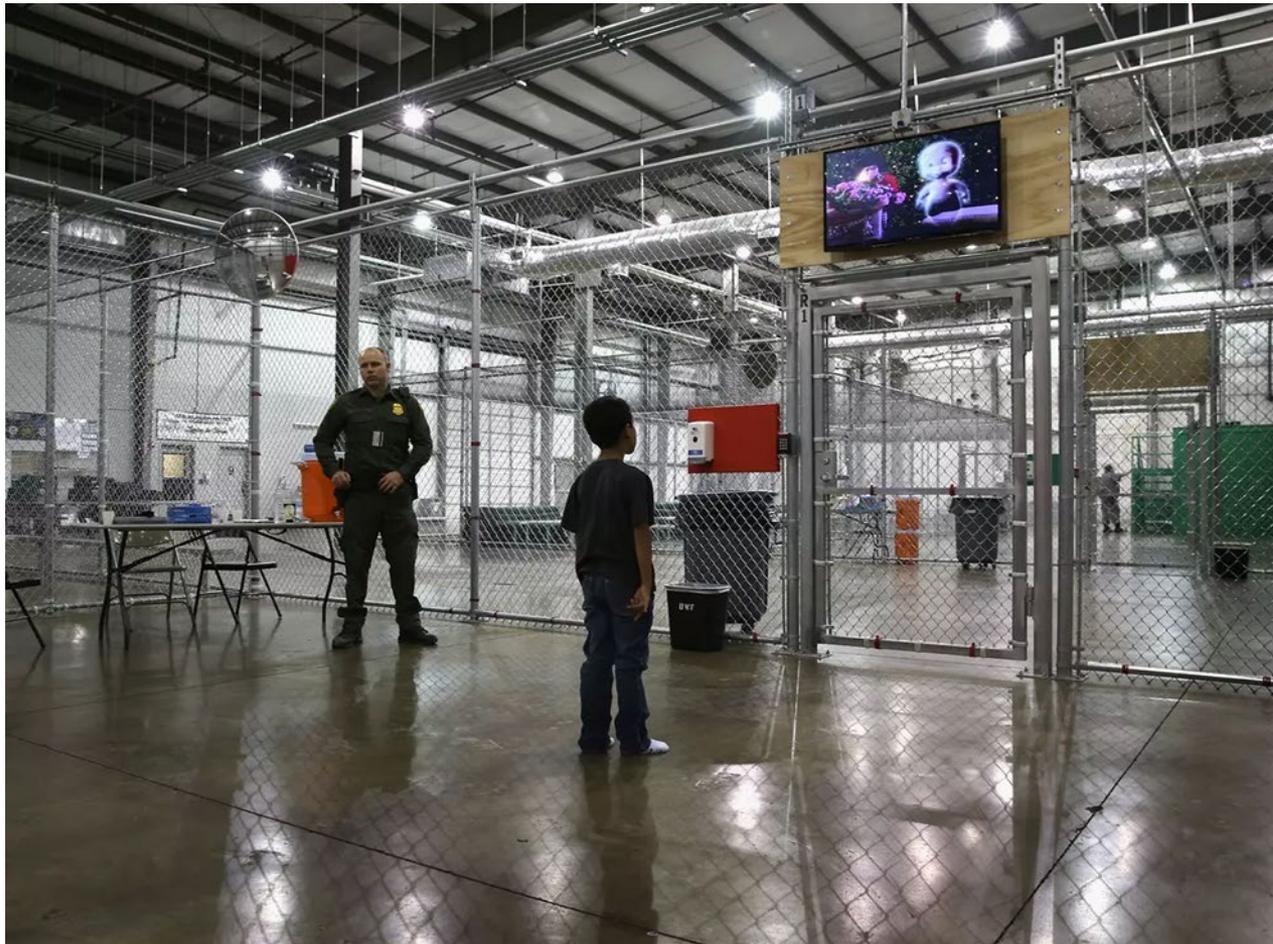


# GenEd 1092

## Lecture 21: 11/18/2020



# Changes in Immigration Policy Under Trump

- Broadening who is prioritized for deportation
- Separating Parents and Children, started in 2018, intense between June 2018-July 2019, estimated to be 5400 cases, 666 children not yet reunited.
- Dramatically reducing Refugee admissions
- Narrowing the eligibility criteria for asylum
- Ending TPS for over 1 million people
- Slowing visa processing for legal immigrants, and with the pandemic drastically dropping legal immigration.

# Detention and Deportation

- Apprehension at the border and its aftermath
- Apprehension in the interior of the country
- Criminal convictions and deportation
- Growth of immigrant detention as a parallel to mass incarceration

