Courting Disaster

Absent attendance and absent enforcement in America's immigration courts

By Mark H. Metcalf

Executive Summary

U.S. immigration enforcement and adjudication are failing. American immigration courts have the highest failure to appear rates of any courts in the country. Over the last 20 years, 37 percent of all aliens free pending trial failed to appear for their hearings. From the 2,498,375 foreign nationals outside detention during their court proceedings, 1,219,959 were ordered removed, 75 percent of them (918,098) for failing to appear. Only 25 percent of this group — some 301,861 people — actually litigated their claims. Trial courts are three times more likely to issue removal orders for failure to appear than removal orders based upon the merits of fully litigated claims. Nearly 46,000 people each year disappeared from court.[1] Deportation orders for failure to appear are the largest group of orders issued by immigration courts outside detention facilities.[2] From 1996 through 2015, removal orders for failure to appear numbered 918,098. Among those who absconded from court were 3,095 aliens from the 36 countries that promote terrorism. A disproportionate number — 338 altogether — came from those countries the U.S. State Department labels state sponsors of terrorism: Iran, Sudan, and Syria. As populations from countries that promote terrorism have increased since 9/11 — from naturalized citizens, immigrants,[3] and refugees[4] — plots and acts of Islam-inspired terrorism have also increased, more than twice as many under Barack Obama than under George W. Bush. Unexecuted removal orders now number 953,506 — a 58 percent increase since 2002. An average of 25,107 unexecuted orders of removal were added each year through 2015.[5]

Practical reforms that serve America's age-old immigration world view — to attract the talented, redeem the persecuted, and remove the offender — are needed now, perhaps more than ever in our history, as a remedy for policies that have diminished the deserving, emboldened the suspect, and rewarded the violator.

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It began with so much promise in 2008.[6] Assurances of secure borders and effective enforcement were send-ups for an immigration system badly needing both. One candidate, Barack Obama, seemed to get it. His campaign website quoted him:

> *In approaching immigration reform, I believe that we must enact tough, practical reforms. ... We need stronger enforcement on the border and at the workplace. ... But for reform to work, we also must respond to what pulls people to America. ... The time to fix our broken immigration system is now.*[7]

A war-weary public, firmly rejecting bold immigration reforms proposed by George W. Bush only a year before, heard little to argue about or vote against.[8] Obama spoke reasonably. His words invoked accountability for a system needing a strong dose of bottom-line sternness and he seemed to understand that for America's immigration

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system to work, it must sanction as well as redeem. He clearly declared that for a country to be secure, its borders must be sovereign.

But Mr. Obama promised one thing and delivered another across the gamut of immigration issues. Bad went to worse, and worse meant uncertainty for American workers,[9] crime on American streets,[10] unprecedented threats to national security,[11] and, more importantly, a systemic brokenness advanced by the United States government itself.[12] At the center of this brokenness is America's immigration courts. Sidelined by DHS (Department of Homeland Security) priorities that prosecuted few cases[13] and deported even fewer offenders,[14] courts became rubber stamps for enforcement that didn't enforce and prosecution that didn't prosecute. What removal orders they issued went unenforced by Homeland Security officials whose 18-year-old "Interior Enforcement Strategy" — the forerunner of the Obama administration's "smart enforcement" initiatives — never mentions immigration courts and removal orders.[15]

Judges on immigration courts across the country were interviewed for this article. They spoke on background only, fearing their statements would prompt retaliation from superiors within the Executive Office for Immigration Review (EOIR), the agency that manages the courts. They described a system plunged into turmoil by appointees at the Departments of Justice and Homeland Security who ignored statutes, precedent, and regulation and imposed policies that dramatically increased backlogs and nearly halted adjudication. Misusing the tools of "prosecutorial discretion" — justifications for not prosecuting a case — and "administrative closure" — continuances granted to avoid trial — prompted dismissals and ever-growing caseloads. These are the most recent failures in a long line of failures that have helped unmake a court system and its enforcement assets, resulting — says the U.S. Second Circuit Court of Appeals — in laws, regulations, and practices that engender "waste, delay, and confusion" for the government and the immigrant alike.[16]

These are not sudden failures, but incremental ones. Successive presidential administrations, Republican and Democratic, have authored problems that today fall just short of chaos in the operation of these courts. Their legacies — actions in the past that influence the present — are one source of this disorder. They have been abetted by generations of court executives who've hidden the bright markers of disarray to produce testimony and reports that from one year to the next misinformed Congress and the public.

The most definitive source of failure, though, was the Obama administration. Insisting borders were secure and enforcement effective[17] as tens of thousands entered unhindered[18] and hundreds of thousands more were never removed[19] made worse the problems it inherited. Both national and domestic security are today jeopardized in the wake of this maladministration.[20] For a presidency that promised better, borders remain porous,[21] enforcement slack,[22] backlogs endless,[23] court evasion commonplace,[24] and removal orders unexecuted.[25] Disorder — in this instance, a policy of injuries inflicted by a government upon its institutions, citizens, and hopefuls alike — rules, along with its calamitous twin, deception.[26]

"Absent" is the single word that defines these injuries. Absent attendance at court produces chronic failures to appear nearing a million people whose disappearances were muted in annual reports to Congress. Their numbers make up the largest part of unexecuted deportation orders. Absent enforcement — the flat refusal of a presidential administration to secure the borders and interior of the United States — has resulted in 953,506 violators unremoved years after their deportation orders were final, a 58 percent increase since 2002.[27] While illegal aliens composed up to 41 percent of all criminal defendants prosecuted in U.S. federal district courts in 2010,[28] no sustained efforts to stem illegal entry and remove offenders found their way into Obama administration policies, despite the fact that felony reentry into the United States was among the most common offenses charged.[29] Instead, the opposite occurred. Enforcement waned[30] as illegal entry across American borders waxed.[31] Enforcement protocols fashioned over the last eight years pushed unexecuted deportation orders past a million on the watch of a president who assured Congress and the public of hardened borders and tough enforcement.

"Facts are stubborn things," Mark Twain reputedly observed, "but statistics are more pliable."[32] Facts in this context are numbers and narratives twisted to understate the degree to which a court system missed and still misses its grave calling. Annual reports and high-minded Judiciary Committee testimony *can* change them, but cannot make the conditions that underlie them go away. Failure has been filtered by those obligated to report it and statistics have been shaped to give dysfunction not the glow of success, but the pallor of insignificance. Disaster has been courted.

Absent Attendance — The Devil Is the Details

U.S. immigration courts have the highest failure to appear (FTA) rate of any courts in the nation.[33] Court numbers reveal dynamics never seen before in modern American jurisprudence. Studies disclose some state courts see up to 30 percent failure to appear rates for traffic and minor criminal offenses.[34] The Bureau of Justice Statistics (a Justice Department agency) found that even some accused felons in state courts absconded at the rate of 25 percent.[35] At nearly the same time, federal district courts experienced a lowly 1 percent failure to appear rate,[36] despite the fact that 10 percent of all illegal aliens before them — a group numbering 11,362 people out of 116,321 — gained release prior to trial.[37] Chicago's Cook County juvenile courts experienced failure to appear rates in the high thirties that eventually declined to less than 13 percent.[38] But no other courts, state or federal, come near the rates consistently seen by America's immigration courts and have done so little about it.

Over the past 20 years, 37 percent of all aliens free pending their trials — 918,098 out of 2,498,375 — never showed for court.[39] Courtrooms, like borders, are porous. On average, 46,000[40] people each year vanished from proceedings created specifically for those claiming persecution in the lands they called home.[41] Few things diminish a court system more. "Failures to appear", write court observers, "undermine the integrity of the justice system" and "erode the respect that an independent judiciary deserves."[42] More than respect was eroded, though. Enforcement was disabled.

Disabled, in fact, by its own protocols that determined who should be released.[43] A 2006 Department of Homeland Security (DHS) Inspector General report concluded the department's ability "to detain and remove illegal aliens with final orders of removal" was hindered by their "propensity ... to disobey orders to appear in immigration court" and their consequent flight from deportation.[44] DHS, in short, could not ensure effective enforcement of removal orders against those free pending trial.[45]

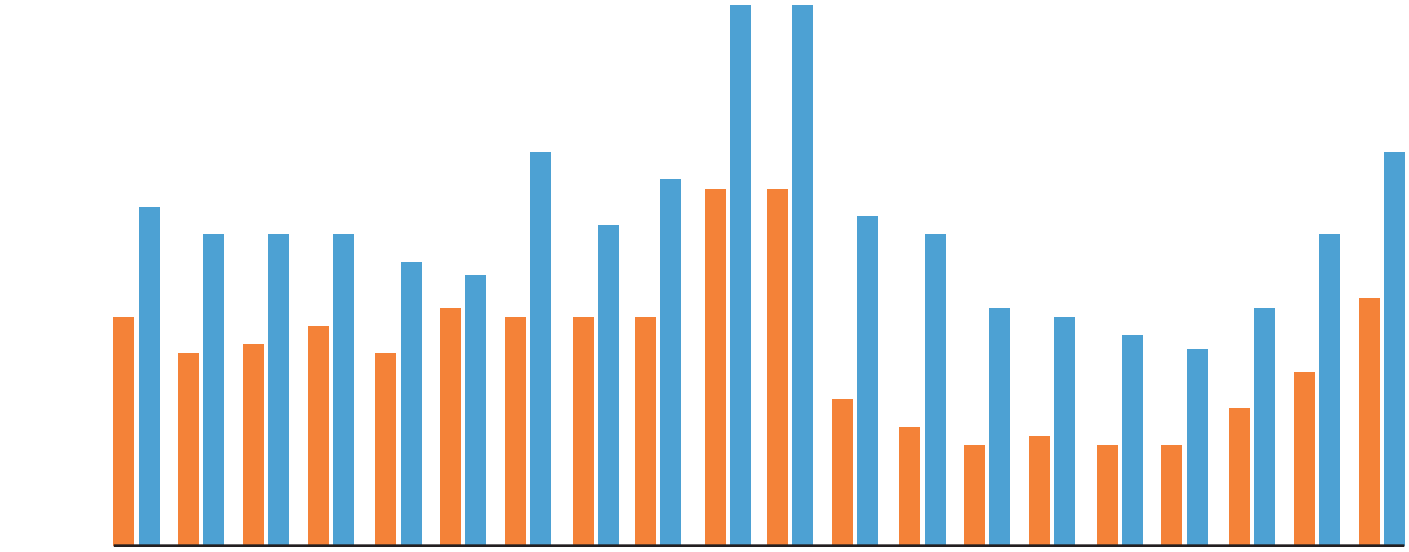
Basic tools to assure against both were not applied by Immigration and Customs Enforcement (ICE) leadership for broader use among the general population of aliens released on their own recognizance. Where they were used — within limited groups from the 1.8 million aliens on varying degrees of supervision — absconding plummeted. Alternatives to detention (ATD's) like ankle monitors, telephonic reporting and reminding calls, and home and job-site visits — tools used with success every day in state courts across America — worked, but found only spare use before, during, and after immigration court proceedings from which aliens frequently disappeared. Risk assessments used by ICE showed promise, with failure to appear rates falling in some sample groups more than 50 percent.[46] Regardless, the DHS inspector general found as recently as February 2015 that ICE's Risk Classification Assessment (RCA) — guidance intended to assist custody decisions — was, on the whole, time-consuming, resource-intensive, and ineffective in determining which aliens to release and under what conditions.[47]

Some alternatives to detention still gave encouragement. Success stories noted a 99.7 percent attendance rate at court and an 85 percent compliance rate with final orders of removal inside a monitored population of 42,000.[48] The same report acknowledged that as supervision was relaxed compliance fell, with the consequent evasion of removal orders equaling 55 percent in a more lightly monitored group.[49] Yet wider use of methods that would mitigate absconding — including detention — trail this long-standing problem. Despite progress with smaller samples of offenders and the comparative low cost-to-benefit ratio when contrasted to detention, success across the spectrum of all non-detained aliens still proves elusive, if not impossible, for those in charge at ICE. As elusive, it turns out, as getting credible information from court reports on the same issue.

While ICE leadership failed to remedy this problem, court management covered it up. While court evasions grew, court executives masked it with soft graphs and friendly numbers that belied what was really going on. Scrutiny shows that for years these executives skewed numbers to paint a much different picture of this dynamic than honest bookkeeping supported.[50] Gamed numbers hid the problem. Congress and the public were — and still are — misled by accounting gimmicks that would send a private-sector CPA to jail.

What the courts offered were distinctions without differences. Whether they called it the failure to appear rate (their former name for court evasion) or the *in absentia* rate (the name they presently give it),[51] the same thing each year back to 1996 has been measured largely the same way and the number the courts always report to Congress is the one that shrinks evasion to a figure that obscures the problem. (See Figure 1.) From 1996 through 2012, the courts labeled evasions as the "overall failure to appear rate" or, more simply, the "failure to appear rate". What they measured was the frequency of *in absentia*

Figure 1. Actual vs. Published EOIR Failure to Appear Rates



Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Actual FTA	0.37	0.34	0.34	0.34	0.31	0.30	0.42	0.35	0.40	0.59	0.59	0.36	0.34	0.26	0.25	0.23	0.22	0.26	0.34	0.43
EOIR FTA	0.25	0.21	0.22	0.24	0.21	0.26	0.25	0.22	0.25	0.39	0.39	0.19	0.16	0.11	0.12	0.11	0.11	0.15	0.19	0.27

Source: U.S. Department of Justice, Executive Office of Immigration Review Statistics, statistical year books, 2000-2015. This figure presents the 20-year disparity between failure to appear (FTA) rates reported by the courts and those produced by making a direct comparison of all aliens who failed to appear in court to all aliens free pending their court dates. The courts include in their comparison aliens in detention pending court. Including aliens in detention produces significantly lower FTA rates.

orders (removal orders issued in the absence of the litigant) from the entire population of orders granting relief, termination, or directing removal and called it the failure to appear rate. Not only did this population include orders involving aliens free before trial, it also included those persons who almost never failed to appear in court: detained aliens.

Including detained aliens had significant effect. In short, it artificially reduced the failure to appear rate. Some years failures to appear exceeded or nearly exceeded the rates declared to Congress by more than 100 percent.[52] The courts stated the FTA rate was 19 percent in 2007, when it was actually 36 percent. In 2008, the courts stated the FTA rate was 16 percent. Instead, it was 34 percent. In 2009, the courts proudly declared failures to appear came in at 11 percent — and noted it was the lowest number in five years. The real number was 26 percent.[53] From 2010 to 2014, the same dynamic is present. Actual failure to appear rates nearly doubled or more than doubled what the courts told Congress (see Figure 1). Here the devil isn't in the details. The devil *is* the details.

In 2013, the courts changed the name for court evasions, replacing "failure to appear rate" with the term "*in absentia* rate". Changing labels changed nothing, though. Virtually the same thing was measured the same way. Never from 1996 through today have the courts been candid about this critical metric. Congress and the public are misled each year by a marquee number that is consistently lower than what accurate statistics support. Instead of a direct comparison of those aliens free before trial who failed to make court out of all aliens free before trial, the courts compared those who failed to appear to the much larger number of all those who were free before trial *plus* all those who were detained before trial.

The courts' deception works this way: First, they declare the number of aliens who failed to show for their hearings. This is the numerator. Next they combine the total number of aliens free pending trial *with* the total number of aliens *held in detention*. This is the denominator. Then the courts divide the numerator (those who failed to appear) by the denominator (all aliens free pending trial *plus* all aliens in detention). This division always yields a lower number than the actual failure to appear rate. Because the courts include in their equation aliens in detention — persons who have no choice but to appear in court — they enlarge the denominator and, by doing so, shrink the value of the numerator. In turn, they make failures to appear seem lower — and less significant — than they really are.

The courts' most recent annual report provides a telling example of this institutional misguidance. Here's how they did it. Conceding 38,229 aliens ran from court in 2015, court executives didn't compare the runaways to all aliens free pending trial, *i.e.* 38,229 ÷ 88,868 = 43 percent. Instead, they added all aliens in detention to the denominator, so the equation was 38,229 ÷ 139,048 (88,868 aliens free pending trial + 50,180 aliens in detention) = 27 percent.[54] Nowhere in 20 years of annual reports are direct comparisons ever made between aliens free before trial who fled court vs. all aliens free before trial. Using this method, the courts minimized failures to appear in 2015 and every year reported back to 1996 and in the process hid the fact that nearly two-fifths of all those released on their own recognizance never made it to court.[55] Candor fails this agency and aggregating 20 years of annual reports shows just how badly.

Declaring that aliens failed to appear in court 27 percent of the time in 2015, court executives grossly understated court evasion.[56] No-shows were underreported to Congress by a factor of 37 percent.[57] Accuracy shows 38,229 aliens free pending trial out of a total of 88,868 simply disappeared and this number is not an outlier. It is wholly consistent with a two-decades-long track record of litigants skipping court with impunity and wholly inconsistent with the courts' duty "to provide accurate and credible statistics that will permit policy debates to be ... about policy, not about the credibility of the data."[58] Since 2012, failures to appear have increased 95 percent.[59] The FTA rate of 43 percent in 2015 is the highest number since 2006, when 59 percent of aliens free pending trial never made it to court.[60] These are not the metrics of past, present, or future success.

The courts' latest spin on failures to appear — the *in absentia* rate — engages them in further sleight of hand. They ignore in any narratives describing the *in absentia* rate that only those free pending trial can receive an *in absentia* order of removal.[61] Regardless, the courts include aliens held in detention when calculating this rate. Including this group dilutes the *in absentia* rate, the same way it did when the courts called this statistic the failure to appear rate — and that presumably is the point. Court executives would rather dilute this metric and be implicated in data manipulation than confirm the fact that over 20 years an average of 46,000 people each year never made their court dates and became fugitives. A very real 37 percent failure to appear rate is nothing to brag about at congressional oversight hearings.

The courts admitted in their 2002 and 2007 annual reports that detained aliens seldom miss court.[62] Detained aliens miss, if at all, because of illness or transportation problems. In fact, their misses are so rare that court executives *never* break them out in annual reports. Nor are these misses tallied as failures to appear. Instead, new court dates are scheduled for them.[63] Yet the courts' leadership persistently included this group in annual summaries submitted to Congress because in prior years it lowered the failure to appear rate in the same way it is now used to lower the *in absentia* rate. Basic statistics courses call this "mixing different populations" — in other words, combining "apples and oranges".[64] In America's immigration courts, it's called business as usual.

