

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AJR 1 (Kalra) – As Amended March 25, 2021

SUBJECT: ABOLITION OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

KEY ISSUE: SHOULD THE FEDERAL GOVERNMENT ABOLISH THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY AFTER IMPLEMENTING AN ORDERLY AND JUST TRANSFER OF ITS ESSENTIAL AND BASIC LEGALLY REQUIRED FUNCTIONS, TO OTHER AGENCIES IN A MANNER THAT UPHOLDS VALUES OF DUE PROCESS, EQUALITY UNDER LAW, AND FAMILY UNITY?

SYNOPSIS

In response to the terrorist attacks on September 11, 2001, the United States Congress passed the Homeland Security Act, which abolished the Immigration and Naturalization Service and replaced it with the Department of Homeland Security, which included the establishment of the agency now known as U.S. Immigration and Customs Enforcement, or ICE. Congress granted ICE a unique combination of civil and criminal powers, ostensibly to better protect national security and public safety in answer to the tragic events on 9/11. ICE's stated primary mission is to use those powers to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. Yet this federal agency has been mired in controversy for years over what its critics describe as a culture of abuse, deceptive practices, and inhumane detention and deportation activities. Most controversially, under the Trump administration, ICE implemented a policy of separating children from their families upon detention and caging them in furtherance of a so-called "zero-tolerance" policy meant to deter families from entering the United States.

The author states that, due to lax federal oversight, ICE has routinely engaged in deceptive practices which mislead the public, such as posing as local law enforcement despite not being trained or deputized as police officers, misrepresenting administrative warrants as judicial warrants, and pressuring local and state law enforcement to violate due process rights by transferring to ICE custody people who are being released from jails and prisons. The agency has also reportedly failed to control for and treat the spread of COVID-19 in its detention facilities, resulting in hundreds of detained adults and children contracting the virus with little to no medical care provided in some documented cases. As a result, this joint resolution urges the 117th Congress to abolish ICE, while recognizing that its essential and basic legally-required functions should be transferred to other parts of the federal government in a manner that upholds values of due process, equality under law, and family unity. This resolution is supported by seven nonprofit organizations, including the California Immigration Policy Center, and is opposed by the Southwest California Legislative Council.

SUMMARY: Urges the 117th United States Congress to abolish U.S. Immigration and Customs Enforcement (ICE), and on or before the abolition of ICE, to implement an orderly and just transfer of essential and basic legally required functions in a manner that upholds values of due process, equality under the law, and family unity. Specifically, **this resolution:**

- 1) Finds that in response to the terrorist attacks on September 11, 2001, the United States Congress passed the Homeland Security Act, which abolished the Immigration and Naturalization Service and replaced it with the Department of Homeland Security, which included the establishment of the Bureau of Immigration and Customs Enforcement, now known as U.S. Immigration and Customs Enforcement, or ICE.
- 2) Finds that according to the ICE website, “Congress granted ICE a unique combination of civil and criminal authorities to better protect national security and public safety in answer to the tragic events on 9/11. Leveraging those authorities, ICE’s primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration.”
- 3) Finds that, even prior to the election of Donald Trump as President in 2016, ICE has had a troubled history, that it has been criticized by both sides of the political spectrum, and that it has been mired in controversy by using its funding to detain immigrants in egregiously inhumane conditions and to deport them with little to no due process or consideration for their familial and community ties to the United States.
- 4) Finds that, on January 25, 2017, Donald Trump signed Executive Order No. 13768, entitled “Enhancing Public Safety in the Interior of the United States,” which expanded ICE’s activities to terrorize immigrants through inhumane detention, isolation, and abuse.
- 5) Finds that ICE has long had a culture of abuse and has been referred to as an unaccountable agency that has treated detained individuals, including children, inhumanely, with acts bordering on crimes against humanity.
- 6) Finds that, in December 2017, the Department of Homeland Security Office of the Inspector General issued a report categorizing violations of compliance with ICE detention standards regarding conditions for detainees, and that these violations “undermine [their] protections, rights, humane treatment, and provisions of safe and healthy environments.”
- 7) Finds that, in June 2018, the Office of the Inspector General issued another report titled “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systematic Improvements” where the department found that ICE did not follow up on identified deficiencies or hold facilities accountable for correcting them.
- 8) Finds that due to lax federal oversight, ICE has routinely engaged in deceptive practices that mislead the public, such as posing as local law enforcement despite not being trained or deputized as police officers and misrepresenting administrative warrants as judicial warrants, and pressuring local and state law enforcement to violate due process rights by holding and transferring people who are being released to ICE.
- 9) Finds that ICE’s controversial program for checking every fingerprint taken by local and state law enforcement for immigration enforcement purposes was launched as the Secure Communities program (“S-Comm”), later rebranded as the Priority Enforcement Program (“PEP”), and that it continues to generate thousands of ICE detainer requests to local law enforcement and our state prison system annually, and turns every local arrest into a potential funnel into immigration detention and deportation.

