals who pose a suicide risk.⁹

But Takei says ICE was slow to roll out the 2009 standards across its more than 250 detention centers, and many facilities are still following 2000 standards. “The challenge for ICE has been actually implementing those policies as opposed to having them exist only on paper,” he says.

— **Reed Karaim**



Demonstrators in Boca Raton, Fla., protest the detention of immigrants by The Geo Group and other private corrections firms.

¹ Megan Julia and Daniel Gonzalez, “Eloy Detention Center: Why so many suicides?” *The Arizona Republic*, July 29, 2015, <http://tinyurl.com/qhmhyohu>.

² *Ibid.*

³ “List of Deaths in ICE Custody, October 2003 — December 2013,” ICE Health Service Corps (formerly the Division of Immigration Health Services), undated, <http://tinyurl.com/4yv3x8b>.

⁴ Elizabeth Stuart, “Amid Faux Coffins, Protesters Demand Justice For Immigrant’s Death In ICE Detention,” *Phoenix New Times*, Aug. 21, 2015, <http://tinyurl.com/prg7kjin>.

⁵ *Ibid.*

⁶ Nina Bernstein, “Officials Hid Truth of Migrant Deaths in Jail,” *The New York Times*, Jan. 9, 2010, <http://tinyurl.com/yz8j6ku>.

⁷ Nina Bernstein, “Detention Center Facing Inquiry Will Get No More Immigrant Detainees,” *The New York Times*, Dec. 5, 2008, <http://tinyurl.com/o5t8gov>.

⁸ Nina Bernstein, “Documents Reveal Earlier Immigrant Deaths,” *The New York Times*, Jan. 9, 2010, <http://tinyurl.com/yeu7f8r>.

⁹ “Significant Self-Harm and Suicide Prevention and Intervention,” ICE National Detention Standards 2011, U.S. Immigration and Customs Enforcement, <http://tinyurl.com/qbdjl4b>.

Private prison companies, such as Corrections Corporation of America and The GEO Group, provide about 62 percent of the immigration detention capacity, according to an analysis by Detention Watch Network and the Center for Constitutional Rights, a New York-based legal-rights group.⁶⁰

Critics say for-profit detention raises troubling questions. “This is where we get into the incentives to detain people,” says Wong, who says the private prison companies depend financially on a steady stream of detained immigrants.

ICE’s contracts with specific facilities can include a guarantee to pay for a minimum number of immigration detention beds. “Because guaranteed min-

imums require payment to private contractors whether beds are filled or not, ICE faces considerable pressure to fill them,” the two groups concluded. “Local lockup quotas that serve to protect the bottom line of private companies thus incentivize the imprisonment of immigrants.”⁶¹

In a written statement, ICE defended the practice, saying the guaranteed minimums “allow the federal government to procure beds at a reduced rate, thereby saving money while giving the contractor the capability to predict the number of detainees held on a regular basis allowing for appropriate scheduling of the proper number of medical and detention personnel.”

Detainees and outside observers

have reported cases of abuse and neglect at both privately and publicly run facilities, with reports of medical maltreatment or neglect perhaps the most frequent.⁶² “I think the government just really underestimated the need for medical services,” says Hoffman, the attorney who serves immigrants at the Dilley detention center run by Corrections Corporation of America (CCA). “We’ve had clients with really serious conditions — infected lesions, breast cancers. We constantly have cases where we have someone say, ‘My child had a fever and we waited five hours to get medical care, and then they just said he needs to drink more water and we couldn’t get any medicine.’ ”

Behind the Headlines, Support for a More Humane Policy

But a sharp partisan divide persists on illegal immigration.

The 2016 presidential campaign got off to a controversial start when Republican candidate Donald Trump vaulted to the top of his party's polls after vowing to build a wall along the 1,954-mile U.S.-Mexico border and deport all 11.3 million undocumented immigrants living in the United States. Trump wasn't alone in taking a stand on illegal immigration: A majority of the GOP field promised to pursue a hard line on undocumented immigration.