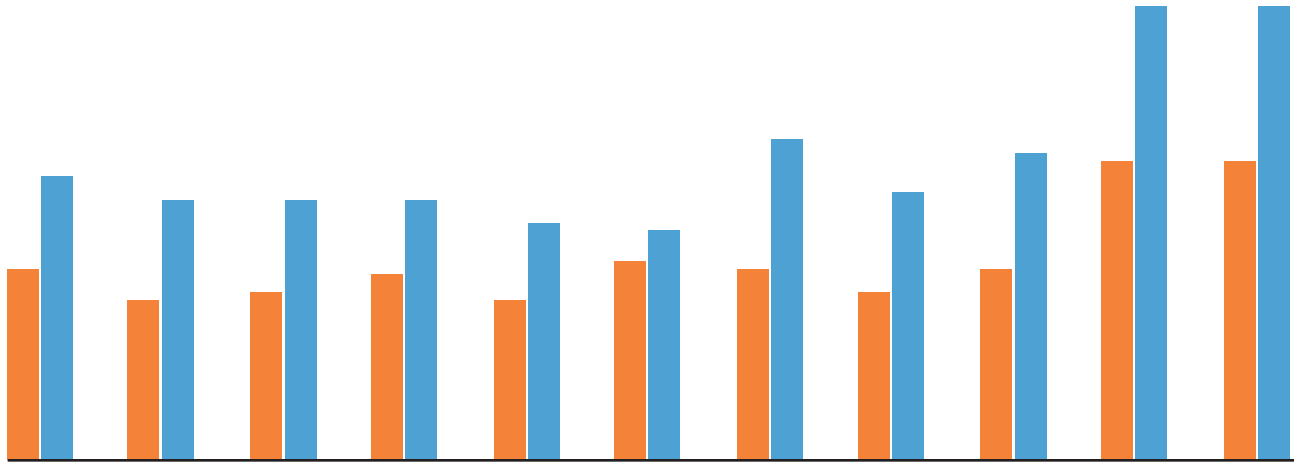
The courts' use of labels — "failure to appear rate" and "*in absentia* rate" — wrongly characterizes all aliens as absconders when the problem is limited solely to one group: *aliens free before trial*. These labels impair understanding of court evasion and insidiously promote stereotypes regarding the foreign-born. The many multiple opportunities for the courts to provide Congress and the public with critical analysis have been ignored at oversight hearings and in annual reports throughout the courts' history. The consequence of shallow reporting could not be clearer. Congress cannot fix a problem that isn't identified as one. Errant reporting isn't incidental in the life of these courts. It is, in fact, routine and its effect is nothing less than corrosive to the courts themselves and to the public's perception of its immigration mechanisms.

How other agencies measure this same dynamic reveals how deceptive the courts have been. Both the Justice Department (through the Bureau of Justice Statistics, BJS) and DHS (through ICE) track failures to appear. BJS, in examining failure to appear rates for accused felons in state courts, made direct comparisons. Accused felons who absconded from court were compared to all accused felons free pending their court dates.[65] ICE did the same thing the same way with aliens who failed to appear in immigration courts. It compared aliens who failed to appear in court to all aliens free pending court. ICE found court evasion rates were significantly higher than those reported by the courts.[66] Finally, academic studies examining failure to appear rates in a variety of state courts uniformly compared those who failed to appear in court solely to those free pending their court appearances.[67] Never were those in custody included in their control groups. Unlike immigration courts, data manipulation did not carry over to these federal agencies or to those non-governmental organizations analyzing failures to appear in state courts.

Distrust of the courts is not just about the methods used to tell Congress how many aliens evade court. It is also about bleached numbers that led Congress and the public away from understanding a dynamic that witnessed just short of a million people walking away from court, seldom to be seen again, and it has a context well beyond annual reports. In a time of peace, these annual reports might be forgiven as harmless understatement. In a time of porous borders, drug cartels, alien smuggling, human trafficking, immigration fraud, and a still-raging War on Terror, gamed numbers conceal risk to national security. They disguise the actual weakness of courts and enforcement in addressing chaotic conditions entirely the making of those in charge.

In any other court system, such dysfunction would scream for redress. Only in U.S. immigration courts can litigants literally abandon their cases without fear of incarceration or removal, while litigants in nearly any other state or federal court risk arrest, contempt, and new charges for the same conduct. Federal law — 18 U.S.C. § 3146 — imposes penalties from one year all the way to 15 years for absconding from a federal district court. Not so in federal immigration courts. Rarely, if at all, are aliens held accountable for the same conduct that in other court systems would land them in jail and in some instances brand them a felon.

Figure 2. Actual Failure to Appear Rates Five Years Prior to and Five Years After 9/11 Compared to Those Reported by the Courts



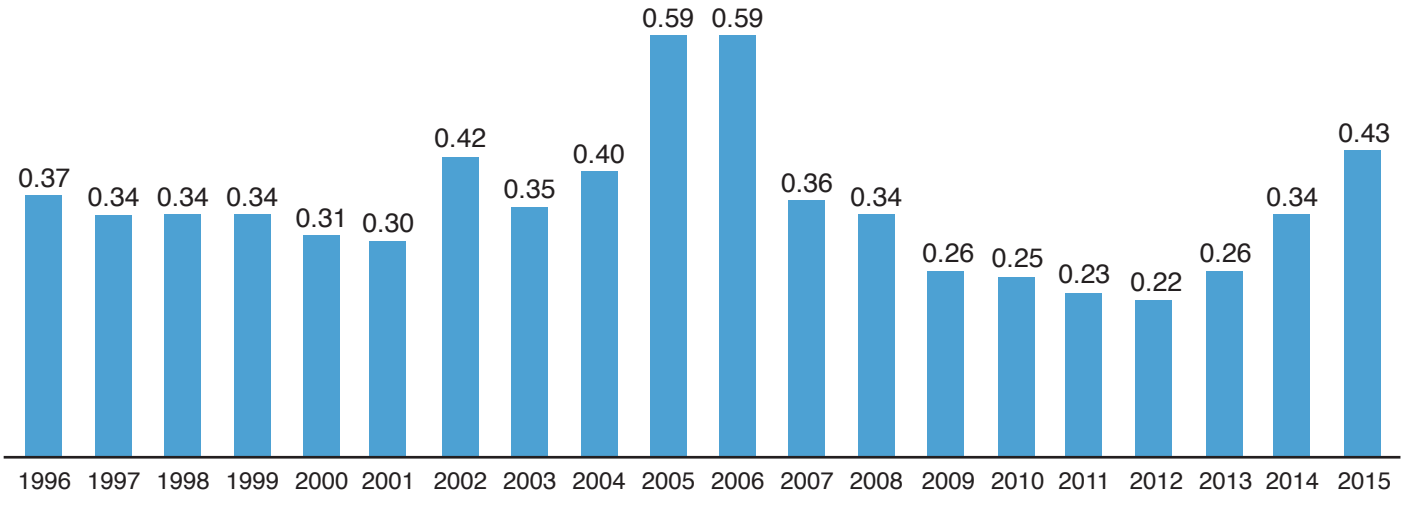
Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Actual FTA	0.37	0.34	0.34	0.34	0.31	0.30	0.42	0.35	0.40	0.59	0.59
EOIR FTA	0.25	0.21	0.22	0.24	0.21	0.26	0.25	0.22	0.25	0.39	0.39

Source: U.S. Department of Justice, Executive Office of Immigration Review, statistical year books for 2000-2006. This figure presents the actual failure to appear rates vs. published EOIR failure to appear rates for the five years before and after 9/11. In the five years before 9/11 failures to appear averaged 35 percent. In the five years after 9/11, failures to appear averaged 50.4 percent.

Another story — the five years on either side of September 11, 2001 — tells of dysfunction the courts never shared with Congress. (See Figure 2.) Court evasions did not decrease after 9/11. *They increased*. From 1996 through 2000, 251,309 of the 726,164 aliens free pending trial disappeared.[68] Fully 35 percent of those persons the United States allowed to remain free before trial never showed for court.[69] In the five years following 9/11 — from 2002 through 2006 — failures to appear exploded. Fifty percent of all of litigants free pending trial — 360,199 out of 713,974 — skipped their hearings.[70] Within the raw memory of the fallen World Trade Center towers in New York, 59 percent of aliens free on their own recognizance fled their hearings in 2005 and 2006. Yet the courts stated with the straightest of bureaucratic faces that *only* 39 percent went missing.[71] Rather than tell Congress that three-fifths of those summoned to immigration courts never showed in these years, the easy way out was the old way out. Enlarging the denominator by adding those in custody shrank the numerator of those who absconded and, in the end, diluted the failure to appear rate. Two-fifths of litigants never showing for court — instead of the three-fifths that actually dodged their dates — became the narrative that stuck in annual reports to Congress.[72]

Fourteen years after 9/11, failure to appear rates remained stubbornly high and are again on the rise.[73] The failure to appear average for the years *after* 9/11 exceeds the 35 percent failure to appear average *before* 9/11. (See Figure 3.) From 2002

Figure 3. Actual Failure to Appear Rates Before and After 9/11

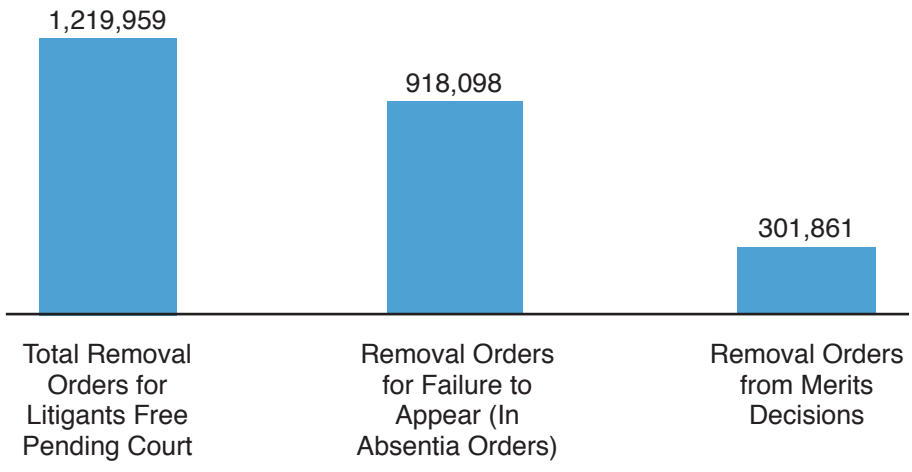


Source: U.S. Department of Justice, Executive Office of Immigration Review, statistical year books for 2000-2015. This figure presents the actual failure to appear rates from 1996 through 2015. FY 2015's 43 percent failure to appear rate is the highest the courts have experienced since 2006. Since 2012, the courts' failure to appear rate increased by 95 percent.

through 2015, 43 percent of aliens free pending trial never saw the inside of a courtroom or, if they did, they never came back. Out of 1,445,248 aliens released on their own recognizance, 622,009 vanished.[74] Stasis, failure, and mendacity have been standardized by this American court[75] and its flagship agency, the Department of Justice.[76]

Since 1996, deportation orders total 2,991,273. Of this number, 1,771,314 aliens were ordered removed from detention facilities. Another 1,219,959 persons free pending trial received removal orders. Breaking down these numbers shows 301,861 litigants completed their trials, but lost their cases and were ordered removed. The balance — 918,098 — never showed for court and were ordered deported *in absentia*.[77] By fractions, 75 percent of all removal orders against aliens free before trial were imposed for failure to appear (918,098 ÷ 1,219,959 = 75 percent).[78] *In absentia* removal orders (see Figure 4) are the largest set of orders for aliens outside detention, *not* verdicts from proceedings they actually attended and finished. A trial court is three times more likely to issue a removal order for failure to appear than a removal order based on the merits of a fully litigated claim.

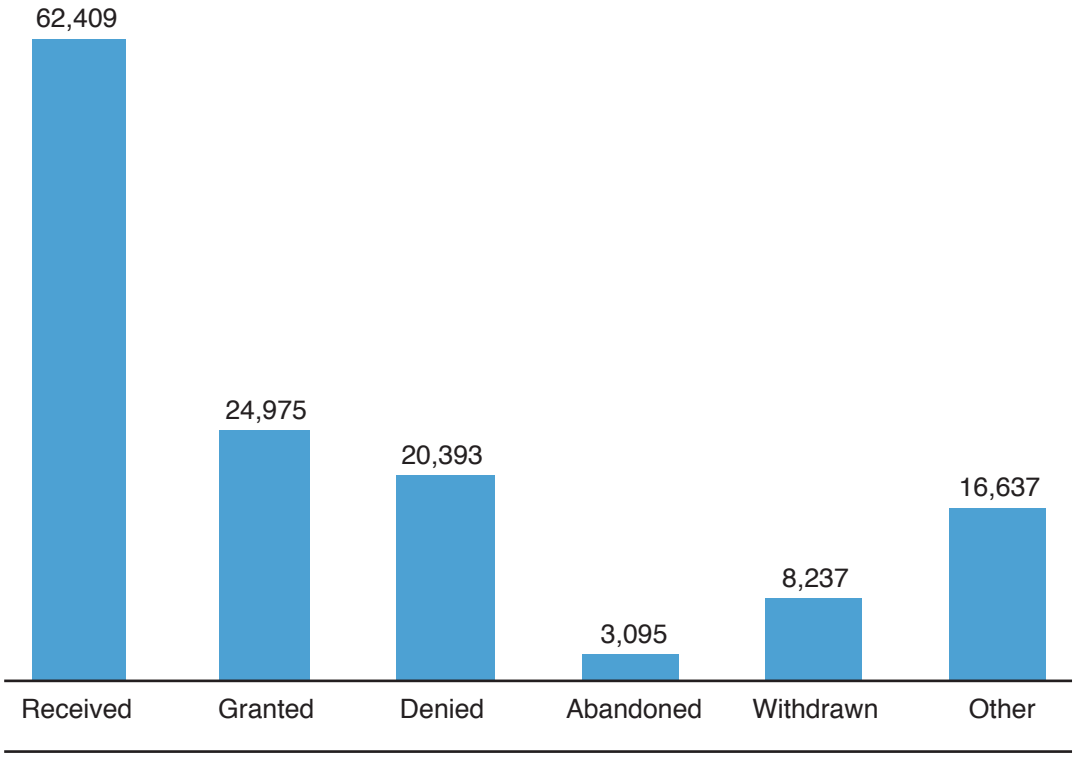
Figure 4. Comparison of All Removal Orders for Litigants Free Pending Court to Those Who Received Removal Orders for Failure to Appear, and Those Ordered Removed on Merits Decisions, 1996 to 2015



Source: U.S. Department of Justice, Executive Office of Immigration Review, statistical year books for 2000-2015. This figure's comparisons reveal trial courts are three times more likely to issue removal orders for failure to appear than removal orders based on the merits of fully litigated claims.

From 1996 through 2015, 918,098 out of 2,498,375 aliens free before trial absconded. How this 37 percent escaped the notice of Congress addresses itself to leadership that did not lead,[79] but was instead bent upon political objectives dramatically at odds with the facts of court evasion, safe neighborhoods, and national security.[80] For even as absconding climbed ever higher during these years, no word from court officials or Justice Department higher-ups warned of this looming enforcement and court-made

Figure 5. Asylum Applications for the 36 Specially Designated Countries Received, Granted, Denied, Abandoned, Withdrawn, and Other for Fiscal Years 2003 through 2015



Source: U.S. Department of Justice, Executive Office of Immigration Review, statistical year books for 2003-2015. This figure presents totals for all asylum applications received from the 36 Specially Designated Countries and their dispositions from fiscal years 2003 through 2015.

disaster. Instead, the courts' accounting, and the narratives that interpreted it, laid down a smokescreen that concealed evasion. Court executives submitted annual reports that belied high evasion rates that began with release from ICE custody — and in some cases no custody at all[81] — and ended with removal orders for failures to appear that went largely ignored.

Ignored, but not uncounted, nor with risk unassessed. Asylum statistics, from 2003 through 2015, reveal 576,893 aliens failed their appearances in immigration courts. Among them numbered 3,095 aliens from the 36 nations labeled Specially Designated Countries (SDCs) because they "promote, produce, or protect terrorist organizations or their members."[82] Formerly known as Special Interest Countries (SICs), changing the label didn't change the risk.[83] From these same countries, 62,409 people filed applications for asylum. Of these, 24,975 applications were granted and 20,393 were denied. Another 8,237 applicants withdrew their requests for asylum prior to a trial court issuing a decision on their applications.[84] (See Figure 5.)

In other words, a total of 31,725 applicants — 51 percent altogether — were either ordered removed or sought another method to remain in the United States by withdrawing their applications.[85] Yet no accounting from the courts or DHS tells Congress or the public what eventually became of these people once inside American borders. Though some certainly were in custody and were removed after their applications were denied, others were released and absconded from their asylum hearings, while others disappeared after an order of removal was issued. All that is known is that more half of all applicants did not receive grants of asylum. A documented history of court evasion coupled with avoidance of removal orders explains the risk of allowing onto our shores those about whom little is known, often until it is too late. These numbers also explain DHS warnings as it confronted potential backlash from release protocols that raised concern rather than relief.

A 2003 DHS Inspector General report found the now defunct INS (Immigration and Naturalization Service) ineffective in removing aliens from nations with terrorist links: "[W]e examined three important subgroups of non-detained aliens," stated

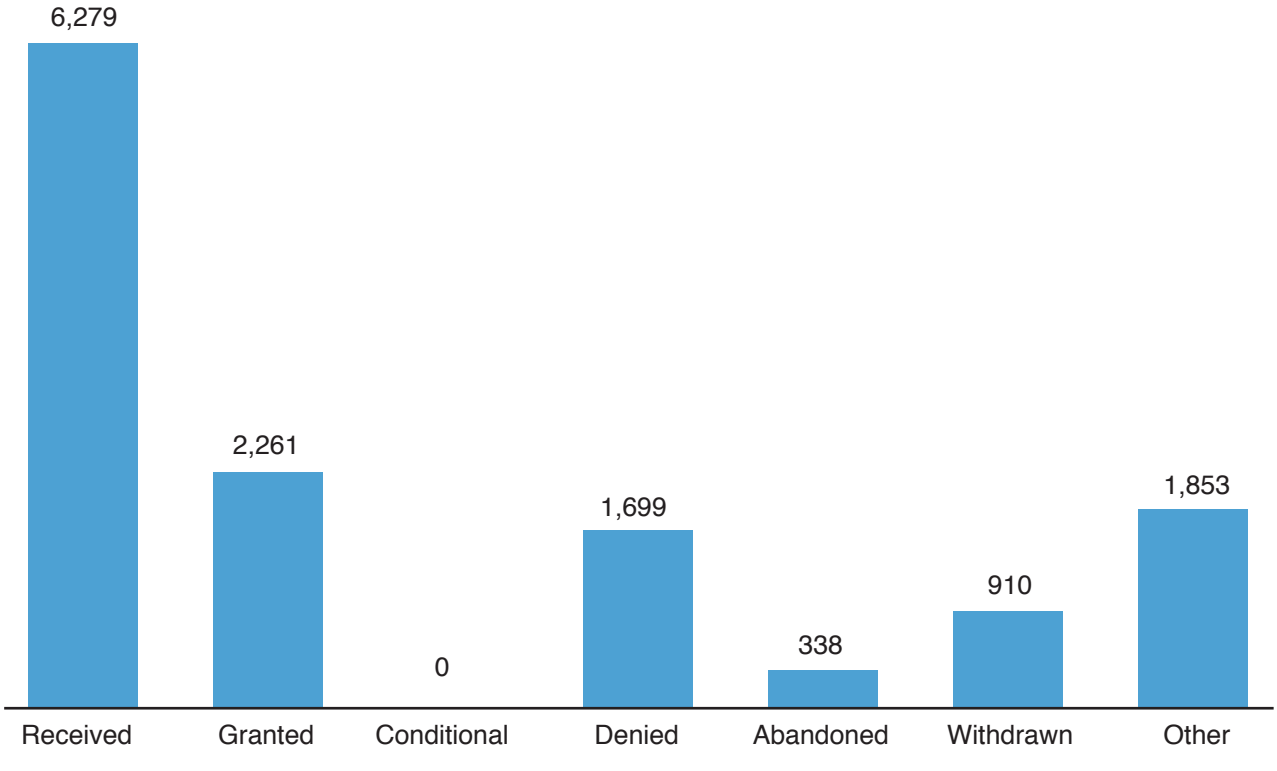
the IG, "and found that the INS was ... ineffective at removing potential high-risk groups of non-detained aliens." The IG examined groups including aliens from countries the State Department identified as sponsors of terrorism and found "only 6 percent [were] removed."[86] By 2006, things improved, but were hardly better.[87] Another DHS report summed it up:

> *From FY (fiscal year) 2001 through the first half of FY 2005, 91,516 SIC (Special Interest Countries regarding terrorism) and SST (state sponsors of terrorism) aliens were apprehended, of which 45,000 (49 percent) were later released. It is not known exactly how many of these SIC and SST aliens were ultimately issued final orders of removal and were actually removed. ... However, assuming SIC and SST aliens are being removed at the same rate as other apprehended and released aliens, 85 percent of the SIC and SST aliens released who eventually receive final orders of removal will abscond.*[88]

Yet fearing these migrants would abscond at the same 85 percent rate as non-SIC migrants, DHS still released them. Admittedly, asylum statistics from the 36 SDCs and DHS absconding reports are not the same things, but incidentally address the same problems with those of the same national origin: aliens from nations friendly to terrorism who disappear after their admission into the United States. It is here that aliens who fail to appear in court — whether they later commit misdemeanors or felonies, plot acts of terrorism or simply try to find work — intersect with failures to enforce removal orders. It is here also that numbers speak more clearly than anything else and reveal risks that cannot be ignored except at the cost of American lives. More than 107,000 aliens from SDCs were present in the United States in 2009. Only 1,500 were in custody.[89]

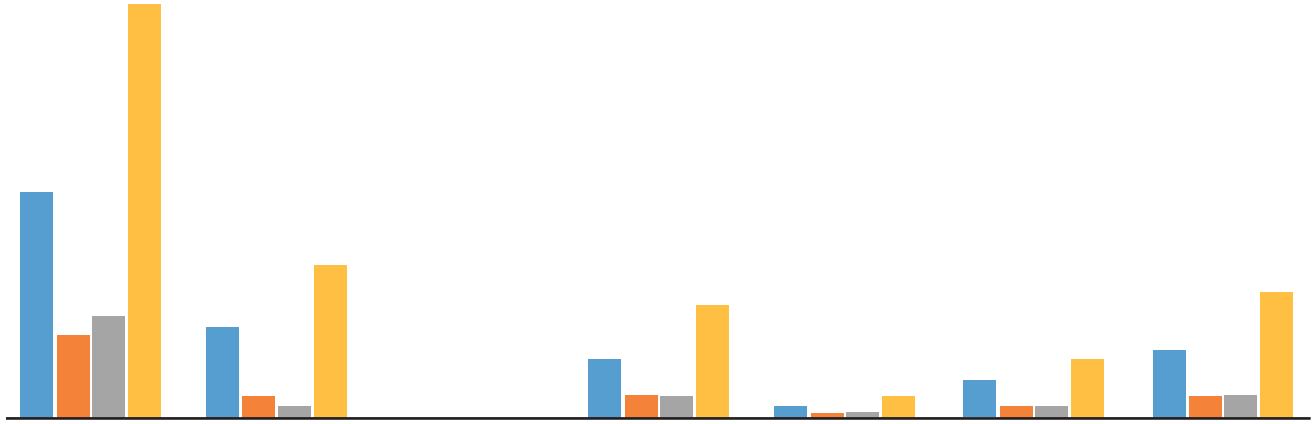
Applicants from those countries identified as state sponsors of terrorism (SSTs) — Iran, Sudan, and Syria — give more than a glimpse into these risks that begin with asylum requests. Together they compose a disproportionate share of those who apply for sanctuary as well as those who disappear from court proceedings.[90] (See Tables 6A and 6B.)

Figure 6A. Asylum Application Totals for State Sponsors of Terrorism: Iran, Sudan, and Syria, 2003-2015



Source: U.S. Department of Justice, Executive Office of Immigration Review, statistical year books for 2003-2015. This figure presents the dispositions on the 6,279 asylum applications received from the three countries identified by the U.S. State Department as State Sponsors of Terrorism (SSTs). The term "abandoned" refers to applicants who failed to appear in court.

Figure 6B. Asylum Totals and Comparisons Among State Sponsors of Terrorism: Iran, Sudan, Syria, and Overall Totals, 2003-2015



	Received	Granted	Conditional	Denied	Abandoned	Withdrawn	Other
Iran	3,457	1,359	0	927	215	590	1,068
Sudan	1,290	526	0	465	64	131	379
Syria	1,532	376	0	307	59	189	406
Totals	6,279	2,261	0	1,699	338	910	1,853

Source: U.S. Department of Justice, Executive Office of Immigration Review Statistics, statistical year books, 2003-2015. This figure presents a comparison of the dispositions on asylum applications of those applying from Iran, Sudan, and Syria. Note that Iranians filed more than twice as many applications for asylum than Sudan and Syria put together. Iranians absconded from court (i.e., abandoned or failed to appear in court) more than three times more often than applicants from Sudan or Syria.

Of the 62,409 asylum applications that came from the 36 SDCs, 10 percent or 6,279 came from Iran, Sudan, and Syria. From these three countries alone came 11 percent or 338 of those who absconded from court from a total of 3,095. Only 9 percent were granted asylum, or 2,261 out of 24,975, and only 8 percent — 1,699 out of 20,393 — experienced denial of their asylum claims.[91]

Applications from Iranians weigh heaviest on these percentages. These applicants filed more than twice as many requests for asylum than those filed by applicants from Sudan or Syria and were more than half of all applications received from the three countries, 3,457 out of 6,279. Nearly 40 percent of Iranian asylum requests were granted — 1,359 out of 3,457 — but these applicants also lost 27 percent of their asylum cases — 915 out of 3,457. Troublingly, they became runaways three times more often than Sudanese or Syrian asylum-seekers — 215 no-shows compared to 64 for Sudan and 59 for Syria. An alert perspective is needed here.[92]

Risk, like opportunity, abounds from the fluid movement of people across the globe. Threats to the United States from any particular group of persons — whether asylees, refugees, permanent residents, naturalized or native-born citizens — is difficult to predict, but in the current state of world affairs not hard to identify. Drug cartels seek access to American traffickers and their clientele. Alien smugglers want American dollars for their human cargo. Chinese spies holding business visas — like the Soviet spies before them — attempt theft of American high-tech secrets. Radical Islam has its objectives, too. It seeks regional dominance and world influence, largely by disabling the West, in order to spread its lethal version of faith at the point of a knife, a gun, a nuclear weapon, or a hidden jihadist. More than any other adversary, it attempts to insert followers through porous borders[93] or into the largely unvetted refugees from the Middle East that seek sanctuary in the United States.[94] All these risks urge vigilance at every checkpoint in the immigration process, including stricter supervision of those free pending their hearings, broader use of detention for the suspect, and swift removal of those who fail the generous litmus of American immigration laws.

Courts unable to compel enforcement of their own orders cannot command the respect of litigants[95] and court evasion that began a steady rise in the late 1990's is still unchecked today.[96] To visa overstayers and those who enter illegally, frail immi-

gration courts are only speed bumps: easily passed, quickly forgotten, and rarely respected. And court executives and Justice Department officials who game the courts' statistics have ignored the high calling of federal service to serve political expedients that have diminished these tribunals. On their watch, nearly one million people ran from court and never looked back.

Absent Enforcement — Removal Is Rare

Nor should they. Since 2002, unexecuted removal orders have increased 58 percent — from 602,000 to 953,506. Over the last 14 years an average of 25,107 were added each year to this total which in turn, invited more illegal entry and further disregard for courts that cannot direct the execution of their own orders.[97] The past is prologue for this shambles.

A 1989 report by the General Accounting Office (GAO, now called the Government Accountability Office) found that "[a] liens have nothing to lose by failing to appear for hearings and, in effect, ignoring the deportation process."[98] Over the preceding 30 years, GAO noted, illegal entry into the United States increased by 2,200 percent — from 45,000 in 1959 to 1.2 million in 1989[99] — and, as illegal entry grew, failures to appear in court became a significant problem.[100] Select audits revealed a 27 percent failure to appear rate in that year alone.[101] This was an average, though. Failures to appear spiked to 68 percent in Miami in 1985 and to 63 percent and 46 percent in New York and Los Angeles, respectively, in 1989.[102] Uniformly, absconders were foreign nationals who had posted cash bonds that were forfeit upon their disappearance, not those who were released on their own recognizance.[103] By 1996, DoJ's inspector general found that 89 percent of non-detained aliens who were ordered removed had fled court and were still at large.[104] Even in the event of arrest and re-arraignment before an immigration court, sanctions, if any, were nearly non-existent.

Indeed, GAO found aliens who failed to appear at their deportation hearings "do not suffer penalties ... or such adverse consequences as loss of appeal rights or denial of the rights to claim relief from deportation." "Even if they are reapprehended," reported the IG, "the deportation process continues where it was interrupted" by their absconding. Not only did they pick up where they left off, but GAO determined "the additional time aliens ... accumulated in the country by avoiding deportation proceedings [might] support their requests for relief from deportation because of their good conduct while they were here." In short, aliens who absconded from court were rewarded for bad conduct. A "failure to appear[did] not jeopardize their claim of good conduct when applying for relief " from removal.[105]

Things have changed little since this was written decades ago. Judges report that in today's permissive environment aliens who have for years avoided removal orders now ask the Board of Immigration Appeals (BIA) to reopen their cases. Their justifications vary as much as the aliens themselves. Some claim parentage of U.S. citizen children. Others assert marriages to U.S. citizens. Still others plead a fear of persecution if returned to their home countries, despite their asylum claims being denied years before. Judges further report many of these efforts to reopen old cases in which a removal order was entered are successful and that absconders are allowed to regularize their presence and gain a path to citizenship through the BIA's adoption of a "totality of the circumstances" test, a concept without statutory or regulatory precedent. Bad conduct, in effect, is still being rewarded. Removal — in this case, the enforcement of a deportation order when a fugitive alien reveals his presence through a motion to reopen — is never initiated. An earlier finding by GAO in its 1989 report, besides being accurate, was also predictive. "Disregard for the courts," it declared, stemmed from a "lack of repercussions" — in other words, no consequences — because few aliens were actually deported.[106] Nor, as numbers would show, did the situation improve.

Fourteen years later, circumstances were nearly identical. A 2003 DoJ inspector general's report found no more than 3 percent of asylum seekers ordered deported and only 35 percent of criminal aliens actually removed. Even after federal circuit courts yearly affirmed deportation verdicts by the thousands, aliens ordered deported remained in the United States because DHS was no better at enforcing the orders of federal appellate courts than it was of immigration trial courts.[107] A DHS inspector general report in 2006 spotlit this disarray:

> *Historical trends indicate that 62 percent of the aliens released [from detention] will eventually be issued final orders of removal by the U.S. Department of Justice Executive Office for Immigration Review (EOIR) and later fail to surrender for removal or abscond. ... [I]t is unlikely that many of the released aliens will ever be removed.*[108]

Practice proved prediction. In its 2008 annual report, Immigration and Customs and Enforcement declared that the fugitive alien population — 594,756 aliens who fled deportation orders — was reduced only 6 percent, to 557,762, by arrests and

removals.[109] Another 35,094 fugitive aliens were removed in 2009 — leaving 522,668 at large.[110] In contrast to aliens who run from court and are seldom seen again, on average 70 percent of accused felons who fled prosecutions in state courts were caught within one year.[111]

Even if aliens were arrested, Obama administration rules required ICE agents to release or ignore offenders unless they had serious criminal records.[112] At least three misdemeanors were required to invoke arrest and removal, but not just any misdemeanors. ICE leadership demanded offenses such as domestic violence, sexual offenses, and third offense DUIs before its enforcement officers could arrest an illegal alien, even if they'd previously been ordered removed.[113] Removal orders, as it turned out, meant less and less to that administration.

"All should be troubled," wrote Judge Edward Grant of the Board of Immigration Appeals, "by the fact that only a small fraction of final orders of deportation and removal — entered after a hearing before an immigration judge, with right of appeal to the Board of Immigration Appeals — are actually executed." He went further: "This fact would surely not be comforting to judges of the United States courts of appeals, who have strained in recent years to manage a burgeoning docket of immigration cases."[114]

That was in 2006. What was then a strong likelihood that a deportation order would never be executed became a near certainty. Non-criminal alien removals from the United States in 2015 — a total of 69,478 — reached a low not seen since 2003 when 126,720 non-criminal aliens were deported pursuant to removal orders.[115] The bulk of removals came from orders issued inside detention facilities or to criminal aliens, not those handed down in courtrooms outside detention facilities.[116] An early Obama administration declaration confirms the direction this administration pursued since its beginnings in 2009. ICE spokesman, Richard Rocha, signaled on August 26, 2010:

> *[The Obama] Administration is committed to smart, effective immigration reform, prioritizing the arrest and removal of criminal aliens and those who pose a danger to national security. In 2010 to date, ICE has removed more than 150,000 convicted criminals — a record number. ... ICE has implemented a new policy to expedite the removal of criminal aliens and those who pose a danger to national security by ensuring these cases are heard.*[117]

No less than President Obama provided the clearest confirmation that his administration's enforcement priorities excluded the nation's interior and non-criminal aliens. On September 28, 2011, he explained that deportation statistics were misleading and that, in addition to criminals, another group was being deported who didn't pass through immigration courts. "[T]he statistics are actually a little deceptive," he said, "because what we've been doing is ... apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours."[118] Criminal aliens and recent illegal border-crossers then were removed, but few others. A Migration Policy Institute study agreed: "[N]inety-five percent of the immigrants deported from 2009 to 2013 were criminal aliens ... meaning only about 77,000 of the 1.6 million illegal immigrants removed by U.S. Immigration and Customs Enforcement (ICE) over the last five years were rank-and-file border-crossers with clean records."[119]

ICE refused to remove those who entered illegally and made it well past the border as well as those who overstayed their visas, lost or ran from their asylum hearings, and those ordered removed whose profiles didn't match the enforcement priorities of the Obama administration. Apparent then and even more apparent now is that America's immigration enforcement system fell into the hands of those who for eight years took stock of a refined body of law at odds with their own political objectives and, in consequence, ignored it where possible or, failing that, attempted to go around it through executive orders and what administration officials termed "prosecutorial discretion". The results offer no surprises.

Flight from court and disobedience to statutory removal orders, if not officially sanctioned, were unofficially encouraged by an administration whose enforcement essentially didn't enforce. Constitutional history offers no similar parallels to this refusal to execute the removal mandate of 8 U.S.C. 1231, requiring deportation within 90 days of removal orders becoming final.[120] Its organic underpinning that "Congress shall have power to ... establish a uniform rule of naturalization,"[121] confronted executive rulemaking that mocked congressional intent and revealed a president bent on making laws on his own.[122] This is nothing less than absolutism.[123] President Obama's attempt to regulate an area reserved to Congress without laws upon which to base his expansive interpretation of executive authority ended predictably.[124] These efforts exposed defects irreconcilable with due process and equal protection among citizens and the foreign-born who reside here legally and those who do not.

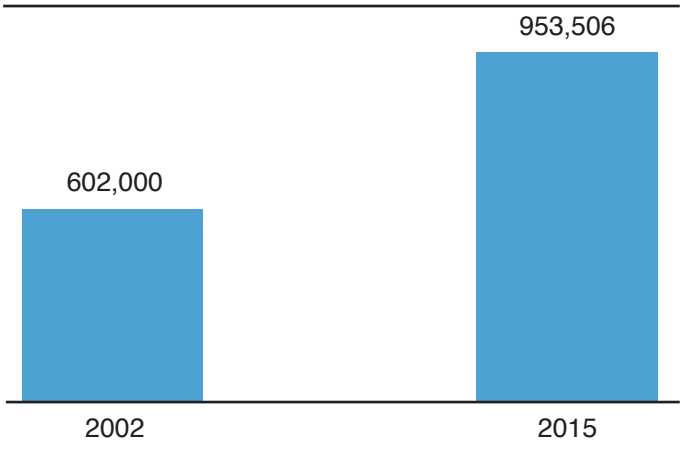
Under Obama administration protocols, illegal entrants were treated remarkably better than their citizen and legal entrant opposites. Were citizens, visa holders, or lawful permanent residents to commit crimes that ICE declared insufficient to arrest and remove an illegal entrant — crimes such as shoplifting and identity theft, low-level DUIs, misdemeanor assaults, and illegal voting — law enforcement response would be prompt and certain. Criminal proceedings would follow with records generated that would influence federal and state enforcement efforts in the event of future offenses. Visa holders would be denied extensions of their U.S. stays or become inadmissible when applying to reenter.[125] Lawful permanent residents would be subject to removal proceedings for committing crimes of moral turpitude or aggravated felonies.[126] But in the inverse world of immigration enforcement, ICE officers were directed to not only avoid taking into custody aliens who committed criminal offenses like these, but to release them or, in the alternative, cease prosecuting them.[127] In other words, set loose on the public those who committed offenses that would put citizens behind bars for up to a year.[128] Blurring the lines between those who entered and remained legally and those who did not effectively disabled federal enforcement and helped encourage the mass migration from Central America now witnessed at the Southwest border.[129] From 2012 through 2016, Southwest border apprehensions of "other than Mexicans" (virtually all from Central America) totaled 859,546.[130]

Encouraged is not too strong a word to describe what ICE's political leadership did to minimize enforcement. ICE leadership announced on August 17, 2009,[131] that it was disbanding its fugitive operations teams that made removal of absconders an enforcement priority.[132] The same leadership likewise dismantled the Secure Communities Program[133] and left in place of both the Priority Enforcement Program.[134] In turn, interior enforcement against illegal entrants and criminal and fugitive aliens retreated and what enforcement was left dealt with only what ICE considered the worst offenders. In the wake of this retreat, unexecuted removal orders have increased 351,506 since 2002. Around 179,000 criminal aliens have "final orders of removal", but cannot be found.[135] Non-enforcement brings other results, too.[136]

The willingness of migrants to enter illegally[137] or attempt fraudulent entry at ports across the United States remains unshaken.[138] Non-enforcement echoes as policy when as many as 90 percent of Central American youths in 2015 — some 135,000 according to the House Judiciary Committee — skipped court,[139] while others expected *permisos* — documents granting permission to stay — after their 1,500-mile journeys north.[140] A Customs and Border Patrol memo from its deputy chief, Ronald Vitiello, reported this dysfunction. "Releasing other than Mexican family units, credible fear claims, and low-threat aliens on their own recognizance, along with facilitating family reunification of [unaccompanied alien minors] in lieu of repatriation to their country of citizenship, serve as incentives for additional individuals to follow the same path," he wrote.[141] He continued: "The large quantity of DHS interdiction, intelligence, investigation, processing, detention, and removal resources currently being dedicated to address [unaccompanied minors] is compromising DHS capabilities to address other trans-border criminal areas, such as human smuggling and trafficking and illicit drug, weapons, commercial, and financial operations."[142] Few were stopped, but even fewer were removed.