- 10) Finds that, in collaboration with other federal agencies, ICE has used deportation or the threat of deportation as a tool to pressure immigrants, especially those of Arab, Middle Eastern, and South Asian descent, to spy against their own communities for the United States government.
- 11) Finds that most egregiously, ICE has separated children from their families upon detention, and that to date, thousands of children have been removed from their parents for no reason other than to implement a “zero-tolerance” policy to criminally prosecute every adult who has entered the country without legal status, even though these parents are simply seeking a better life for themselves and their families.
- 12) Finds that ICE has also failed miserably in controlling and treating the spread of COVID-19 in detention facilities, including youth detention facilities, resulting in hundreds of detained adults and children contracting the virus and reports documenting that in some cases little to no medical care is provided.
- 13) Finds that the U.S. House of Representatives Committee on Homeland Security hosted a panel on September 21, 2020, entitled “ICE Detention Facilities: Failing to Meet Basic Standards of Care,” which found that ICE’s detention facilities failed to identify and correct deficient conditions, and concluded that ICE does not do enough to ensure that its own standards of confinement are met.
- 14) Finds that ICE has consistently and continuously demonstrated an inability to fulfill its duties without violating due process, human rights, transparency, or public accountability, and that it fails to adhere to domestic and international law.
- 15) Finds that the United States of America does not need an opaque and rogue agency operating in our communities, dehumanizing our immigrant communities, and acting without consequence.
- 16) Finds that California, being home to the largest and most diverse immigrant communities in the nation, has enacted policies to protect immigrants and refugees from the inhumane treatment and aggressive tactics of ICE, but that there are still countless stories of brutal detentions and unjust deportations.
- 17) Calls upon the 117th United States Congress to abolish ICE and, on or before the abolition of ICE, implement an orderly and just transfer of its essential and basic legally required functions in a manner that upholds values of due process, equality under the law, and family unity.

EXISTING INTERNATIONAL LAW provides for the protection of people who have fled persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. (United Nations General Assembly, Universal Declaration of Human Rights, 217A(III), Article 14 (Dec. 10, 1948).)

EXISTING FEDERAL LAW:

- 1) Provides that the federal government has the exclusive authority to regulate immigration and naturalization. (U.S. Const., article I, section 8, clauses 3 and 4.)

- 2) Provides that the Secretary of Homeland Security or the Attorney General may grant asylum to an immigrant who has applied for asylum and who has been determined to be a refugee because they are unwilling or unable to return to their country of origin, in turn because they have been persecuted or have a well-founded fear of persecution on the basis of specified characteristics or activities. The President of the United States has the authority to set the number of refugees who may be admitted to the United States each year, based on the President's determination of the number that is justified in light of humanitarian concerns and the national interest. (8 U.S.C. Sections 1101(a)(42), 1157(a)(2), 1158.)
- 3) Prohibits the federal government from returning to their home countries people whose life or freedom would be threatened because of their race, religion, nationality, membership in a particular social group, or political opinion. (8 U.S.C. Section 1231(b)(3).)
- 4) Protects all asylum seekers by prohibiting the federal government from returning to their home countries people who have fled persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. (8 U.S.C. Section 1101(a)(42)(A).)
- 5) Provides that once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. (*Zadvydas v. Davis* (2001) 533 U.S. 678.)

EXISTING STATE LAW declares that immigrants are valuable and essential members of the California community and points out that almost one in three Californians is foreign-born and one in two children in California has at least one immigrant parent. (Government Code Section 7284.2 (a).)

COMMENTS: This measure calls upon the 117th United States Congress to abolish ICE. Further, it calls upon Congress, on or before the abolition of ICE, to implement an orderly and just transfer of essential and basic legally required functions in a manner that upholds values of due process, equality under the law, and family unity. In support of this measure, the author writes:

Founded in the aftermath of 9/11, when national rhetoric against immigrants and desire for heightened homeland security were grossly exaggerated, the Immigration and Customs Enforcement Agency or ICE has systematically carried out an extreme agenda of dehumanizing lives and communities. Deploying paramilitary units disguised as peace officers with dubious warrants, ICE has for too long used its unchecked authority to terrorize immigrant communities without enhancing public safety.

