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# THE HUMAN COSTS OF ICE'S ENFORCEMENT FRAMEWORK

WHY ICE MUST PRIORITIZE PEOPLE FOR PROTECTION,  
NOT ENFORCEMENT

JUNE 2021



## **Acknowledgments**

This report is a publication of the National Immigration Project (NIP-NLG). The report was authored by Katie McCoy and reviewed by Caitlin Bellis and Sirine Shebaya. The report was designed by Arianna Rosales. We are grateful to the many organizations listed below who contributed to stories and trends to the survey.

AFSC  
Al Otro Lado  
Alameda County Public Defender  
American Gateways  
American Immigration Council  
Black Alliance for Just Immigration  
Bilbao Law LLC  
Brooklyn Defender Services  
CAIR Coalition  
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## Introduction

In February 2021, Acting Director of Immigration and Customs Enforcement (ICE) Tae D. Johnson issued a memorandum providing interim guidance on ICE’s enforcement and removal priorities. The memo [identifies three categories](#) that ICE considers to be “priorities” for enforcement: national security, border security, and public safety. Each of these categories is defined in broad and highly problematic terms. The public safety category prioritizes for enforcement people who have had contact with the criminal legal system, a system infected with racism and bias. And the national security and border security categories sweep broadly to shut out asylum seekers and deny people the opportunity to come home. In this report, we highlight trends and stories of people left behind by an approach that treats them as targets rather than as whole people with lives, communities, and families. The stories are based on a survey of immigration practitioners and advocates that the National Immigration Project conducted in June.<sup>1</sup> They demonstrate the critical need for a fundamentally different approach that moves away from criminalization and instead adopts values of compassion, humanity, and second chances, and prioritizes people for protection, not enforcement.

### **ICE continues to deny safety to broad categories of people and denies people relief even where the memo supports an exercise of discretion.**

Many practitioners reported that ICE repeatedly refused to shield their clients from detention or deportation, both because of the harmful “priority” categories and also in cases where people clearly did not fall within them. Deportation officers in certain field offices issued blanket refusals to release people, sometimes offering no justification for the denial and other times citing reasons that should have been considered positive factors under the memo, like a pending BIA appeal. And ICE-OCC often refused to join motions to terminate a case. In one such case, the petitioner had an approved derivative U-visa, a lawful permanent resident spouse, and no criminal convictions.

#### **JOHN**

Under the memo, John should be a prime candidate for prosecutorial discretion. John was arrested by ICE over what turned out to be a case of mistaken identity. John does not fall within any of the priority categories: he has long resided in the United States and has no criminal history. But rather than grant his release or agree to terminate his case, instead, ICE detained him, filed an NTA and set an unreasonably high bond that John cannot pay. John spent months in detention before ICE finally agreed to release him.

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<sup>1</sup> All names used in this report are either first names or pseudonyms.

Numerous practitioners also expressed frustration with local offices' refusal to adhere to the memo. One practitioner noted that the local ICE office has demonstrated such unwillingness to discuss, let alone grant, a request for prosecutorial discretion that practitioners in that area now deem making a request for prosecutorial discretion futile.

**ICE routinely denies protection based on *any* contact with the criminal legal system—no matter how minimal or how much time has passed.**

ICE also appears to be applying extremely broad interpretations of the three “priority” categories, especially the public safety category. The memo requires officers and agents to consider the “extensiveness, seriousness, and recency” of a person’s convictions, but many field offices appear to be treating any contact with the criminal legal system as sufficient reason to deny release or stays of deportation. The memo also creates a presumption that anyone convicted of an “aggravated felony” poses a threat to public safety. The stories shared by practitioners illustrate that ICE is treating these categories as automatic grounds for denial, with little or no consideration to the specifics of each case.

**DUIs Treated as Public Safety Threats**

**ROGER**

Roger is a 29-year-old survivor of a violent assault with a pending application for a U visa. He has resided in the United States for 25 years and is a former DACA recipient. He is the oldest of seven siblings and was the primary provider for his family until he was arrested and detained by ICE. ICE denied his release through the ICR process based solely on DUI convictions.