Even felony records, as it turns out, were no guarantee of removal.[143] Large numbers of ICE's Level I and II offenders — murderers, drug traffickers, kidnappers, and sex offenders — obtained release from ICE decision makers,[144] only to again jeopardize the communities that once placed them behind bars and hopefully off U.S. soil. Having the highest removal priority made no difference.[145] From 2013 through 2015, 86,288 criminal aliens — over whose custody and removal from the United States ICE had full discretion — were turned back on the American public.[146] Since 2010, 124 criminal aliens were implicated in 135 deaths after ICE declined to remove them.[147] Where removal to their home countries would have significantly reduced, if not eliminated, further threats to American neighborhoods, releasing these criminals prompted a return to the lifestyles that first made them felons. Criminal aliens proved the truism

Figure 7. Growth in Unexecuted Removal Orders from 2002-2015: A 58 Percent Increase in 14 Years



Source: U.S. Department of Justice, FY 2002 Performance and Accountability Report, Strategic Goal 5.2A; and U.S. House of Representatives, Committee on Oversight and Government Reform, "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", July 14, 2016.

common to all lawbreakers regardless of nationality: Felony offenders tend to offend again[148] and ICE's releasing them on an unsuspecting public proved the point.

A few other things proved the point, too. In 2014, criminal aliens in the United States numbered more than 2.1 million and, under Obama administration enforcement guidelines, these numbers have only grown.[149] Any removal of these individuals presently means law enforcement had to wait for them to commit worse offenses that would compel their deportation. The whole purpose for the Obama administration's retreat in immigration enforcement over the last eight years was clearly stated in ICE's 2015 annual report. First admitting that it stepped back from enforcement, the agency revealed priorities unmet by its efforts:

> *In executing its enforcement duties, ICE focuses on two core missions: 1) the identification and apprehension of criminal aliens and other priority aliens located in the U.S.; and 2) the detention and removal of those individuals apprehended in the interior of the United States as well as those apprehended by CBP officers and agents patrolling our nation's borders. ICE is committed to smart immigration enforcement, preventing terrorism, and combatting the illegal movement of people and goods.*

Vows to remove criminal aliens and halt illegal entry collided with news reports of the same criminals committing new crimes and waves of Central Americans crossing the Southwest border with impunity. In short, core missions failed, words were at odds with deeds, and a watchful public took notice in 2016 and elected a candidate declaring secure borders and the certain removal of violators among his top priorities. When immigration enforcement under Barack Obama revealed itself as false advertising — tough talk unmatched by tough action — American voters took action on their own to fix the broken system that the candidate of 2008 left even more broken.

* * *

The smart enforcement initiatives of the Obama administration have meant little or no enforcement for many, including the American public. More than twice as many post-9/11 acts of terrorism — plots and attacks — occurred on American soil in the last eight years than all those under George W. Bush,[150] as populations from SDC countries saw steady increase.[151] Failure to enforce removal orders, secure borders, and deport criminal aliens provides further lessons in dim policy making. Illegal aliens now comprise a larger share of both state and federal prison populations that outpaces their percentage of the U.S. population.[152] Still, the posture of the Obama administration was to continue freeing from removal criminal aliens who unsurprisingly offended again.[153] The trafficking of goods and people by way of unauthorized entries and clandestine movement through drug cartels at the Southwest border did not slow to a trickle, but instead witnessed distinct acceleration.[154] Chronic absconding from immigration courts continued unabated.[155] Most telling of all, the number of illegal aliens present in the United States at the end of Barack Obama's second term — 11 million — is the same as it was in 2005 when George W. Bush began his second term.[156] This is not how we define progress.

Stasis and failure are not new norms in American immigration, but merely old ones starting a new decade. Courting disaster is not an accident but, instead, a policy disconnected from rule of law and common sense that counts dysfunction as success and disorder as the price of progress, even at the loss of American jobs and the cost of American lives.

Recommendations

1. Absconding from immigration courts should result in removal orders that cannot be reopened or set aside. *In absentia* orders should also permanently deny any other form of relief that would allow an alien to legally re-enter or remain in the United States. Exceptions to this policy should only include an alien's assistance in matters of national security or assistance in federal criminal prosecution deemed in the national interest.

2. Aliens ordered deported should be placed in ICE custody at the conclusion of proceedings pursuant to 8 CFR 241.4 and held through confinement or under strict monitoring until released due to a removal order being overturned or until removed from the United States.

3. The discretion of ICE/ERO (Enforcement and Removal Operations) officials to grant administrative stays of removals that delay an alien's removal from the United States should not be available to Level I and II alien offenders or those aliens ordered deported pursuant to an *in absentia* order of removal except for purposes of national security assistance or federal criminal prosecution deemed in the national interest.

4. Immigration, asylum, refugee, and visa policies affecting Specially Designated Countries (SDCs) should be re-examined in light of terrorist attacks involving persons from these countries and with the purpose of limiting entry of persons who have not passed the same background checks that visa applicants must undergo. Providing sanctuary areas in the home countries of these persons or in neighboring countries with a strong U.S. presence should be a priority that protects the lives of innocent foreign nationals abroad and protects the lives of innocent Americans at home.

End Notes

[1] Of the 2,498,375 foreign nationals released on their own recognizance pending their court proceedings, 1,219,959 were ordered removed, 75 percent of them or 918,098 for failing to appear in court. See the EOIR statistical year books for: 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23; 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; and 2015, pp. P1-P4 and Figures 23-26. Over the same period (1996 through 2015), 25 percent or 301,861 of those free pending trial actually litigated their claims. Dividing 918,098 by 20 (918,098 ÷ 20 = 45,904.9) reveals nearly 46,000 people on average failed to appear for their hearings in immigration courts each year and were ordered removed.

[2] *In absentia* orders equal 75 percent of all orders of removal issued outside of detention facilities. The equation demonstrates the significance of these orders: 918,098 ÷ 1,219,959 = .752 or 75 percent. See EOIR statistical yearbooks: 2000, p. I3, Table 12, pp. L1-L2, Figures 15-17, and p. T1, Figure 23; 2004, p. D2, Figure 5, pp. H1-H4, Figures 10-12, and p. O1, Figure 20; 2008, p. D2, Figure 5, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; 2009, p. D2, Figure 5, pp. H1-H4, Figures 10-12, and p. O1, Figure 23; and 2015, pp. P1-P4 and Figures 23-26.

[3] Geoff Earle, "Obama Administration on Track to Grant One Million Green Cards to People from Muslim-majority Countries", *Daily Mail*, June 18, 2016. States the article: "More than 800,000 people from Muslim-majority countries have gotten green cards since 2009, with the number set to hit 1 million before President Obama leaves office. The data, released by a Senate subcommittee on immigration and the national interest, reflect a steady uptick in migration from Muslim nations in recent years — even as Donald Trump seeks to put a pause on Muslims visiting the United States. The biggest increase in permanent residents came from Pakistan and Iraq, with more than 100,000 coming from each country. Bangledesh had 90,000, Iran had 85,000, and Egypt had 56,000, while Somalia had 37,000." See also Peter Bergen, Alyssa Sims, David Sterman, and Albert Ford, "Terrorism in America After 9/11", New America, 2016. States the report: "Far from being foreign infiltrators, the large majority of jihadist terrorists in the United States have been American citizens or legal residents. Moreover, while a range of citizenship statuses are represented, every jihadist who conducted a lethal attack inside the United States since 9/11 was a citizen or legal resident."

[4] Josh Lederman, "Obama Administration Sets Goal to Take in 110,000 Refugees Next Year", PBS Newshour, September 14, 2016. States the article: "The United States will strive to take in 110,000 refugees from around the world in the coming year, the White House said Wednesday, in what would be a nearly 30 percent increase from the 85,000 allowed in over the previous year. The increase reflects continuing concern about the refugee crisis stemming from Syria's civil war and conflicts in Iraq and Afghanistan. Yet it's still far short of what advocacy groups say is needed to address an unprecedented crisis that saw some 1 million people pour into Europe alone last year. Of the 110,000, 40,000 will come from the Middle East and South Asia, where the origins of the crisis have been most pronounced. An additional 35,000 will come from Africa, 12,000 from East Asia, 4,000 from Europe and 5,000 from Latin America and the Caribbean, White House spokesman Josh Earnest said."

[5] "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", House Committee on Oversight and Government Reform hearing, July 14, 2016. The committee summarized: "According to ICE, 953,506 aliens with final orders of removal remain in the United States as of 2016." Unexecuted deportation orders increased each year by an average of 25,107 from 2002 through 2015 for a total of 351,506 additions. The percentage of increase in unexecuted deportation orders equals 58 percent (351,596 ÷ 602,000 = .583 or 58 percent) over that 14-year period. See also "Fiscal Year 2002 Performance Report & Fiscal Year 2003 Revised Final Performance Plan, Fiscal Year 2004 Performance Plan", U.S. Department of Justice, last updated February 27, 2003, Strategic Goal 5.2A. States the report: "As of September 30, 2002, there was a 406,000 case backlog of removable unexecuted final orders and a 196,000 case backlog of not readily removable unexecuted final orders of removal, for a total of 602,000 unexecuted orders."

[6] Obama-Biden campaign website. Declared Barrack Obama: "In approaching immigration reform, I believe that we must enact tough, practical reforms. ... We need stronger enforcement on the border and at the workplace. ... But for reform to work, we also must respond to what pulls people to America. ... Where we can reunite families, we should. Where we can bring in more foreign-born workers with the skills our economy needs, we should. ... The time to fix our broken immigration

system is now. It is critical that as we embark on this enormous venture to update our immigration system, it is fully reflective of the powerful tradition of immigration in this country and fully reflective of our values and ideals."

[7] *Ibid.*

[8] Robert Pear and Carle Hulse, "Immigration Bill Fails to Survive Senate Vote", *The New York Times*, June 28, 2007. The *Times* stated: "Pres. Bush's effort to overhaul the nation's immigration policy, a cornerstone of his domestic agenda, collapsed in the Senate today, with little hope that it can be revived before Mr. Bush leaves office in January 2009."

[9] Julia Preston, "Laid-Off Americans, Required to Zip Lips on Way Out, Grow Bolder", *The New York Times*, June 11, 2016. States the article: "American corporations are under new scrutiny from federal lawmakers after well-publicized episodes in which the companies laid off American workers and gave the jobs to foreigners on temporary visas. ... Now some of the workers who were displaced are starting to speak out, despite severance agreements prohibiting them from criticizing their former employers.

[10] Jessica Vaughan and Steven Camarota, "Immigration and Crime: Assessing a Conflicted Issue", Center for Immigration Studies, November 2009. "[I]t also would be a mistake to conclude that immigrant crime is insignificant or that offenders' immigration status is irrelevant in local policing. The newer information available as a result of better screening of the incarcerated population suggests that, in many parts of the country, immigrants are responsible for a significant share of crime. This indicates that there are legitimate public safety reasons for local law enforcement agencies to determine the immigration status of offenders and to work with federal immigration authorities."

[11] James Clapper, Director of National Intelligence, "Statement for the Record, Worldwide Threat Assessment of the US Intelligence Community", Senate Armed Services Committee, February 9, 2016. Stated National Intelligence Director James Clapper: "The United States will almost certainly remain at least a rhetorically important enemy for most violent extremists in part due to past and ongoing U.S. military, political, and economic engagement overseas. Sunni violent extremists will probably continually plot against U.S. interests overseas. A smaller number will attempt to overcome the logistical challenges associated with conducting attacks on the U.S. homeland. The July 2015 attack against military facilities in Chattanooga and December 2015 attack in San Bernardino demonstrate the threat that homegrown violent extremists (HVEs) also pose to the homeland. In 2014, the FBI arrested approximately one dozen U.S.-based ISIL supporters. In 2015, that number increased to approximately five dozen arrests. These individuals were arrested for a variety of reasons, predominantly for attempting to provide material support to ISIL. [A] top U.S. intelligence official said Tuesday that ISIS was likely to attempt direct attacks on the U.S. in the coming year and that the group was infiltrating refugees escaping from Iraq and Syria to move across borders." See also Ryan Browne, "Top Intelligence Official: ISIS to Attempt U.S. Attacks This Year", CNN, February 9, 2016. States the article: "'[ISIS] will probably attempt to conduct additional attacks in Europe, and attempt to direct attacks on the U.S. homeland in 2016,' Lt. Gen. Vincent Stewart, director of the Defense Intelligence Agency, testified on Capitol Hill Tuesday. Director of National Intelligence James Clapper, who was also at the Senate Armed Services Committee hearing, estimated that violent extremists were active in about 40 countries and that there currently exist more terrorist safe havens 'than at any time in history.' Clapper warned ISIS and its 8 branches were the No. 1 terrorist threat and it was using refugees from violence in Iraq and Syria to hide among innocent civilians in order to reach other countries."

[12] Margaret Wente, "Why the U.S. Immigration System Is So Broken", *The Globe and Mail*, June 21, 2014. States the article: "The elites of both parties agree the immigration system is broken and needs to be fixed. But no one has a serious plan to secure the border or enforce the immigration laws. Progressives believe that generous immigration policies reflect America's liberal humanitarian values. Big businesses depend on Hispanic immigration (both legal and illegal) as a reliable source of cheap labour. Neither party wants to alienate the Hispanic vote. And anyone who questions the wisdom of admitting a huge influx of low-skilled people into the United States is labelled as a nativist, a Tea Partier, or worse. In fact, the United States would be much better off with a system like Canada's and Australia's, which admits immigrants on the basis of education, skills and language ability. But it's probably too late now. One of the people who questions current U.S. immigration policy is George Borjas, a Harvard labour economist who has studied immigration economics for decades. He argues that the large-scale migration of low-skilled workers has hurt the economic opportunities of less-skilled natives. Businesses and affluent Americans gain; the people at the bottom lose." See also Heather Mac Donald, "The Illegal Alien Crime Wave", *City Journal,* Winter 2004. Writes Mac Donald: "Resource starvation is not the only reason for federal inaction. The INS was a creature of immigration politics, and [in the 1980's and 1990's] INS district directors came under great pressure from

local politicians to divert scarce resources into distribution of such 'benefits' as permanent residency, citizenship, and work permits, and away from criminal or other investigations. The … Citizenship USA project of 1996 was a … case of politics driving the INS to sacrifice enforcement to 'benefits.' … [and] the naturalization process radically expedited. [As a result] … processing errors in 1996 were 99 percent in New York and 90 percent in Los Angeles, and tens of thousands of aliens with criminal records, including murder and armed robbery, were naturalized." Ms. Mac Donald found both major political parties, presidential administrations, and Congress equally responsible over these periods. In many cases, state and local officials were impediments to criminal and civil law enforcement. As her article explains, both major political parties at all levels of government have failed to dignify rule of law.

[13] "Latest Figures on the Use of Prosecutorial Discretion in Immigration Court Cases", TRAC Immigration, February 19, 2015. States the article: "For hearing locations that closed at least 200 cases since FY 2012, recorded PD closures over this cumulative period ranged from none at all to a high of 39.1 percent. The five locations with the highest PD usage rates were: Tucson, Arizona (39.1%); Seattle, Washington (26.3%); Omaha, Nebraska (24.7%); Los Angeles, California (24.5%); and Charlotte, North Carolina (18.1%). If the focus is simply on those hearing locations where the greatest number of PD closures occurred during this period, then the clear standout was Los Angeles with a total of 13,333 PD dispositions. This accounted for roughly one out of every four of all PD closures nationwide. This is because the Los Angeles court handled a particularly large caseload along with having a high PD closure rate. Despite much smaller caseloads, Charlotte was second with 2,616 PD closures, followed by Seattle with 2,207. Even with much lower PD closure rates, New York City (2,102) and San Francisco (1,925) came in fourth and fifth respectively, due to their relatively large caseloads." See also Michael Matza, "Local U.S. immigration lawyers opt more for discretion", *Philadelphia Inquirer*, March 28, 2015. States the article: "Lawyers for U.S. Immigration and Customs Enforcement in Philadelphia have nearly doubled their use of the sparingly used prosecutorial discretion to close deportation cases this year, a new study shows. The trend, which grants relief from deportation to a larger pool of undocumented immigrants, won praise from some local immigration lawyers, and concern that it could end abruptly if President Obama's executive actions on immigration are nullified in the hotly contested federal court challenge playing out in Texas. The Philadelphia lawyers have used the option in almost 20 percent of cases so far in 2015, up from about 10 percent in recent years, according to the study."

[14] Jessica Vaughan, "Deportation Numbers Unwrapped", Center for Immigration Studies, October 2013. States the author: "Deportation totals have fluctuated over the last 30 years, peaking in 1986, 2000, and 2004. The all-time record year was 2000, the last year of the Clinton administration. In 2011, the most recent year for which all ICE and CBP totals have been reported, deportations numbered 715,495. This was the lowest year since 1973, when 585,351 deportations were effected."

[15] The INS "Interior Enforcement Strategy", issued by DoJ in 1999 and adopted by DHS in 2003, developed priorities for enforcement efforts. The first priority is the detention and removal of criminal aliens. The second is the dismantling and diminishing of alien smuggling and trafficking operations. The third addresses responses to community complaints about illegal immigration, including those of law enforcement. The fourth priority regards investigating and prosecuting immigrant benefit and document fraud. The fifth involves deterrence of employers' use of unauthorized aliens. Overall, the strategy aims to deter illegal immigration, prevent immigration-related crimes, and remove those illegally in the United States. See Alison Siskin, Andorra Bruno, Blas Nunez-Neto, Lisa M. Seghetti, and Ruth Ellen Wasem, "Immigration Enforcement Within the United States", Congressional Research Service, April 6, 2006, p. 7. Nowhere in the "Interior Enforcement Strategy" are immigration courts or enforcement of their removal orders mentioned.

[16] *Drax v. Janet Reno, et al*, 338 F.3d 98 (2d. CCA, 2003). States the opinion: "This case vividly illustrates the labyrinthine character of modern immigration law — a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike. The inscrutability of the current immigration law system, and the interplay of the numerous amendments and alterations to that system by Congress during the pendency of this case, have spawned years of litigation, generated two separate opinions by the District Court, and consumed significant resources of this Court. With regret and astonishment, we determine, as explained more fully below, that this case still cannot be decided definitively but must be remanded to the District Court, and then to the Board of Immigration Appeals ('BIA'), for further proceedings."

[17] "Remarks by the President at the Business Roundtable", the White House, Office of the Press Secretary, December 3, 2014. Stated the President: "Border security — the truth is, we're already doing a lot. We're going to be doing more as a consequence of the executive actions. There was a spike in concern about the borders because those kids had been coming up from Central

America during the summer and it got two weeks of wall-to-wall coverage until everybody forgot about it. It does reflect real problems in Central America with their economies and violence, but also active marketing by smugglers to parents, saying that they could get kids in. We brought that back down so the numbers are now below what they were two years ago. Overall, the border is less porous than it's been any time since the 1970s."

[18] Julia Preston, "Number of Migrants Illegally Crossing Rio Grande Rise Sharply", *The New York Times*, November 26, 2015. Stated the article: "The numbers of migrants crossing the Rio Grande illegally have risen sharply in recent weeks, replaying scenes from the influx of Central American children and families in South Texas last year. Once again, smugglers are bringing hundreds of women and children each day to the Mexican banks of the river and sending them across in rafts. In a season when illegal crossings normally go down, 'The numbers have started going the other way,' said Raul L. Ortiz, acting chief of the Border Patrol for the Rio Grande Valley. Since Oct. 1, official figures show, Border Patrol apprehensions of migrant families in this region have increased 150 percent over the same period last year, while the number of unaccompanied children caught by agents has more than doubled. The new flows here are smaller than the surge in the summer of 2014, but come after a year of declines in illegal crossings across the southwest border. The increases come as Americans' concerns about border security are heightened after the Nov. 13, 2015 attacks in Paris raised fears that terrorists would try to sneak into the United States. And they are complicating the Obama administration's efforts to reassure the country that the border is under control."