Still to this day, ICE operates as a rogue agency and continues to detain immigrants in egregiously inhumane conditions and deport them with little to no due process or consideration for their familial and community ties. Additionally, countless formerly incarcerated immigrants and refugees are systematically being transferred to ICE without regard to circumstance, path toward rehabilitation, or family connections in California.

ICE's extreme agenda and actions demonstrate a complete inability to fulfill its duties without violating due process, human rights, or public accountability. These failures show ICE to be beyond reform or restructuring, and the agency must be abolished. AJR 1 strongly

and unequivocally urges Congress for the abolition of ICE and that we begin an orderly and just transfer of legally required essential functions in a manner that upholds values of due process, equality under the law, and family unity.

The basic justification for abolishing ICE is that it regularly employs methods that range between inhumane and illegal. ICE was created in response to the tragic events of September 11, 2001, with a stated mission to protect the United States from cross-border crime and illegal immigration that threaten national security and public safety. However, critics claim that the agency has gained a notorious record of abuse, illegality, waste, and ineffectiveness in carrying out its intended purpose. ICE's abusive tactics are well-documented. They include the separation of toddlers from their parents, forced sterilization, and inhumane treatment in facilities. ICE has therefore earned a reputation amongst immigration advocates as a dishonest and racist agency that regularly ignores legal limits. (See, e.g., *Ms. L. v. ICE* (S.D. Cal.) No. 3:18-cv-00428, filed February 26, 2018; *Flores v. Garland* (C.D. Cal.), No. 2:85-cv-04544-DMG-AGR, filed June 26, 2020; *Crew et al. v. ICE* (D.D.C.), No. 1:20-cv-03120, filed October 29, 2020.)

ICE under the Obama administration. Immigration advocates began criticizing ICE during the George W. Bush. However, it was during the Obama administration that internal removal of immigrants by ICE reached what was then an all-time high. The Obama administration removed approximately 1,242,486 immigrants from the interior of the United States during its full eight years, averaging 155,311 removals per year. Data from the earlier Bush administration are more speculative, but they show an increase in deportations during the last half of President Bush's administration. This increase continued during President Obama's first term, before flattening and, finally, dropping rapidly in his second term. During his second term, President Obama responded to the outcry against the high rates of deportation, which led to a pronounced shift in focus to the removal of recent border crossers and criminals, rather than ordinary status violators apprehended in the interior of the U.S. As a result, interior removals decreased sharply from 181,798 in FY 2009 to 65,332 in FY 2016. Nevertheless, border removals stayed high and increased, from 207,525 to 279,022 over the same period. (See Transactional Records Access Clearinghouse, *The Role of ICE Detainers Under Bush and Obama* (Feb. 1, 2016), available at <https://trac.syr.edu/immigration/reports/458/>.) President Obama summarized this later policy as: "Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids." (See Barack Obama, *Remarks by the President in Address to the Nation on Immigration* (Nov. 20, 2014), available at <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.)

ICE's changed priorities under the Trump administration. The Trump administration, however, changed the federal government's immigration enforcement priorities and tactics. Many of those changes emanate from Executive Order 13768: "Enhancing Public Safety in the Interior of the United States," which President Trump issued on January 25, 2017, five days after taking office. (Executive Order No. 13768, 82 Fed. Reg. 8799.) President Trump largely echoed President Obama in his rhetoric regarding his immigration enforcement priorities, stating that he intended to focus on criminals. His actual policies, however, dramatically expanded the list of immigration enforcement priorities to include virtually every undocumented person. Pursuant to executive orders from President Trump, on February 20, 2017, Department of Homeland Security Secretary John Kelly issued a pair of memoranda changing immigration enforcement policy. In those memos, Secretary Kelly directed ICE to prioritize:

Removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. (See John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest*, U.S. Department of Homeland Security (Feb. 20, 2017) at 2, available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.)