But American attitudes overall are more sympathetic to undocumented immigrants than many Republican candidates. A June Gallup Poll found that 65 percent of U.S. adults favor a plan to allow immigrants living illegally in the United States to remain in the country and become citizens if they meet certain requirements over time. Gallup said that view has remained relatively stable for the past decade.¹

Despite the media attention given to the issue, immigration ranks only third among voters' concerns, behind dissatisfaction with government and the economy, according to a September Gallup Poll.² A poll by the Pew Research Center taken in January, before the election cycle heated up, found that immigration ranked 12th among the public's policy priorities, just ahead of the environment.³

Those results could partly reflect the fact that the number of undocumented immigrants living in the United States has remained relatively constant for the past five years, at about 11.3 million, down nearly 1 million from a peak in 2007. The country actually had a net outflow of migration during the 2008 recession as jobs dried up in the United States and undocumented workers returned home.⁴

While much of the public's ire about illegal immigration has focused on Mexico, historically the largest source of undocumented immigrants, net migration from Mexico likely was zero in 2010, with just as many migrants leaving the United States as entering, according to Pew. And since then, more Mexicans have left the United States than have arrived, the research center said.⁵ In fact, more non-Mexicans, including thousands of women and children from Central America seeking asylum, were apprehended along the U.S. border in 2014 than Mexicans.⁶

"The Mexican part of this population is indeed shrinking, and the general pattern is more Central Americans and more Asians," says John Skrentny, director of the Center for Comparative Immigration Studies at the University of California, San Diego.

Some analysts give Mexico credit for helping to reduce the 2014 surge in Central American immigrants. Many of those immigrants were fleeing gang violence in their home countries. "Mexico actually has taken a lot of initiative in dealing with this and stopping unaccompanied children from passing through their country," says Frank Bean, director of the Center for Research on International Migration at the University of California, Irvine.

At least one study has found that Mexico is now apprehending and returning more Central Americans than the United States.⁷ That effort is occurring with U.S. assistance, which increased the funding for a long-standing collaborative security program between the two countries to include more money for stepped-up enforcement along Mexico's southern border.⁸

The changing shape of immigration, however, appears not to have resonated with at least one segment of Americans. Polls reveal a split between Democratic and Republican voters that

Some cases are more serious. In a CCA-run facility in Hutto, Texas, a guard pleaded guilty to two lesser charges after being accused of sexual assault.⁶³ Other investigations have found detention personnel ignored health issues that led to the death of detainees.⁶⁴ (See sidebar, p. 900.)

An ICE spokesperson says the agency has issued detailed and revised guidelines, which are being implemented over time at different facilities, intended to ensure that detainees are treated humanely and that their needs are met.⁶⁵ "ICE is committed to providing all detainees in our care with timely, safe, humane and appropriate treatment, which includes medical and mental health care," says Sarah Rodriguez,

an ICE spokeswoman.

Corrections Corporation did not respond to requests for an interview. GEO Group responded with a written statement: "GEO's facilities provide high-quality services in safe, secure, and humane residential environments, and our company strongly refutes allegations to the contrary. Our facilities adhere to strict contractual requirements and standards set by ICE, and the agency employs several full-time, on-site contract monitors who have a physical presence at each of GEO's facilities."

The private prison company further said, "All of GEO's residential facilities are audited and inspected by [ICE] on a routine and unannounced basis. GEO's facilities are also independently

accredited by the American Correctional Association (ACA) and achieved an average score in excess of 99 percent during the most recent accreditation audits." ■

CURRENT SITUATION

Family-Detention Battle

The Obama administration's treatment of immigrant families held in detention continues to draw high-

helps to explain why Trump's position on undocumented immigration has resonated with many in his party. Over the years Republicans have been more willing than Democrats and independents to support the building of a fence along the U.S.-Mexico border and also more supportive of aggressive deportation.⁹

