



**Written Statement of Asian Americans Advancing Justice | AAJC and Asian
Americans Advancing Justice | Los Angeles**

House Committee on the Judiciary

Hearing on: “Oversight of U.S. Immigration and Customs Enforcement”

April 14, 2015

Founded in 1991, Advancing Justice | AAJC is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Founded in 1983, Asian Americans Advancing Justice | Los Angeles is the nation’s largest Asian American legal and civil rights organization and serves more than 15,000 individuals and organizations every year. We are leading experts on civil rights issues of importance to the Asian American and Pacific Islander (AAPI) community including: immigration and immigrants’ rights, affirmative action, anti-Asian violence prevention/race relations, census, language access, television diversity and voting rights. We appreciate this opportunity to submit a statement for the April 14, 2015 House Committee on the Judiciary Committee hearing concerning immigration enforcement.

A Decade of Enforcement

In the past decade, the United States has deported more people than in the preceding century.¹ Expenditures on immigration enforcement have also swelled, eclipsing the budgets of all other federal law enforcement agencies combined.² In fact, during the 2012 fiscal year, the federal government spent more on immigration enforcement — \$18 billion — than on every other federal law enforcement agencies combined.³ Since President Obama took office, two-thirds of the two million deportation cases involve

¹ *A Decade of Rising Immigration Enforcement*, IMMIGRATION POLICY CENTER – AMERICAN IMMIGRATION COUNCIL at n.2 (Jan. 2013),

<http://www.immigrationpolicy.org/sites/default/files/docs/enforcementstatsfactsheet.pdf>.

² *Immigration Enforcement in the United States*, MIGRATION POLICY INSTITUTE at 12 (Jan. 2013), <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>.

³ Doris Meissner, et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute (Jan. 2013), www.migrationpolicy.org/pubs/enforcementpillars.pdf.

people who committed relatively minor, non-violent crimes or have no criminal histories at all.⁴

The unprecedented rise in deportations has come with a parallel rise in the size of our immigration detention system. The Illegal Immigration Reform and Responsibility Act (IIRIRA) of 1996 subjects many people to mandatory detention and strips immigration judges of authority to release immigrants from detention or place them in alternatives to detention, even if they are determined not to be a danger to the community or a flight risk. In FY 2012, the United States Department of Homeland Security (DHS) detained a record 477,523 adult noncitizens.⁵ *More than half* of those in immigration detention have never been convicted of a crime.⁶ The immigration detention system is a massive waste of taxpayer dollars, costing \$164 per day to house a detainee, or \$2 billion per year.⁷ Sixty two percent of all ICE immigration detention beds in the United States are now operated by for-profit prison corporations, up from 49 percent in 2009.⁸

It is also our view that the current system of immigration detention leads to:

- Greater numbers of people detained in cases where detention is not necessary, for example, asylum seekers who have proven credible fear of persecution, LGBT individuals, mothers and children, and cases where individuals otherwise pose no public safety threat;
- Widespread failure by DHS to release individuals from detention even after it becomes apparent that removal will not be possible within a reasonable period;
- Widespread due process violations as individuals in detention have little access to counsel and are forced to accept voluntary departure; and
- Prolonged detention in too many cases beyond anything that could be considered reasonable or proportionate.

⁴ *Misplaced Priorities: Most Immigrants Deported by ICE in 2013 Were a Threat to No One*, IMMIGRATION POLICY CENTER – AMERICAN IMMIGRATION COUNCIL (Mar. 2014), <http://www.immigrationpolicy.org/just-facts/misplaced-priorities-most-immigrants-deported-ice-2013-were-threat-no-one>.

⁵ Department of Homeland Security, *Immigration Enforcement Actions: 2012*, available at <http://www.dhs.gov/publication/immigration-enforcement-actions-2012>.

⁶ Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?*, MIGRATION POLICY INSTITUTE (Sept. 2009), <http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf> (reporting that 58% of the detainees held on January 25, 2009 did not have criminal convictions).

⁷ *The Math of Immigrant Detention*, NATIONAL IMMIGRATION FORUM (Aug. 2013), <http://immigrationforum.org/blog/themathofimmigrationdetention/>.

⁸ Bethany Carson and Eleana Diaz, *Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota*, GRASSROOTS LEADERSHIP (Apr. 2015), http://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf.

Under the Obama Administration, a surge of violence in Central America has brought a wave of migrants from Honduras, El Salvador and Guatemala to the United States. Many of these individuals are fleeing unspeakable horrors, and seeking asylum in the United States.⁹ ICE has sought to deter these new arrivals by keeping the new arrivals in “ice boxes” along the border, and opening family detention centers to detain mothers and children in remote locations, contrary to the *Flores* settlement.¹⁰ While DHS blames the immigration court backlogs for the prolonged detention of these refugee families, the Administration can use alternatives to detention for these recent arrivals, such as releasing them on parole after they have passed credible fear interviews. Ultimately, DHS should use detention sparingly, in the worst case scenarios, and for the shortest time necessary.