ICE's role in family separations. On April 6, 2018, Attorney General Jeff Sessions notified all U.S. Attorney's Offices along the southwest border of a new "zero-tolerance policy" for both actual and attempted illegal entry into the United States by any individual, as provided under 8 U.S.C. Section 1325(a). The zero-tolerance policy directed these U.S. Attorney's Offices (which included specified districts in California, Arizona, New Mexico, and Texas) to adopt a policy of prosecuting all Department of Homeland Security (DHS) referrals of illegal entry or attempted illegal entry to the extent practicable. (*Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry*, U.S. Department of Justice Office of Public Affairs (Apr. 2018), available at <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.) On May 7, 2018, Sessions elaborated on the policy by stating, "If you are smuggling a child then we will prosecute you, and that child will be separated from you as required by law. If you don't like that, then don't smuggle children over our border." (*Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration*, U.S. Department of Justice Office of Public Affairs (May 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.)

Unaccompanied minors taken into DHS custody are supposed to be transferred to the custody of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. ORR is then required to care for the children in accordance with the *Flores* Settlement Agreement. This Agreement sets the minimum nationwide standards for the detention, housing, and release of non-citizen juveniles who are detained by the government and, according to the Ninth Circuit United States Court of Appeals, "obliges the government to pursue a 'general policy favoring release' of such juveniles." (*Flores v. Sessions* (9th Cir. 2017) 862 F.3d 863.) *Flores* created a presumption in favor of release of the detained minor, and particularly favors release that results in family reunification. The Agreement provides that, unless immigration authorities determine the detention of a minor is required to secure the minor's timely appearance before the immigration court, or to ensure the safety of the minor or others, the authorities must release the minor from their custody without unnecessary delay, to a parent, legal guardian, or other person or entity as specified. (*Ibid.*)

Instead, as a result of the Trump administration's zero-tolerance policy, thousands of children were separated from their parents and housed in group facilities while their parents faced prosecution for illegal entry into the United States—a crime that may ultimately result in their deportation. In response to this, on February 26, 2018, the American Civil Liberties Union (ACLU) filed *Ms. L. v. ICE* (S.D. Cal.), No. 3:18-cv-00428, a nationwide class action that sought to halt and undo the Trump administration's family separation policy. On June 26, 2018, the

district court issued a preliminary injunction ordering the U.S. government to halt the family separation policy, and to reunify all families that had already been separated. The court also stayed the deportation of separated families. The case is currently ongoing.

However, it should be noted that another particularly cruel form of family separation also occurred under the Trump administration due to ICE. Many undocumented individuals live with family members in communities throughout the United States. As a result of increased enforcement and raids by ICE officials, such individuals have been apprehended and detained in detention centers, severing their connections to their loved ones, despite having no criminal record. (See Priscilla Alvarez, *Family separation and the Trump administration's immigration legacy* (Oct. 7, 2020), CNN, available at <https://www.cnn.com/2020/10/07/politics/trump-family-separation/index.html>.) Transactional Records Access Clearinghouse, a Syracuse University-based research organization, created a profile of detainees held in 217 ICE detention centers. As of June 30, 2018, ICE was holding 44,435 people in custody. Out of this group, 58 percent had no criminal convictions, while about 21 percent had committed a minor infraction, such a traffic violation; and 16 percent had committed what ICE considered a serious crime, which included offenses such as selling marijuana. (See Transactional Records Access Clearinghouse, *Profiling Who ICE Detains - Few Committed Any Crime* (Oct. 9, 2018), available at <http://trac.syr.edu/immigration/reports/530/>.)

The impact of these policies, particularly of family separation at the border, is ongoing. As of October 2020, hundreds of separated families had still not yet been reunited. Despite court orders to reunify these families (See *Ms. L v. ICE*, *supra*), poor record-keeping, increased criminal prosecutions of adult family members, and deportations of parents without their children have hindered reunification efforts. (See Kaitlyn Dickinson, *Parents of 545 children separated at the border cannot be found* (Oct. 21, 2020), New York Times, available at <https://www.nytimes.com/2020/10/21/us/migrant-children-separated.html>.)

ICE's inability to provide immigrants with access to basic health needs, and its effects. In February 2019, California Attorney General Xavier Becerra released a report on conditions in immigration detention centers in California. The report found that immigrants faced a multitude of infringements on their liberties, including, notably, lack of access to medical and mental health access, inadequate access to basic hygiene products, concerning food quality, and lack of access to legal representation to ensure due process.