And the gap between the two parties is widening: A recent poll for the Chicago Council on Global Affairs shows that two-thirds of Republicans, compared with about one-third of Democrats, say "controlling and reducing illegal immigration is a very important goal for U.S. foreign policy" — the biggest partisan divide on immigration in the survey's 20-year history.¹⁰

While Republican attitudes may have hardened, it is uncertain whether that will remain the case. Polls show that Americans under 30 have a more positive attitude about immigrants and are more supportive of letting them stay in the country than Americans overall.¹¹

— **Reed Karaim**

¹ Jeffrey M. Jones, "In U.S., 65% Favor Path to Citizenship for Illegal Immigrants," Gallup, Aug. 12, 2015, <http://tinyurl.com/qh75yhx>.

² Rebecca Riffkin, "Government, Economy, Immigration seen as top U.S. problems," Gallup, Sept. 17, 2015, <http://tinyurl.com/qeu3nsd>.

³ "Public's Policy Priorities Reflect Changing Conditions at Home and Abroad," Pew Research Center, Jan. 15, 2015, <http://tinyurl.com/kuzlpvl>.

⁴ Jeffrey Passel and D'Vera Cohn, "Unauthorized immigrant population stable for half a decade," Pew Research Center, July 22, 2015, <http://tinyurl.com/nuvsnaw>.

⁵ Ana Gonzalez-Barrera and Jens Manuel Krogstad, "What we know about illegal immigration from Mexico," Pew Research Center, July 15, 2015, <http://tinyurl.com/nwbxr6u>.

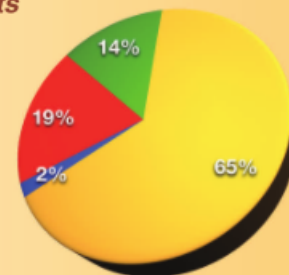
⁶ *Ibid.*

Most Support Path to Citizenship

Nearly two-thirds of American adults say the United States should allow undocumented immigrants to remain in the country and earn their citizenship.

"What policy should the government adopt toward illegal immigrants in your state?"

- **Deport all**
- **Permit to remain in the U.S. in order to work**
- **Permit to remain in the U.S. and become citizens**
- **No opinion**



Source: Jeff Jones and Lydia Saad, "Gallup Poll Social Series: Minority Rights & Relations — Final Topline," Gallup, June 15-July 10, 2015, p. 2, <http://tinyurl.com/nev95sr>

⁷ Rodrigo Domínguez Villegas and Victoria Rietig, "Migrants Deported from the United States and Mexico to the Northern Triangle: A Statistical and Socioeconomic Profile," Migration Policy Institute, September 2015, <http://tinyurl.com/pphwhky>.

⁸ Clare Ribando Seelke and Kristin Finklea, "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond," Congressional Research Service, May 7, 2015, <http://tinyurl.com/qxj7wh4>.

⁹ Sara Kehaulani Goo, "What Americans want to do about illegal immigration," Pew Research Center, Aug. 24, 2015, <http://tinyurl.com/oa4tvuh>.

¹⁰ Craig Kafura and Sarah McElmurry, "Growing Partisan Divides on Immigration," Chicago Council on Global Affairs, Sept. 18, 2015, <http://tinyurl.com/pgjysyf>.

¹¹ "Broad Public Support for Legal Status for Undocumented Immigrants," Pew Research Center, June 4, 2015, <http://tinyurl.com/owjr5zy>.

profile condemnation, even though the Department of Homeland Security said in September it was pressing forward with changes that would allow most women and children to be released while awaiting an asylum ruling.