The growth of our detention and deportation system has also been fueled by programs such as Secure Communities. Launched in 2008, Secure Communities engaged state and local law enforcement in immigration enforcement by allowing them to send fingerprints of persons arrested to DHS to check their immigration status. Although the program’s purpose was to identify and deport individuals with serious or violent felony convictions, about 7 out of 10 individuals deported either did not have criminal convictions or were convicted of lesser offenses.¹¹

While the Obama Administration has now replaced Secure Communities with the Priority Enforcement Program (PEP), ICE has piloted new enforcement programs such as the Criminal Alien Removal Initiative (CARI), whereby ICE officials carry out indiscriminate raids in immigrant communities to round up undocumented immigrants and deport them.¹² Among these new measures, the most visible initiative involves the fortification of the U.S. Mexico border, where Congressional mandates have repeatedly increased the number of border agents and led to the construction of 650 miles of additional fencing.¹³ Under the Obama Administration, the United States has invested significantly in immigration enforcement that extends far into the southern parts of Mexico, to stem the tide of migrant children escaping poverty and persecution in Central

⁹ Wil S. Hylton, *The Shame of America’s Family Detention Camps*, N.Y. TIMES (Feb. 4, 2015), <http://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html>.

¹⁰ *Id.*

¹¹ Jacquie Marroquin, *Secure Communities: The Real Cost of Failed Immigration Policy*, VOTO LATINO (Feb. 2012), <http://www.votolatino.org/blogs/secure-communities-real-cost-failed-immigration-policy>.

¹² *The Criminal Alien Removal Initiative in New Orleans*, NEW ORLEANS CENTER FOR RACIAL JUSTICE (Dec. 2013), <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cari-report-final.pdf>.

¹³ Marc R. Rosenblum, CONG. RESEARCH SERV., BORDER SECURITY: IMMIGRATION ENFORCEMENT BETWEEN PORTS OF ENTRY 14–15 (2013).

America who are making their way to the United States.¹⁴ These children now face increasing apprehension and excessive stints in detention in Mexico, contrary to international law, which requires that countries receiving migrants meaningfully inform them of their right to seek asylum and provide access to procedures to determine whether they merit asylum or other forms of international protection.¹⁵

Immigration Enforcement Separating Families

Over 204,000 people deported between 2010 and 2012 left behind U.S. citizen children.¹⁶ In the decade following IIRIRA, 217,068 people lost an immediate permanent resident family member to deportation.¹⁷ Over 5,000 children have been placed in foster care too often without the consultation or permission of their deported parents.¹⁸ Estimates are that an additional 15,000 children will enter the foster care system in the next five years because of deportations, at a cost of \$26,000 per child per year.¹⁹ Studies have shown high rates of depression and post-traumatic stress disorder among children who lost a parent to deportation.²⁰

These immigration enforcement actions foster a climate of fear, and uncertainty in our communities, and break up families. Over half of the individuals deported to Western Samoa and Tonga report separation from their partners and children.²¹ A staggering 89

¹⁴ Georgetown Human Rights Institute, *The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children's Access to International Protection*, Apr. 13, 2015, <https://www.law.georgetown.edu/news/press-releases/the-cost-of-stemming-the-tide.cfm>.

¹⁵ *Id.*

¹⁶ Seth Wessler, *Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years*, COLORLINES: NEWS FOR ACTION (Dec. 17, 2012), http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html.

¹⁷ *In the Child's Best Interest?: The Consequences of Losing a Lawful Immigrant Parent to Deportation*, INTERNATIONAL HUMAN RIGHTS LAW CLINIC, EARL WARREN INSTITUTE ON RACE, ETHNICITY AND DIVERSITY, AND IMMIGRATION LAW CLINIC (March 2010), http://www.law.berkeley.edu/files/Human_Rights_report.pdf.

¹⁸ *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, APPLIED RESEARCH CENTER: RACIAL JUSTICE THROUGH MEDIA, RESEARCH AND ACTIVISM (Nov. 2011), <http://arc.org/shatteredfamilies>.

¹⁹ *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities*, CENTER FOR AMERICAN PROGRESS (Aug. 20, 2012), <http://www.americanprogress.org/issues/immigration/report/2012/08/20/27082/how-todays-immigration-enforcement-policies-impact-children-families-and-communities/>.

²⁰ Urban Institute, *Paying the Price: Impact of Immigration Raids on America's Children*, THE NATIONAL COUNCIL OF LA RAZA (2007), http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf.

