

SO, WHAT DOES “ABOLISH ICE” REALLY MEAN?

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Abstract

Analyzing the history of the United States federal immigration laws and the rising movement and debate of abolishing the U.S. Immigration and Customs Enforcement within the Department of Homeland Security

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INTRODUCTION

“Immigration policy should be generous; it should be fair; it should be flexible. With such policy we can turn to the world, and to our past, with clean hands and a clear conscience.”

—John F. Kennedy¹

Within the past two years, a growing movement from liberal, far-left, and even socialist groups and activists have called to abolish the

* This Note was written in the 2018–2019 academic year.

1. JOHN F. KENNEDY, *A NATION OF IMMIGRANTS* 65 (Updated ed., Harper Perennial Modern Classics 2018) (1964).

United States Immigration and Customs Enforcement (“ICE”).² At first glance, a person not knowing much about United States immigration law might think that ICE is responsible for almost all immigration-related issues, such as border control, visa applications, the separation of children and families at the border, immigrant entry quotas, detention centers, removal orders, removal proceedings, and more. However, immigration rules and regulations are quite complex within the federal government.³ Immigration regulations are enforced by multiple federal law enforcement agencies and departments. For instance, immigrants⁴ who have removal orders must eventually appear before an immigration judge in a federal immigration court under the Executive Office of Immigration Review in the Department of Justice.⁵ Whereas, ICE enforces immigration regulations under the Department of Homeland Security.⁶ Moreover, the children separated at the border from their families are sometimes placed under the responsibility of the U.S. Department of Health and Human Services.⁷

An even deeper look into U.S. immigration rules and regulations would evince it has been constantly changing, evolving, and is highly debated. In the nineteenth century, quotas were used (some of which are still used today) to determine if a foreign national could enter and remain in the United States.⁸ In the twentieth century, the Immigration and Naturalization Service (“INS”) was implemented but was later

2. Sydney Ember & Astead W. Herndon, *How ‘Abolish ICE’ Went From Social Media to Progressive Candidates’ Rallying Cry*, N.Y. TIMES (June 29, 2018), <https://www.nytimes.com/2018/06/29/us/politics/abolish-ice-midterms-immigration.html>.

3. Nicole Hemmer, *Trump’s Biggest Mistake On Immigration: His Belief That Something So Complex Can Be “Fixed,”* VOX (Mar. 1, 2018), <https://www.vox.com/the-big-idea/2018/3/1/17064908/immigration-reform-history-restriction-daca-nativism-compromise>.

4. This Note uses the words “immigrant” or “noncitizen” rather than the word “alien.” See Maria Sacchetti, *ICE, CBP to stop using ‘illegal alien’ and ‘assimilation under new Biden administration order,’* WASH. POST (Apr. 19, 2021, 9:14 AM), https://www.washingtonpost.com/immigration/illegal-alien-assimilation/2021/04/19/9a2f878e-9ebc-11eb-b7a8-014b14aeb9e4_story.html; Joel Rose, *Immigration Agencies Ordered Not To Use Term ‘Illegal Alien’ Under New Biden Policy,* NAT’L PUB. RADIO (Apr. 19, 2021, 2:51 PM), <https://www.npr.org/2021/04/19/988789487/immigration-agencies-ordered-not-to-use-term-illegal-alien-under-new-biden-polic>.

5. *Organization, Mission and Functions Manual: Executive Office of Immigration Review*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/jmd/organization-mission-and-functions-manual-executive-office-immigration-review> (last updated Aug. 3, 2018).

6. DEP’T OF HOMELAND SECURITY, <https://www.dhs.gov/> (last visited Nov. 12, 2018).

7. Camila Domonoske & Richard Gonzalez, *What We Know: Family Separation and ‘Zero Tolerance’ at the Border,* NAT’L PUB. RADIO (June 19, 2018), <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.

8. Faye Hipsman & Doris Meissner, *Immigration in the United States: New Economic, Social, Political Landscapes with Legislative Reform on the Horizon,* MIGRATION POLICY INSTITUTE (Apr. 16, 2013), <https://www.migrationpolicy.org/article/immigration-united-states-new-economic-social-political-landscapes-legislative-reform>.

criticized for its strict policies and enforcements.⁹ In the early twenty-first century, the United States re-organized and re-structured the INS to become the Department of Homeland Security, which is now less than twenty years old.