On Sept. 17 the U.S. Civil Rights Commission, an independent agency, issued a critical report on conditions in family immigrant detention centers and called on the administration to promptly release detained families.⁶⁶

Most detained families arrived from Central American countries where drug gangs and extreme poverty have left children and women particularly vulnerable, the report noted. But the conditions in family detention centers are, in some ways, worse than those

the immigrants are fleeing, the commission said.⁶⁷

According to claims by migrants and advocacy groups, food served at one center was infested with maggots, a detainee with AIDS died after her illness was ignored by staff, transgender immigrants were mistreated and some children were sexually abused, the commission reported.⁶⁸ "No children, with or without an accompanying adult, should be forced to live in these facilities," the commission said in a letter to Obama accompanying the report.⁶⁹

Two of the commission's eight members opposed the report, saying the allegations could not be independently confirmed. Still, the commission backed a July ruling by federal District Judge Dolly

M. Gee in California ordering the release of child detainees. Dee found ICE's detention of children violated an earlier legal settlement the government had agreed to regarding the housing of children.⁷⁰

Although the government has appealed the ruling, DHS Secretary Johnson announced detention policy changes designed to shorten the length of families' stays. "With these reforms, the detention of families is becoming short-term in most cases," Johnson said in a statement released the day after the commission's report. "We are transitioning our family residential center facilities into processing centers where individuals can be interviewed and screened rather than detained for a prolonged period of time."⁷¹

IMMIGRANT DETENTION

Families who proved initially that they face a “credible fear of persecution” in their home countries are now being released “under conditions designed to ensure they will appear in immigration court for their case,” he said.⁷²

counsel provided at these facilities,” Hoffman says, “when that’s only because you have volunteers who spend thousands of dollars to fly down here and rent a car on their own dime to help people.”



Getty Images/David McNew

Secretary of Homeland Security Jeh Johnson in September announced several changes in detention policies for immigrant women and children. Johnson said last year the Obama administration’s detention of Central American families seeking asylum was designed to discourage other would-be asylum seekers.

Early this year, however, federal District Judge James E. Boasberg issued a preliminary injunction barring the administration from detaining immigrants solely as a deterrent to future immigration.

Hoffman, the lawyer who heads a project to provide legal representation at the Dilley center, says he has noticed the pace picking up. “What they’re going to do is try to get everybody out in 20 days,” he says. He says, however, that a quicker pace will put more pressure on the pro-bono lawyers trying to make sure the women understand the legal process of applying for asylum before they are released. Without that assistance, he adds, which the government does not provide, the women can face an intimidating asylum process they don’t understand.

“It’s frustrating how you hear the government says there’s access to

Obama Actions Halted

Last November, Obama announced two executive actions that would have allowed an estimated 4 million undocumented immigrants to remain in the country, significantly reducing the scope of detention and deportation.⁷³

However, Texas and 25 other states sued, calling the president’s actions unconstitutional, and early this year a federal judge in Texas blocked the administration’s plans until the issue is resolved. A federal appeals court heard arguments in July, but the case is expected to reach the Supreme Court.⁷⁴

Obama’s plan would have allowed undocumented immigrant parents of U.S. citizens and legal permanent residents who have lived in the country for at least five years to apply for relief from deportation and gain the right to work legally. The program, known as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), would have affected about 3.7 million undocumented immigrants, according to the Migration Policy Institute.⁷⁵

The president’s second action would have expanded an existing effort, known as Deferred Action for Childhood Arrivals (DACA), to allow more immigrant children who arrived in the United States when young and meet certain educational achievements to stay in the United States. The expansion would have brought an estimated 290,000 more young people into the program.⁷⁶

Critics of DAPA and the DACA expansions accused the president of exceeding his executive authority in an attempt to bypass a congressional deadlock on immigration reform.⁷⁷ Legislative efforts have stalled over the question of whether undocumented immigrants who have been in the country for years should be granted a route to citizenship.⁷⁸

The administration contends that it hasn’t exceeded its authority and that the executive actions were necessary so it could focus detention and deportation on undesirable undocumented immigrants rather than those who have lived and worked in the country without serious incident for years. In announcing DAPA, Obama said the message to law-abiding, longtime immigrants was: “You can come out of the shadows.”⁷⁹

However, the ongoing court battle means that any resolution over the legality of DAPA and the DACA expansion is likely to happen very late in Obama’s term, leaving the administration little time to implement its proposals if they are upheld.