[19] "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", House Committee on Oversight and Government Reform hearing, July 14, 2016. The committee summarized: "According to ICE 953,506 aliens with final orders of removal remain in the United States." Author's Note: There were 523,003 unremoved aliens (i.e., aliens subject to removal orders) at the end of 2009. By 2016, 953,506 aliens were subject to removal orders, an increase of 82 percent or 430,503 in less than seven years.

[20] Richard Perez-Pena, "Migrants' Attempts to Enter U.S. via Mexico Stoke Fears About Jihadists", *The New York Times*, November 19, 2015. States the article: "In quick succession this week, three small groups of people, from Syria, Pakistan and Afghanistan, have reportedly tried to enter the United States through the border with Mexico, fanning fears that violent jihadists could make their way into the country. Federal officials say there are no indications that any of the migrants had radical history or intentions, and one of the groups did not try to sneak across the border but surrendered voluntarily. But the incidents come in a politically charged atmosphere, less than a week after the deadly Paris attacks by the Islamic State, as many Republican officials and some Democrats around the country argue that militants could be hiding among people fleeing the Syrian civil war and other conflicts. Advocates of stricter border control, including many border-region officials, have long cited the possibility that violent radicals could slip into the stream of Latin Americans crossing the United States' southern border. That has not been a common route for migrants from the Middle East, but any indication that it is becoming one could ratchet up security concerns. 'My fear—and what should be the fear of all Americans—is that terrorists are using well-established smuggling routes through Central America, through Mexico, and positioning themselves to come across the border,' said Sheriff Paul Babeu of Pinal County, Ariz., which straddles one of the region's major corridors for smuggling people and drugs into the country."

[21] "The State of America's Border Security", Committee on Homeland Security and Governmental Affairs United States Senate, Majority Staff Report, 114th Congress, November 23, 2015. States the report: "Despite dedicated and often heroic efforts from both the U.S. Customs and Border Protection (CBP) and local law enforcement, the accumulated testimony and information the Committee has gathered yields an inescapable conclusion: America's borders are not secure. This current state of affairs is clearly unacceptable. A secure border is not only a prerequisite to a functioning legal immigration system, but it is essential to maintaining national security and protecting public health and safety."

[22] U.S. House of Representatives, "Statement of Chris Crane, Before the House Judiciary Committee", February 5, 2013. Stated Crane: "[I]mmigration agents are regularly prohibited from enforcing the two most fundamental sections of United States immigration law. According to ICE policy, in most cases immigration agents can no longer arrest persons solely for entering the United States illegally. Additionally, in most cases immigration agents cannot arrest persons solely because they have entered the United States with a visa and then overstayed that visa and failed to return to their country. Essentially, only individuals charged or convicted of very serious criminal offenses by other law enforcement agencies may be arrested or charged by ICE agents and officers for illegal entry and overstay. …[U]nder current policy individuals illegally in the United

States must now be convicted of three or more criminal misdemeanors before ICE agents are permitted to charge or arrest the illegal alien for illegal entry or overstaying a visa, unless the misdemeanors involve the most serious types of offenses such as assault, sexual abuse or drug trafficking. With regard to traffic violations, other than DUI and fleeing the scene of an accident, ICE agents are also prohibited from making an immigration arrest of illegal aliens who have multiple convictions for traffic related misdemeanors."

[23] See "Immigration Court Backlog Tool", TRAC Immigration. From a bottleneck of 186,108 stagnant cases at the end of 2008, a total of 502,794 cases awaited trial as of October 2016 — an increase of 270 percent in less than eight years. Court officials claim unaccompanied minors explain this growth. This is not credible. Before the surge of minors from Central America in 2014, the courts added 158,122 cases to its backlog from end of 2008 to end of 2013. From 2014 through 2016, the courts have added another 158,564.

[24] See Mark H. Metcalf, "Built to Fail: Deception and Disorder in America's Immigration Courts", Center for Immigration Studies, October 2011. States the author: "From 1996 through 2009, trial courts issued removal orders in 2,279,234 cases. Of this total, 1,287,685 were issued against aliens in detention facilities. The balance of removal orders — 991,549 — were issued against aliens free pending their court dates. Removal orders were issued against 769,842 aliens who failed to appear in court and 221,707 aliens who kept their court dates but lost their trials. Put another way, 78 percent of all removal orders against those the U.S. allowed to remain free pending trial come from those who failed to keep their court dates, while 22 percent of removal orders are issued against those who followed orders to appear in court but lost their trials."

[25] *Ibid.* States the author: "A review of the courts' history strongly suggests the number of unexecuted removal orders at the end of 2009 equaled 1,109,551 and that unexecuted removal orders are much greater than ICE admits. Adding together the number of removal orders from 2003 through 2009 — orders which the 2003 IG report and ICE's own 2008 report suggests remain unenforced —shows the United States added 541,867 removal orders to the 602,000 that remained unexecuted as of 2002."

[26] "President Obama's Record of Dismantling Immigration Enforcement", Federation for American Immigration Reform, September 2014, p. 2. States the monograph: "Outright deception [is used by] the administration designed to convince the American public that immigration laws are being vigorously enforced. The Obama administration repeatedly engages in efforts to inflate its record of deporting illegal aliens. These deceptive practices include the release of data that is later exposed to be inaccurate. The Departments of Justice and Homeland Security carefully select data to claim that our 'borders are more secure than ever,' even as violence along the southern border escalates to alarming proportions."

[27] "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", U.S. House of Representatives, Committee on Oversight and Government Reform hearing, July 14, 2016. The committee summarized: "According to ICE, 953,506 aliens with final orders of removal remain in the United States as of 2016." This is a 58 percent increase (351,506 ÷ 602,000 = .583 or 58 percent) since 2002 when the number of unexecuted removal orders stood at 602,000. See "Fiscal Year 2002 Performance Report & Fiscal Year 2003 Revised Final Performance Plan, Fiscal Year 2004 Performance Plan", U.S. Department of Justice, last updated February 27, 2003, Strategic Goal 5.2A. Said the report "As of September 30, 2002, there was a 406,000-case backlog of removable unexecuted final orders and a 196,000-case backlog of not readily removable unexecuted final orders of removal, for a total of 602,000 unexecuted orders." Note that aliens "not readily removable" include those who are incarcerated, officially designated as in a Temporary Protected Status, and those who are nationals of Laos, Vietnam, or Cuba (countries with whom the United States does not have repatriation agreements.

[28] Thomas H. Cohen, "Pretrial Release and Misconduct in Federal District Courts, 2008-2010", U.S. Department of Justice, Bureau of Justice Statistics, November 2012, See Table 9 and p. 10. Federal courts released 10 percent of noncitizen defendants identified as illegal aliens, compared to 43 percent of legal aliens and 55 percent of U.S. citizens. Altogether, 116,321 illegal aliens were arrested on federal charges from 2008-2010. Illegal aliens made up 41 percent of those arrested and held on federal charges (116,321 ÷ 283,385 = 41 percent). The breakdown between citizen and alien was respectively: 148,348 citizens, 15,100 legal aliens, and 116,321 illegal aliens. State authors: The low rate of pretrial release for immigration defendants was due to 91 percent of these defendants being illegal aliens, which the federal courts typically do not release.

[29] "Illegal Reentry Becomes Top Criminal Charge", TRAC Immigration, June 10, 2011. States the report: "Illegal reentry under Title 8, Section 1326 of the United States Code was the most commonly recorded lead charge brought by federal prosecutors during the first half of FY 2011. It alone accounted for nearly half (47 percent) of all criminal immigration prosecutions filed. It accounted for just under a quarter (23 percent) of overall criminal prosecutions, surpassing illegal entry (Title 8, Section 1325) as the most frequently cited federal lead charge. The latest available data from the Justice Department show the government reported 18,552 new prosecutions for illegal reentry during the first six months of this fiscal year. If this activity continues at the same pace, the annual total of prosecutions will be 37,104 for this fiscal year. According to the case-by-case information analyzed by the Transactional Records Access Clearinghouse (TRAC), this estimate is up 3.5 percent over FY 2010, when the number of prosecutions totaled 35,836."

[30] "Immigration Prosecutions for July 2016", TRAC Immigration, August 30, 2016. States the report: "Immigration prosecutions in U.S. district courts are down 32.8 percent since 2010." See Table 1. Criminal Immigration Prosecutions".

[31] Steven Camarota and Karen Ziegler, "Immigrant Population Hits Record 42.1 Million in Second Quarter of 2015", Center for Immigration Studies, August 2015. States the report: "[T]he illegal population grew significantly since 2013, when Pew and the Center for Migration Studies last estimated its size. Of course, this represents only an educated guess. To actually estimate the illegal population in the second quarter of 2015 would require administrative data that is not yet available, as well as other information. But the evidence, while preliminary and incomplete, does indicate that the number of illegal immigrants has increased in the last two years. ... [T]he increase in the Mexico-born population in the last year suggests that illegal immigration has increased. In addition to Mexico, growth in the immigrant population was led by a 449,000 increase in the number of immigrants from other Latin American countries in the last year. This 449,000 accounted for 27 percent of the growth in the total foreign-born population since 2014. Looking at growth in the last two years shows a 2.75 million increase in the immigrant population (See Figure 1 and Table 1). Mexico accounted for 921,000 (34 percent) of this growth and other Latin American countries accounted for 953,000 (35 percent). Most researchers have estimated that individuals from Mexico and Latin America accounted for eight in 10 illegal immigrants in the country. The significant growth of immigrants from all of Latin America over the last two years lends support to the idea that the number of illegal immigrants has begun to increase again."

[32] "Facts are stubborn things, but statistics are more pliable" has frequently been credited to the American novelist and humorist Mark Twain (1835-1910). However, history indicates the saying first appeared in print in the *Fort Wayne News-Sentinel* in April 1927. The attribution has stuck, however. A similar quote is attributed to President John Adams, who spoke at length stating: "I will enlarge no more on the evidence, but submit it to you, gentlemen — Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."

[33] Brian H. Bornstein, Alan J. Tomkins, and Elizabeth M. Neeley, "Reducing Courts' Failure-to-Appear Rate: A Procedural Justice Approach", National Criminal Justice Reference Service, Office of Justice Programs, May 20, 2011, p. 6. States the article in pertinent part: "One area of the criminal justice system where compliance is particularly lacking is in individuals' response to orders to appear in court for relatively minor offenses such as traffic offenses, misdemeanors, and low-level felonies. Non-custodial criminal defendants often fail to appear for court. This occurs for all kinds of mandated appearances: arraignment, pretrial (post-arraignment) hearings, trial, and post-trial. Initial (i.e., arraignment) failure-to-appear (FTA) rates for non-waiverable offenses are particularly problematic, as they involve the greatest volume of defendants. Many, if not most, of these individuals are not detained prior to trial (Goldkamp & White, 2006; VanNostrand & Keebler, 2009). There are a number of alternatives to pretrial detention (VanNostrand & Keebler, 2009), the most common of which, for minor offenses, is simply to release individuals in the community with little if any government oversight, placing the burden to appear in court entirely on defendants themselves (Goldkamp & White, 2006). Not surprisingly, this can result in substantial failure-to-appear (FTA) rates. FTA rates vary depending on jurisdiction and offense type, ranging from less than 10% (e.g., Cuvelier & Potts, 1997; VanNostrand & Keebler, 2009) to as high as 25-30% (e.g., Davis, 2005; Helland & Tabarok, 2004; McGinty, 2000). These failures to appear are costly for both the court system and defendants (Levin, Kennel, Pellegrino, Simmons, & Surett, 2007)."

[34] Timothy R. Schnacke, Michael R. Jones, and Dorian M. Wilderman, "Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program", Court Review, Vol. 48. State the authors: "In 2004, one of the most important issues facing Jefferson County, Colorado, criminal justice leaders was the rising numbers of these failures to appear (FTAs). That year,

consultants working on behalf of the National Institute of Correction's Jails Division completed a local system assessment showing that 33 percent of the county jail's inmates were compliance violators (*i.e.*, failure to comply with court orders by failing to appear, pay, or perform some task) up from only 8 percent in 1995. Subsequent jail-population analyses found that three-fourths of these compliance violators had been booked on failure to appear warrants for misdemeanor, traffic, or municipal offenses, and in 90 percent of the studied cases these FTA warrants were issued to defendants missing the very first court event in their case. … As a matter of jail-population management alone, a facility with roughly 25 percent of its inmates incarcerated for failing to appear for mostly lower-level offenses did not seem like the best use of the limited jail resources." See also Brian H. Bornstein, Alan J. Tomkins, Elizabeth M. Neeley, Mitchel N. Herian, and Joseph A. Hamm, "Reducing Courts' Failure-to-Appear Rate by Written Reminders", *Psychology, Public Policy, and Law* 19:1 (2013), pp. 70–80. States the article: "FTA rates vary depending on jurisdiction and offense type, ranging from less than 10% (e.g., Cuvelier & Potts, 1997; VanNostrand & Keebler, 2009) to as high as 25–30% (e.g., Davis, 2005; Helland & Tabarrok, 2004; McGinty, 2000). These failures to appear are costly for both the court system and defendants (Levin, Kennel, Pellegrino, Simmons, & Surett, 2007; Rosenbaum, Hutsell, Tomkins, Bornstein, Herian, & Neeley, in press)."

[35] Thomas H. Cohen, and Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts", BJS Special Report, Department of Justice, Office of Justice Programs, November 2007, pp. 1 and 8-10. Write the authors: "For failure to appear, the range was from 21 percent to 24 percent [of accused felons who were released pending trial]. … Overall rearrest rates ranged from 13 percent to 21 percent;" and "Between 1990 and 2004, 62 percent of felony defendants in State courts in the 75 largest counties were released prior to the disposition of their case." Author's Note: When determining failure to appear rates, the authors compared those accused felons released prior to trial who failed to appear in court out of the total population of accused felons who were released pending trial. See also Eric Helland and Alexander Tabarrok, "The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping", *Journal of Law and Economics*, Vol. 47, No. 1, February 2004, p. 93. This study used figures from the State Court Processing Statistics program of the Bureau of Justice Statistics at the U.S. Department of Justice.

[36] Thomas H. Cohen, "Pretrial Release and Misconduct in Federal District Courts, 2008-2010", U.S. Department of Justice, Bureau of Justice Statistics, November 2012, p.1. States the article: "Technical violations were committed by 17 percent of defendants released prior to case disposition, while 1 percent of released defendants failed to make court appearances and 4 percent were rearrested for new offenses."

[37] *Ibid.* See Table 9 and p. 10. Federal courts released 10 percent of noncitizen defendants identified as illegal aliens, compared to 43 percent of legal aliens and 55 percent of U.S. citizens. Altogether, 116,321 illegal aliens were arrested on federal charges from 2008-2010. Illegal aliens made up 41 percent of those arrested and held on federal charges (116,321 ÷ 283,385 = 41 percent). The breakdown between citizen and alien was respectively: 148,348 citizens, 15,100 legal aliens, and 116,321 illegal aliens.

[38] Brian H. Bornstein, Alan J. Tomkins, and Elizabeth M. Neeley, "Reducing Courts' Failure-to-Appear Rate: A Procedural Justice Approach", National Criminal Justice Reference Service, Office of Justice Programs, p. 6, May 20, 2011. States the article in pertinent part: "Following the example set by medical profession (e.g., Larson et al., 1982), several courts have effectively implemented court reminder programs designed to reduce FTA rates (Cozier, 2000; O'Keefe, 2007; White, 2006; *see*, generally, The Court Brothers, 2010a). For example, the Cook County (IL) Juvenile Court's postcard reminder program reduced the failure-to-appear rate from 38% to 13% (Rohan, 2006). Similarly, an evaluation of Coconino County (AZ) showed a reduction in the percentage of failures to appear at initial appearance in adult misdemeanor cases from over 25% to less than 13% when the defendant was called in advance and reminded of the hearing date (White, 2006). Reminder programs in Arapahoe County (CO), Jefferson County (CO), and Multnomah County (OR) have also increased appearance rates and realized substantial labor and financial savings (Arapahoe County Justice Center, 2010; Jefferson County Criminal Justice Planning, 2006; O'Keefe, 2007). The potential of reminder programs has even spawned a national reminder call business for courts (The Court Brothers, 2010b)."

[39] Of the 2,498,375 aliens the United States permitted to remain free pending trial over the last 20 years, 37.3 percent of this number — 918,098 — never came to court. Composites for five-year periods may be found in each EOIR statistical year books: 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23; 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; and 2015, pp. P1-P4 and Figures 23 and 26.

[40] *Ibid*. From 1996 through 2015 (20 years), 918,098 aliens never made it to court while released on their own recognizance to appear for their hearings. Dividing 918,098 by 20 (918,098 ÷ 20 = 45,904.9) reveals nearly 46,000 people on average failed to appear in immigration courts each year and were ordered removed.

[41] Under the 1980 Refugee Act (8 USC 1101(a) (42), Immigration and Nationality Act) a refugee was defined as "any person who is outside of any country of such person's nationality ... who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." See also Greg Siskind, "The ABC's of Immigration: Grounds for Asylum and Refuge", Siskind's Immigration Bulletin, August 2014.

[42] Timothy R. Schnacke, Michael R. Jones, and Dorian M. Wilderman, "Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program", *Court Review*, Vol. 48, p. 87.

[43] W.D. Reasoner, "Deportation Basics, Center for Immigration Studies", Center for Immigration Studies, July 2011. States the author: "ICE officers are supposed to consider two key factors in determining whether to detain or release an alien in proceedings — if the alien is a flight risk and if he is a risk to the community. The latter factor obviously is given serious consideration, but it is equally obvious from the large number of absconders that officers don't give the same weight to the likelihood of flight, especially considering the scarcity of funded detention space."

[44] See "Detention and Removal of Illegal Aliens", Audit Report OIG-06-33, Department of Homeland Security, Office of Inspector General, April 2006, p. 2.

[45] *Ibid.*, p. 1.

[46] "U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised)", Office of Inspector General, Department of Homeland Security, February 4, 2015, p. 6, Figure 1. The IG's report shows 10.79 percent of aliens free pending trial absconded in 2010 and only 4.86 percent did the same in 2012. Alternatives to detention merited use that ICE did not apply on a broader scale.

[47] *Ibid.* States the DHS IG: "ICE developed the RCA [Risk Classification Assessment] to assist its release and custody classification decisions. However, the tool is time consuming, resource intensive, and not effective in determining which aliens to release or under what conditions."

[48] "Congressional Briefing Gives Overview of Immigration Detention System", American Bar Association, February 4, 2013. Explained former Assistant Secretary of Immigration and Customs Enforcement Julie Myers Wood: "The purpose [of detention and alternatives to detention] is to ensure that detainees return home." Wood said it is tough to detain immigration detainees the right way because there are not a lot of facilities for civil detention. Wood discussed ICE's alternative to detention programs, which had 42,000 participants in 2012. Among this group as many as 99.7 percent of participants appeared for their final hearing, and 85 percent complied with final orders of removal.