# Apprehension

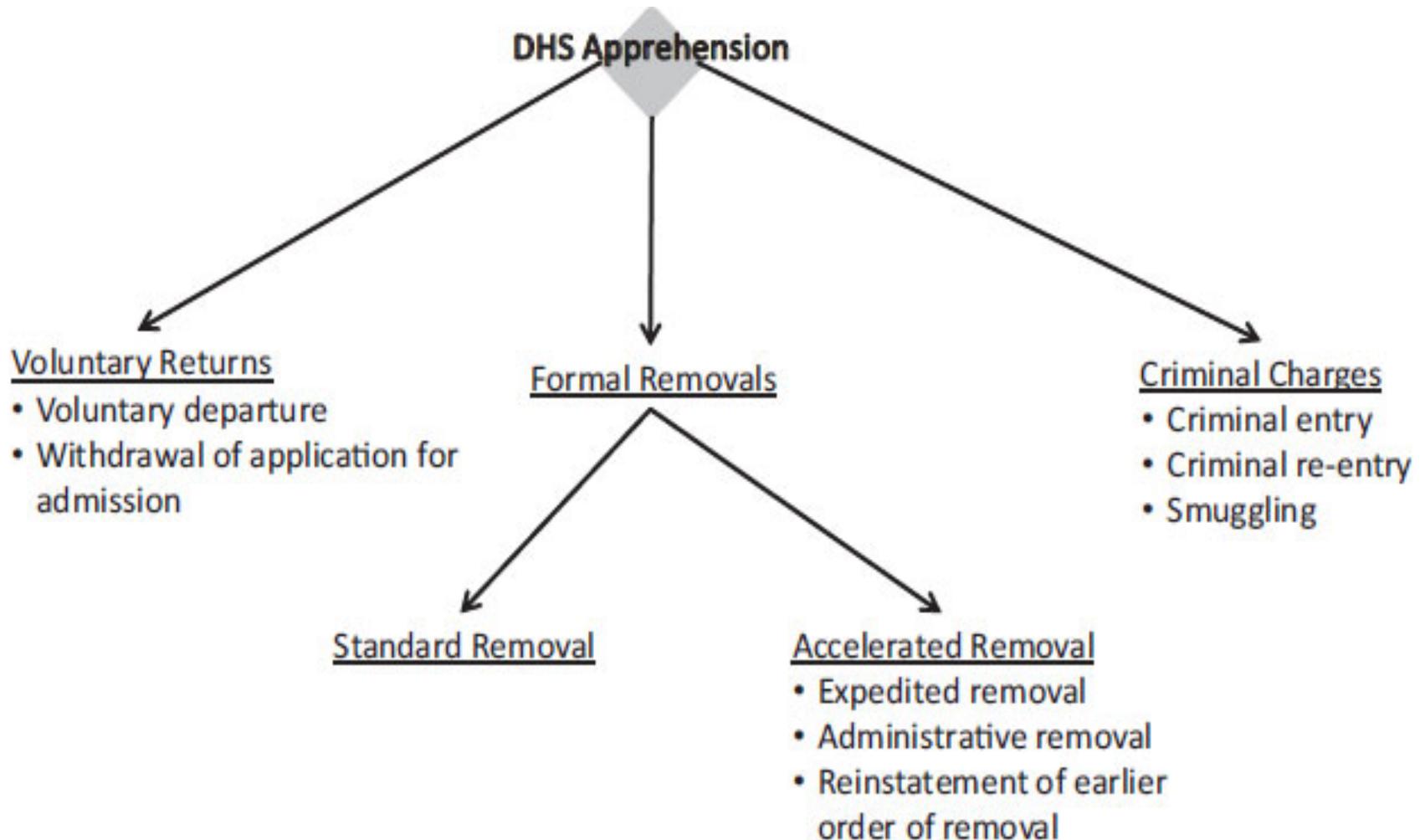
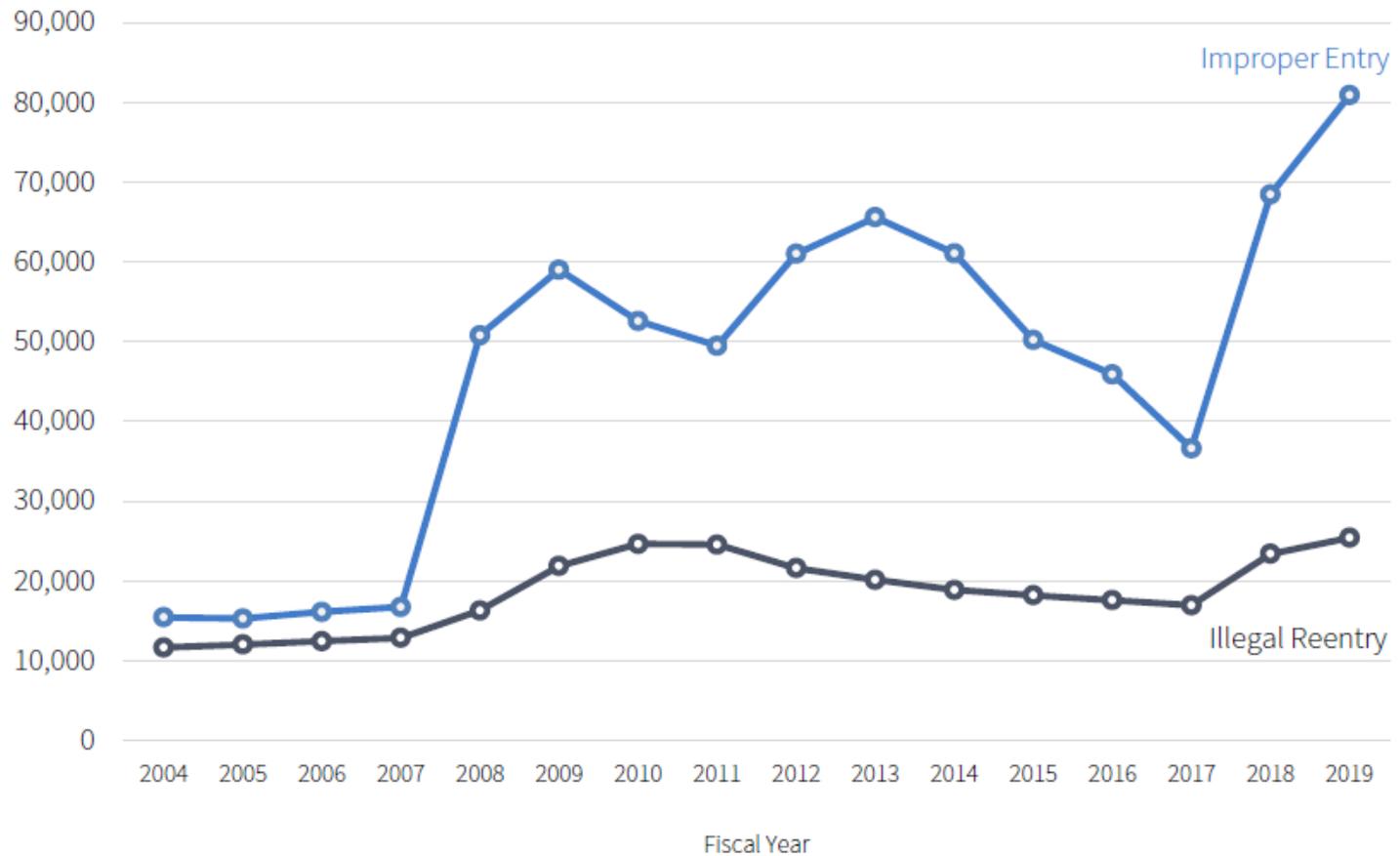


Figure 1: Number of Individuals Charged with Improper Entry & Illegal Reentry, FY 2004-2019



# Expedited Removal

- Removal (deportation) proceedings generally go before an immigration judge. Expedited removal means they do not.
- Created in 1996 IIRIRA Act
  - People entered illegally or overstayed visa
  - Make no claim to permanent resident status
  - Do not seek asylum
  - If they have been inside the US two years or less.

# Expedited Removal

- Starting in 1997 it was only used at airports, seaports and the southern border for people who had been in the US less than 2 weeks.
- Border patrol agents were trained to give credible fear screenings to people.
- In 2004 it was expanded to anyone caught within 100 miles of the border.
- The Trump administration expanded it to anyone in the US under 2 years.

# Immigration Enforcement

- Customs and Border Patrol (CBP)
  - Enforcement at the border
- Immigration and Customs Enforcement (ICE)
  - Enforcement in the interior

# “The Border”

- The 100 mile zone.
  - Border Patrol can operate immigration checkpoints
  - ICE needs reasonable suspicion that someone has committed immigration violation
  - Border Patrol operates 170 interior checkpoints



# The Government's 100 Mile Border Zone



**The Government's 100 Mile Border Zone**  
Nearly 2 out of 3 Americans (197.4 million people) live within 100 miles of the US land and coastal borders, according to 2007 figures from the US Census Bureau.

# Checkpoints

- <https://www.youtube.com/watch?v=Q6H0Od6UHJQ>

# Border apprehensions

In 2000, 1.6 million migrants were apprehended along the U.S. border, but by 2017 the number was only 304,000. The number of apprehensions normally fluctuates from month to month.