So, what led to a movement to abolish the U.S. Immigration and Customs Enforcement, an agency within the Department of Homeland Security? This Note will discuss the history and evolution of U.S. immigration laws and regulations. It will also analyze the beginning and growth of the “Abolish ICE” movement, detailing specific events that ignited the movement to become a public policy concern as well as potential immigration myths that arose during the movement. Further, this note will evaluate the various positions and arguments as to what “Abolish ICE” means not only for immigrants, but also for federal immigration policies and regulations. Moreover, it should be noted that this Note is not meant to provide any definite solution or take any position in addressing the “Abolish ICE” movement. Rather, this Note serves as an educational tool for those interested in learning more about the “Abolish ICE” movement and the United States’ complex history of immigration law and reform.

I. BRIEF HISTORY OF FEDERAL IMMIGRATION LAW

“Another way of indicating the importance of immigration to America is to point out that every American who ever lived, with the exception of one group . . . was either an immigrant himself or a descendant of immigrants.”

–John F. Kennedy¹⁰

Prior to the eighteenth and nineteenth centuries, Americans rarely questioned immigration regulations or restrictions as millions of immigrants arrived in search of economic prosperity and religious freedom.¹¹ For instance, from 1815 to 1865, more than four million immigrants arrived to the United States from northern and western Europe.¹² In the 1840s, more than twenty-five thousand immigrants from China settled on the west coast of North America, enticed by the

9. *Id.*

10. Kennedy, *supra* note 1, at 3.

11. *Rise of Industrial America, 1876–1900: Immigration to the United States, 1851–1900*, LIBRARY OF CONGRESS, <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/riseind/immigrants/> (last visited Nov. 13, 2018).

12. *U.S. Immigration Before 1965*, HISTORY, <https://www.history.com/topics/immigration/u-s-immigration-before-1965> (last updated Sept. 14, 2018); see generally Dean Swift, *Immigration to the United States*, GENERAL-HISTORY BLOG (Oct. 17, 2014), <http://general-history.com/immigration-to-the-united-states/>.

rumors of California gold.¹³ However, following the Civil War, certain states (primarily those in the South) began to pass immigration regulations in hopes of persuading immigrants to either remain or immigrate to the South to help grow and boost the economy.¹⁴ Whereas, other states (such as New York and California) began to tax arriving immigrants to dissuade them from remaining in the United States.¹⁵

As a result of this tension between states, the Supreme Court declared that immigration regulation was a federal responsibility.¹⁶ In 1875, the Court held that the power to regulate commerce with foreign nations and the passage of laws which concerned the admission of citizens and subjects of foreign nations belonged to Congress, not the States.¹⁷ Further under the Immigration Act of 1891, the federal government acquired direct control of inspecting, admitting, rejecting, and processing all immigrants seeking admission.¹⁸ Since then, the United States has enacted, regulated, updated, and revised various immigration policies to address the influx of immigrants starting in the twentieth century.¹⁹

Numerous federal agencies and departments have been created, developed, and reassigned to oversee immigration regulations and laws as they have become more complex. In 1891, the Office of Superintendent of Immigration was placed under the Treasury Department and then later moved to the Bureau of Immigration.²⁰ In 1903, the Bureau of Immigration was then transferred to the Department of Commerce and Labor.²¹ Further, in 1906, the Federal Naturalization Service was created, and the Bureau of Immigration was renamed the Bureau of Immigration and Naturalization.²² In 1913, the Bureau of Immigration and Naturalization then divided into two separate

13. See *The Gold Rush: Chinese Immigrants and the Gold Rush*, PUBLIC BROADCASTING SERVICE, <https://www.pbs.org/wgbh/americanexperience/features/goldrush-chinese-immigrants/> (last visited Nov. 10, 2018); see also *Searching for the Gold Mountain in Chinese Immigration*, Library of Congress, <https://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/immigration/chinese2.html> (last visited Nov. 11, 2018).

14. Michael R. Meyers, *U.S. Civil War*, IMMIGRATION TO THE UNITED STATES, <http://immigrationtounitedstates.org/435-us-civil-war.html> (last visited Nov. 11, 2018).