**PERLA**

Perla is a grandmother who has family in the US, including US citizen grandchildren, and a pending application for a U-visa. She also suffers from several significant health problems. ICE continues to refuse to release her from detention based solely on a single 15-year-old DUI. Despite her strong positive equities, she remains detained.

**Baseless, Dropped, or Non-Qualifying Charges Used to Justify Prolonged Detention**

**SAM**

Sam is an 18-year-old survivor of human trafficking and has a pending T-visa application. While detained in ICE custody, Sam suffered an additional sexual

assault. Sam has no criminal convictions, only pending charges, but ICE took weeks to process Sam's request for release.

### **OMAR**

Omar came to the U.S. as a refugee and was living with his family in California. In 2018, he was arrested and faced extradition to Iraq on a completely baseless charge. A federal judge found that Omar was in Turkey during the time of the alleged crime in Iraq and that there was no probable cause to support extradition. The day he was ordered released from custody, ICE arrested Omar and refuses his release on the ground that Omar poses a national security risk, relying on the same false information a court rejected.

### **PETYR**

Petyr is the beneficiary of an approved VAWA petition based on having survived domestic violence from his former U.S. citizen spouse. Petyr falls outside the ICE priorities, as he has no criminal convictions. He has only a single arrest, which was dismissed as unsubstantiated and was related to the domestic abuse he endured. Despite this, ICE has repeatedly refused to acknowledge he is not a priority or to join a request to terminate his removal proceedings and allow him to adjust status before USCIS, forcing his case to remain pending for years.

### **LISA**

Lisa received a criminal conviction as a direct result of her being a victim of human trafficking and domestic servitude. ICE refuses to acknowledge the context of her conviction, continues to deem her a public safety threat, and has refused to release her.

### **MARTIN**

At the age of 18, Martin pled guilty to participation in a gang due, in part, to irresponsible government conduct. Now 30 years old, he has no gang affiliation and would not otherwise fall within the priorities, but ICE insists on continuing to consider him a priority.

### **LU**

Lu was a long-time lawful permanent resident who recently obtained U.S. citizenship. ICE is attempting to denaturalize Lu because, although he was convicted of a crime *after* naturalizing, ICE argues that Lu committed the conduct

prior to becoming a citizen. Lu's attorney requested a favorable exercise of discretion, but ICE maintains that Lu is a priority because he committed "fraud."

## **MARIA**

Maria is a transgender woman from Nicaragua who has spent half her life living in the United States. She sought safety in the United States after experiencing relentless transphobic violence. In the US, she attended high school, and then found work in the hospitality industry and built a community that accepts her. But instead of offering Maria protection, US authorities detained her, and she has spent the past two years in ICE detention. In detention, she has experienced abuse, a lack of adequate medical care, and possible exposure to COVID-19. When she is released from detention, Maria wants to have a job, an apartment, and to be independent. Maria loves to sing, dance, and perform, and hopes for the day she can perform again. ICE has repeatedly denied Maria's requests for release, including through the ICE Case Review process, presumably on the basis of Maria's previous involvement in the criminal legal system, even though she clearly should not be considered to fall within the enforcement priorities under holistic consideration.

### **Ignoring strong evidence of rehabilitation, including court orders of early release**

## **GABBY**

Gabby is an immigrant domestic violence survivor with a murder conviction, who was unjustly incarcerated and blamed for the actions of her abusive boyfriend and his acquaintances. While she had no intent to harm anyone, she was sentenced to life without the possibility of parole. After serving over two decades in prison, Gabby was granted a commutation of her sentence by former California Governor Jerry Brown in recognition for her commitment to service, mentorship, and rehabilitation. Despite being granted release by the California Board of Parole and Governor, Gabby was transferred to immigration detention. To be freed from detention, Gabby decided to sign her deportation order to be out of detention, even if it means she will be forced to rebuild her life away from loved ones. She was deported to Mexico, a country she has not been to since she was 2-years old.

## **MICHAEL**

ICE denied prosecutorial discretion to Michael, who grew up in the Bronx, New York. He was charged with selling \$130 worth of drugs and based on his conviction and a false gang allegation, ICE deems him a priority for enforcement. ICE has ignored that Michael completed 11 courses, all of which deemed him

rehabilitated. He has now spent more time in ICE custody—two years—than he served after his conviction.