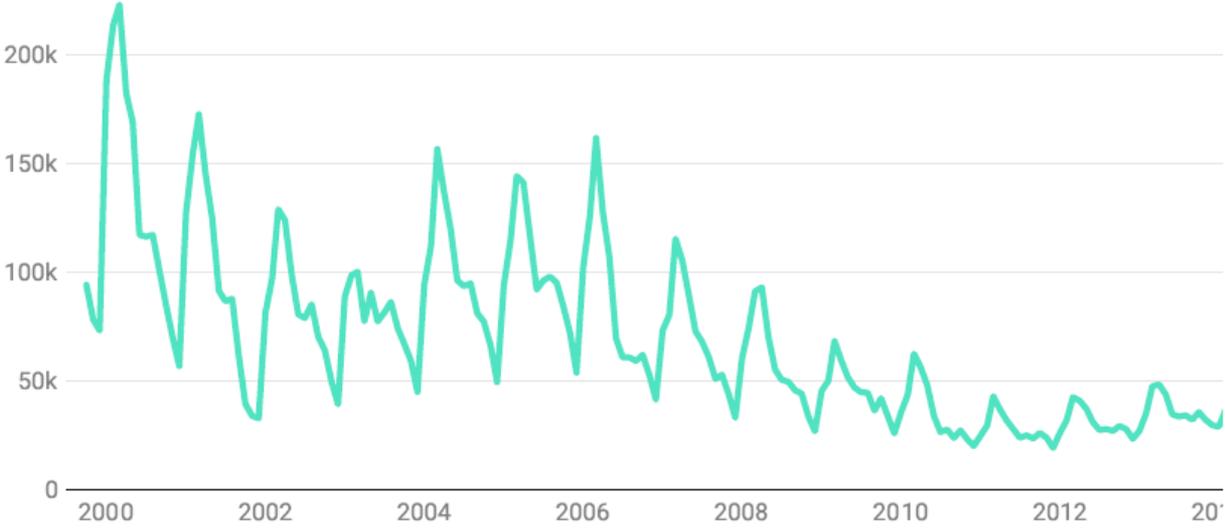


Chart: The Conversation, CC-BY-ND • Source: U.S. Customs and Border Protection • [Get the data](#)

# Impact

- Border Patrol with little to do, ICE doing most arrests in the interior.
- People claiming asylum from Central America do not try to enter without inspection, but try to present themselves to border crossings but are turned away.
- The construction of the wall continues, and settled people are being detained and deported.

# Who Faces Deportation?

- Anyone who is not a U.S. Citizen
  - Undocumented people
  - Asylum seekers
  - Non-immigrants
  - Green card holders (LPRs)

# Notice to Appear

- If an individual does not go through the expedited process, they begin the normal process.
- Individuals are given the reasons why the government believes they are undocumented and that they should be removed.

# Bond Hearing

- Individuals appear before a Department of Justice immigration judge for a bond hearing. The judge sets the dollar amount of the bond. As in bail, the individual agrees to return for all hearings or forfeit the bond.
- The judge decides whether to grant bond based on criteria such as an individual's local family ties, ability to post the bond, time in the U.S., criminal record and how they entered the country.

# Merits Hearing

- In this hearing before an immigration judge, individuals present arguments for staying in the country. Merits hearings can take hours or days. The government is represented by an ICE attorney. Individuals may have their own lawyer.
- At the hearing's end, the immigration judge decides whether the individual can remain in the U.S. If relief is denied, individuals can appeal to the Board of Immigration Appeals within 30 days. ICE can also appeal.

# Immigrant Detention

- Trump administration ended the “catch and release” policy of Obama, where people who were judged to have a well founded fear and needed to see a judge were given bond or release, with an ankle bracelet. Instead they are holding people in detention
- 3 family detention centers, average age of kids is 9 years old. Apply for day care center license. Average stay 22 days, some over a year.

# Defense against Deportation

- Defenses include, but are not limited to:
- Asylum, where the individual claims persecution or fear of persecution if returned to country of origin
- Cancellation of removal, where the individual claims a long history in the U.S., with or without authorization, or as a legal permanent resident

# Immigration Courts

- Trump has appointed 283 out of total 520 immigration judges.
- 88% of judges appointed in 2018 were former Department of Homeland Security employees or lawyers representing the department.
- Admin offered buyouts to the judges for early retirement, when none took it, they packed the Board of Immigration Appeals raising the total size from 17 to 23.
- Judges appointed by Barr gave asylum 2.3% of the time, compared to 29% average for other judges.

# Backlog of Immigration Cases

- Since Trump took over in 2017 the backlog of cases has risen from 600,000 to 1.3 million.
- The average wait for a hearing time was 700 days.
- If there were no more immigration cases it would take over three years to catch up.

# Criminalizing Aliens

- After 1996 automatic deportation for anyone convicted of an aggravated felony.
  - Includes anyone who is a non citizen, even people with green cards.
  - Retroactive, No recourse for false convictions or plea bargains.
  - Permanently inadmissible.
- An “aggravated felony” is any one of 50 crimes, including filing a false tax return or failing to appear in court

# Crimmigration

- Immigration is now over half the federal criminal workload.
- Immigration laws empower criminal prosecutions without criminal constitutional protections. (Eagly 2010)
  - Detention without bond. (ICE holds)
  - Interrogation without Miranda.
  - Arrest without probable cause of crime.
  - Sentencing without probation.
  - Retroactivity
  - No right to an attorney in deportation proceedings.

# How does the system work?

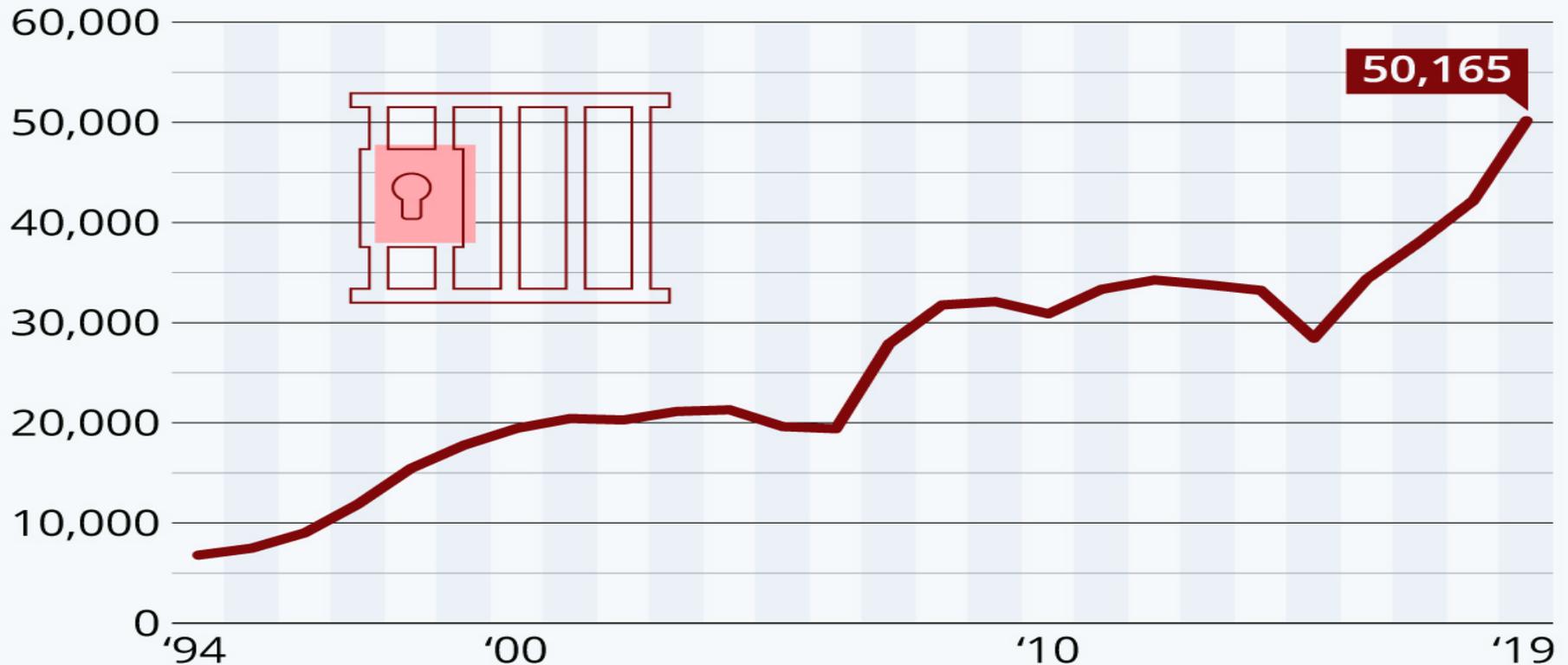
- Mandatory detention
- No right to counsel
- Retroactivity
- No jury trial
- No post removal motions to re-open

