

Introduction

Deportation Champion

President Barack Obama was dubbed “deporter-in-chief” by immigrant rights advocates for good reason.¹ During his eight years in office, his administration formally removed more than three million noncitizens, compared to two million during George W. Bush’s tenure and about 900,000 under the Clinton administration.² On the other hand, the Clinton and Bush administrations apprehended and returned millions more without formal proceedings at the US–Mexico border than during the Obama administration. But the reason is likely because far fewer Mexican migrants were attempting to enter without inspection during Obama’s eight years in office.³ So the Obama administration focused more on formal removals instead of border returns, with formal removals under Obama far outpacing those of the Bush and Clinton administrations even as returns were far lower. At the time he left office, Obama was definitely the reigning Deportation Champion.

Enter Donald Trump. Given the immigration enforcement exploits of President Trump and his administration, Obama’s clutch on the title of “deporter-in-chief” is in serious jeopardy. In spite of early court actions constraining Trump’s travel ban and Congress’s hesitance to fund the construction of a border wall or a deportation army, Trump’s enforcement henchmen have initiated a frightening deportation campaign with resources that were already in place. Interior enforcement is up, and his threat to local law enforcement officials to take away federal funds if they refuse to cooperate is working. Between his tweeting and the unleashing of mean-spirited Immigration and Customs Enforcement (ICE) agents, noncitizens in the country

¹ Amanda Sakuma, *Obama Leaves Behind a Mixed Legacy on Immigration*, NBC News, April 17, 2015.

² Muzaffar Chishti, Sarah Pierce, and Jessica Bolter, *The Obama Record on Deportations: Deporter in Chief or Not?*, Migration Policy, January 26, 2017.

³ That trend, which began under the Bush administration, is due to improved economic conditions in Mexico, reduced post recession job demand in the United States, ramped-up enforcement, and the increased use of different enforcement tactics at the border. Ibid.

are scared. Trump is easily on his way to yanking the deportation champ moniker away from Obama.

Time and again, the enforcement of US immigration laws over the past four decades should make us wonder about the cost we are willing to pay to enforce the nation's immigration laws. We should wonder not simply in terms of the billions of dollars spent on enforcement, but also in terms of the cost to our basic humanity. In the name of border integrity and an enforcement regime based on ill-informed claims of economic competition, hundreds of migrants die each year attempting to cross our southern border due to the expanded militarization of the border that began with Operation Gatekeeper. Hardworking immigrants were victimized by Bush-era ICE raids, and thousands more lost their jobs each year because of the Obama administration's silent raids on employers. The Obama administration also took a page from the Bush era, instituting raids at workplaces frequented by Latinos in New Orleans and other parts of the country. The result was family separation – usually involving US citizen children. The destruction of families also resulted from the expansion of the so-called “Secure Communities” program under the Obama administration's watch. The deportation of refugees and longtime lawful permanent residents convicted of aggravated felonies has become the unquestioned, politically accepted routine – in spite of an acknowledgment in criminal justice communities that engaging in rehabilitation efforts would be wiser. Obama's Department of Homeland Security (DHS) also made credible fear standards for refugees fleeing to our borders more rigorous, then more inhumanely called for expeditious removal of the thousands of unaccompanied children (UACs) arriving at our border who are fleeing violence.

To achieve its formal removal numbers, the Obama enforcement priorities and policies represented a significant departure from those of the Bush and Clinton administrations. The Obama-era policies focused on two key groups: The deportation of criminals and recent unauthorized border crossers. So, for example, in 2016, Obama's last year in office, 85 percent of all removals were of noncitizens who had recently crossed the US border unlawfully, were apprehended, and then were formally ordered removed. Of the remainder, who were removed from the US interior, more than 90 percent had been convicted of what the DHS regarded as serious crimes.⁴