15. See Vincent J. Cannato, *Our Evolving Immigration Policy*, NAT'L AFFAIRS (2012), <https://www.nationalaffairs.com/publications/detail/our-evolving-immigration-policy>; see also *Henderson v. Mayor of New York*, 92 U.S. 259, 263 (1875).

16. *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876).

17. *Id.* at 280.

18. See Immigration Act of 1891, 26 Stat. 1084, 51 Cong. Ch. 551.

19. *Id.*

20. *Organizational Timeline*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.uscis.gov/history-and-genealogy/our-history/organizational-timeline> (last visited Nov. 11, 2018).

21. *Id.*

22. *Id.*

bureaus.²³

A. *Immigration and Naturalization Service*

In 1933, the Immigration and Naturalization Service (“INS”) was formed under the Department of Labor.²⁴ As a result of the Great Depression and immigration quotas still in place, the United States began to see a decrease in immigration.²⁵ Thus, the INS shifted its focus from immigrant quota regulations to law enforcement.²⁶ So, throughout the 1930s, INS primarily focused on investigations, exclusions, prevention of illegal entries, and deportations of criminal and subversive noncitizens while cooperating with the Department of Justice’s attorneys and the Federal Bureau of Investigation to prosecute those who violated immigration and nationality laws.²⁷

In the 1940s, INS moved from the Department of Labor to the Department of Justice due to the growth of immigration as a national security threat pre-World War II.²⁸ The agency’s workforce doubled from four thousand to eight thousand employees.²⁹ In addition, INS instituted several programs in support of the war, including recording and fingerprinting immigrants under the Alien Registration Program; organizing and operating internment camps and detention facilities for enemy noncitizens; increasing border operations; checking records in relation to security clearances for immigrant defense workers; and administering agricultural laborers.³⁰

In 1952, Congress recodified and reorganized all previous immigration and naturalization law into the Immigration and Nationality Act (“INA”), which “removed all racial barriers to immigration and naturalization,” but still retained national origin quotas.³¹ At the turn of the twenty-first century, INS employees also became responsible for enforcing laws that oversaw controlling entries of tourists, business travelers, and other temporary visitors; inspecting and admitting arrivals at land, sea, and airports; administering benefits;

23. *Id.*

24. Exec. Order No. 6166 (Jun. 10, 1933), *reprinted as amended in* 5 U.S.C. § 901 (2000).

25. Peter J. Duignan, *Making and Remaking America: Immigration into the United States*, HOOVER INSTITUTION (Sept. 15, 2003), <https://www.hoover.org/research/making-and-remaking-america-immigration-united-states>.

26. USCIS History Office and Library, *Overview of INS History*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., at 7 (2012), <https://www.uscis.gov/sites/default/files/USCIS/History%20and%20Genealogy/Our%20History/INS%20History/INSHistory.pdf>.

27. *Id.*

28. *Id.* at 8.

29. *Id.*

30. *Id.*

31. *Id.* at 9.

granting asylum to refugees; patrolling the nation's borders; and removing immigrants who entered illegally, violated the requirements of their stay, or threatened the safety of the people of the United States.³²

B. *The Department of Homeland Security*

The terrorist attacks of September 11, 2001 provoked the United States to again reevaluate and re-structure its immigration agencies and policies. In 2002, the 107th Congress passed the Homeland Security Act, which disbanded the former INS and established the Department of Homeland Security (“DHS”).³³ The mission of the DHS was to prevent terrorism, enhance security, secure and manage the United States’ borders, enforce and administer the United States’ immigration laws, safeguard and secure cyberspace, and ensure resilience to disasters.³⁴

The DHS’ goal was to unify all or part of twenty-two different federal agencies and programs into one single department.³⁵ Primarily, the DHS absorbed INS and the U.S. Customs Service.³⁶ Within the new Department, other offices and bureaus were formed, such as the U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, Transportation Security Administration, and the Bureau of Immigration and Customs Enforcement (now known as U.S. Immigration Customs Enforcement or ICE).³⁷

In 2003, the DHS officially began operations.³⁸ That November, President George W. Bush appointed Michael J. Garcia (the former Acting Commissioner of the INS) as the Assistant Secretary for the Bureau of Immigration and Customs Enforcement.³⁹

II. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT “ICE”

When first created in 2003, ICE was established through a merger of the investigative and interior enforcement elements of the former U.S.