# Immigrant Detention

- ICE has a mandated quota of 34,000 beds per day. Quota began in 2010.
- In 2013, the US detained 441,000 people
- 71% are held in private detention facilities, the rest in local jails, state prisons and federal facilities. Federal government pays state and local prisons for the detention. Current Rate is \$126.46 per day.
- 3 family detention centers, average age of kids is 9 years old. Apply for day care center license. Average stay 22 days, some over a year.

# Number of Immigrant Detainees Rises Quickly

Average daily populations in DHS detention 1994-2019\*



\* Average number of people detained on any given day/fiscal years

Source: Department of Homeland Security



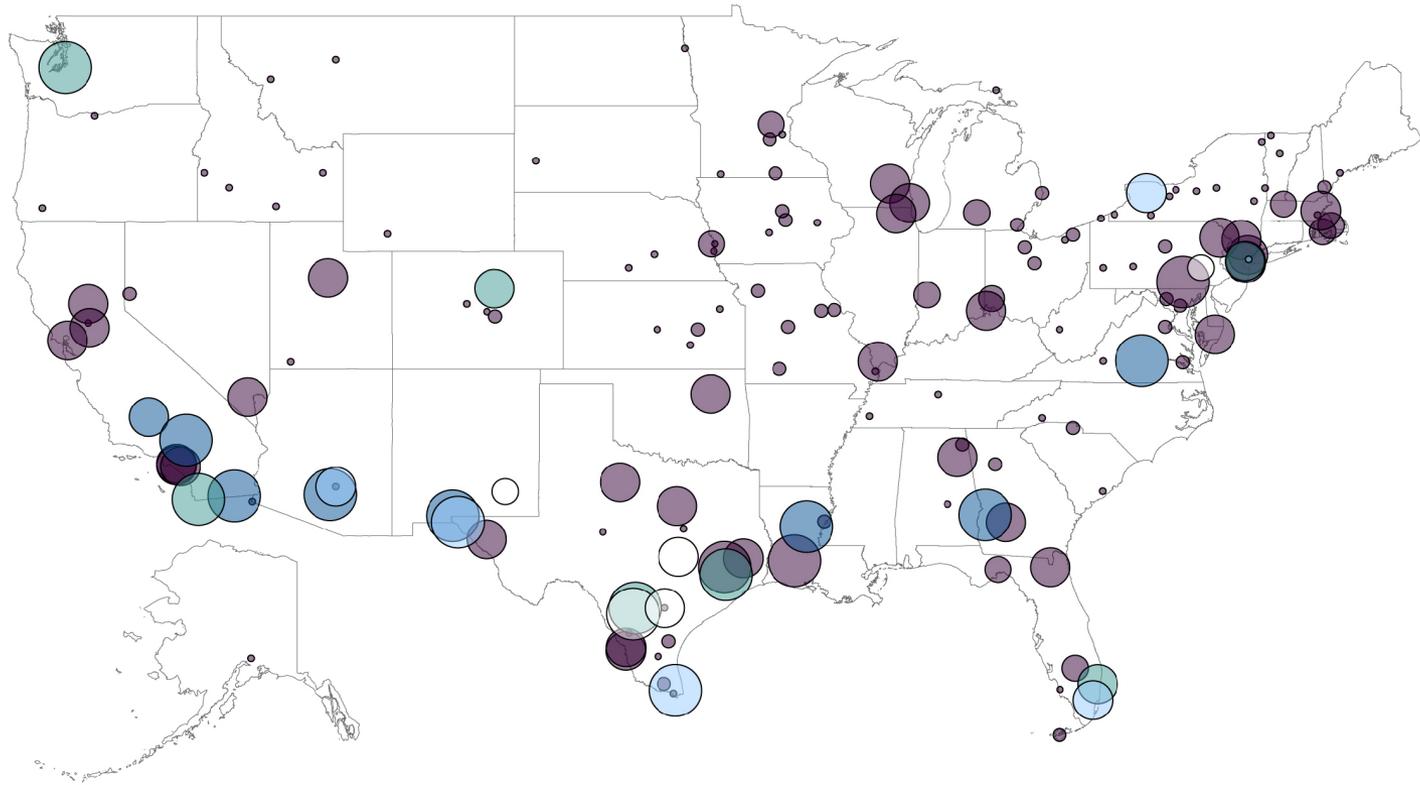
# Private Companies in Detention Business

- Stocks soared after Trump was elected
- Stocks plummeted after Biden was elected
- GEO and Core Civic are the two largest.
- ICE holds 70% of detainees in privately run facilities. For the rest it uses federal prisons and contracts with local and state jails and prisons. . Federal government pays state and local prisons for the detention. Current Rate is \$126.46 per day.
- Pandemic has led to 60% drop of people in detention.

# Detention Centers

- ICE operated 1,478 adult detention centers — a number that doesn't include the CBP facilities, which are all within 100 miles of the southern border.