[49] *Ibid.* The alternatives to detention included phone-reporting and GPS systems as well as a full-service program that involved counseling on how to find a lawyer and obtain travel documents for deportation. Wood said the alternatives programs have very positive results. Under the full-service program, which costs less than $8 per person per day, 99.7 percent of participants appeared for their final hearing, and 85 percent complied with final orders of removal, while the scaled-down, technology-based program had a 45 percent compliance rate for final orders. Wood encouraged challenging the premise of who must be detained. "Some folks, in my view, shouldn't fall into mandatory detention," she said.

[50] The rosier picture in one respect is achieved by understating failure to appear (FTA) rates. This is accomplished, in part, through some bait and switch. Aliens failing to appear in court are compared to the much larger group of aliens free who came to court *plus* all aliens who were detained pending trial. In this manner, FTA rates are understated or, put differently, suppressed. The courts never compare apples to apples. In other words, the courts never make a direct comparison of aliens free pending trial who skip court to all aliens free pending trial.

[51] From 1996 through 2012, the courts published what they then called the "overall failure to appear rate", using the same equation that is used today to produce what the courts have called since 2013 the *in absentia* order rate. The courts from 1996 through 2012 didn't measure the failure to appear rate, though they said they did. This was pointed out in "Built to Fail: Deception and Disorder in America's Immigration Courts", page 42. The courts mislabeled what they measured and, in turn, misled Congress and the public. See the EOIR statistical year books: 2015, pp. P1-P4 and Figures 23-26; 2013 p. P1-P4 and Figures 23-26; 2012, p. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; and 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23.

[52] "Built to Fail: Deception and Disorder in America's Immigration Courts", p. 39, Table 1. In 2007, the courts stated the FTA rate was 19 percent. It was actually 38 percent. In 2008, the courts stated the FTA rate was 16 percent. Instead, it was 37 percent. In 2009, the court said the FTA was 11 percent, when it was really 32 percent.

[53] *Ibid.*

[54] EOIR statistical year book for 2015, pp. P1-P4 and Figures 23-26. Since 1996, the courts have always mixed aliens free pending trial with aliens detained pending trial.

[55] See the EOIR statistical year books: 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23; 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; 2008, p. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; 2015, pp. P1-P4 and Figures 23-26. The rosier picture is achieved by understating failures to appear (FTA) rates. Aliens failing to appear in court are compared to the much larger group of all aliens free pending trial *plus* all aliens in detention. No direct comparisons between aliens free pending trial who fled court versus all aliens free pending trial is ever made by the courts.

[56] The courts understated the FTA rate in 2015 the way they always have over the previous 19 years. They compared those aliens who failed to appear in court (38,229) to all aliens free before trial (88,868) and all aliens who were detained before trial (50,180). Thus, to get the lower FTA rate of 27 percent the courts compared the 38,229 aliens who no-showed to the 139,048 aliens combined from those who were free pending trial *plus* those in detention (38,229 ÷ 139,048 = 27 percent). Comparing aliens who failed to appear in court to all aliens free pending court, 38,229 ÷ 88,868 = 43 percent, produces the accurate measure failure to appear. See EOIR statistical year book for 2015, pp. P1-P4 and Figures 23-26.

[57] *Ibid.*

[58] Margaret E. Martin, Miron L Straf, and Constance F. Citro, eds., *Principles and Practices for A Federal Statistical Agency, 3rd ed.*, Washington, D.C.: National Academies Press, 2005, p. 3. State the authors: "An agency should make every effort to provide accurate and credible statistics that will permit policy debates to be concerned about policy, not about the credibility of the data." Principle 2 is "A federal statistical agency must have credibility with those who use its data and information."

[59] EOIR statistical year book for 2015, pp. P1-P4 and Figures 23-26. States the 2015 yearbook: "From FY 2011 to FY 2015 the number of *in absentia* orders for aliens free pending trial increased by 71 percent while the number of immigration judge decisions for those aliens decreased by 9 percent in the same time period. ... From FY 2011 to FY 2015 the number of *in absentia* orders for aliens released on bond or on their own recognizance increased by 73 percent while the number of immigration judge decisions for those aliens increased by 18 percent." Author's Note: The failure to appear rate increased from 23 percent in 2011 to 43 percent in 2015, an 87 percent increase in the failures to appear rate in four years.

[60] See EOIR statistical year book for 2008, p. H1-H4, Figures 10-12 and p. O1, Figure 23. Using the five-year composite in the 2008 statistical year book shows EOIR repeated its earlier finding that 39 percent of aliens failed to appear in court 2005. In fact, 59 percent were no-shows. In 2006, EOIR once more reported 39 percent of aliens made no court appearance. The real number was again 59 percent. The courts failed to make the direct comparison of aliens free who failed to make court versus the entire groups of aliens free before court. Had they done so, they would have revealed to Congress the degree to which litigants were evading court. In 2005, 106,832 aliens out of 184,241 aliens free pending their court dates never appeared (106,832 ÷ 184,241 = 59 percent). In 2006, the same disarray affected the courts' proceedings. 109,741 aliens out of 184,241 aliens free pending trial were no-shows when their cases were called (109,741 ÷ 184,241 = 59 percent).

[61] EOIR statistical year book for 2015, pp. P1-P4 and Figures 23-26. No mention is ever made that aliens free pending trial are the only group that can receive *in absentia* orders.

[62] EOIR statistical year book for 2007, p. H2 and Figures 10-12. In 2007, EOIR stated "Failures to appear for detained cases occur infrequently, generally only because of illness or transportation problems, and are not broken out in the following figures."

[63] EOIR statistical year book for 2007, p. H2 and Figures 10-12; and 2002 yearbook p. H2 and Figures 10-12. In both years, EOIR stated: "Failures to appear for detained cases occur infrequently, generally only because of illness or transportation problems, and are not broken out in the following figures." Sitting as a special judge in Los Angeles, Calif., (Mira Loma Detention Facility) and San Antonio, Texas, the author heard cases involving detained aliens. In a few instances, hearings were rescheduled because the detainees were not present in court because of transportation or illness issues. The non-appearances were no one's fault and *in absentia* removal orders were not imposed.

[64] Hossein Arsham, "Statistical Thinking for Managerial Decisions, Homogeneous Population (Don't Mix Apples with Oranges)", University of Baltimore class, undated. States Arsham: "A homogeneous population is a statistical population which has a unique mode. To determine if a given population is homogeneous or not, construct the histogram of a random sample from the entire population. If there is more than one mode, then you have a mixture of two or more different populations. Know that to perform any statistical testing, you need to make sure you are dealing with a homogeneous population."

[65] Thomas H. Cohen, and Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts", Bureau of Justice Statistics Special Report, Department of Justice, Office of Justice Programs, November 2007, p.1, 8-10. Author's note: When determining failure to appear rates, the authors compared those accused felons released prior to trial who failed to appear in court out of the total population of accused felons who were released pending trial.

[66] See "Detention and Removal of Illegal Aliens", Audit Report OIG-06-33, Department of Homeland Security, Office of Inspector General, April 2006, p. 16.

[67] All studies measuring failure to appear rates, without exception, compared those who failed to appear only those who were free before trial. Never were those in custody added to the control group of those free before trial in order to determine the failure to appear rate. See Brian H. Bornstein, Alan J. Tomkins, and Elizabeth M. Neeley, "Reducing Courts' Failure-to-Appear Rate: A Procedural Justice Approach", National Criminal Justice Reference Service, Office of Justice Programs, p. 6, May 20, 2011; Timothy R. Schnacke, Michael R. Jones, and Dorian M. Wilderman, "Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program", *Court Review*, Vol. 48; Thomas H. Cohen, and Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts", Bureau of Justice Statistics Special Report, Department of Justice, Office of Justice Programs, November 2007, pp. 1 and 8-10; Thomas H. Cohen, "Pretrial Release and Misconduct in Federal District Courts, 2008-2010", U.S. Department of Justice, Bureau of Justice Statistics, November 2012, Table 9 and p. 10.

[68] EOIR statistical year book for 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23.

[69] *Ibid.,* (251,309 ÷ 726,164 = 35 percent, excluding detainees).

[70] Non-detained litigants who came to court over the same period equaled 353,775. During this five-year period, trial courts decided or administratively closed 713,974 cases involving non-detained aliens, and 360,199 out of this group failed to show, equaling 50.4 percent (360,199 ÷ 713,775 = 50.4 percent). See EOIR statistical year book for 2006, p. H1-H4, Figures 10-12 and p. O1, Figure 20.

[71] See EOIR statistical year book for 2008, p. H1-H4, Figures 10-12 and p. O1, Figure 23. Using the five-year composite in the 2008 yearbook shows EOIR repeated its earlier finding that 39 percent of aliens failed to appear in court 2005. In fact, 59 percent were no-shows. In 2006, EOIR once more reported 39 percent of aliens made no court appearance. The real number was again 59 percent. The courts failed to make the direct comparison of aliens free who failed to make court versus the entire

groups of aliens free before court. Had they done so, they would have revealed to Congress the degree to which litigants were evading court. In 2005, 106,832 aliens out of 184,241 aliens free pending their court dates never appeared (106,832 ÷ 184,241 = 59 percent). In 2006, the same disarray affected the courts' proceedings. 109,741 aliens out of 184,241 aliens free pending trial were no-shows when their cases were called (109,741 ÷ 184,241 = 59 percent).

[72] *Ibid.*

[73] In 2015, 38,229 alien litigants free pending trial (out of a total of 88,868) failed to appear in court at some point prior to their trials. By fractions, 43 percent of all aliens free pending trial evaded court. EOIR statistical year book for 2015, p. P1 and Figures 23.The courts stated the FTA rate was 27 percent and understated this rate by a full 37 percent (16 ÷ 43 = 37 percent). EOIR statistical year book for 2015, pp. P1-P4 and Figures 23-26.

[74] EOIR statistical year books for 2015, pp. P1-P4 and Figures 23-26; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; and 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23.

[75] Twenty years' worth of annual court reports (called the EOIR statistical year books) show court officials defaulting to formulaic analyses that often hide as much as they reveal. In other words, the courts and DoJ are locked-in (and they, as is usually the case in such situations, hold the key to their own cell) and cling to routines that fail the oversight function of Congress and are ultimately harmful to the courts. Failures to appear have never been clearly explained to Congress and the public. Had they been, part of the disarray present on 9/11 might still have been in effect, but the blinders would have been off. They would have been able to tell Congress and the 9/11 Commission: "This is the problem we told you about. Help us fix it." Instead, the same dysfunction held sway and courts are now more ineffective than ever before.

[76] The Department of Justice manages the courts. See 8 C.F.R. §1003.10: "Immigration judges. (a) *Appointment*… [I]mmigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them."

[77] See EOIR statistical year books for 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23; 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; 2008, p. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; and 2015, pp. P1-P4 and Figures 23-26.

[78] *In Absentia* orders equal 75 percent of all orders of removal issued outside of detention facilities. The equation demonstrates the significance of these orders. 899,619 ÷ 1,219,959 = 73.7 percent or 74 percent. See EOIR statistical year books for 2000, p. I3, Table 12, p. L1-L2, Figures 15-17, and p. T1, Figure 23; 2004, p. D2, Figure 5, p. H1-H4, Figures 10-12, and p. O1, Figure 20; 2008, p. D2, Figure 5, p. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12, and p. O1, Figure 23; and 2015, pp. P1-P4 and Figures 23-26.

[79] The failure of America's immigration courts is not the fault of its judges or the aliens who appear before them. It is the failure of an institution and the executives put in charge of the courts. This failure is not limited to Democratic administrations. It is a Republican failure as well. History labels this failure wooden-headedness. "Wooden-headedness," writes historian Barbara Tuchman, is "the source of self-deception … [and] a factor that plays a remarkably large role in government. It consists in assessing a situation in terms of … fixed notions while ignoring or rejecting any contrary signs. It is acting according to wish while not allowing oneself to be deflected by the facts." See Barbara W. Tuchman, *The March of Folly*, New York: Alfred A. Knopf, Inc., 1984, p. 7.

[80] See Heather Mac Donald, "The Illegal-Alien Crime Wave", *City Journal*, Winter 2004. States the article**: "**Some of the most violent criminals at large today are illegal aliens. Yet in cities where the crime these aliens commit is highest, the police cannot use the most obvious tool to apprehend them: their immigration status. In Los Angeles, for example, dozens of members of a ruthless Salvadoran prison gang have sneaked back into town after having been deported for such crimes as murder, assault with a deadly weapon, and drug trafficking." See also Brandon Darby, "Leaked FBI Data Reveal 7,700 Terrorist Encounters in USA in One Year; Border States Most Targeted", Breitbart, September 26, 2016. States the article: "Leaked documents with sensitive FBI data exclusively obtained by Breitbart Texas reveal that 7,712 terrorist encounters occurred within

the United States in one year and that many of those encounters occurred near the U.S.-Mexico border. The incidents are characterized as 'Known or Suspected Terrorist Encounters.' Some of the encounters occurred near the U.S.-Mexico border at ports-of-entry and some occurred in between, indicating that persons known or reasonably suspected of being terrorists attempted to sneak into the U.S. across the border. In all, the encounters occurred in higher numbers in border states."

[81] *In absentia* rates and failure to appear rates are not calculated by comparing aliens free before trial who failed to come to court to all aliens free before trial. The courts actually compare two groups. The courts compare aliens released from custody that failed to come to court to the whole group that was released from custody. They also compare those that were never in custody who failed to make their court dates to all who were never in custody. But never do court executives publicly make the stark comparison of all aliens free before trial who evaded court to all aliens free before trial.

[82] "ICE List of Specially Designated Countries (SDCs) that Promote or Protect Terrorism", Public Intelligence, July 2, 2011. The 36 countries labelled Specially Designated Countries (SDCs) are: Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Malaysia, Mauritania, Morocco, Territories of Gaza West Bank, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan and Yemen. Aliens in American custody from these countries are examined to determine if they have terrorist links through a TAC (third agency check). Israel is included in this analysis, since it was added May 11, 2011, but with caveats from then-ICE Assistant Secretary John Morton. Essentially, Mr. Morton walked back Israel's inclusion, claiming it is a valuable partner in fighting terrorism, but never removed it from the SDC list. The SDC list was withdrawn in December 2011 with the same language that many of the nations on it were valuable partners.

[83] Special Interest Countries (SICs) and State Sponsors of Terrorism (SSTs) are included the larger group of SDCs, but only Iran, Sudan, and Syria are considered SSTs.

[84] All references to asylum statistics have been compiled and analyzed from the Executive Office for Immigration Review statistical year books for 2003 through 2012. These are found past the glossary in the back of each report. EOIR ceased publishing them in 2013 in the statistical yearbooks. However, for fiscal years 2013 through 2015, they may be found in the "Statistics, Publications, and Manuals" in the Asylum Statistics Chart.

[85] *Ibid.*

[86] "The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders", Rep. No. I-2003-004, U.S. Department of Justice, Office of Inspector General, February 2003. States the report: "[W]e examined three important subgroups of non-detained aliens and found that the INS was also ineffective at removing potential high-risk groups of non-detained aliens. The subgroups we examined were aliens: from countries that the U.S. Department of State identified as sponsors of terrorism — only 6 percent removed, [those] with criminal records — only 35 percent removed, and [those] who were denied asylum — only 3 percent removed."

[87] "Detention and Removal of Illegal Aliens", Audit Report OIG-06-33, Office of the Inspector General, Department of Homeland Security, p. 9, April 2006. States the report: "From FY 2001 through the first half of FY 2005, 91,516 SIC (special interest countries regarding terrorism) and SST (state sponsors of terrorism) aliens were apprehended, of which 45,000 (49 percent) were later released. It is not known exactly how many of these SIC and SST aliens were ultimately issued final orders of removal and were actually removed since such data is not tracked by DRO. However, assuming SIC and SST aliens are being removed at the same rate as other apprehended and released aliens, 85 percent of the SIC and SST aliens released who eventually receive final orders of removal will abscond."

[88] *Ibid.*

[89] "Supervision of Aliens Commensurate with Risk", OIG-81-11, Department of Homeland Security, Office of Inspector General, December 2011 (Revised), See Figure 2: "Population of Aliens From SDCs", p. 5.

[90] All references to asylum statistics have been compiled and analyzed from the Executive Office for Immigration Review statistical year books for 2003 through 2012. These are found past the Glossary in the back of each report. EOIR ceased publishing them in 2013 in the statistical yearbooks. However, for fiscal years 2011 through 2015, they may be found in the "Statistics, Publications, and Manuals" in the Asylum Statistics Chart.

[91] *Ibid.*

[92] *Ibid.*

[93] "The State of America's Border Security", Committee on Homeland Security and Governmental Affairs United States Senate, Majority Staff Report, 114th Congress, November 23, 2015. States the report: "Finally, legitimate concerns remain that terrorists could exploit our country's southwest border to enter the U.S. undetected. While the likelihood of a terrorist group using the southwest border as an entry point to complete a terrorist attack is an area of debate, the potential for exploitation should be taken seriously given that there was a 70 percent increase from FY2013 to FY2014 in OTMs (Other Than Mexicans) crossing the border. This included individuals from Iraq, Syria, and Egypt. According to Border Patrol agents on the ground, 51 percent of all Border Patrol apprehensions are currently OTMs."

[94] James Clapper, director of national intelligence, Statement for the Record, "Worldwide Threat Assessment of the U.S. Intelligence Community", Senate Armed Services Committee. Stated National Intelligence Director James Clapper: "The United States will almost certainly remain at least a rhetorically important enemy for most violent extremists in part due to past and ongoing US military, political, and economic engagement overseas. Sunni violent extremists will probably continually plot against US interests overseas. A smaller number will attempt to overcome the logistical challenges associated with conducting attacks on the US homeland. The July 2015 attack against military facilities in Chattanooga and December 2015 attack in San Bernardino demonstrate the threat that homegrown violent extremists (HVEs) also pose to the homeland. In 2014, the FBI arrested approximately one dozen US-based ISIL supporters. In 2015, that number increased to approximately five dozen arrests. These individuals were arrested for a variety of reasons, predominantly for attempting to provide material support to ISIL. [A] top U.S. intelligence official said Tuesday that ISIS was likely to attempt direct attacks on the U.S. in the coming year and that the group was infiltrating refugees escaping from Iraq and Syria to move across borders." See also Ryan Browne, "Top Intelligence Official: ISIS to Attempt U.S. Attacks This Year", CNN, February 9, 2016. States the article: "ISIS 'will probably attempt to conduct additional attacks in Europe, and attempt to direct attacks on the U.S. homeland in 2016,' Lt. Gen. Vincent Stewart, director of the Defense Intelligence Agency, testified on Capitol Hill Tuesday. Director of National Intelligence James Clapper, who was also at the Senate Armed Services Committee hearing, estimated that violent extremists were active in about 40 countries and that there currently exist more terrorist safe havens 'than at any time in history.' Clapper warned ISIS and its 8 branches were the No. 1 terrorist threat and it was using refugees from violence in Iraq and Syria to hide among innocent civilians in order to reach other countries."

[95] Once an alien has been ordered removed by EOIR, DHS (through ICE and its sub-agency DRO (Detention and Removal Operations, now ERO (Enforcement and Removal Operations)) is charged with executing removal. Courts cannot direct the execution of their own orders, whether they grant relief to an alien or direct his deportation from the U.S. See EOIR 2008 statistical year book, p. B1.