The effects of these conditions on detainees' mental health was evident. Between January 2017 and March 2020, 12 people died because of apparent suicide while in immigration detention. People in detention also reported they were locked up in solitary confinement for lengthy periods, often for minor infractions or due to retaliation by officers. ICE failed to support people with disabilities by neglecting to provide legally required reasonable accommodations for their disabilities or assistance. Immigrants also reported they were held in sordid conditions, without access to proper hygiene products or facilities. Further, food quality also raised concerns, with individuals stating they often did not receive meals that accommodated health needs, such as diabetes, or religious observations, as required. (See California Attorney General Xavier Becerra, *The California Department of Justice's Review of Immigration Detention in California* (Feb. 2019) available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.)

The impact ICE has on physical and mental health extends past mistreatment in detention facilities. Recently, a policy brief reported that the harm of detainee incarceration in jails, prisons, and detention centers leads to worse health outcomes, including higher rates of HIV, sexually transmitted infections, chronic disease, other infectious diseases, poor mental health, higher rates of post-traumatic stress disorder (PTSD), and overall lower life expectancy, than individuals who have not been incarcerated in jails, prisons, and detention centers. Further, individuals who are incarcerated or detained experience additional layers of trauma, including physical, psychological, and sexual violence. (See Christine Mitchell, Sukhdip Boparai, and Amber Piatt, *Stop ICE Transfers: Promoting Health, Unifying Families, Healing Communities* (Aug. 2020) available at https://humanimpact.org/wp-content/uploads/2020/08/HIP-Stop-ICE-Transfers-Research-Brief-08-2020_compressed-1.pdf)

ICE and the impact of the COVID-19 pandemic. The detrimental effects of family separation have also been exacerbated by the COVID-19 pandemic, particularly as it relates to the health conditions for those detained in congregate care settings. A report by the Detention Watch Network noted that “conditions in detention centers were of concern well before COVID-19; however, the nature of these settings, namely the closeness with which detainees are housed, leaves them vulnerable to outbreaks, substantially increasing the health risks to those in detention.” According to the report, an estimated 60 mothers, 500 fathers, and 800 children, all of them detained, live, eat, and sleep in close quarters and therefore cannot meet hygiene and “social distancing” standards recommended to prevent the spread of the virus. (Setareh Ghandehari and Gabriela Viera, *Courting Catastrophe: How ICE is Gambling with Immigrant Lives Amid a Global Pandemic*, Detention Watch Network (Mar. 2020), available at <https://www.detentionwatchnetwork.org/pressroom/reports.>)

Due to these concerns, U.S. District Court Judge Dolly M. Gee issued an order to the Trump administration to “make every effort to promptly and safely release” migrant children from government custody, due to concerns about insufficient protocols in place to protect children from COVID-19. (See Tyche Hendricks, *Judge Orders Release of Detained Migrant Children to Halt Coronavirus Spread*, KQED (Mar. 20, 2020), available at <https://www.kqed.org/news/11809708/judge-orders-release-of-detained-migrant-children-to-halt-coronavirus-spread.>) Further, attorneys had argued to the court that ICE and ORR’s response to the pandemic failed to comply with their obligations under the *Flores* Settlement Agreement, specifically, the requirement that children in ORR shelters for more than 20 days be immediately released into the care and custody of a sponsor in order to reduce health risks. (*Flores v. Garland*, *supra*.) ICE and ORR eventually complied with this court order, although at a much slower pace than originally anticipated. (See Camilo Montoyo-Galvez, *Judge postpones deadline for ICE to release minors from family detention facilities*, CBS News (Jul. 16, 2020), available at [https://www.cbsnews.com/news/judge-postpones-deadline-for-ice-to-release-minors-from-family-detention-facilities/.](https://www.cbsnews.com/news/judge-postpones-deadline-for-ice-to-release-minors-from-family-detention-facilities/)) It became evident that congregate care settings were hotspots for infection and the lasting effects can be seen with data reporting that as of April 7, 2021, 11,190 detainees tested positive for COVID-19. (See U.S. Immigration and Customs Enforcement, *COVID-19 ICE Detainee Statistics by Facility*, (Apr. 7, 2020), available at <https://www.ice.gov/coronavirus#detStat.>)

ICE’s documented mistreatments of detainees and failure to maintain facilities up to required standards. In 2017, the DHS Office of the Inspector General (OIG) issued a report entitled “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systematic Improvements,” based on inspections of five detention facilities. The report raised

concerns about the treatment and care of ICE detainees at four facilities, including undermining of protection of detainees' rights, inhumane treatment of detainees, and the lack of a safe and healthy environment. Among the violations cited were strip searches of all detainees entering one facility, and the absence of available language services to facilitate communication with detainees.