Continued on p. 906

At Issue:

Is U.S. immigrant-detention policy justified?



DAN CADMAN
RESEARCH FELLOW, CENTER FOR
IMMIGRATION STUDIES

WRITTEN FOR *CQ RESEARCHER*, OCTOBER 2015



MIZUE AIZEKI
DEPUTY DIRECTOR,
IMMIGRANT DEFENSE PROJECT

WRITTEN FOR *CQ RESEARCHER*, OCTOBER 2015

few Americans believe in open borders. They disagree about the proper level of legal immigration and how to deal with the existing population of aliens residing illegally in the United States, but most understand the importance of immigration controls as an exercise of sovereignty, public safety and job security.

To function properly, the immigration system must have the tools needed to discourage illegal immigration.

Opponents advocate alternatives to detention such as supervised release for humanitarian and fiscal reasons. This is superficially attractive, but although release is cheaper on a daily basis, nondetained cases take longer to resolve. Backlogs are massive: It can take nearly three years to begin court hearings. So there are no long-term savings. Detention alternatives are also ineffective; in 2014 the Government Accountability Office reported that data are inadequate to determine what happens to those who leave detention.

There are significant reasons to continue detention:

- **Deterrence** — Without detention, there is no border control. Absent credible deterrence, we will face a global tsunami of the hopeful. Half the world's population lives on \$2.50 daily or less. Why would they not come, if left footloose to disappear among the 11.3 million aliens already here illegally?

- **Public Safety** — Hundreds of thousands of aliens are arrested each year near land borders. They come with no identification or sometimes with forged documents. Agents often have only their word for who they are. Delving into identity is laborious when verifying foreign records of birth, nationality and criminal history, and the results are not always certain. Do we really want drug cartel members or potential terrorists walking the streets?

- **System Integrity** — Opponents say because immigration is a civil, rather than criminal, offense, detention is inappropriate. That argument holds no weight. Every legal system must have the means to enforce its rulings. Detention inhibits aliens from fleeing and protects the public. Aliens have repeatedly shown that when released on a promise to appear in court, or for removal if ordered by a judge, they break that promise. Why not? The worst that happens if absconders get caught is they will be deported — but that's what they face if they stick around. Presently, more than 900,000 undetained aliens who absconded from immigration proceedings are roaming our cities. That figure reflects the current official disinclination to use detention. It's a national disgrace no other legal system would tolerate.

is it justifiable to imprison more than 400,000 people each year — including longtime green card holders, children and families, trafficking survivors and asylum seekers — for civil violations of immigration law? To lock them up for months, sometimes years, in violation of basic human rights? To hold them in harsh conditions with inadequate medical care and with only limited ability to challenge their confinement? To rip parents from children, children from parents, however deep their roots in the United States? Simple justice and fairness say “no.”

The U.S. government claims mass detention deters unauthorized immigration; ensures that immigrants show up at deportation hearings; and keeps public-safety threats off the streets. But the overwhelming majority of immigrant detainees pose neither a public-safety threat nor a risk of absconding. And people who are fleeing danger or seeking to reunite with their families in the United States are not easily deterred.

But even if these justifications stood up to scrutiny, we have to weigh them against the heavy moral and human costs of policies that include locking up people in jails — 34,000 in immigrant detention on any given day, per a congressionally mandated “bed quota.” These include the profound emotional, psychological and even physical toll on detainees and family members and the damage done to the rule of law when we tolerate a second-tier system of “justice” where due process rights — including the right to effective counsel and to a fair hearing — are routinely disregarded. These costs are a big part of why international human rights standards recommend nations use immigration detention as only a last resort.

We should not accept the status quo of mass detention and deportation as necessary, acceptable or normal. Since 1996, the number of immigrant detainees has increased five-fold, in an atmosphere of rising xenophobia and “law and order” hysteria.