[96] From 1996 through 2000, failures to appear averaged 35 percent of all aliens free pending trial. From 2002 through 2016, failures to appear averaged 43 percent of all aliens free pending trial. A population, that in the words of DHS has a "penchant" to flee removal orders if released from custody, has never been subject to detention or alternatives to detention that significantly impacted this problem over the history of these courts. The following statistical year books trace the histories of court evasion, using the bleached numbers that EOIR shares with Congress. See EOIR statistical year books for 2000, p. L1-L2, Figures 15-17 and p. T1, Figure 23; 2005 p. H1-H4, Figures 10-12 and p. O1, Figure 23; 2008, p. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, p. H1-H4, Figures 10-12 and p. O1, Figure 23; and 2015, p. P1-P4 and Figures 23-26.

[97] "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", House Committee on Oversight and Government Reform hearing, July 14, 2016. The committee summarized: "According to ICE, 953,506 aliens with final orders of removal remain in the United States as of 2016. Unexecuted deportation orders increased

each year by an average of 61,548 from 2009 through 2015 for a total of 430,838 additions. Unexecuted deportation orders equaled 522,668 in 2009." The percentage of increase in unexecuted deportation orders equals 82 percent (430,838 ÷ 522,668 = .824 or 82 percent) over that six-year period.

[98] See "Immigration Control: Deporting and Excluding Aliens from the United States", GAO/GGD-90-18, U.S. General Accounting Office, October 1989, p. 31.

[99] *Ibid.* Stated GAO: "When Congress passed the Immigration and Nationality Act of 1962, the illegal flow of aliens into this country was not a major problem. Since then, however, the flow has become a torrent. For example, apprehensions of aliens illegally entering the country rose from 45,000 in 1959 to 1.8 million in 1986." This constitutes a 2700 percent increase or 45,000 ÷ 1,800,000 = 2.666 rounded to 2700 percent. In 1989, 1.2 million people entered illegally — a 2200 percent increase.

[100] *Ibid.*, p. 22. Stated the GAO: "[E]xisting data indicate that this is a significant problem."

[101] *Ibid.,* p.4. Stated the GAO: "[We] estimated that about 27 percent of the apprehended aliens failed to appear for their deportation hearings in New York and Los Angeles. Virtually all of the aliens had been charged with entering the country illegally and most had attended at least one hearing before not appearing at a following hearing."

[102] *Ibid.*, p. 22. Stated GAO: "Data provided by the Chief Immigration Judge indicate that the failure to appear problem exists in varying degrees in different locations. From January 1 to May 26, 1989, the failure to appear rate was 15 percent in El Paso, 23 percent in San Diego, and12 percent in Miami. However, from January 1 to March 31, 1989, the failure to appear rate in New York was 63 percent and in Los Angeles, 46 percent. In 1985 in Miami, 68 percent of aliens who had posted bond failed to appear for court. These studies include only aliens who were released on bond. These numbers do not include those aliens who were released on their own recognizance."

[103] *Ibid.*, p. 22. Stated GAO: "These studies include only aliens who were released on bond. These numbers do not include those aliens who were released on their own recognizance."

[104] "Detention and Removal of Illegal Aliens", Audit Report OIG-06-33, Department of Homeland Security, Office of Inspector General, April 2006. Stated the DHS IG: "As early as 1996, a Department of Justice (DOJ) OIG report cited the shortage of detention bed space as impacting DOJ's ability to deport illegal aliens with final orders of removal. Specifically, the DOJ OIG concluded that the legacy INS program for deporting illegal aliens had been largely ineffective, finding that 89 percent of the non-detained aliens released into the U.S. who were subsequently issued final orders of removal were not removed (absconded)."

[105] See "Immigration Control: Deporting and Excluding Aliens from the United States", GAO/GGD-90-18, U.S. General Accounting Office, October 1989, p. 31.

[106] *Ibid.*, p. 22. Stated the GAO: "[T]heir [aliens] non-appearance may also be due partly to the general lack of repercussions (other than bond forfeitures) for failing to appear."

[107] Edward R. Grant, "Laws of Intended Consequences: IIRIRA and Other Unsung Contributors to the Current State of Immigration Litigation", *Catholic University Law Review* Symposium on Immigration Appeals and Judicial Review, Summer 2006.

[108] "Detention and Removal of Illegal Aliens", Audit Report OIG-06-33, Department of Homeland Security, Office of Inspector General, April 2006, p. 3.

[109] "ICE Fiscal Year 2008 Annual Report", ICE. States the annual report: "These efforts continued to pay dividends in FY08 as ICE arrested 34,155 fugitives, which is an increase of more than 12 percent over the previous year. This has led to a 6 percent reduction in the number of open fugitive alien cases from the beginning of the fiscal year with nearly 37,000 fugitive alien cases resolved. At the end of FY08, there were 557,762 such cases remaining. ICE also spearheads various joint fugitive task

forces in communities throughout the nation, through which ICE agents coordinate and collaborate with other federal, state and local law enforcement agencies to share information leading to the arrest and removal of fugitive aliens."

[110] "Immigration Enforcement Actions: 2009", Department of Homeland Security, Office of Immigration Statistics, August 2010, Table 1, p. 3. States the article: "35,094 fugitive aliens were removed by Detention and Removal Operations (DRO now ERO, Enforcement and Removal Operations). At the end of 2009, unexecuted deportation orders numbered 522,668. Since then, 430,838 unexecuted orders have been added to the total which now equals 953,506." See also "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", House Committee on Oversight and Government Reform hearing, July 14, 2016.

[111] Thomas H. Cohen, and Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts", BJS Special Report, Department of Justice, Office of Justice Programs, November 2007, pp. 1, 8, 10. Write the authors: "For failure to appear, the range was from 21 percent to 24 percent [of accused felons who were released pending trial. ... Overall rearrest rates ranged from 13 percent to 21 percent;" and "[b]etween 1990 and 2004, 62 percent of felony defendants in state courts in the 75 largest counties were released prior to the disposition of their case. When determining failure to appear rates, the authors compared those accused felons released prior to trial who failed to appear in court out of the total population of accused felons who were released pending trial." *See also* Eric Helland and Alexander Tabarrok, *The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping*, 47 Journal of Law and Economics, p. 93 (2004) (using figures from the State Court Processing Statistics program of the Bureau of Justice Statistics at the U.S. Department of Justice). Some of these failures to appear are due to sickness or forgetfulness and are quickly corrected, but many represent planned abscondments. Because this is completely unacceptable, considerable resources are put into getting these defendants into court for their trials. Still, after one year, some 30 percent of the felony defendants who initially fail to appear remain fugitives from the law. In absolute numbers, some 200,000 felony defendants fail to appear every year, and of these, approximately 60,000 will remain fugitives for at least one year.

[112] Rep. Bob Goodlatte, "Judiciary Committee Releases New Information About Freed Criminal Aliens", press release, July 14, 2015. Stated Goodlatte: "Despite DHS's pledge to prioritize the removal of serious criminal aliens, in the last year the number of administrative arrests of criminal aliens has fallen by a third. ... DHS continues to release thousands of such aliens onto our streets. ICE has admitted to releasing 30,558 aliens with criminal convictions in 2014. Last Friday we received data from DHS regarding the recidivist activity of these criminal aliens ICE released in 2014. 1,423 have already been convicted of new crimes like vehicular homicide, domestic violence, sexual assault, DUI, burglary and assault, among many others. Because of the failure by this and previous administrations to detain criminal aliens, and the failure to vigorously pursue fugitives, there are almost 180,000 convicted criminal aliens currently in removal proceedings who are living in our neighborhoods and almost 170,000 convicted criminal aliens who have been ordered removed yet are also living free. ... [S]uch convicted criminal aliens who are not being detained has jumped 28 percent since 2012."

[113] U.S. House of Representatives, "Statement of Chris Crane, Before the House Judiciary Committee", February 5, 2013.

[114] Edward R. Grant, "Laws of Intended Consequences: IIRIRA and Other Unsung Contributors to the Current State of Immigration Litigation", *Catholic University Law Review* Symposium on Immigration Appeals and Judicial Review, Summer 2006. A 2003 DoJ Inspector General's Report, the report to which Grant referred at the symposium, found that only 3 percent of failed asylum seekers were actually deported.

[115] "FY 2015 ICE Immigration Removals", U.S. Immigration and Customs Enforcement, undated, Figure 1. ICE removals declined in 2015 for the third year in a row. Since 2012, ICE removals have gone down 43 percent to 235,413 removals and non-criminal removals declined to 69,478 (See p. 8). This is the lowest number of removals since 2003 when a total of 211,098 removals occurred were deported, of which 126,720 were non-criminal aliens. See also Marc R. Rosenblum and Kristen McCabe, "Deportation and Discretion: Reviewing the Record and Options for Change", Migration Policy Institute, October 2014. Table 2, p. 13. See also "Interior Immigration Enforcement by the Numbers", Bipartisan Policy Center, updated March 2014, "Figure 1. Number of alien removals, FY 1989–2013", p. 2.

[116] "FY 2015 ICE Immigration Removals", U.S. Immigration and Customs Enforcement, undated, Figure 1. In 2015, ICE conducted 235,413 removals, nearly all of which came from detention settings. ICE conducted 69,478 removals of individuals

apprehended by ICE officers (i.e., interior removals), almost all of whom were convicted of crimes (63,539 (91%) of all *interior removals* were previously convicted of a crime). ICE conducted 165,935 removals of individuals apprehended at or near the border or ports of entry. These individuals appeared in courtrooms maintained in detention facilities and were ordered removed in these settings. Many of these removals by history are stipulated removals.

[117] Mizanur Rahman, "ICE: We Are Not Engaged in A 'Backdoor' Amnesty", Immigration Chronicles, Chron.com, August 26, 2011.

[118] See "What You Missed: President Obama's Open for Questions Roundtable", White House blog, September 28, 2011.

[119] Stephen Dinan, "95 Percent of Deported Illegals Were Criminals", *Washington Times*, October 14, 2014. State the article: "President Obama has generally kept true to his vow to deport only criminals and repeat immigration violators, according to a new report Thursday from the Migration Policy Institute that undercuts many of the fears immigrant rights advocates have about the severity of his policies. MPI said that 95 percent of the immigrants deported from 2009 to 2013 met Mr. Obama's stated national security priorities for deportations, meaning only about 77,000 of the 1.6 million illegal immigrants removed by U.S. Immigration and Customs Enforcement (ICE) over the last five years were rank-and-file border-crossers with clean records. Mr. Obama has pledged to try to refine his deportation policies later this year, but the MPI study, said he'll have to make major changes such as carving out exceptions for substantial categories of illegal immigrants if he's to make a dent in his deportation figures. That's because Mr. Obama has already placed most rank-and-file illegal immigrants living in the interior of the U.S. out of any danger for deportations, the MPI report concluded."

[120] See 18 U.S.C. § 3146.

[121] United States Constitution, Article I, Section 8, Clause 4. In 1795, Congress claimed exclusive authority over naturalization by establishing new conditions — "and not otherwise" — for aliens "to become a citizen of the United States, or any of them." In *Chirac v. Lessee of Chirac* (1817), the Supreme Court affirmed that "the power of naturalization is exclusively in Congress," notwithstanding any state laws to the contrary.

[122] United States Constitution, Article II, Section 3: "[The president] shall take Care that the Laws be faithfully executed." The Take Care Clause (also known as the Faithful Execution Clause) is best read as a duty that qualifies the president's executive power. By virtue of his executive power, the president may execute the lawful and control the lawful execution of others. Under the Take Care Clause, however, the president must exercise his law-execution power to "take Care that the Laws be *faithfully* executed." The president possesses wide discretion in deciding how and even when to enforce laws. He also has a range of interpretive discretion in deciding the meaning of laws he must execute. When an appropriation provides discretion, the president can gauge when and how appropriated moneys can be spent most efficiently. However, the president may not prevent a member of the executive branch from performing a ministerial duty lawfully imposed upon him by Congress (*Marbury v. Madison* (1803); *Kendall v. United States ex rel. Stokes* (1838)). Nor may the president take an action not authorized either by the Constitution or by a lawful statute (*Youngstown Sheet & Tube Co. v. Sawyer* (1952)). Finally, the president may not refuse to enforce a constitutional law, or "cancel" certain appropriations, for that would amount to an extra-constitutional veto or suspension power.

[123] Allen C. Guelzo, "Lincoln", the Gilder Lehrman Institute of American History, undated. Writes Guelzo: "As [Lincoln] explained to his impatient abolitionist secretary of the Treasury, Salmon Chase, he could not extend the Emancipation Proclamation further than 'any state, or designated part of a state' actually in rebellion without undermining the legal rationale of using his 'war powers.' And that would leave the whole emancipation project liable to interference from the same Supreme Court that had given the nation the *Dred Scott* decision. "'The exemptions were made because the military necessity did not apply to the exempted localities,' Lincoln explained. If, as Commander in Chief, he tried to emancipate slaves outside the war zones, he would have no more justification for doing so than saying, 'I think the measure politically expedient, and morally right.' This would surrender 'all footing upon constitution or law' and plunge him into 'the boundless field of absolutism.'" This passage would be lost on the present administration. President Obama's DAPA announcement placed him squarely in the "boundless field of absolutism". See also Gideon Welles, diary entry for July 13, 1862, in *The Diary of Gideon Welles*, ed. John T. Morse , Boston: Houghton Mifflin, 1911); Abraham Lincoln, "Preliminary Emancipation Proclamation" (September 22, 1862); and Abraham Lincoln, "To Salmon P. Chase" (September 3, 1863), *Collected Works*, 5:434, 6:428-429.

[124] Michael McConnell, "Obama's Unconstitutional Immigration Order", Hoover Institution, April 13, 2016. States Judge McConnell: "The *Immigration and Naturalization Act* defines persons who entered this country without authorization and do not fall into any of its specific exceptions as being here *unlawfully*. That includes the beneficiaries of the DAPA order. Among the consequences of *unlawful presence* are ineligibility for work permits and for many social welfare programs. Moreover, the INA expressly provides that every day a DAPA beneficiary spends in the United States should accrue as time under the individual's unlawful-presence clock. These consequences were set by Congress for the purpose of discouraging illegal immigration. And unlike deportation, which necessarily involves enforcement discretion, these consequences are absolute—unless there is an explicit statutory exception, these consequences apply to every person in this country unlawfully. Under the DAPA rule, some four million people who are unlawfully present in the United States under the statute have been given the dispensation to remain and to obtain work permits and social welfare benefits. Their unlawful-presence clocks do not run. This is not mere non-enforcement. It is not an exercise of prosecutorial discretion. It is not a matter of enforcement priorities. ... DAPA permits 'an individual ... to be lawfully present in the United States,' notwithstanding the INA's provisions to the contrary. Until such time as it might be revoked, its beneficiaries are no longer in violation of the law. Because the executive officials who promulgated DAPA are acting outside their statutory authority, and are making *lawful* what Congress has declared *unlawful*, they are in violation of the Take Care Clause of Article II."

[125] "Ineligibilities and Waivers: Laws", U.S. Department of State, Bureau of Consular Affairs, undated.

[126] Ilona Bray, "Grounds for Deportation: Crimes of Moral Turpitude", Lawyers.com, undated. States the article: "Courts regularly find the following offenses to be CIMTs (crimes involving moral turpitude): Crimes against the person, such as murder, voluntary or reckless manslaughter, aggravated battery, kidnapping, attempted murder, assault with intent to rob or kill or to commit abortion or rape, domestic violence, stalking, child abuse, child neglect, child abandonment, violation of a protection order, and repeated harassment or bodily injury. Sexual offenses, such as rape (whether common law or statutory), adultery, bigamy, prostitution, lewdness, sodomy, gross indecency, and possession of child pornography. Crimes against property, such as burglary (if the intended offense involves moral turpitude, since unlawful entry and remaining unlawfully on a property by themselves are not CIMTs), and breaking and entering to commit larceny. Theft offenses, such as trafficking in counterfeit goods and receipt of stolen property, which may be both a CIMT and an aggravated felony. Crimes against the government, such as counterfeiting, perjury, willful tax evasion, bribery (or attempted bribery), using the mail to defraud, misprision of a felony, harboring a fugitive, conspiracy to commit an offense against the United States, making false statements to avoid being drafted, and draft evasion. Crimes involving fraud, whether against government or individuals, except for false statements not amounting to perjury. Examples include forgery, making false statements to obtain a U.S. passport or U.S. naturalized citizenship, a driver's license, or a firearm; passing bad checks; false representation of a Social Security Number; money laundering; and conspiracy to affect a public market in securities." See also Ilona Bray, "What's an Aggravated Felony According to U.S. Immigration Law?" Nolo.com, undated. Per 8 U.S.C. § 1101(a)(43) an aggravated felony includes murder, rape, sexual abuse of a minor (which can include statutory rape), drug trafficking, trafficking in firearms or destructive devices, various other offenses concerning firearms or explosive materials, racketeering, money laundering of more than $10,000, fraud or tax evasion involving more than $10,000, theft or violent crime with a sentence order of at least one year, perjury with a sentence of at least one year, kidnapping, child pornography, trafficking in persons or running a prostitution business, spying, treason, or sabotage, commercial bribery, counterfeiting, forgery, or trafficking in vehicles, failure to appear in court on a felony charge for which a sentence of two years in prison may be imposed, alien smuggling, and obstruction of justice, perjury, or bribery of a witness, if the term of imprisonment was at least one year. Notably, precedent holds that driving under the influence is an aggravated felony. See *Matter of Magallanes,* Interim Decision 3341 (BIA 1997), holding that a conviction for "driving under the influence" is a deportable offense and an "aggravated felony."

[127] Jan Ting, "President Obama's Deferred Action Program for Illegal Aliens Is Plainly Unconstitutional", Center for Immigration Studies, December 2014. Writes the author: "In October of this year, USCIS union president Palinkas published an open letter declaring that USCIS employees had been 'denied mission support' and had been 'blocked in their efforts' to ensure 'that terrorists, diseased [persons], criminals, public charges, and other undesirable groups are kept out of the United States.' On November 6, 2014, Patricia Vroom, a career ICE prosecutor, filed suit in U.S. district court, alleging that she had been punished for resisting orders to drop prosecutions of illegal aliens convicted of drunk driving, identity theft, and illegally voting."

[128] Many of the offenses the Obama administration looks past are commonly referred to as "Class A" misdemeanors, an offense one step below a felony. Shoplifting, identity theft, and subsequent offense DUIs fall into this category.

[129] "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016", Department of Homeland Security, U.S. Customs and Border Protection, October 18, 2016. See the tables outlining total migration from all persons as compared to unaccompanied minors.

[130] "U.S. Border Patrol Apprehensions From Mexico and Other Than Mexico (FY 2000 - FY 2016)", Department of Homeland Security, U.S. Customs and Border Protection, undated.

[131] "Supervision of Aliens Commensurate with Risk", OIG-81-11, Department of Homeland Security, Office of Inspector General, December 2011 (Revised), See Figure 4: "Increase in Fugitive Alien Arrests FYs 2003–2009", p. 11.

[132] Anna Gorman, "Immigration Official Says Agents Will No Longer Have to Meet Quotas", *Los Angeles Times*, August 18, 2009.