A central focus of this book is on an important segment of Obama's removal priority at the border that helped him earn the deporter-in-chief title – the apprehension, detention, and removal prioritization of women and children fleeing violence in Central America. In my view, those efforts were reprehensible and cast a dark shadow on Obama's legacy, even though he took some remarkably courageous steps on behalf of immigrants as well. On the positive side, most notably, he responded to Congress's failure to pass comprehensive immigration reform by taking executive

⁴ Ibid.

action on behalf of DREAMers – young, undocumented immigrants who grew up here – through the Deferred Action for Childhood Arrivals (DACA) program. Those who qualified were granted permission to stay and work without the threat of deportation. Some 800,000 DREAMers benefited from the DACA program. However, on the negative side, Obama’s policy on women and children fleeing Central America has visited great and unnecessary hardship and trauma on migrants victimized by violence.

As background, I also review other aspects of Obama’s enforcement efforts and major tools used by earlier presidents, including Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush. Those presidents established the immigration enforcement policies that my clients have faced since I started practicing immigration law and deportation defense in the 1970s. That backdrop is important for contextualizing ICE enforcement under Obama as well as under Trump. Although the main focus of this project is on President Obama’s soiled legacy, the back end of the book hones in on the new Trump ICE age. As you will see, however, Obama and Trump were provided templates for deportation by other presidents of recent vintage. Carter ordered all Iranian students to report to immigration authorities and turned away Haitian boat people as “economic” migrants rather than admit them as political refugees. Reagan rejected asylum claims by El Salvadorans and Guatemalans fleeing the devastations of civil war, as well as providing even less due process for Haitians seeking asylum. He also criminally prosecuted and jailed sanctuary workers trying to help Central Americans. Bush became infamous for inspiring anti-Muslim, anti-Arab hate that evolved into his own Muslim bans, while his ICE engaged in some of the most harrowing gun-wielding raids ever experienced in the history of immigration enforcement. And Clinton left us with the legacy of Operation Gatekeeper – a death trap along the southern border that results in an average of one avoidable death each day because it funnels migrants to the deadliest border crossing trails.

I.1. MARIA AND MAYNOR

“Why are we here?” the young boy asked me. “Because you and your mother need to talk with the judge about staying in the United States,” I responded. I did not tell him what else I was thinking: that we were there because the Obama administration was determined to quickly deport migrants like Maynor and his mother Maria back to one of the most violent regions in the world. That the Obama administration was trying to make an example of Maynor and Maria and send a message to tens of thousands of Central American migrants, in spite of the fact that they had never broken the law and were on solid footing seeking asylum. They were two of dozens of clients that my law school immigration clinic was assisting within months of opening our doors.

After more than an hour, the precocious nine-year-old looked at me and asked me once more, “Why do we have to wait so long?” I told him again, “You and your

mother are near the end of the long list of people that have been ordered to speak with the judge this morning. It won't be much longer." About fifteen minutes later, federal Immigration Judge Dana Marks called out, "Maria Garrido and Maynor Garrido, cases A- 094 500 and 501." Five minutes later after a brief discussion, Judge Marks set their final removal and asylum hearing for November 5, 2015, 10 am. This time Maria asked, "Will she grant us asylum?" I responded, "Time will tell. She is a fair judge."

Maria and Maynor were part of the "rocket docket" process that was set up for the surge in Unaccompanied Alien Children (UACs) and family units (mostly mothers and children) who had fled the Northern Triangle of Central America (Honduras, Guatemala, and El Salvador). The influx caught the nation's attention in the summer of 2014. The law school clinic was simply one of many pro bono attorneys and legal services programs in the San Francisco Bay Area that had stepped up to assist the migrants subjected to the rocket dockets. The migrants who made it to the San Francisco Bay Area were relatively lucky; others who were still in detention centers or who were sent to areas of the country with few legal services programs often were left to fend for themselves in the Byzantine world of immigration law and procedure.

The number of migrants fleeing Central America in 2014 was impressive. Over 60,000 UACs arrived that year, while a similar number of women with children traveling as "family units" crossed into the United States as well. The numbers dipped somewhat in 2015, only to swell once again in 2016 and 2017.