The same punitive mindset that brought us the hyper-aggressive policing and draconian sentencing laws that put millions of people — especially people of color — behind bars is now increasingly directed toward immigrants. It has driven the increasing criminalization of immigration and the passage and aggressive implementation of harsh immigration laws, including provisions that make detention and deportation a “mandatory minimum” punishment for a growing range of offenses.

Mass incarceration is increasingly seen as a moral and public policy disaster, even by some of its original architects. Mass immigration detention and deportation are equally indefensible. Both must end.

Continued from p. 904

Shift in Priorities

In addition to the blocked DAPA and DACA initiatives, the Obama administration last year announced another change in immigration enforcement strategy that could reduce the number of detentions and deportations.

portations, which reached a record of more than 409,000 in 2012, leading some immigrant advocates to label Obama the “deporter-in-chief.”⁸¹

Secure Communities also faced a growing backlash from local authorities who felt detainers were too often issued for people who had committed relatively minor crimes, such as traffic violations or nonviolent offenses. Nearly

porting individuals with serious or repeated offenses or who have just arrived illegally. ICE spokeswoman Rodriguez says PEP has “the overarching goal of working with state and local jurisdiction to ensure dangerous criminals are transferred to ICE custody, in the interest of public safety and national security.”

Deportations are expected to fall this year to slightly fewer than 230,000 — a significant drop from last year’s total of 425,000.⁸⁴ Still, the administration’s stated ambition of limiting detention and deportation has left both immigrant advocates and supporters of greater restrictions on immigration dissatisfied.

“The program is a disappointing rebranding of Secure Communities using somewhat narrower enforcement priorities,” says Chris Rickerd, an ACLU expert on immigration enforcement. “Unconstitutional detention requests continue, as does the harmful entanglement between immigration enforcement and policing, which undermines local communities’ efforts to promote immigrants’ trust in police.”

Conversely, Vaughan, the Center for Immigration Studies policy studies director, describes PEP as “an unnecessary and overzealous dismantling of immigration enforcement.”

Conservative critics also dispute the notion that Obama has been the “deporter-in-chief,” saying President George W. Bush actually sent more undocumented immigrants home. During the Bush administration, many undocumented immigrants were simply “returned” at the border, which meant nobody took their fingerprints or entered their entry attempt in their immigration records before they were put on buses and driven back to Mexico. Obama’s critics say when these returns are added to more formal deportation proceedings, Bush was more aggressive in removing undocumented immigrants.⁸⁵

However, other analysts note that the informal nature of returns — immigrants could be counted several times



Getty Images/Los Angeles Times/Mark Boster

Lupillo Rivera and other immigrant-rights activists confront local citizens in Murrieta, Calif., who support the apprehension and deportation of undocumented immigrants. Two-thirds of American adults say the United States should allow undocumented immigrants to remain in the country and earn citizenship, according to public opinion polls.

The administration ended the controversial “Secure Communities” program, in which individuals booked into a local jail had their fingerprints sent to ICE, which ran the prints through federal databases to determine whether the person was in violation of immigration laws. If so, the U.S. government could issue a “detainer,” which meant states and communities were to notify ICE before releasing the person so he or she could be transferred to federal detention.⁸⁰

Secure Communities began under President George W. Bush but was expanded by the Obama administration. The program contributed to a significant increase in detentions, along with de-

300 cities and counties, along with the states of California, Colorado and Connecticut, stopped or limited their participation in the program.⁸²

“Its very name has become a symbol for general hostility toward the enforcement of our immigration laws,” Homeland Security Secretary Johnson acknowledged in announcing the decision to end the program.⁸³

Replacing Secure Communities is the Priority Enforcement Program (PEP), which ICE began implementing in early 2015. Although PEP still depends on local authorities passing on information, it is intended to narrow the immigration dragnet to focus on detaining and de-

if they were repeatedly caught crossing the border — makes it hard to determine how many people were actually escorted out of the United States. They add that Obama's greater use of formal deportation proceedings has more serious consequences because such undocumented border crossers are identified and recorded in government databases.⁸⁶

OUTLOOK

Stalled and Deadlocked

The future of immigration detention is inextricably tied to the country's overall policies and attitudes toward immigrants, both undocumented and those who have arrived legally. Most major polls consistently show at least a slight majority of Americans favor immigration reforms that would provide a pathway to citizenship for some undocumented immigrants. But repeated attempts to pass reform legislation have stalled in Congress.