²¹ Natalia Pereira, *Pacific Island Nations, Criminal Deportees, and Reintegration Challenges*, MIGRATION POLICY INSTITUTE (Nov. 7 2014), <http://www.migrationpolicy.org/article/pacific-island-nations-criminal-deportees-and-reintegration-challenges>. These figures include deportations from New Zealand, Australia and the United States.

percent of Marshall Islanders who have been deported back to the Marshall Islands report that they are separated from their children.²² While Asian Americans and Pacific Islanders represent less than six percent of the total U.S. population, in fiscal year 2010, 23,402 of 247,301 cases (9.5 percent) of cases in removal proceedings were from Asian or Pacific Islander countries.²³ This means that almost 1 out of every 10 individuals in removal proceedings in 2011 was Asian American or Pacific Islander.

Recent large-scale ICE national operations allegedly targeted and apprehended “criminal aliens.” However, these operations have led to the detention and deportation of many community members and family members of U.S. citizens. In fiscal year 2014, ICE removed 315,943 individuals from the United States. Of these, 46 percent of individuals had no prior convictions.²⁴ Many of them had strong ties to the United States. During the recent Operation Cross Check, ICE arrested and detained over 2000 individuals with criminal convictions, and dubbed them as the “worst of the worst.”²⁵

However, 47 percent of people had only misdemeanor conviction, committed many years ago, after which they had completely rehabilitated.²⁶ For example, one of the individuals dubbed as the “worst of the worst” included Rick, a married 42-year old Middle Eastern man, who was convicted of drug possession over 15 years ago, spent 18 months in immigration detention, and checked in for years with ICE supervision and a drug court program.²⁷ Rick received a culinary school degree and had worked in the food industry for 15 years, and posed no public safety threat.²⁸ While individuals such as Rick may not qualify for deferred action under any of the programs recently announced by President Obama, the spirit of prosecutorial discretion does require ICE to assess whether the removal of these individuals is in the public and national interest.

Deportations of Asian Americans and Pacific Islanders

A staggering 78 percent of adult Asian Americans are foreign-born —more than any

²² *Id.*

²³ Transactional Records Access Clearinghouse, *U.S. Deportation Proceedings In Immigration Courts*, TRAC: Immigration, available at http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php.

²⁴ Immigration and Customs Enforcement, ICE Enforcement and Removal Operations Report FY 2014, Dec. 2014, <http://www.ice.gov/doclib/about/offices/ero/pdf/2014-ice-immigration-removals.pdf>.

²⁵ Mark Noferi, *ICE Sweeps Up Minor Offenders with Families, Using Heavy-Handed Approach*, Immigration Impact, Mar. 13, 2015, <http://immigrationimpact.com/2015/03/13/ice-sweeps-up-minor-offenders-with-families-using-heavy-handed-approach>.

²⁶ *Id.*

²⁷ Esther Yu-Hsi Lee, *Nationwide Deportation Raid Nabs Immigrants With Roots In The U.S.*, ThinkProgress (Mar. 12, 2015), <http://thinkprogress.org/immigration/2015/03/12/3631771/ice-raid-2000-immigrants/>.

²⁸ *Id.*

other racial or ethnic group in the United States.²⁹ Asian American communities are disproportionately impacted by IIRIRA. One and a half million refugees from Cambodia, Vietnam, and Laos came to the United States as refugees during the 1980s. Their children were very young when they arrived and grew up as Americans. Refugees face a number of hurdles in the United States, including being resettled in neighborhoods with high crime and unemployment rates, language barriers, and mental health needs stemming from the war-related trauma.

Adjustment was particularly difficult for Cambodian refugees who fled a genocide in which one third of the country was killed. Ninety-nine percent of Cambodian refugees faced starvation, 90 percent lost a close relative in the genocide, and 70 percent continue to suffer from depression.³⁰ Faced with these difficulties, many of the younger refugees who had grown up in the United States turned to gangs as surrogate families.

Asian Americans are increasingly becoming targets of immigration enforcement efforts. Today, Southeast Asians and Pacific Islanders are deported on the basis of old criminal convictions at a rate three times higher than other immigrants.³¹ Many are deported to countries in which they have never set foot. As of FY 2015, nationals from China, India, Bangladesh and Nepal are among the top ten nationalities for whom removal orders are sought in immigration court.³² Only a very small proportion of these filings seek to remove noncitizens on the basis of any alleged criminal activity.³³ Under IIRIRA, immigration judges are not allowed to consider their rehabilitation, hardship to their children or other family members, or lack of ties to their home countries. Upon deportation, deportees face high levels of homelessness, depression, and suicide due to difficulties in acclimating to a foreign country and separation from family.

²⁹ U.S. Census Bureau, 2013 American Community Survey 1-Year Estimates, Table B05003D Sex by Age by Nativity and Citizenship Status (Asian Alone), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_B05003D&prodType=table (author calculations).