ICE's Performance Based National Detention Standards (PBDNS) are meant to establish procedures for detainees to file formal grievances, in order to protect detainees' rights and to ensure they are treated fairly. However, effective resolution depends on facility staff properly handling and addressing grievances without deterrents, which were identified at several facilities. Some detainees reported that staff obstructed or delayed their grievances or intimidated them, through fear of retaliation, into not complaining. There were concerns about a lack of professionalism and inappropriate treatment of detainees by facility staff, which fostered a culture of disrespect and disregard for detainees' basic rights. Detainees at ICE facilities alleged in OIG interviews that staff mistreated them, citing guards yelling at them and using inappropriate language. Surveillance of video footage of multiple incidents corroborated detainee accounts of mistreatment, including hostile and prolonged rants and threats of a lock-down.

Finally, although the PBDNS requires maintaining "high facility standards of cleanliness and sanitation," it was reported that detainee bathrooms were in poor condition, including mold and peeling paint on walls, floors, and showers. Further, detainees reported lack of access to basic hygienic supplies, such as toilet paper, shampoo, soap, lotion, and toothpaste. (See Office of the Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, (Dec. 11, 2017), available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.)

In 2018, a follow-up OIG report, entitled "ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements," noted that ICE facilities lacked consistent compliance with detention standards and had largely failed to comprehensively correct the previously identified deficiencies. (See Office of the Inspector General, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, (Jun. 26, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.)

ICE's dark history on the infringement of reproductive rights. Recently, allegations emerged in a complaint filed on behalf of immigrants detained at the privately operated Irwin County Detention Center (ICDC) in Georgia. In the complaint, nurse Dawn Wooten blew the whistle on "jarring medical neglect" she says she learned about while working at the facility, including an allegation that a government-contracted doctor repeatedly performed sterilization procedures on women in ICE custody without their knowledge or consent. In response, a class action lawsuit was filed against ICE, seeking to obtain the medical records detailing what procedures were performed. The case is ongoing. (*Crew et al. v. ICE* (D.D.C. 2020), No. 1:20-cv-03120, filed October 29, 20.)

The hostility against immigrants' reproductive autonomy is unfortunately well-documented. In 2018, the Trump administration reversed an Obama-era policy that presumed pregnant people should not be detained. ICE then made "case by case" decisions on whether it was legal to keep a pregnant individual caged. (United States Immigration and Customs Enforcement Policy 11022.1: *Detainee Transfers* (Jan. 4, 2012).) Pregnant women reported that

they were repeatedly slammed against fences. In one case, a woman experienced a miscarriage while detained, but did not receive any hygienic products or medical care. Further, numerous pregnant women detained recounted being told by officers to get abortions, all while being held in crowded, unsanitary facilities with little access to food or water. Medical attention for pregnant women was often delayed or denied, all while they endured verbal abuse. This resulted in the number of undocumented women who miscarried while in government detention to double under the Trump administration. (See Brigitte Amiri, *Reproductive Abuse is Rampant in the Immigration Detention System* (Sep. 23, 2020) available at <https://www.aclu.org/news/immigrants-rights/reproductive-abuse-is-rampant-in-the-immigration-detention-system/>.)

ICE struggles to carry out its intended mission and instead is harming public safety in the United States. In 2017, immigration arrests by ICE increased by 30 percent from 2016. During the same period, police officers reported a dramatic drop in outreach from, and cooperation with, immigrant and limited English proficiency (LEP) communities. Since police are often the first point of contact for survivors of crime within the justice system, the decline in trust and cooperation has had a significant impact on their work and on the rest of the justice system. A report by the ACLU found 64 percent of police officials surveyed cited a concern for community safety when immigrant crime survivors were afraid to seek assistance. Approximately 22 percent of police officers reported that immigrants were less likely in 2017 than in 2016 to make police reports; 21 percent said immigrant crime survivors were less likely to help in investigations when police arrived at the scene of a crime; 20 percent reported that these survivors were less likely to help in post-crime scene investigations; and 18 percent said survivors were less willing to work with prosecutors. As a result, law enforcement officials reported that many crimes have become more difficult to investigate: 69 percent said domestic violence was harder to investigate, 64 percent said human trafficking was harder to investigate, and 59 percent said this about sexual assault. (See American Civil Liberties Union, *Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system* (2018), available at https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-re01.pdf.)