32. USCIS History Office and Library, *supra* note 25, at 10.

33. The Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002).

34. *Celebrating the History of ICE*, U.S. DEP’T OF HOMELAND SECURITY, <https://www.ice.gov/features/history> (last updated Dec. 7, 2017).

35. Organizational Chart, U.S. DEP’T OF HOMELAND SECURITY, https://www.dhs.gov/sites/default/files/publications/18_0519_DHS_Organizational_Chart.pdf (last updated 2018).

36. *See* USCIS History Office & Library, *supra* note 26, at 11; *see also Our History*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/our-history> (last updated May 25, 2011).

37. USCIS History Office & Library, *supra* note 26, at 11.

38. *History*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/history> (last updated July 10, 2018).

39. *Celebrating the History of ICE*, U.S. DEP’T OF HOMELAND SECURITY, <https://www.ice.gov/features/history> (last updated Dec. 7, 2017).

Customs Service and INS.⁴⁰ Similar to the purpose of DHS, ICE was designed to prevent another attack similar to 9/11 by promoting public safety and enforcing federal laws regarding border control, customs, trade, and immigration.⁴¹ ICE's current mission is to continue protecting America from cross-border crime and illegal immigration that threatens national security and public safety.⁴²

ICE executes its mission through three main areas: immigration enforcement, investigating illegal movement of people and goods, and preventing terrorism.⁴³ Within each area, ICE institutes various programs, task force units, sub-division units, and specialty organizations or centers.⁴⁴ For instance, in preventing terrorism, ICE has a counterterrorism and criminal exploitation unit, a joint terrorism task force, a law enforcement assistance corner, and a counter-proliferation investigations program.⁴⁵ For investigating illegal movement of people and goods, ICE oversees a border enforcement security task force; firearms, ammunition, and explosives smuggling investigations; foreign corruption investigations; narcotics enforcement; and several other units.⁴⁶ ICE also has three directorates to aid in accomplishing the agency's mission: the Homeland Security Investigations, the Enforcement and Removal Operations, and the Management and Administration.⁴⁷

The largest area of responsibility under ICE is immigration enforcement.⁴⁸ With cooperation from other agencies within the DHS, ICE states that its focus is on "remov[ing] illegal aliens who are criminals, fugitives or recent arrivals."⁴⁹ Within its main area of immigration enforcement, ICE is responsible for the criminal alien program; deferred action for childhood arrivals ("DACA"); detention facilities; detention reform; detention management; fugitive operations; human rights violators and war crimes unit; national gang unit; law enforcement support center; worksite enforcement; and removal statistics.⁵⁰

40. *Id.*

41. *Id.*

42. *What We Do*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/overview> (last updated Jan. 3, 2018).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Who We Are*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/about> (last updated Aug. 24, 2018).

48. *What We Do*, *supra* note 42.

49. *Immigration Enforcement*, DEP'T OF HOMELAND SECURITY, <https://www.dhs.gov/topic/immigration-enforcement-overview>.

50. *What We Do*, *supra* note 42.

Currently, ICE has more than 20,000 employees in more than 400 offices in the United States and in forty-six countries.⁵¹ The agency has an annual budget of approximately \$6 billion, which primarily allocates money toward Homeland Security Investigations, Enforcement and Removal Operations, and the Office of the Principal Legal Advisor.⁵² In addition, ICE employees are also responsible for enforcing approximately four hundred federal statutes relating to any investigation of illegal movement of people or goods.⁵³

A. *Myths and Misconceptions about ICE*

Prior to discussing the “Abolish ICE” movement and its various positions, it is important to determine what ICE actually does concerning immigration regulation. Several misconceptions and myths exist as to the extent of ICE’s functions and its control over immigration regulations in the United States, specifically during the Trump administration. This section will discuss those misconceptions and address what ICE actually does and does not do within immigration regulation.