As the influx of 2014 hit the news headlines across the country, immigrants and immigrant rights advocates realized that we were in trouble when a Ku Klux Klan "knight" called for shooting UACs arriving at the border, and the Obama administration expedited removal proceedings of UACs and other families arriving at the border. As the Loyal White Knights of the Klan advocated a "shoot-to-kill" border policy, another North Carolina Klan leader made clear why he thought the policy should apply to UACs: "If we pop a couple of 'em off and leave the corpses laying on the border, maybe they'll see we're serious about stopping immigrants."⁵ Seemingly in tandem, although the White House initially labeled the influx of UACs a "humanitarian crisis," the DHS and Department of Justice responded by sending a "surge" of immigration judges and government attorneys to the border to start deportation hearings immediately. Immigration courts around the country were ordered to prioritize UAC-related cases for those children or family units who were no longer in custody. That's how Maria and Maynor landed on the San Francisco rocket docket and came to be represented by the law school's immigration clinic.

In addition to expediting deportation proceedings against both groups, the Obama administration decided to rely on a policy of detention in large part to send a message to Central Americans that they were not welcome. Ignoring the fact that

⁵ Leslie Savan, *The KKK Wants a 'Shoot to Kill' Policy to Include Migrant Children*, *The Nation*, July 30, 2014.

the migrants were fleeing violence that could give rise to valid asylum claims, family detention facilities in Karnes, TX were expanded, while a makeshift prison-like operation was opened in Artesia, NM. Both were located far away from immigration attorneys who might be willing to help the migrants assert their rights.

More than a year later, in October 2015, after the Artesia facility was forced to close due to challenges to its poor human rights conditions and a replacement facility was opened in Dilley, TX, several of my law students traveled to Texas to help the detainees. They returned after a week, sickened by the conditions – physically and emotionally – in disbelief that this was happening in the United States. One student, Kaitlin Tally debriefed:

The detainees are fleeing truly unimaginable threats of violence in their home countries. Gang-rapes of young women who refuse to become involved in a gang, brutal violence from domestic partners or husbands that refuse to let them file for divorce or leave the relationship, threats from gang members to kill women, kidnap their children, or kill the families of those who do not comply with the gang's recruitment or other demands are just a few of the fears often expressed...

[M]any suffer further violence en route to the United States. Upon arriving to the United States, they were not welcomed with the promise of freedom and basic right to life, but were immediately vilified, interrogated, placed into cold jail cells notoriously known as *hieleras* ("freezers"), and then incarcerated into family "residential" centers only to suffer again from sexual abuse, lack of basic healthcare, and no mental healthcare in spite of their PTSD...

[M]others reported that their children started crying through the entire night, a 12-year-old would start wetting the bed again, or that their children simply refused to eat. They report waiting hours in the detention center's medical clinic for medical treatment for their child's fever, headache, stomach ache or other complaints, only being told to put ice cubes under their armpits, to drink honey and water, that the child had allergies, or if they were lucky given a Tylenol to help with the pain.

Maria and Maynor were held in the despicable *hieleras* for a couple days, but fortunately they averted detention at Artesia because Maria was able to reach her husband in San Francisco. ICE officials at the border allowed her to join him on the condition that she wear an ankle monitor.

1.2. UAC ENFORCEMENT PRIORITIZATION

The sharp increase in Central American migration generated tremendous media coverage and speculation by elected officials and others about the reasons for the surge. Many of the explanations were misguided. Some Obama critics claimed the influx resulted from promises of immigration reform or administrative reforms in enforcement that sent encouraging signals to Central Americans; the migrants were said to be hoping to enjoy a "de facto amnesty" if they got across

the United States–Mexico border. Others thought the children were being drawn by rumors about special protections for migrant children by the Obama administration, and pointed to the DACA program announced in 2012.