Finally, The Center for American Progress issued a study of jurisdictions that do not assist federal immigration enforcement officials by holding people in custody beyond their release date and found that in these so-called “sanctuary counties,” on average, 35.5 fewer crimes committed per 10,000 people compared to nonsanctuary counties. (See Tom Wong, *The Effects of Sanctuary Policies on Crime and the Economy* Center for American Progress, (Jan. 26, 2017), available at <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.)

ICE’s misleading raids have left immigrants in fear. It is well documented that ICE agents sometimes employ deception in order to obtain information or access that their target probably would not otherwise offer. Frequently, this takes the form of ICE agents pretending to be local police officers, but ICE agents have impersonated other government officials as well, including at least one instance in which they staged an Occupational Safety and Health Administration (OSHA) training and then proceeded to arrest many of the workers who showed up. There are widespread reports of ICE officers posing as local police in their attempts to get undocumented immigrants to reveal their status or as part of their efforts to gain access into people’s homes without a warrant. According to media accounts, ICE agents often wear uniforms emblazoned with the word “Police,” and frequently identify themselves as police officers when pulling

people over or knocking on people's doors. From ICE's perspective, impersonating local police has the advantage of setting law-abiding immigrants at ease: if they have done nothing criminal, these immigrants may see no harm in speaking openly with police and inviting police into their homes. For the same reason, from a law enforcement perspective, ICE's impersonation of police officers contributes to distrust between immigrant communities and local law enforcement. Rather than opening up to local police, law-abiding immigrants may refuse to cooperate if they fear that someone who looks like local police is, in fact, an ICE agent. That distrust frequently makes it more difficult for local law enforcement to obtain community cooperation in investigations and prosecutions, thus endangering everyone. (See Joel Rubin, *It's Legal for an Immigration Agent to Pretend to be a Police Officer Outside Someone's Door. But Should it Be?* (Feb. 21, 2019) Los Angeles Times, available at <https://www.latimes.com/local/lanow/la-me-immigration-deportation-ruses-20170219-story.html>.)

There are other reports of ICE using ruses to entrap undocumented individuals. On at least two occasions, ICE has created fake universities. Last year, ICE operated a website claiming to be the University of Farmington in Michigan, in order to identify persons who might be unlawfully extending student visas. (Sarah Mervosh, *ICE Ran a Fake University in Michigan to Catch Immigration Fraud* (Jan. 31, 2019) New York Times available at <https://www.nytimes.com/2019/01/31/us/farmington-university-arrests-ice.html>.)

Finally, reports of ICE arrests at courthouses spread fear among immigrants and their families. Advocates argue that the right to safely access courts is a fundamental right, and one that protects and ensures other core constitutional rights, such as due process and equal protection of the law. These unnecessary raids have a detrimental effect on courts, which cannot operate fairly or effectively when people do not feel safe coming to testify. Recognizing the far-reaching impact of ICE arrests at courthouses, judges in states including California, New Jersey, and Washington protested courthouse enforcement, telling the Department of Homeland Security that courts and the justice system should not be used as "bait" and warning of the danger to public safety when crime survivors and witnesses are afraid to come forward. (See American Civil Liberties Union, *Freezing Out Justice*, *supra*.)

In 2017, the Chief Justice of California, Tani G. Cantil-Sakauye, wrote to Attorney General Jeff Sessions and then-Secretary of Homeland Security John Kelly that, "enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary's ability to provide equal access to justice." (See Chief Justice Cantil-Sakauye, *Objections to Immigration Enforcement Tactics at California Courthouses* (Mar. 16, 2017) available at <https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-immigration-enforcement-tactics-california-courthouses>.)

ICE's continual budget mismanagement and public deception. ICE's funding has risen from \$3.3 billion in 2003, the year after its creation, to \$7.5 billion in 2018. (See Peter Markowitz, *Abolish ICE . . . And Then What?*, Yale Law Journal Forum, Cardozo Legal Studies Research Paper No. 581 (Nov. 7, 2019) at 135.)

In recent years, Congress has reprimanded ICE for its chronic fiscal mismanagement. In May 2017, Congress passed a supplemental appropriations bill providing ICE with \$2.6 billion to massively increase its detention capacity. In the bipartisan report language accompanying the bill, Congress noted ICE's lack of fiscal discipline and continued mismanagement of funding for

detention operations. Further, it noted that ICE's daily population rates and daily bed rates were unrealistic, and its calculations were invalid. As a result, the United States now spends more on immigration enforcement than on all other federal criminal law enforcement combined. (See The National Immigrant Justice Center and The Watch Network, *ICE Lies: Public Deception, Private Profit* (Jan. 2018) available at https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf.)