³⁰ Grant N. Marshall et al., *Mental Health of Cambodian Refugees 2 Decades After Resettlement in the United States*, 294(5) JAMA 571 (2005); J. Kroll et al., *Depression and posttraumatic stress disorder in Southeast Asian refugees*, 146(12) AM J. PSYCHIATRY 1592 (1989).

³¹ Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics*, U.S. DEPARTMENT OF HOMELAND SECURITY (2010).

³² Transactional Records Access Clearinghouse, *New Filings Seeking Removal Orders in Immigration Courts through January 2015*, TRAC: Immigration, available at http://trac.syr.edu/phptools/immigration/charges/apprep_newfilings.php.

³³ Transactional Records Access Clearinghouse, *Nature of Charge in New Filings Seeking Removal Orders through January 2015*, TRAC: Immigration, available at http://trac.syr.edu/phptools/immigration/charges/apprep_newfiling_charge.php.

Immigrants who have rehabilitated and become contributing members of society should be given an opportunity to remain with their families. Take for example, Bertina Carter, a 41-year-old resident of California and lawful permanent resident who came to the U.S. from Western Samoa when she was just 9-years-old. For sixteen years, she was the victim of severe abuse by her first husband that included, by his own admission to police, incidents in which he choked her, punched her in the face with a closed fist, and stomped on her face so severely that he broke her nose. During one such attack in 2010, Bertina slashed at his arms with a knife in self-defense as he dragged her through the house by her hair. When the police came, she was arrested and pled guilty to inflicting corporal injury on her spouse. She was sentenced to 364 days in jail and later had her record expunged and case dismissed after successfully completing 3 years of probation. When ICE arrested her on March 1, 2015, as part of Operation Cross Check, Bertina had spent nearly 5 years turning her life around. She was enrolled full-time in community college and was preparing to transfer to a university. She was also fighting for custody of her son, a 13-year-old U.S. citizen. Bertina was ultimately released on \$3,000 bond after spending one month in detention awaiting her first hearing. She is eligible for several forms of relief and an individual such as Bertina should not be the focus of immigration enforcement.

Restore A Fair Day in Court

IIRIRA stripped judges in many cases from considering hardship to family members and rehabilitation. Judges are required to order deportations without the ability to consider any equities. As a result of the Antiterrorism and Effective Death Penalty Act and IIRIRA, long term permanent residents are deported daily for misdemeanor convictions or decades old convictions without receiving a fair day in court.

Consider the case of Adam Crasper, a 39-year-old former barbershop owner and auto-insurance claims estimator, who was picked up by ICE in February 2015.³⁴ By his own admission, Adam Crasper has had a rather difficult journey. In 1979, Adam arrived in the United States with his older sister as a young adoptee from South Korea.³⁵ Through most of his childhood, Adam was forced to endure unspeakable physical and emotional abuse by his adoptee parents, who never bothered to file for his citizenship.³⁶ As a direct result of his abusive environment, Adam grew up a troubled teenager, and ran afoul of the law a few times.³⁷ However, despite great barriers, Adam worked hard to create a

³⁴ Maggie Jones, *Adam Crasper's Bizarre Deportation Odyssey*, N.Y. TIMES (Apr. 1, 2015), http://www.nytimes.com/2015/04/01/magazine/adam-craspers-bizarre-deportation-odyssey.html?_r=0.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* As a teenager, Adam served 25 months in prison for retrieving his Bible, rubber shoes, and stuffed toy. His abusive adoptive parents were sentenced to only 90 days, in comparison.



semblance of a normal life, and he is now a married stay-at home father of three U.S. citizen children.³⁸ Due to his old convictions and lack of U.S. citizenship, Adam now faces deportation to South Korea, a country he does not remember.

Despite his incredibly sympathetic story, ICE continues to pursue his removal, and Crasper's immigration judge does not have the authority to grant him any form of permanent immigration relief. Immigration Judges must be given the power to grant a second chance to immigrants after considering their criminal convictions as well as their rehabilitation, family ties, and length of time in the United States. In a country that values second chances, immigrants should not be judged based solely on their worst acts.

These numbers and stories reflect that far from a lack of immigration enforcement, the United States has seen unprecedented levels of immigration enforcement in the past decade, which has facilitated the expulsion of many law-abiding and hard-working non-citizens. We need immigration legislation now that will enable undocumented immigrants to obtain citizenship, reunite families quickly, and protect the civil and human rights of all immigrants. We reject enforcement-focused policies that terrorize border communities, encourage profiling by state and local authorities, and incentivize detention and deportation without due process. Advancing Justice | AAJC and Advancing Justice | Los Angeles pledge to work with all members of Congress who want to make positive changes to our immigration laws.

³⁸ *Id.*