In reality, the migration has been mostly forced with little due to pull factors. The migration of youth arose out of longstanding, complex problems in their home countries – that is, the growing influence of youth gangs and drug cartels, plus targeting of youth by gangs and police. Women are fleeing because of gender-based violence, rising poverty, and continuing unemployment as well as the gang and drug violence. Violence clearly has been the main reason that the women and children are fleeing their countries, not because of some nebulous lure of promised amnesty in the United States.

The prevalence of violence is apparent in what is termed the Northern Triangle of Honduras, El Salvador, and Guatemala. Honduras, from where the largest numbers of unaccompanied minors have fled, has become one of the most dangerous countries in the world. In 2017, Honduras was ranked first with the highest homicide rate in the world.⁶ El Salvador and Guatemala were ranked fourth and fifth respectively. In 2015, El Salvador had been bestowed with the tragic title of murder capital of the world.⁷ Besides that, gender-based violence is at epidemic levels in Guatemala and the country ranks third in femicide worldwide. According to the United Nations, two women are killed there every day.⁸

Children in the region are at a greater risk of gang violence. Collaboration between drug cartels and gangs has led to a significant increase in violence, with children and teens being the primary targets. For example, more than nine hundred Honduran children were murdered in the first three months of 2012. In El Salvador, gangs have increasingly targeted children at their schools, resulting in El Salvador having one of the lowest school attendance rates in Latin America.

Human and drug trafficking also are rampant. The influence of cartels in Mexico and at the border connects the current migratory experience with human and drug trafficking. The United Nations High Commissioner for Refugees (UNHCR) reported that organized criminal groups coerce children into prostitution or to work as hit men, lookouts, and drug mules. Drug traffickers may target minors in their home country and force them to traffic drugs across the border and once they are in the United States. Because these youth often travel alone and are escaping death in their home countries, they are often faced with no choice but to carry drugs or work for drug cartels in order to cross the border.

Gang and drug trafficking in Central America are increasingly recruiting girls to smuggle and sell drugs in their home countries, using gang rape as a means of

⁶ H. Petr, *25 Countries With the Highest Murder Rates in the World*, June 8, 2017, available at: <http://list25.com/25-countries-with-the-highest-murder-rates-in-the-world/>

⁷ *It's Official San Salvador is the Murder Capital of the World* – LA Times, March 2, 2016.

⁸ Julie Guinan, *Nearly 20 Years After Peace Pact, Guatemala's Women Relive Violence*, CNN, April 7, 2015.

forcing them into compliance. Many gangs are targeting younger girls, some as young as nine-year-old, for rape and sexual assault. Gangs also use the threat of rape as a tactic to gain money through extortion and kidnapping.

1.3. DETENTION OF UNACCOMPANIED MIGRANT CHILDREN

The Office of Refugee Resettlement (ORR), a branch of the Department of Health and Human Services, is the federal agency responsible for the care and custody of unaccompanied migrant children. Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, unaccompanied, non-Mexican, migrant children must be transferred to ORR custody within 72 hours of their arrest. For several years, ORR has operated temporary shelters throughout the United States to house children while ORR caseworkers sought to reunify them with family members or family friends in the United States. In response to the dramatic increase in numbers of children apprehended by Customs and Border Patrol, ORR opened three large facilities housed on military bases: Joint Base San Antonio – Lackland in San Antonio, TX; Fort Sill Army Base in Oklahoma; and Port Hueneme Naval Base in Ventura, CA. Advocates raised significant concerns about the conditions in which children were held at these facilities and the difficulty in gaining access by attorneys and legal workers due to security procedures at these military facilities.

More than 200,000 migrant kids traveling without their parents have been detained at the United States–Mexico border over the past five years. Most are part of the wave of Central American children fleeing violence, as criminal gangs in El Salvador and neighboring countries have come to wield terrifying power with impunity, and weak governments struggle to respond. That violence is a legacy of the civil wars of the 1980s, subsequent migrations to the United States, and the deportation of gang members back to their home countries in the 1990s.