One of the biggest misconceptions is that ICE is solely responsible for border control.⁵⁴ This misunderstanding is especially prevalent with the recent events regarding the separation of families and children at the border.⁵⁵ However, the United States Customs and Border Protection under DHS, not ICE, is primarily responsible for protecting the country’s border.⁵⁶ Customs and Border Protection (“CBP”) is also the main agency for monitoring ports of entry and enforcing U.S. laws and regulations concerning economic security.⁵⁷

On an average day, CBP enforcement officials may arrest more than 1,100 individuals, screen more than 67,000 cargo containers, and seize nearly six tons of illegal drugs.⁵⁸ Further, CBP enforcement officials are also responsible for individuals who are found at the border, and they are the ones who take those individuals to immigration processing

51. *Who We Are*, *supra* note 47.

52. *Id.*

53. *What We Do*, *supra* note 42.

54. *Myth v. Fact*, DEP’T OF HOMELAND SEC., <https://www.dhs.gov/myth-vs-fact> (last updated Aug. 28, 2018).

55. *Id.*

56. *About CPB*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/about> (last updated Nov. 21, 2016).

57. *Id.*

58. *U.S. Customs and Border Protection in Miami and Federal Partners Seize Over Six Million Counterfeit Cigarettes*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/newsroom/local-media-release/us-customs-and-border-protection-miami-and-federal-partners-seize-over> (last updated April 26, 2019).

stations.⁵⁹ There, the CBP enforcement official enters the individual's information, such as biographical information and entry point locations into an electronic system of records.⁶⁰ Only then are individuals transferred to ICE for immigration removal proceedings.⁶¹

However, some individuals do not remain under ICE custody.⁶² Children may instead undergo separate immigration proceedings and be placed within the custody of Health and Human Services ("HHS").⁶³ Following their time in HHS custody, these children are sent to immigration detention facilities, under the Office of Refugee Resettlement. Thus, clearly, ICE is not solely responsible for the arrests, inspections, and detainments that occur at the border. Although ICE does play a significant role, ICE is only one part of the process for an individual detained at the border.

Another misconception pertains to the recent ICE raids impacting cities, schools, hospitals, and local communities under the Trump administration.⁶⁴ Since Trump's inauguration, multiple media outlets and sources have highlighted ICE raids taking place throughout local communities in search of undocumented immigrants.⁶⁵ However, ICE raids are not new.⁶⁶ In fact, ICE raids occurred even under the Obama administration which heavily focused on removing people who had aggravated felony convictions or were recidivists.⁶⁷ Yet under the Trump administration, ICE spokeswoman Danielle Bennett, suggested

59. Domonoske & Gonzalez, *supra* note 7.

60. *CBP Procedures for Processing Travel Documents at the Border*, U.S. DEP'T OF HOMELAND SEC. 1, 3 (July 2, 2008), https://www.cbp.gov/sites/default/files/documents/privacy_july08_2.pdf.

61. *Immigration Action*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/border-security/immigration-action> (last updated Mar. 15, 2019).

62. *See Immigration Detention & Enforcement*, NAT'L IMMIGRANT JUST. CTR., <https://www.immigrantjustice.org/issues/immigration-detention-enforcement> (last viewed Nov. 14, 2018).

63. Domonoske & Gonzalez, *supra* note 7.

64. *See* Delphine Schrank, *Trump's Season of Fear: Inside the Devastation Left by Immigration Raids*, THE GUARDIAN (Mar. 13, 2017), <https://www.theguardian.com/us-news/2017/mar/13/undocumented-immigration-raids-ice-impact>.

65. Tal Kopan, *Democrats, Advocates Question ICE Raids After Hundreds of Arrests*, CNN (Feb. 14, 2017), <https://www.cnn.com/2017/02/10/politics/democrats-question-ice-enforcement-raids/index.html>.

66. Carly Goodman, *Angry that ICE Is Ripping Families Apart? Don't Just Blame Trump. Blame Clinton, Bush and Obama, Too.*, WASH. POST (June 11, 2018), https://www.washingtonpost.com/news/made-by-history/wp/2018/06/11/angry-that-ice-is-ripping-families-apart-dont-just-blame-trump-blame-clinton-bush-and-obama-too/?utm_term=.c447f6480d32.