**Figure 1: U.S. Immigration and Customs Enforcement (ICE) Detention Over-72-Hour Facility Locations, Fiscal Year 2015**



**Legend**

**Size indicates average daily population**

- 0-10
- 11-50
- 51-100
- 101-500
- greater than 500

**Color indicates facility type**

- Family residential facility
- Service processing center
- Contract detention facility
- Dedicated intergovernmental service agreement facility
- Nondedicated ICE intergovernmental service agreement facility, or U.S. Marshals Service intergovernmental agreement, or contract facility

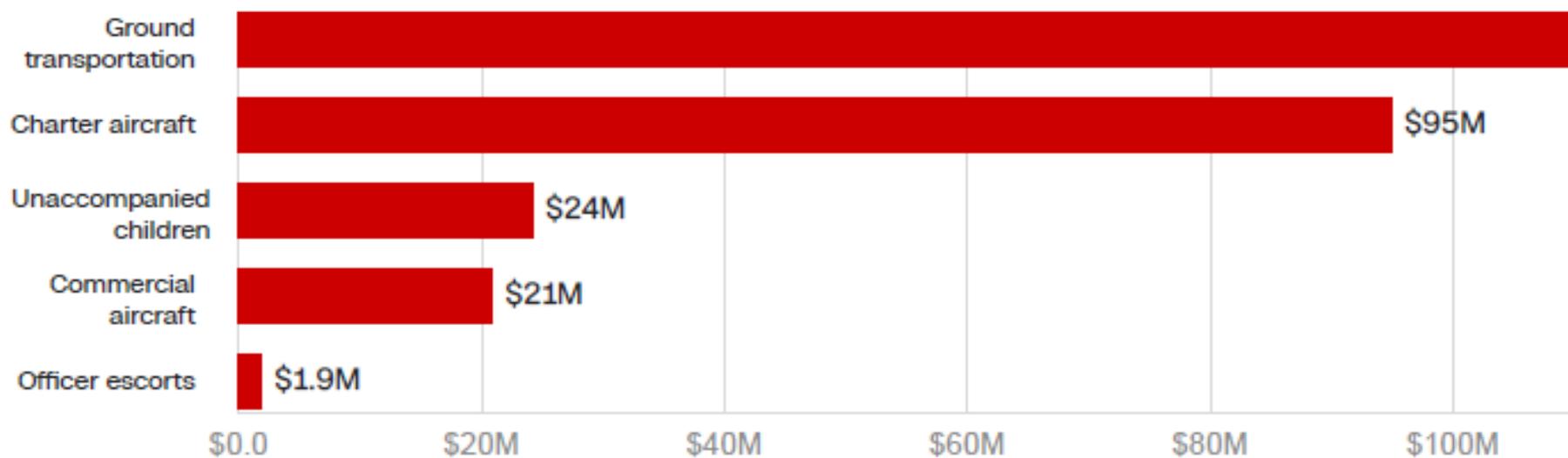
Source: GAO analysis of ICE information; Mapinfo (map). | GAO-16-231

# Deportation

- Individuals from Mexico are usually flown to U.S. border cities and either walk or are bused across the border. Those from Central American countries are flown direct. ICE Air Operations (IAO) handles air transport.
- Because federal law requires that people are deported directly back to their home countries, IAO runs regular deportation flights to Central America and occasional flights to other countries.

# Transportation and deportation costs

Charter flights accounted for about a third of the costs for ICE's transportation and removal program in fiscal year 2016.



Source: US Department of Homeland Security

# ICE Air's domestic routes

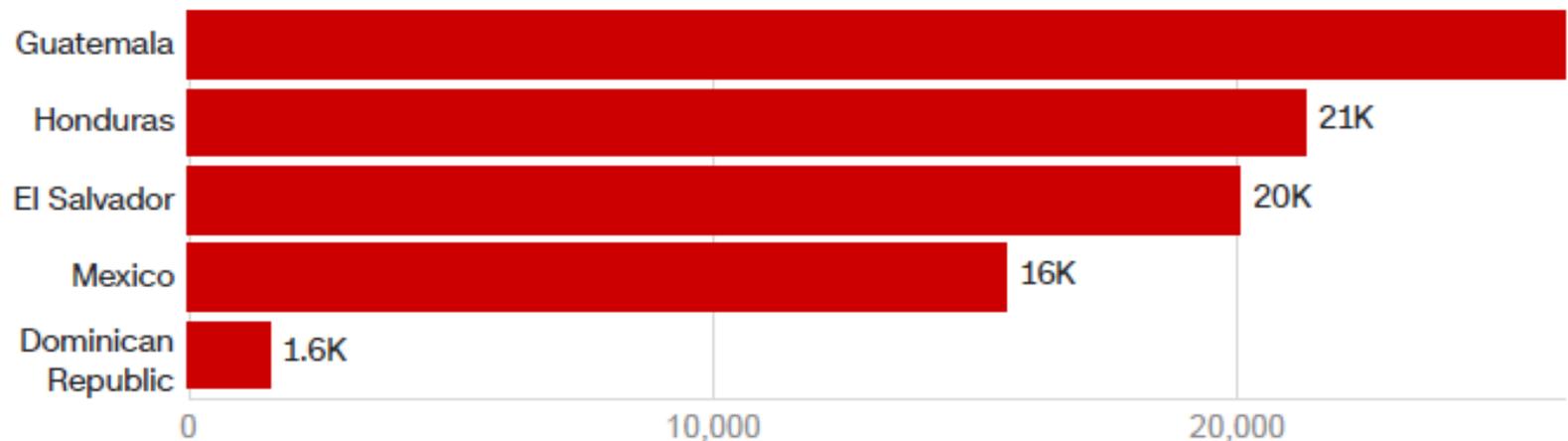
In addition to chartering international flights, ICE Air Operations flies immigration detainees within the United States. Here's a snapshot of typical routes the planes fly weekly.



## ICE Air's top deportation destinations

Guatemala was the country that saw the largest number of deportations via Immigration and Customs Enforcement charter flights in fiscal year 2016, which began on October 1, 2015 and ended on September 30, 2016.