### **ABEL**

Abel entered the United States over 30 years ago as a refugee from Ethiopia of Eritrean ethnicity. He subsequently obtained lawful permanent resident status. In 2011, he pled guilty to a serious crime and was ordered deported while he was serving his sentence. However, Ethiopia would not issue travel documents to him, so ICE released him twice—in 2013 and again in 2017. In November 2020, Abel reported to ICE offices and was informed that, over seven years later, ICE had obtained a travel document from Ethiopia and intended to remove him. This is notwithstanding that Abel had demonstrated that he is rehabilitated, had reported regularly to ICE for many years, has resided in the US since age 13, has no family in Ethiopia, and that his entire immediate family—all in lawful status—reside in the US. His family, particularly his elderly parents, live in constant anguish about his potential removal and their belief that his life will be endangered in those countries. If removed, they fear they will never see him again.

### **ASSIA**

Assia is a mother of two U.S. citizen children and a 22-year resident of the United States. She is a nursery aide, doula, trained facilitator in conflict resolution, college graduate, and a survivor of domestic violence and abuse. After spending 15 years incarcerated for actions she took as a teenager under the coercive influence of her abuser, Assia was granted early release from prison.

But instead of being released to reunite with her family in the U.S., ICE immediately detained Assia upon her release from state prison, ignoring the resentencing criminal court who found that she was “deserving” of a second chance and hoped that she would never see inside a jail ever again. Then, ICE moved quickly to deport Assia based on a fundamentally unfair 2007 deportation order, issued while she was in state prison and unable to present a legal defense. Despite a motion to reopen and an emergency stay motion with EOIR, the ICE prosecutor ignored the memo’s directives and opposed Assia’s motion to reopen. And despite filing a 548-page prosecutorial discretion request with ICE—highlighting Assia’s outstanding positive equities, widespread community support, relief from deportation, the criminal court transcript and resentencing motion detailing the years of abuse she sustained as a survivor of domestic violence—ICE entirely ignore this request and deported Assia without ever even replying to the request for prosecutorial discretion.

## **Prioritizing people with “illegal reentry” convictions**

### **CARLOS**

Carlos only came into contact with ICE after taking the wrong exit while driving and inadvertently finding himself on private government property. Security guards detained him until ICE arrived and transported him to ICE detention. Carlos’s only conviction is for “illegal reentry.” He was a victim of crime in the United States and submitted a U-visa petition after assisting with local law enforcement on the case. After Carlos was transferred to three different detention centers, ICE deported him back to Honduras.

### **HENRY**

Henry was stopped for a driving infraction and was subsequently detained by ICE. His only “crime” was returning to the United States after being deported. Henry has legal representation who assisted him with filing an application for withholding of removal and protection under the Convention Against Torture. Henry requested bond, which should have been granted based on his his pending applications, community ties, and strong equities. His request was denied. Only after Henry won his case did ICE release him from detention.

## **DHS shuts out asylum seekers based on false “border security” considerations.**

DHS currently considers any person who entered the United States on or after November 1, 2020 to presumptively be a priority for enforcement. This indiscriminate policy serves only to incarcerate and deny protection to people seeking asylum or trying to rejoin their families. One practitioner observed that the border priority enforcement category has led to a population surge in the local detention center, increasing from 4,000 to 6,000 in a matter of months. The selected stories demonstrate the extreme callousness of this policy.

### **SARA**

Sara entered after November 1, 2020, and DHS erroneously marked her a “security risk” after her credible fear interview. Sara’s attorneys advocated with both the local ICE office and the asylum office to secure her release, but no amount of advocacy convinced ICE that her recent entry should not place her in the priority category. Sara will likely remain detained for the remainder of her asylum proceedings.

## **ARNOLD**

Arnold lived in the United States for over 7 years and has very strong ties, including family ties, to his community. Arnold was forced to return to his home country due to a family emergency. When he attempted to return to his family in the United States in 2021, Arnold was immediately detained. His bond was denied solely because ICE considers him to be an enforcement priority due to his recent entry.

### **ICE repeatedly detains and deports people with serious medical conditions.**

When ICE focuses solely on removing those who fall within the priority categories, ICE overlooks those most in need of protection. For example, if someone is suffering from a serious medical condition or mental illness—including conditions ICE itself caused through neglect or mistreatment—the agency nonetheless has frequently refused to grant release. The stories below all feature people who should have received prosecutorial discretion based on their severe medical needs but were denied.