When adults are picked up at the border, they are dealt with by the DHS. But unaccompanied children are turned over to ORR. As the number of migrant kids has multiplied, ORR's job has grown. In 2011, the agency took custody of 7,000 children. In 2014 it was 57,000.

The vast majority of these children spend about a month in a licensed ORR-funded shelter, and then they are placed with a relative or a sponsor while they await their day in immigration court. A small fraction – roughly 500–700 in any given year – are placed in jail-like settings: locked group homes or juvenile detention facilities. Those children are held for two to three months, on average, but some are detained much longer.⁹

⁹ Tyche Hendricks, *Hundreds of Migrant Teens Are Being Held Indefinitely in Locked Detention*, KQED News, April 11, 2016.

I.4. DETENTION OF FAMILIES

In a 2014 change in policy, Obama's ICE began detaining families apprehended at the border, rather than releasing them from custody to appear for removal proceedings at a later date. ICE opened a family detention center in Artesia, NM, in July 2014 and opened another family detention center in Karnes City, TX, in August. Due process violations became the norm in how cases were being handled at these facilities. For example, concerns were raised about how credible fear asylum screening interviews were being conducted. These interviews determine whether the adult family member will be given the opportunity to have her or his asylum claim heard before an immigration judge. Other problem areas included hearings being conducted remotely via video teleconferencing and, of course, lack of access to counsel.

A friend, Helen Lawrence, was one of the first pro bono attorneys who traveled to assist detainees in Artesia. She emailed me her observations:

On average our days in Artesia ran from 5:30 am to 1:30 am, logging in around 4 hours of sleep a day. We entered the facility in the cool dawn hours and left at dusk. In between those hours, when we would step out of the attorney trailer or the court trailer to move between trailers, the bright sun and the bland backdrop of the white trailers that comprise the detention center and the neutral Southwest landscape were blinding. After leaving the detention center, we went to the church to meet together to troubleshoot cases, receive updates, and dole out the next day's cases and workload. After the group meeting, we would begin preparing our cases for the next day.

Our team filled a variety of roles. At the detention center, some of us would meet with women and kids in the attorney trailer to prepare their cases. The list of these consultations was on average around 60. Others would be in court representing the women in their bond and asylum hearings in two court dockets that averaged around 15 cases a court. Still others would stay behind at the community church to prepare innumerable filings.

The women we saw were mostly from El Salvador, Guatemala and Honduras. They were all fleeing either gang or domestic violence or both. They shared stories of kidnapping, rape, abuse, extortion and threats. The weight that these women carry is profound. Most of the women came to the attorney trailer for consultations with their children. They often have to recount these horrific stories of rape, domestic violence, abuse, and other threats within earshot of their children. We would do our best to remove the children during these moments, but even separating mom from child(ren) was cruel in itself. As a distraction, ICE would put on a children's video and tear out pages of coloring books and give the children crayons that they have to return when they leave the legal trailer.

Most of the children had coughs, some had sores on their faces, one kid had a growth on his face. There have been chicken pox outbreaks here, leading to quarantines. Many of the children who are old enough to be weaned from bottles have regressed to bottles. Some moms reported their children were sleeping

for distressingly long hours. I read medical records of a 5-year-old reporting to the clinic here that expressed that his level of pain was between 7 to 8 on a scale of 10.

We heard that some of the little boys have started to pretend they are ICE agents, mimicking them at count (when the guards count the detainees to confirm that everyone is still there).

Another disturbing observation from our team is how quiet the kids are in Artesia. All day we are surrounded by them either in our consultation area in the detention center or in court. They all seem so sedated and low energy. I spent two days working with one mother and her 16-month-old. The child's face was always tear-stained and yet he never made a peep or fussed.¹⁰

After great uproar over the deplorable conditions at Artesia, ICE closed the facilities, but opened new barracks in Dilley, TX. Meanwhile, the Karnes facility was expanded. To no one's surprise, the conditions at Dilley and Karnes were no improvement over Artesia.