67. Tessa Berenson, *Immigration Raids Are Sweeping Up More People Who Weren't Targets*, TIME MAG. (Aug. 9, 2017), <http://time.com/4893074/immigration-raids-undocumented-targets>.

that agents are now instructed to detain and deport anyone.⁶⁸ “Since the change in the Administration, our director has said there are not going to be any classes or categories of removable aliens that are exempt.”⁶⁹ Thus as compared to the Obama administration, the Trump administration used ICE raids as part of his zero-tolerance policy, which was a call to prosecute all undocumented individuals who entered the United States.⁷⁰ Therefore, ICE agents can report and detain any undocumented individual regardless of criminal background or age as compared to ICE raids conducted by previous administrations.⁷¹

Another misconception relates to the relative number of deportations in the Trump administration and the Obama administration.⁷² According to the U.S. Immigration and Customs Enforcement, deportations for the first half of the Obama Administration were at an all-time high,⁷³ peaking at over 400,000 deportations in 2012.⁷⁴ In fact, immigration activists even coined the term “Deporter-in-Chief”⁷⁵ for President Obama due to the rise in deportations during his presidency. However, following 2012, the number of deportations under the Obama administration steadily declined, and by 2015, the number was 235,413.⁷⁶ Data also illustrates that the Trump administration has increased its rates of removal and deportation.⁷⁷ The number of deportees increased twenty-four percent in Trump’s first year in

68. *Id.*

69. *Id.*

70. Miriam Valverde, *What You Need to Know About the Trump Administration’s Zero-Tolerance Immigration Policy*, POLITIFACT (June 6, 2018), <https://www.politifact.com/truth-o-meter/article/2018/jun/06/what-you-need-know-about-trump-administrations-zer/>.

71. *Id.*

72. Suzanee Gamboa, *Is Trump Carrying Out a Mass Deportation? It Feels That Way to Some*, NBC NEWS (Jan. 17, 2018), <https://www.nbcnews.com/news/latino/trump-carrying-out-mass-deportation-it-feels-way-some-n838381>.

73. Scott Horsley, *5 Things to Know About Obama’s Enforcement of Immigration Laws*, NAT’L PUB. RADIO (Aug. 31, 2016), <https://www.npr.org/2016/08/31/491965912/5-things-to-know-about-obamas-enforcement-of-immigration-laws>.

74. *Id.*; see also *ICE by the Numbers FY 2017*, U.S. DEP’T OF HOMELAND SECURITY, <https://www.ice.gov/topics/fy2017> (last updated Jan. 11, 2018).

75. *Obama Leaves Office as ‘Deporter-In-Chief’*, NAT’L PUB. RADIO (Jan. 20, 2017), <https://www.npr.org/2017/01/20/510799842/obama-leaves-office-as-deporter-in-chief>.

76. Horsley, *supra* note 73; see also *ICE By The Numbers FY 2017*, *supra* note 74.

77. Miriam Valverde, *Have Deportations Increased Under Donald Trump? Here’s What the Data Shows*, POLITIFACT (Dec. 19, 2017), <https://www.politifact.com/article/2017/dec/19/have-deportations-increased-under-donald-trump-her/>; see also John Burnett, *Trump’s ICE Deportations Are Up From Obama’s Figures, Data Show*, NAT’L PUB. RADIO (Jan. 23, 2018), <https://www.npr.org/2018/01/23/579884642/trumps-ice-deportations-increase-from-obamas-figures-data-show>; *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf> (last viewed Nov. 11, 2018).

office.⁷⁸ These numbers included individuals arrested by ICE and individuals stopped by other immigration officials at the border and then passed on to ICE for removal proceedings.⁷⁹

Also contrary to popular understanding, deportations and removals of individuals do not only arise from ICE. The DHS, the United States Citizenship and Immigration Services ("USCIS") and the U.S. State Department also play a role of deporting and removing individuals.⁸⁰ The USCIS and the U.S. State Department, are responsible for handling visas to temporary workers, students, and others.⁸¹ Former Trump administration DHS Secretary Kirstjen Nielsen stated that the agency was working with the U.S. State Department "to share information on departures and overstays, especially as it pertains to the visa application and adjudication process."⁸² In fact, it is more common for an individual with a visa to overstay in the United States than to cross the border undocumented.⁸³ In both 2016 and 2017, more than 600,000 individuals entered the United States legally (i.e. legally obtained temporary visas) and yet remained in the country by the end of the year illegally.⁸⁴ Interestingly enough, at least five of the hijackers in the September 11, 2001 attacks also held visas and overstayed.⁸⁵ From this relationship between USCIS, the U.S. State Department and ICE, it is important to recognize that ICE is not solely responsible for the deportation and removal of immigrants. Other federal departments and agencies also play important roles.