A recent example of ICE's misuse of the budget process occurred in September 2017, when agency leaks revealed that ICE was planning a nationwide enforcement operation called "Operation Mega," intending to target 8,400 immigrants. Internal documents described it as "the largest operation of its kind in the history of ICE." Immediately after the news went public, ICE announced that the operation had been postponed due to natural disasters. Politico reported that the timing and numbers strongly suggest that ICE was using this operation to artificially inflate the number of individuals in its custody for the purpose of presenting a larger "operational need" estimate in end-of-year appropriations negotiations. (See Ted Hesson, Politico Morning Shift (Sep. 8, 2017), available at <https://www.politico.com/tipsheets/morning-shift/2017/09/08/daca-sellout-222183>.)

An example of an ICE function that should be transferred, rather than abolished. When ICE was created, its mission was to execute enforcement of more than 400 federal statutes that focus on immigration enforcement, preventing terrorism, and combating the illegal movement of people and goods. ICE therefore has two main components, the Homeland Security Investigations (HSI) arm and the Enforcement and Removal Operations (ERO) arm. ICE's heavily criticized actions come from increased focus on the ERO component. Its lesser-known counterpart, HSI, however plays an important role in combatting, among other things, terrorism; human smuggling and trafficking; weapons smuggling and evasion of weapons export controls; narcotics smuggling and trafficking; financial crimes, including money laundering and bulk cash smuggling; cyber crime; exploitation of children and sex tourism; trade crimes such as commercial fraud and intellectual property theft; smuggling of counterfeit pharmaceuticals and other merchandise; international cultural property and antiquities crimes; and visa security breaches. Due to the Trump administration policies towards undocumented immigrants, agents under the HSI component reported that their ability to focus on issues such as transnational crime have been hindered, and even called for ICE to be dissolved into separate agencies so they could focus on their stated mission. (See Ron Nixon, *Agents Seek to Dissolve ICE in Immigration Policy Backlash* (Jun. 28, 2018), available at <https://www.nytimes.com/2018/06/28/us/politics/ice-immigration-eliminate-agency.html>.) It appears, therefore, that HSI provides "essential and basic legally required functions," per the terms of this resolution, that ought to be transferred to another portion of the federal government "in a manner that upholds values of due process, equality under the law, and family unity."

ARGUMENTS IN SUPPORT: The California Immigrant Policy Center and other advocacy organizations justify their support of this policy as follows:

ICE's immigration detention system endangers human lives. Despite numerous reports of egregious medical neglect and malpractice, overcrowding, extreme temperatures, toxic water, use of harmful chemical agents on immigrants, and routine and prolonged solitary confinement immigrants, ICE consistently fails to provide adequate oversight over these immigration detention facilities, allowing these abuses to proliferate. Most recently, the

agency also failed miserably in containing the spread of COVID-19 in immigration detention, making 2020 the deadliest year in immigration detention since 2005.

Further, ICE officers conducting interior immigration enforcement routinely and intentionally engage in deceptive practices to mislead community members, posing as local police officers, misrepresenting administrative warrants as judicial warrants, and pressuring local and state law enforcement to transfer immigrants to ICE custody.

California is home to the largest and most diverse immigrant community in the United States, and cannot remain silent as ICE continues to take harmful, destructive, and inhumane actions against our immigrant community members. AJR 1 conveys to federal leaders that ICE's role in terrorizing immigrant communities is unwelcome and does nothing to enhance public safety.

ARGUMENTS IN OPPOSITION: Writing in opposition to this measure, Southwest California Legislative Council adopts the rhetoric of immigration hardliners:

The resolution contains a litany of untruths to support this egregious assault on the security of our nation. Referencing numerous fables, half-truths, and outright fabrications, the author(s) build a case without foundation. Further, they simply cannot restrain themselves from taking a shot at President Trump, although acknowledging a 'troubled history' with ICE prior to that. Interesting in this screed is the fact that ICE is simply enforcing the law as set down by Congress, extant through numerous former Presidents and extending to the current inhabitant of the White House. ICE doesn't make the laws, they simply enforce. Look to the root of the problem is you're serious about fixing it.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Women Prisoners
California Immigrant Policy Center
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Khmer Girls in Action
Re:store Justice
Silicon Valley De-bug

Opposition

Southwest California Legislative Council

Analysis Prepared by: Mary Soliman and Jith Meganathan / JUD. / (916) 319-2334