[133] Suzanne Gamboa, "Obama Ends Secure Communities Program That Helped Hike Deportations", NBC News, November 21, 2014. States the article: "A six-year-old enforcement tool that links people booked into local jails with federal immigration authorities is getting the ax as part of President Barack Obama's immigration reforms. Under the multi-million-dollar Secure Communities program, local authorities shared digital fingerprints from everyone booked into jail with federal authorities, who combed the prints for immigrants, those here legally and illegally, so they could be deported."

[134] Marc R. Rosenblum, "Understanding the Potential Impact of Executive Action on Immigration Enforcement", Migration Policy Institute, July 2015. States the article: "The new policy guidance [Priority Enforcement Program], which builds on previous memoranda published by the Obama administration in 2010 and 2011, further targets enforcement to noncitizens who have been convicted of serious crimes, are threats to public safety, are recent illegal entrants, or have violated recent deportation orders. MPI estimates that about 13 percent of unauthorized immigrants in the United States would be considered enforcement priorities under these policies, compared to 27 percent under the 2010-11 enforcement guidelines. The net effect of this new guidance will likely be a reduction in deportations from within the interior of the United States as DHS detention and deportation resources are increasingly allocated to more explicitly defined priorities. By comparing the new enforcement priorities to earlier DHS removal data, this report estimates that the 2014 policy guidance, if strictly adhered to, is likely to reduce deportations from within the United States by about 25,000 cases annually—bringing interior removals below the 100,000 mark. Removals at the U.S.-Mexico border remain a top priority under the 2014 guidelines, so falling interior removals may be offset to some extent by increases at the border."

[135] Adam Kredo, "Congress: More Than 179,000 Criminal Illegal Immigrants Roaming Free in U.S.", *Washington Free Beacon*, December 2, 2015. States the article: "More than 179,000 illegal immigrants convicted of committing crimes, including violent ones, continue to roam free across the United States, with reports indicating that these illegal immigrants commit new crimes 'every day,' according to lawmakers and the director of the Immigration and Customs Enforcement agency, also known as ICE. Sarah Saldana, ICE's director, disclosed to Congress on Wednesday that the agency is apprehending and removing fewer illegal immigrants than in past years. Somewhere around 179,029 'undocumented criminals with final orders of removal' from the United States currently remain at large across the country and are essentially untraceable, according to Sen. Chuck Grassley (R., Iowa), chairman of the Senate Judiciary Committee, who disclosed these numbers during a Wednesday hearing."

[136] "Recalcitrant Countries: Denying Visas to Countries That Refuse to Take Back Their Deported Nationals", House Committee on Oversight and Government Reform hearing, July 14, 2016. The Committee summarized: "According to ICE, 953,506 aliens with final orders of removal remain in the United States as of 2016."

[137] The term "enter without inspection" as used in the context of immigration laws means entering the United States without being inspected by a U.S. immigration official. The phrase is often shortened to EWI (pronounced ee-wee). This term is most commonly used to refer to crossing the Mexican or Canadian border without having any contact with an immigration official. A foreign national who enters the United States EWI generally cannot apply for legal status from within the nation. However, the following categories of aliens who entered without inspection may adjust status: (1) Abused spouses and minor children of U.S. citizens; (2) Lawful Permanent Residents who entered without inspection; (3) Aliens who entered without inspection who were present in the United States on December 21, 2000, and who are beneficiaries of a petition or labor certification filed on or before April 30, 2001. See "Entered Without Inspection Law and Legal Definition", USLegal.com,

undated. See also 8 U.S. Code § 1325 -Improper entry by alien: "(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts, Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both."

[138] A history of few consequences is the story of immigration enforcement. The following GAO study and news articles provide a perspective that, even though authored years apart, tell the same story. Absent enforcement and violation of immigration laws without consequences invites more illegal immigration and encourages terrorist entry. See "Immigration Control: Deporting and Excluding Aliens from the United States", GAO/GGD-90-18, U.S. General Accounting Office, October 1989, pp. 22 and 31. Stated the GAO: "Aliens who are released from INS custody pending their deportation hearings frequently have not appeared at their deportation hearings. ... [G]iven that aliens generally have not suffered negative repercussions for failing to appear, other than forfeiture of their bonds, and given that INS has not vigorously pursued reapprehension of those aliens, there seems to be little incentive for aliens facing deportation to appear at hearings… Aliens have nothing to lose by failing to appear for hearings and, in effect, ignoring the deportation process. For example, if they are reapprehended the deportation process continues where it was interrupted. While they are still subject to deportation, no sanctions are imposed. Further, the additional time aliens may have accumulated in the country by avoiding deportation proceedings may support their requests for relief from deportation because of their good conduct while they were here. Failure to appear does not jeopardize their claim of good conduct when applying for relief. By avoiding the deportation process, aliens prolong their stay in the United States. This affords them the opportunity to establish roots in the community and undertake positive and beneficial activities that can be used to support claims for relief from deportation should they be reapprehended Aliens who post bond and fail to appear can forfeit the money or other collateral used to secure their bonds. However, such costs could be viewed as a cost of remaining in the United States. Moreover, many aliens are released on their own recognizance or are not taken into custody at all and do not suffer even the forfeiture of their bond." See also Ian Hanchett, "Border Patrol Agent: Border Has 'Gotten Less Secure' 'Lucky to Catch 45% of What Crosses", Beitbart, April 4, 2016. Wrote the author: "Cabrera was asked, 'Are you saying the border, as it now stands, is just not secure?' He responded, 'Not at all.' When questioned on whether the border had gotten more secure in recent years, he stated, 'It's actually gotten less secure. We're lucky to catch 45 percent of what crosses.' Cabrera added, '[Y]ou're constantly hearing from the administration that it's secure, so the resources aren't being sent where it needs to be. We're having to catch and release program, where people are let into the country pending a court date, and you never see them again, coupled with the fact that it's extremely porous large stretches of our border being left unsecured, unmanned, and it's just a recipe for disaster.' Between 2005 and 2010, according to the Congressional Research Service, the Department of Homeland Security used a measure called 'operational control' to describe the stretches of border it had secured. 'Operational control describes the number of border miles where the Border Patrol can detect, identify, respond to, and interdict cross-border unauthorized activity,' CRS said in a report published last month. 'In February 2010, the Border Patrol reported that 1,107 miles (57 percent) of the Southwest border were under operational control." See also Terrence P. Jeffrey, "Border Walls Would Humanely Enforce a Just Law", CNS News, March 16, 2016. Wrote the author: "That means [the] government, according to the Border Patrol, did not have operational control of 43 percent — or approximately 826 miles—of our southern border. By failing to secure the border, the federal government not only allows foreign nationals to come here illegally to live and work, but also provides an avenue for deadly drugs, for the criminals who bring them and for potential terrorists…The failure to secure our southern border harms American workers whose jobs are put at risk and whose wages are suppressed by competition with immigrant workers here illegally. It also harms Americans who become addicted to deadly drugs smuggled across the border, and it harms American communities where those drugs are distributed. 'Mexican transnational criminal organizations (TCOs) remain the greatest criminal drug threat to the United States; no other group can challenge them in the near term,' the U.S. Drug Enforcement Administration said in its 2015 National Drug Threat Assessment Summary."

[139] Paul Bedard, "Report: 90% of Illegals Skip Immigration Court Appearances; 135,000 Will Go Missing", *Washington Examiner*, June 26, 2014. States the article: "Ninety percent of the mostly-teen illegal immigrants flooding over the Mexico-U.S. border won't show up for their immigration court hearing, meaning at least 135,000 of the youths will simply vanish into the country this year alone, according to a key House committee chairman. House Judiciary Chairman Rep. Bob Goodlatte, who on Wednesday held a hearing to raise national security concerns about the new wave of illegals, revealed Thursday that many of the teens are placed with relatives, including parents who are in the U.S. illegally, and then ignore court orders to

appear for immigration hearings." See also "Immigration Courts Issued 10,000 Deportation Orders to Central American Kids", Fox News Latino, March 1, 2016. States the article: "The 55 immigration courts in the United States have handed down 10,142 deportation orders for Central American youngsters who came to this country unaccompanied by an adult since 2014. Of those, according to data from the Justice Department's Executive Office for Immigration Review, 8,912 youths were issued *in absentia*." Author's Note: Many media sources right, center, and left reported this dysfunction. See also Warren Mass, "Illegal Immigrant Children Fail to Show at Immigration Hearings", The New American, July 24, 2014. States the article: "Judge Michael Baird of the federal Dallas Immigration Court said on July 22 that 18 of the children whose cases he was scheduled to hear on that day didn't show up for court. The unaccompanied children were among 20 from Honduras, El Salvador, and Guatemala who were set to appear in Baird's court for initial deportation hearings. The *Dallas Morning News* cited Baird's statement describing the absentee rate that day as 'highly unusual' — so high that he reset the hearings for August 11 rather than possibly issuing a deportation order. Baird said he was concerned that the children may not have received proper notice of the hearings from the federal government. Attorney Lynn Javier of the U.S. Department of Homeland Security agreed that it was 'prudent' to reset the hearings, the Dallas paper reported. Testifying before the Senate Homeland Security Committee studying the illegal immigration crisis on July 9, Juan Osuna, director of the Executive Office for Immigration Review at the Department of Justice, said that about 46 percent of all children, whether accompanied or unaccompanied, who are apprehended by authorities fail to show up for hearings before immigration judges. The *New York Post* reported that Osuna told the committee that his office did not have completely accurate data for the court appearance rate for the unaccompanied children, so the non-appearance rate could be even higher."

[140] Byron Tau, "U.S. Is Bracing for Influx of Central American Migrants", *Wall Street Journal*, December 10, 2015. States the article: "According to Border Patrol interviews conducted during this past summer, many illegal immigrants told authorities they believed the U.S. was allowing families to stay, speaking of 'permisos' to remain in the country."

[141] Caroline May, "Internal Memo: 'DREAM Act' Deluge 'Compromising' Border Security", Breitbart, June 6, 2014.

[142] *Ibid.*

[143] Jessica Vaughan, "ICE Released 19,723 Criminal Aliens in 2015", Center for Immigration Studies, April 27, 2016. States the author: "In 2015, ICE made 119,772 arrests, or just half the number of arrests made in 2013 (232,287). Under the strict enforcement rules implemented as part of President Obama's executive actions announced in 2014, ICE officers are forced to ignore a large share of the criminal aliens they identify in jails or who are referred by local law enforcement agencies."

[144] *Ibid.* States Vaughan: "[Y]ear after year, even after the deaths of Chadwick, Ronnebeck, and dozens of others [killed by criminal aliens]. These cannot be characterized as 'isolated incidents' or 'anecdotal' — not after 86,000 releases [of criminal aliens] and 124 new homicides."

[145] "Supervision of Aliens Commensurate with Risk", OIG-11-81, Department of Homeland Security, Office of the Inspector General, December 2011, pp. 18-19. Offense levels are designated as Levels I, II, and III. The Specially Designated Countries list (formerly Special Interest Countries) was withdrawn by DHS in December 2011. This list, however, is still in use.

[146] "Breakdown of the Types of Specific Criminal Convictions Associated with Criminal Aliens Placed in a Non-Custodial Setting in Fiscal Years 2013-2015", ICE, undated. See also Jessica Vaughan, "ICE Releases 19,723 Criminal Aliens in 2015", Center for Immigration Studies blog, April 17, 2016.

[147] Jessica Vaughan, "Free to Kill: 124 Criminal Aliens Released by Obama Policies Charged with Homicide Since 2010", Center for Immigration Studies, March 14, 2016. Of the criminal aliens freed by ICE between 2010 and 2015, 124 were subsequently charged with homicide-related incidents.

[148] Cassia Spohn and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders", *Criminology*, Vol. 40 No. 2 (2002), p. 334. States the article: "A substantial body of research focuses on recidivism among criminal offenders who receive different types of sanctions. Most of this research examines the recidivism rates of offenders sentenced to probation or released on parole or compares recidivism rates of offenders assigned to different levels of supervision (Turner and Petersilia, 1992) or different types of treatment (Hepburn and Albonetti, 1994; Kruttschnitt

et al., 2000). One of the most influential of these studies was an analysis of recidivism among adult felony offenders placed on probation in Los Angeles and Alameda (California) counties (Petersilia et al., 1985). The authors of this study reported that recidivism rates among probationers were high: 65% were arrested and 51% were charged and convicted during the 40-month follow-up period. Moreover, 18% of the probationers were convicted of serious violent crimes. These results led Petersilia and her colleagues (1985:45) to conclude that 'felony probation has been a high-risk gamble' and to suggest that judges consider alternatives to incarceration other than routine probation." Author's Note: Removal from the United States is an alternative to routine or monitored release or administrative stay of removal effected by ICE.

[149] Jessica Vaughan, "Secure Communities, Please", Center for Immigration Studies blog, March 14, 2011. Vaughan writes: "There are approximately 2.1 million criminal aliens living in the United States, according to new figures from ICE's Secure Communities office. Of these, about 1.9 million are removable, and the remaining 200,000 are green card holders who committed lesser crimes allowing them to avoid removal."

[150] David Inserra, "An Interactive Timeline of Islamist Terror Plots Since 9/11", the Daily Signal, September 10, 2015. States Inserra: "There have been 92 plots and attacks [since 9/11], 27 under President Bush and 65 under President Obama."

[151] Geoff Earle, "Obama Administration on Track to Grant One MILLION Green Cards to People from Muslim-majority Countries", the *Daily Mail,* June 18, 2016. States the article: "More than 800,000 people from Muslim majority countries have gotten green cards since 2009, with the number set to hit 1 million before President Obama leaves office. The data, released by a Senate subcommittee on immigration and the national interest, reflect a steady uptick in migration from Muslim nations in recent years–even as Donald Trump seeks to put a pause on Muslims visiting the United States. The biggest increase in permanent residents came from Pakistan and Iraq, with more than 100,000 coming from each country. Bangledesh had 90,000, Iran had 85,000, and Egypt had 56,000, while Somalia had 37,000."

[152] "Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs", United States Government Accountability Office, March 2011, pp.7-10, GAO-11-187. States the GAO report: "[T]he number of criminal aliens incarcerated in federal prisons increased about 7 percent from about 51,000 in fiscal year 2005 to about 55,000 in fiscal year 2010. The number of total inmates incarcerated in federal prisons increased about 14 percent from about 189,000 in fiscal year 2005 to about 215,000 in fiscal year 2010 ... [and] "the criminal alien population as a percentage of the total federal inmate population has remained relatively constant since 2001. In 2005, we reported that the overall percentage of the criminal alien population incarcerated in federal prisons remained consistently around 27 percent of the total inmate population from 2001 through 2004. In fiscal year 2005, the criminal alien population in federal prisons was around 27 percent of the total inmate population, and from fiscal years 2006 through 2010 remained consistently around 25 percent. ... From fiscal years 2003 through 2009, the number of SCAAP (State Criminal Alien Assistance Program) criminal alien incarcerations in state prison systems and local jails increased from about 220,000 in fiscal year 2003 to about 296,000 in fiscal year 2009. Specifically, the number of SCAAP criminal alien incarcerations in state prison systems increased by about 25 percent and the number of SCAAP criminal alien incarcerations in local jails increased by about 40 percent." In 2009, criminal aliens comprised 31 percent of the state and local prison population. See Figure 3, p. 10. Author's Note: Illegal aliens made up 4 percent of the U.S. population in 2009 and made up about 3.5 percent of the U.S. population in 2012. See Jeffrey S. Passell and D'Vera Cohn, "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14", Pew Research Center, November 18, 2014.

[153] Maria Sacchetti, "Criminal Immigrants Reoffend at Higher Rates Than ICE Has Suggested", *Boston Globe*, June 4, 2016. States the article: "They were among the nation's top priorities for deportation, criminals who were supposed to be sent back to their home countries. But instead they were released, one by one, in secret across the United States. Federal officials said that many of the criminals posed little threat to the public, but did little to verify whether that was true. It wasn't. A Boston Globe review of 323 criminals released in New England from 2008 to 2012 found that as many as 30 percent committed new offenses, including rape, attempted murder, and child molestation — a rate that is markedly higher than Immigration and Customs Enforcement officials have suggested to Congress in the past. The names of these criminals have never before been made public and are coming to light now only because the Globe sued the federal government for the list of [those] criminals immigration authorities returned to neighborhoods across the country. A judge ordered the names released in 2013, and the Globe then undertook the work that the federal government didn't, scouring court records to find out how many released criminals reoffended."

[154] Michael P. Botticelli, director of national drug control policy, Caucus on International Narcotics Control, "Drug Trafficking Across the Southwest Border and Oversight of U.S. Counterdrug Assistance to Mexico", statement before the Caucus on International Narcotics Control, United States Senate, November 17, 2015. Stated Botticelli: "Opium and heroin production has substantially increased in Mexico in recent years. Heroin seizures along the Southwest border increased sharply (296%) from 2008 to 2013, suggesting a substantial increase in the amount of heroin entering the United States. In 2014, an estimated 42 pure metric tons of heroin were produced in Mexico, up from over 26 pure metric tons in 2013. This compares to a combined estimate of about four metric tons from Colombia and Guatemala…[A] very large proportion of the heroin seized entering the United States comes from Mexico. The increased role of heroin manufacturers and traffickers in Mexico is altering previously established trafficking patterns. As more heroin enters the United States through the Southwest border, the western states have increasingly significant roles as heroin transit areas. DEA and local law enforcement reports from several western states indicate that heroin is entering the United States across the Southwest border in greater volume." See also Jessica Vaughan, "Another Surge of Illegal Immigrants along the Southwest Border: Is This the Obama Administration's New Normal?" statement before the U.S. House Judiciary Committee, Subcommittee on Immigration and Border Security, February 4, 2016. Testified Vaughan: "According to Border Patrol statistics, since 2012 agents have apprehended 125,306 Central American unaccompanied minors (UACs). Since 2013, agents have taken 112,237 Central American family units into custody. Together, these add up to 237,543 new illegal arrivals from Central America over the southern land border. Roughly half of these arrived in FY2014. Nearly all were released into the country under the Obama administration's controversial interpretation of sections of the immigration law that are intended to protect victims of trafficking and persecution. After slowing down in 2015, the number of new family and minor arrivals has ticked upward in recent months, with 21,469 new family members and 17,370 new minors arriving during the first three months of FY 2016. The number of illegal minor arrivals has increased 117 percent over last year, and the number of new illegal family arrivals has increased 187 percent over last year."

[155] The courts understated the FTA rate in 2015 the way they always have over the previous 19 years. They compared those aliens who failed to appear in court (38,229) to all aliens free before trial (88,868) and all aliens who were detained before trial (50,180). Thus, to get the lower FTA rate of 27 percent the courts compared the 38,229 aliens who no-showed to the 139,048 aliens combined from those who were free pending trial plus those in detention (38,229 ÷ 139,048 = 27 percent). Comparing aliens who failed to appear in court to all aliens free pending court, 38,229 ÷ 88,868 = 43 percent, produces the accurate measure of failure to appear. See EOIR statistical year book for 2015, pp. P1-P4 and Figures 23-26.

[156] Jeffrey S. Passell and D'Vera Cohn, "Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009", Pew Research Center, September 20, 2016. States the report: "The U.S. unauthorized immigrant population — 11.1 million in 2014 — has stabilized since the end of the Great Recession, as the number from Mexico declined but the total from other regions of the world increased, according to new Pew Research Center estimates based on government data." This population was the same for President George W. Bush in 2005.