Further, another misconception is that the separation of children from their families was also done under the Obama and Bush

78. Burnett, *supra* note 76.

79. *Id.*

80. Stuart Anderson, *New USCIS Policy Will Carry Harsh Consequences For Applicants*, FORBES (July 11, 2018), <https://www.forbes.com/sites/stuartanderson/2018/07/11/new-uscis-policy-will-carry-harsh-consequences-for-applicants/#345bad974615>.

81. *Id.*

82. Daniel Shoer Roth, *The U.S. Government Is Targeting Hundreds of Thousands Who Have Overstayed Their Visas*, MIAMI HERALD (Aug. 10, 2018), <https://www.miamiherald.com/news/local/immigration/article216432920.html>; U.S. DEP'T OF HOMELAND SEC., FISCAL YEAR 2017 ENTRY/EXIT OVERSTAY REPORT, https://www.dhs.gov/sites/default/files/publications/18_0807_S1_Entry-Exit-Overstay_Report.pdf.

83. Catalina Gonella, *Visa Overstays Outnumber Illegal Border Crossings, Trend Expected to Continue*, NBC NEWS (Mar. 7, 2017), <https://www.nbcnews.com/news/latino/visa-overstays-outnumber-illegal-border-crossings-trend-expected-continue-n730216>.

84. Burnett, *supra* note 76; Alan Gomez, *Homeland Security: More than 600,000 Foreigners Overstayed U.S. Visas in 2017*, USA TODAY (Aug. 7, 2018), <https://www.usatoday.com/story/news/world/2018/08/07/dhs-foreigners-overstayed-visas-2017/924316002/>.

85. Stephen Dinan, *Staggering Number of Visa Overstays Now Biggest Problem in Illegal Immigration*, WASH. TIMES (May 22, 2017), <https://www.washingtontimes.com/news/2017/may/22/visa-overstays-biggest-problem-illegal-immigration/>.

administrations. Prior to signing an executive order⁸⁶ to halt DHS's policy to separate children and families, President Trump stated that "[t]his has been going on under President Obama, under President Bush, this has been going for many many years. We are going to see if we can solve it. This is not something that happened just now."⁸⁷ DHS Secretary Nielson further stated at a press briefing that "[both t]he Obama administration [and] the Bush administration . . . separated families. . . . They absolutely did. They did[—]their rate was less than ours, but they absolutely did do this. This is not new."⁸⁸

Yet to this date, I have not found any precise data to determine whether previous presidential administrations actually ordered children and families to be separated. Theresa Cardinal Brown, a director of immigration and cross-border policy at the Bipartisan Policy Center, stated, "[w]e have not seen any data out of the current or prior administration on how many cases that were prosecuted were individuals who arrived with minors."⁸⁹ Sarah Pierce, a policy analyst with the Migration Policy Institute, stated, "Bush and Obama did not have policies that resulted in the mass separation of parents and children like we're seeing under the [Trump] administration."⁹⁰ Former Obama era DHS Secretary, Jeh Johnson, stated on NPR that "[t]here may have been some exigent situation, some emergency," in which a child was separated, such as a concern for human trafficking.⁹¹ However, he also noted that it was not a matter of policy or practice. Johnson further stated, "It's not something that I could ask our Border Patrol or our immigration enforcement personnel to do."⁹²

The 1997 Flores Settlement set national standards for the detention, release, and treatment of children in immigration detention.⁹³ During the Obama administration, several plaintiffs sued and argued that separated

86. See Exec. Order No. 13841, 83 Fed. Reg. 29,435 (June 25, 2018).

87. Jane C. Timm, *Fact Check: Did Obama Administration Separate Families?*, NBC NEWS (June 20, 2018), <https://www.nbcnews.com/storyline/immigration-border-crisis/fact-check-did-obama-administration-separate-families-n884856>.