## **ANA**

Ana is a transgender woman with serious mental illnesses who has been placed on suicide watch multiple times while detained. Despite evidence of rehabilitation, community ties, and other positive equities, Ana has been denied release because her sole criminal conviction was classified as an aggravated felony.

## **HELEN**

Helen has been detained by ICE for almost two years. Over the last year and a half in ICE custody, Helen has gone from zero health issues to a laundry list of serious medical diagnoses: major depressive disorder, bipolar disorder, hypertension, prediabetes, obesity and so on. She also has concerning unexplained symptoms, such as blood in her stool, foamy urine, swollen legs that are now discolored, bloody noses, vision loss and lumps on the side of her ribs. Numerous requests have been made for her release, and all have been denied, citing a single possession of a weapon conviction from over 25 years ago. She has a US citizen wife, and two beautiful USC children who love and miss her very much. Her attorneys continue to advocate for her release, but ICE continues to issue blanket denials.

## **MANUEL**

Manuel's cancellation of removal case is pending before the Fourth Circuit. He

has strong family ties and was very involved in his community. Manuel requested release over four times but to no avail. Even after Manuel contracted COVID-19 in ICE detention, ICE denied requests for his release without further explanation.

**ICE ignores requests for discretion based on strong family ties and disregards the harmful impact of family separation.**

Numerous practitioners shared stories of families and communities torn apart by aggressive detention practices. Parents missed the births of their children while they were detained. Other families experienced homelessness when their primary caregiver was suddenly incarcerated. ICE is failing to conduct holistic evaluations of each case to determine where protection is needed most.

**SOFIA**

Sofia and her husband have been living in the United States since 2014. Together, they have five children. Originally from El Salvador, Sofia and her family fled the country due to violence and fear for their lives. Sofia's husband was on his way to work in the summer of 2019 when ICE agents detained him. Sofia's husband was detained for ten months. Sofia's children were highly impacted by their father's detention. While he was detained, they were not allowed to visit him in detention and could only see him in court, where they were not allowed to touch him.

**FRANK**

Frank won his case before the immigration judge, but ICE is still detaining him while they appeal, even though he has no aggravated felony or other "priority" convictions. He missed the birth of his daughter and his wife and family are suffering severely as a result of his detention.

**JASON**

Jason was a passenger in a car when a tire went flat. An officer who stopped to help him called ICE after checking Jason's identification and learning he had a prior deportation order. Within three weeks, Jason was deported to Nicaragua. He never had a chance to consult with an attorney. He also was deprived of an opportunity to say goodbye to his wife and three-year-old daughter.

**EDGAR**

ICE denied prosecutorial discretion to Edgar, who has been a lawful permanent resident since he was a teenager, based on his 6-year-old conviction for sale of a

controlled substance, which under the INA is a drug trafficking aggravated felony. The Board of Immigration Appeals initially terminated Edgar's deportation case, and he was released from detention, but ICE reopened his case and re-detained him after 13 months. During that period, Edgar completed all of his rehabilitative requirements and got letters of recommendation and support from his parole officer, his substance abuse counselor, and his employer. His U.S. citizen and permanent resident parents and siblings also submitted letters describing his efforts and also how much Edgar cared for his U.S. citizen children. Nevertheless, ICE refused to release him until a federal court ordered them to justify his continued detention, and is continuing to pursue his deportation.

## **Conclusion**

Prosecutorial discretion can provide important and potentially lifesaving protection, but the interim guidance ICE has issued continues to perpetuate an enforcement-first approach that harms Black immigrants and immigrants of color. The memo lacks a framework necessary to identify those most in need, and continues to encourage enforcement against broad categories of people. The human stories shared in this report highlight the deep and fundamental failures of that approach, which continues to import the same racial biases that infect the criminal legal system into immigration enforcement, and continues the inhumane treatment of people coming to our border. Rather than incremental changes in who is prioritized for enforcement, DHS must adopt a fundamentally different approach, and [must focus on prioritizing people for protection](#) in a manner that upholds values of compassion, dignity, and second chances.

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