Capps, the Migration Policy Institute research director, doesn't expect that to change anytime soon. "U.S. policy is completely deadlocked, and it has been now for a really long time," he says. "There's been no major move on legalization for 30 years, and the way politics are set up right now, it might be another 10 or 20 years before anything happens."

During this period, policy changes will be confined to executive actions or court rulings, which will limit their impact, he says, "because there's no big change through [legislative action] coming now."

The ACLU's Lin is more optimistic. "I look at the overall arc of history, and I think the proponents of legalization — a path to citizenship — are going to win . . . because the majority of the American people are with them on that

and the [demographic] composition of America is changing," she says.

The growing ranks of immigrants are making their presence felt in the political process, she explains. Lin also sees a change across generations. "The younger generation is just not so concerned about this issue," she says, "so I am hopeful."

As attitudes toward immigration evolve, Shah, co-director of the Detention Watch Network, believes the use of detention will shrink. "I'm hopeful, largely because I've been working on detention for 14 years now and what I've seen of the growth of the [anti-detention] moment has been phenomenal," she says. "I hope five years down the road we have less detention beds, and given that people are actually starting to see that this idea of mass incarceration isn't working, I think there's a good chance we'll get there."

But advocates of greater restrictions on immigration see the possibility of a darker future ahead. FAIR's Stein believes the pressure on the United States and other Western nations from migrants trying to escape poorer or violent parts of the world is destined to increase dramatically in coming years. He points to the current situation in Europe, which is dealing with a flood of refugees from the Middle East as an example of what's ahead.

"The migration pressures globally are like nothing the Western democracies have ever seen, frankly, in world history," he says. "This is the beginning of a historic phase, and the U.S. has a choice. We can choose anarchy and accommodation, or we can choose sovereignty, self-determination and the rule of law."

Capps, however, says the situations facing Europe and the United States are different. "The migration situation in Europe is catastrophic right now. It reflects the situations in the Middle East and Africa, which are just as catastrophic, the worst situation since World War II probably," he says. "That is not

true in our hemisphere. We are in a very different position here."

Capps says the growth of the Mexican economy and a slowing of that nation's birthrate are combining to make the United States less attractive to immigrants from Mexico, historically the biggest source of undocumented border crossers. Mexico also has been taking steps to halt the flow of Central American migrants north, he notes. "There's not a gigantic pool of migrants on our doorstep like there is in Europe," he says.

But Vaughan, of the Center for Immigration Studies, which favors lower immigration, says the recent surge in asylum seekers from Central America indicates that when people from troubled regions believe they have a chance to be allowed into the United States, "the worldwide demand to take advantage of that is almost insatiable."

The United States is eventually going to have to adopt stricter immigration controls if it hopes to cope with the consequences of that pressure, she says. Current policy, Vaughan continues, is "really not fiscally sustainable or sustainable from a security sense."

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About the Author



Reed Karaim, a freelance writer in Tucson, Ariz., has written for *The Washington Post*, *U.S. News & World Report*, *Smithsonian*, *American Scholar*, *USA Weekend* and other publications. He is the author of the novel *If Men Were Angels*, which was selected for the Barnes & Noble Discover Great New Writers series. He is also the winner of the Robin Goldstein Award for Outstanding Regional Reporting and other journalism honors. Karaim is a graduate of North Dakota State University in Fargo.

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ICE will partner with a private prison company to provide formerly detained families with caseworkers to ensure they show up to immigration court hearings.

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Private prison companies spent more than \$32 million on lobbying and campaign contributions from 2000 to 2012, expenses that some activists say helped those companies to secure federal contracts to manage immigrant detention centers.

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