Number of detainees removed



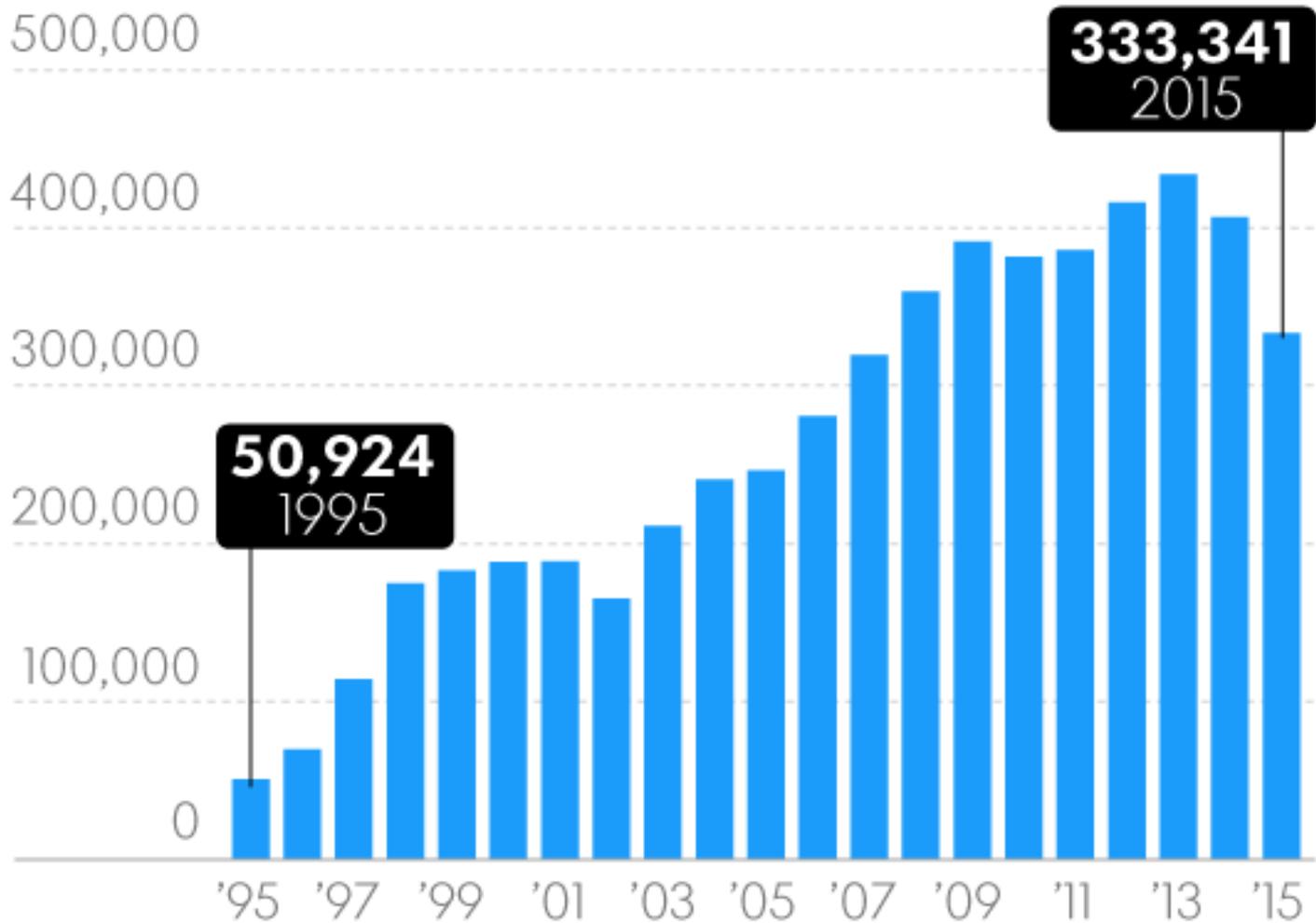
# Obama vs. Trump

- Obama as “deporter in chief”
- Both faced a different challenge than Clinton and Bush.
- Since 2008 the source of immigrants is much more likely to be Central America, and people are much more likely to be eligible to at least apply for asylum which means they have a right to a hearing.

# Obama as “deporter in Chief”

- Deportations were up during the Obama administration.
- These include people caught at the border and interior enforcement.
- Obama administration concentrated almost exclusively on recently arrived immigrants, people with a criminal record, and national security threats.
- Administrative discretion

# Deportations



# Discretion

- With 10.5 million undocumented people, ICE has the ability to arrest and deport only 150,000-250,000 people per year. How to prioritize?
- Under Obama 85% were of noncitizens who had recently crossed the border.
- Of the remainder, who were removed from the interior, more than 90% had been convicted of serious crimes.

# Changes under Trump

- Fewer people at the border so returns are down
- Removed discretion. Anyone illegally in the country is “Fair game”
- ICE has a policy of not going to “sensitive locations”: schools, hospitals, churches, funerals and weddings but reports of arrests in these locations happen, thus sowing more fear among immigrants.

# Targeting People They Can Find

- There are almost 1 million people who have removal orders pending or a “final order of removal”, some decades old.
- There are 90,000 people on so-called orders of supervision, who check in regularly with ICE.
- ICE has changed its statistics: combined “ICE fugitives”, people who have been ordered removed but haven’t yet, with people who have criminal charges, allowing it to claim that they are targeting criminals.

# Interior Enforcement

- Workplace Raids
- Looking for people with prior motions to appear
- Arresting people who come to “check in” who had relief from Obama administration
- Capturing people stopped by law enforcement (the largest numbers).

# Adjusting Status

- The 1996 law made it impossible for the vast majority of people to adjust status and become legal.
- 3 million undocumented people are eligible for a green card because of having a close relative who is a US citizen but they are barred from applying.

# Mixed Status Families

- 16.2 million people live in mixed status families, including 6.1 million US citizen children.
- Children with undocumented parents constitute nearly one-third of all immigrant origin children and about 8 percent of all U.S.-born children. (7% of all K-12 kids in US)
- Undocumented immigrants who have been present in the U.S. for more than 1 year face a bar from accessing legal status and must leave the country for 10 years before regaining eligibility.
- US citizens were denied COVID relief if they had a ITIN (Individual Taxpayer Identification Number) family member living with them

# Interior Enforcement

- <https://www.youtube.com/watch?v=1HdPamZ2HF0>

# Crimmigration

- Immigration is now over half the federal criminal workload.
- Immigration laws empower criminal prosecutions without criminal constitutional protections. (Eagly 2010)
  - Detention without bond. (ICE holds)
  - Interrogation without Miranda.
  - Arrest without probable cause of crime.
  - Sentencing without probation.
  - No right to an attorney in deportation proceedings.

# Immigration Enforcement

- \$187 billion for immigration enforcement since 1986.
- 2012: \$18 billion on immigration enforcement—approximately 24 percent higher than spending for all other federal enforcement **combined**: the FBI, Drug Enforcement Administration, Secret Service, U.S. Marshals Service and Bureau of Alcohol, Tobacco, Firearms and Explosives.

# Arrests

- Local police share info on anyone they arrest or stop with ICE. ICE can ask for a 48 hour hold. The local police do not have to honor the hold request. ICE can still use this information to find the person and arrest them later.
- Border Patrol agents arrest at border and airports. People are turned over to ICE

# Temporary Protected Status

- Before 1990 the govt practiced: Extended Voluntary Departure
  - administrative status that amounted to an exercise of prosecutorial discretion by the Attorney General not to pursue nationals of certain countries for removal if found to be living in the United States without authorization.
- 1990 Congress created Temporary Protected Status