A major part of the problem with Dilley and Karnes is that both sites are operated by private prison companies. Yes, ICE has contracted with GEO Group and CCA (Corrections Corporation of America, recently renamed: CoreCivic) to detain families – mostly women and children – who are anything but criminals. These are the same private prison companies who have been under scrutiny for their lobbying expenditures and relationships with government officials. For instance, the discovery that two of Arizona Governor Jan Brewer's top advisors were former CCA lobbyists raised concerns that these affiliations influenced the creation of SB1070, Arizona's infamous "show me your papers" law, which would have generated significant business for CCA with the state.

Worse still, these are the same companies whose operations are so bad, that complaints against them are difficult to keep track of:

- A 2010 Associated Press report revealed that CCA's Idaho Correctional Center (ICC) had more assaults than all other Idaho prisons combined. Dubbed the "Gladiator School," video footage showed a prisoner being severely beaten by another inmate, pleading for help as CCA guards looked on. CCA lost its \$30 million contract for the prison with the state, and the FBI launched an investigation into the company in 2014.
- In 2013, the Texas Observer called the state's CCA-run Dawson State Jail for nonviolent offenders in Dallas "the worst state jail in Texas." Seven inmates have died in Dawson since 2004, generally due to medical neglect and malpractice. One prisoner gave birth to a premature baby at twenty-six weeks after CCA guards refused her cries for medical attention. The baby was delivered in a prison toilet with no medical assistance and died four days later.

¹⁰ Email from Helen Lawrence, Esq., October 22, 2014.

- CCA's Don T. Hutto facility, a "family residential facility" for immigrant detainees and their children, was found to be violating nearly every standard for minors in ICE custody. Families were crammed into small cells with no privacy, children were dressed in prison scrubs, and conditions were appalling. After an ACLU lawsuit, the facility is no longer used for family detention. Yet in 2011, two federal sexual abuse investigations and a class action lawsuit were filed on behalf of immigrant women who alleged they were sexually assaulted by guards in the facility. One CCA guard was sentenced to ten months in federal prison.
- In 2011, an Oklahoma jury ordered GEO Group to pay \$6.5 million to the family of Ronald Sites, an inmate who was strangled to death by his cellmate in 2005.
- Also in 2011, the Florida Department of Children and Families said GEO Group's neglect contributed to the death of a South Florida State Hospital patient. The man was being escorted by GEO Group employees to an appointment at Jackson Memorial Hospital when he hurled himself from the eighth story of a parking garage.
- In 2009, a Texas appeals court upheld a \$42.5 million verdict after a prisoner at a GEO Group facility was beaten to death four days before he was to be released.
- In 2007, Texas canceled an \$8 million contract with GEO and closed the Coke County Juvenile Justice Center. Inspectors found feces on floors and walls, padlocked emergency exits and the overuse of pepper spray on young inmates.
- A former employee of GEO Group revealed that at the Adelanto, CA, Immigration Detention Center, Muslim men were put into solitary confinement simply for quietly saying their daily prayers. A government report found that GEO Group's medical mismanagement at Adelanto directly led to the death of at least one detainee, Fernando Dominguez, in March 2012. Another Adelanto detainee was denied treatment for his severe hip infection because "it was too expensive." The infection ultimately developed into a life-threatening condition that required six-week hospitalization at an outside hospital.

Immigration detention is big business for private companies. CCA, the largest private prison corporation, reported \$1.65 billion in revenue in 2014; 44 percent was from federal contracts: 20 percent US Marshals, 12 percent Bureau of Prisons, and 12 percent from ICE. Despite GEO Group's embattled reputation, ICE announced plans to expand the available bed space at Adelanto by 640 beds, and for the first time may house women and lesbian, gay, bisexual, transgender, queer (LGBTQ) individuals at the facility. According to their annual report, GEO Group expects to generate \$21 million in additional annualized revenue from this expansion. Both companies have significantly augmented their profits since the implementation of an immigration bed quota that was inserted into federal law in 2007. CCA's net