

Understanding ICE's Release of Immigrants with Criminal Convictions

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Washington D.C. - Understanding the complexities of immigration law and its intersection with criminal law is not easy. Over the past month, a flood of reports about enforcement policies and deportation data have compounded the confusion. Some of these reports were clearly designed to derail genuine and productive conversations around immigration policy reform. Case in point, this week the Center for Immigration Studies (CIS) issued a paper that claims over 36,000 "criminal aliens" were released from Immigration and Customs Enforcement (ICE) custody.

It's important to understand a few key issues underlying this report:

First, it's difficult to assess the methodology of their data collection or analysis because CIS makes none of it publicly available. There are no footnotes in the document, or citations of any kind. All of their data comes from "a document obtained by the Center for Immigration Studies," which they don't provide or describe. The chart in the report says nothing more than "Source: ICE." The article then goes on to draw even more conclusions about the document that are based on "separate information" that is never discussed or identified.

However, even for those who are unwilling to challenge the integrity or value of the CIS "data," it is still important to understand the following:

While all of the 36,000 they refer to may be foreign-born, by no means are they all unauthorized or "illegally" in the United States. In fact, many of them are likely to be legal permanent residents or green-card holders. So it may not even have been determined whether they can or should be deported from the United States. The offenses they committed may or may not even be grounds for revoking their green card and deporting them. Until that determination has been made, the use of alternatives to detention is not only consistent with the Constitutional principles and values that are the foundation of the judicial system in the United States, but it makes economic sense as well. DHS [spends](#) [1] \$5 million dollars per day (nearly \$2 billion per year) detaining immigrants at a cost of \$159 dollars per person, per day (fiscal year 2014). For people who have homes, family, and other ties to the community, who are unlikely to flee, and who pose no threat to the community, alternatives to detention are smart and effective. The test for detention should be an individualized consideration of public safety threat and flight risk, not a one size fits all rule that covers all immigrants.

Next, all the people identified in the CIS document appear to have paid their fine or done their time for their criminal offense. However, since they are foreign-born, after completion of their criminal sentences they are turned over to immigration authorities who determine if their offenses should result in deportation. Many of these people are legal permanent residents (including those who have been here for many years and have family here) who have a right to a hearing before they lose their status. Immigration proceeding are not meant to be, nor should they be, criminal proceedings. In fact, the justification for the lack of due process in immigration proceedings is that they are civil, not criminal. The demand for harsh detention and punitive treatment is completely at odds with what the immigration system is supposed to be. If we are going to treat these people like criminals, then CIS should be equally adamant in demanding full due-process rights. Not surprisingly, they are not.

Also, the overwhelming majorities of these convictions are for minor offenses and include things like tax fraud, disturbing the peace, traffic convictions, and other minor crimes that would be classified as misdemeanors for natives, but which for immigrants are often classified as felonies. Wild accusations notwithstanding, we know next to nothing about the true

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nature of the offenses or the potential threat that these people pose. DHS should be vigilant about protecting communities from those who truly pose a threat, but that is accomplished by looking at the facts, not by making decisions based on labels or fear-mongering.

Moreover, just like in the criminal justice system, the immigration laws contemplate that many individuals going through the court system can remain home while those proceedings are pending. All of these individuals were released under supervision because of basic Constitutional principles that apply to all people. The Supreme Court has affirmed that the United States cannot lock people up indefinitely after they have served their sentence. For those facing the possibility of indefinite detention, the Court has made it clear that there must be a process to review these cases and release people who can be safely released. However, for those who pose a "special risk to public safety," they can continue to be detained. All of the cases in the CIS report appear to have been determined to be cases where this exception does not apply.

Finally, there is nothing in the CIS paper which indicates that DHS has terminated proceedings or exercised any kind of prosecutorial discretion in these cases. Being "released" from custody doesn't mean people are "set free." They are released after paying a bond, under an order of supervision, with an ankle bracelet, etc. while DHS can and does continue to pursue a case against them.

There is no question that our current immigration laws and policies are broken, and the status quo is unsustainable. However, inflammatory rhetoric and baseless accusations are not going to get us an immigration system that is good for our economy, good for families, and that keeps our country safe. That will require our elected officials to move past political rhetoric and posturing and start debating what reform should look like. We can and should have laws that are fair, sensible, and humane - laws that are consistent with our Constitution and our values, and that will keep our country safe and improve our economy. The only question that remains is when will Congress act?

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