# TPS

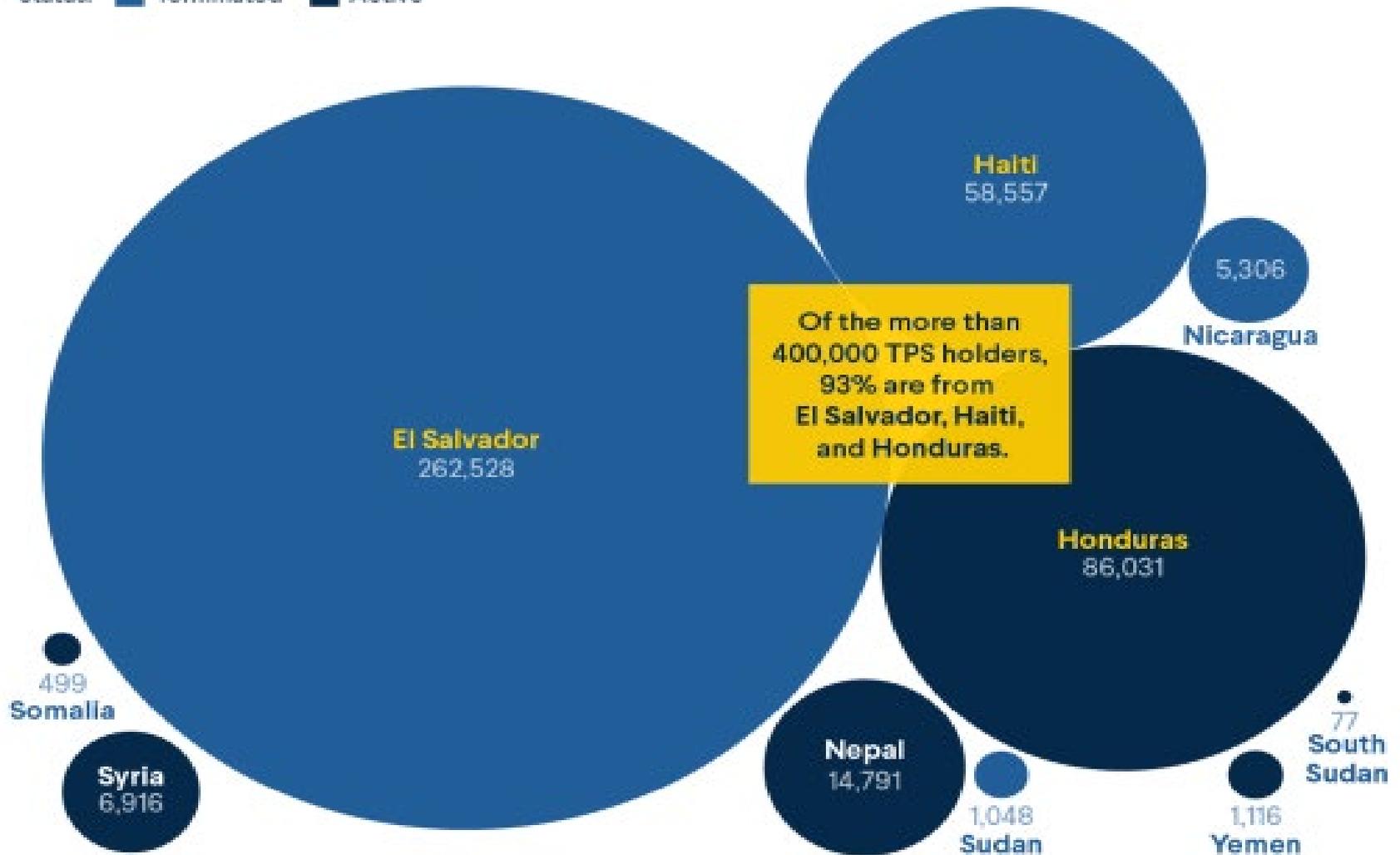
- Under current law, the Homeland Security Secretary may designate a country for TPS when one of three circumstances occurs:
  - there is “ongoing armed conflict” that creates unsafe conditions for returning nationals;
  - there has been an earthquake, flood, drought, epidemic, or other environmental disaster that makes the state temporarily unable to accept the return of its nationals, and the state has requested TPS designation; or
  - “extraordinary and temporary” conditions in a state prevent its nationals from returning safely

# TPS

- The statute bars from receiving TPS:
  - those who have committed a felony offense, two or more misdemeanors, or engaged in the persecution of others.
  - Those who have committed a controlled substance offense, a national security offense, or multiple criminal offenses.
- TPS grants two main benefits:
  - a reprieve from deportation and authorization to work.

## Where do TPS beneficiaries come from?

Status: ■ Terminated ■ Active



Source: Congressional Research Service (October 2017).

**Table 1. TPS Beneficiaries by Country of Citizenship**

Country	Most Recent Decision	Required Arrival Date <sup>a</sup>	Expiration Date <sup>b</sup>	Individuals with TPS <sup>c</sup>
El Salvador	Termination*	February 13, 2001	September 9, 2019	247,697
Haiti	Termination*	January 12, 2011	July 22, 2019	55,338
Honduras	Termination*	December 30, 1998	January 5, 2020	79,415
Nepal	Termination*	June 24, 2015	June 24, 2019	14,550
Nicaragua	Termination*	December 30, 1998	January 5, 2019	4,421
Somalia	Extension	May 1, 2012	September 17, 2021	455
South Sudan	Extension	January 25, 2016	May 2, 2022	96
Sudan	Termination*	January 9, 2013	November 2, 2018	774
Syria	Extension	August 1, 2016	March 31, 2021	6,934
Yemen	Extension	January 4, 2017	September 3, 2021	1,646
<b>Total</b>				<b>411,326</b>

**Source:** CRS compilation of information from *Federal Register* announcements and data provided to CRS by USCIS.

**Note:** \*Due to legal challenges, the termination has not yet taken effect.

- a. The arrival date represents the date from which individuals are required to have continuously resided in the United States in order to qualify for TPS and is indicated in the most recent TPS designation for that country. A foreign national is not considered to have failed this requirement for a “brief, casual, and innocent” absence. 8 U.S.C. §1254a(c) and 8 C.F.R. §244.1.

# Judge Chen's decision

As described below, absent injunctive relief, TPS beneficiaries and their children indisputably will suffer irreparable harm and great hardship. TPS beneficiaries who have lived, worked, and raised families in the United States (many for more than a decade), will be subject to removal. Many have U.S.-born children; those may be faced with the Hobson's choice of bringing their children with them (and tearing them away from the only country and community they have known) or splitting their families apart. In contrast, the government has failed to establish any real harm were the status quo (which has been in existence for as long as two decades) is maintained during the pendency of this litigation. Indeed, if anything, Plaintiffs and amici have established without dispute that local and national economies will be hurt if hundreds of thousands of TPS beneficiaries are uprooted and removed.

# TPS Holders

- TPS holders from Honduras have been in the US an average of 22 years
- Salvadorans 21 years
- Haitians 13 years
- Nearly 1/3 hold mortgages
- TPS holders have 273,200 US born children
- Map:

<https://www.americanprogress.org/issues/immigration/news/2017/10/20/440400/tps-holders-are-integral-members-of-the-u-s-economy-and-society/>

TABLE 2

## U.S. remittances as a share of gross domestic product (GDP) by country, 2015

Estimates for country GDP from the World Bank and estimates for U.S. remittances from Pew Research Center

	U.S. remittances, 2015	U.S. remittances as a share of GDP by country, 2015
El Salvador	\$4 billion	15%
Honduras	\$3.3 billion	16%
Haiti	\$1.3 billion	15%

Sources: U.S. remittances, 2015: Pew Research Center, "Remittance Flows Worldwide in 2015," available at <http://www.pewglobal.org/interactives/remittance-map/> (last accessed August 2017). U.S. remittances as a share of GDP by country, 2015: The World Bank, "World Bank Open Data: El Salvador," available at <https://data.worldbank.org/country/el-salvador> (last accessed August 2017); The World Bank, "World Bank Open Data: Haiti," available at <https://data.worldbank.org/country/haiti> (last accessed August 2017); The World Bank, "World Bank Open Data: Honduras," available at <https://data.worldbank.org/country/honduras> (last accessed August 2017).



# Dream Act

- First version introduced in 2001
- The bill came closest in 2010 when it passed the House, but failed in the Senate by 5 votes.
- States have acted but cant grant lawful residence.
- 18 states provide in state tuition: California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, and Washington

# Dream Act

- 2017 version. Dick Durbin and Lindsay Graham
- Would cover 3.4 million people
- Failed to pass.

# DACA

- Gave work authorization, relief from deportation for two year periods.
- Allows people to get social security cards, drivers licenses.
- Does not grant a green card or path to citizenship.
- Created by Obama November 2012
- 906,693 people who have filed applications.
- 798,980 people enrolled
- Status lasts for 2 years

# DACA 2012 Requirements

- Under age of 31 as of June 15, 2012
- Came to the US before their 16<sup>th</sup> birthday
- Have continuously lived in the US from June 5, 2007 until June 15, 2012
- Currently in school, have graduated or gotten GED, or are honorably discharged veteran
- Have not been convicted of a felony, or three misdemeanors, and do not otherwise pose a threat.

# DACA

- Trump administration tried to terminate DACA in 2017. Court battles ensued.
- They stopped taking new applications but continued renewals. A move to forge a compromise in late 2017 and early 2018 fell apart based on the question of whether only DACA recipients or a wider number of young undocumented would be included, whether changes to asylum would be voted on, and paying for the wall.
- June 18, 2020 Supreme Court ruled 5-4 in a narrow decision that HHS did not follow proper procedure in terminating the program, not that DACA recipients have a right to stay in the US

# HHS defiant after Supreme Court ruling

- July 2020 memo by Chad Wolf HHS required the US Citizenship and Immigration Services to reject all first time applicants for DACA, to prohibit advanced parole for DACA (which allows international travel) and to cut DACA renewals from one to two years.
- On Monday Nov 16, US District Court found that Chad Wolf did not have legal authority to serve as acting secretary of HHS and this should return DACA to its 2012 form. Court conference this morning.

# DACA

- Supposed to be the easy issue
- Fox News Poll: 83% support path to citizenship. (9/17)
- Washington Post-ABC Poll finds 86% support for them to remain in country.

# Effects of DACA

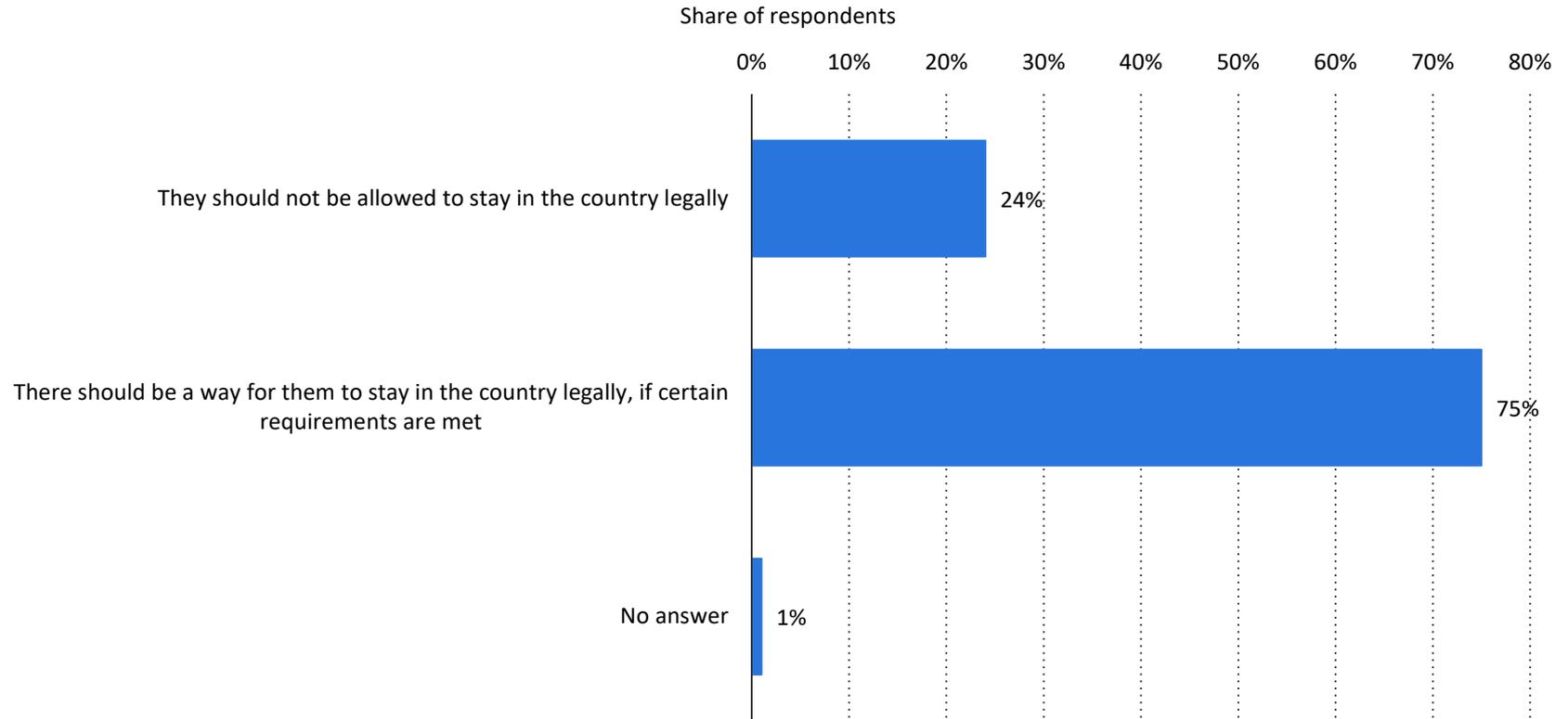
- Beginning in 2017, Tom Wong, UCSD has been studying 3,063 recipients across the country.
- After receiving DACA, 69 percent of respondents reported moving to a job with better pay; 54 percent moved to a job that “better fits my education and training”; 54 percent moved to a job that “better fits my long-term career goals”; and 56 percent moved to a job with better working conditions.

# Effects of DACA

- The average hourly wage of respondents increased by 69 percent rising from \$10.29 per hour to \$17.46 per hour. Among respondents 25 years and older, the average hourly wage increased by 84 percent since receiving DACA.
- 16 percent of respondents purchased their first home after receiving DACA. Among respondents 25 years and older, this percentage rises to 24 percent.
- Overall, 45 percent of respondents are currently in school. Among those currently in school, 72 percent are pursuing a bachelor's degree or higher. 36 percent of respondents 25 years and older have a bachelor's degree or higher.

Public opinion on a path to legal status for undocumented immigrants U.S. 2020

# Public opinion on a path to legal status for undocumented immigrants in the United States in 2020



**Note:** United States; June 4 to 10, 2020; 18 years and older; 9,654 Respondents  
Further information regarding this statistic can be found on [page 8](#).  
**Source(s):** Pew Research Center; [ID 367872](#)