88. *Id.*; Lori Robertson, *Fact Check: Did the Obama Administration Separate Families?*, FACTCHECK.ORG (June 20, 2018), <https://www.factcheck.org/2018/06/did-the-obama-administration-separate-families/>.

89. Robertson, *supra* note 87.

90. *Id.*

91. Scott Simon, *Jeh Johnson On Immigration and Trump*, NAT'L PUB. RADIO (June 9, 2018, 8:10 AM), <https://www.npr.org/2018/06/09/618496706/jeh-johnson-on-immigration-and-trump>.

92. *Id.*

93. Robertson, *supra* note 88; Julia Preston, *Judge Orders Release of Immigrant Children Detained by U.S.*, N.Y. TIMES (July 25, 2015), <https://www.nytimes.com/2015/07/26/us/detained-immigrant-children-judge-dolly-gee-ruling.html>; *Flores Settlement: Myth v. Fact*, KIDS IN NEED OF DEFENSE (June 15, 2018), <https://supportkind.org/resources/flores-settlement-myth-v-fact/>.

detainment was a violation of the settlement.⁹⁴ Afterward, the Obama administration attempted to detain families together.⁹⁵ The Trump administration also attempted to follow this strategy and detain families together.⁹⁶

B. The “Abolish ICE” Movement

In February of 2017, Sean McElwee, a political commentator and activist, first tweeted “Abolish ICE” to his more than 70,000 followers.⁹⁷ The tweet described an undocumented immigrant who was diagnosed with a brain tumor while in ICE custody and included an image of text from an article by The Hill.⁹⁸ Since McElwee’s tweet, the phrase “Abolish ICE” has transformed into a progressive rallying cry for immigration reform.⁹⁹ The phrase has been used countless times on social media and has been covered by radio stations and news channels.¹⁰⁰ A website called “Abolish ICE” was created with the goal to “abolish ICE and create an immigration system divorced from white supremacy, and that respects the dignity of all human beings.”¹⁰¹ In March 2018, McElwee wrote an opinion piece titled, “It’s Time to Abolish ICE”, which will later be analyzed in this note.¹⁰²

“Abolish ICE” has also been supported by a number of progressive Democratic politicians. For instance, Randy Bryce, a Democratic candidate who ran against Former House Speaker Paul Ryan (R-WI),

94. Preston, *supra* note 93.

95. Charlie Savage, *Explaining Trump’s Executive Order on Family Separation*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/us/politics/family-separation-executive-order.html>; *see also* Exec. Order No. 13841, 83 Fed. Reg. 29,435 (June 25, 2018).

96. *Id.*

97. Sean McElwee, *It’s Time to Abolish ICE*, THE NATION (Mar. 9, 2018), <https://www.thenation.com/article/its-time-to-abolish-ice/>; *see also* Ali Breland, *How Twitter Vaulted ‘Abolish ICE’ into the Mainstream*, THE HILL (July 29, 2018 7:43 PM), <http://thehill.com/policy/technology/399303-how-twitter-vaulted-abolish-ice-into-the-mainstream>.

98. Sean McElwee (@SeanMcElwee), TWITTER (Feb. 23, 2017, 10:14 AM), <https://twitter.com/SeanMcElwee/status/834783586574286852>.

99. Chris Hayes & Sean McElwee, *Why Is This Happening? Outlining the Left Wing of the Democratic Party with Sean McElwee: Podcast & Transcript*, NBC THINK (Sept. 11, 2018), <https://www.nbcnews.com/think/opinion/outlining-left-wing-democratic-party-sean-mcelwee-podcast-transcript-ncna908331>.

100. *Id.*

101. *Our Goal*, ABOLISH ICE.ORG, <https://www.abolishice.org/partners-and-advisers/> (lasted visited on Sept. 21, 2018).

102. *See* McElwee, *supra* note 97; *see also* Sean McElwee, *The Power of “Abolish ICE”*, N.Y. TIMES (Aug. 4, 2018), <https://www.nytimes.com/2018/08/04/opinion/sunday/abolish-ice-ocasio-cortez-democrats.html?searchResultPosition=1>.

offered his support to the movement in April 2018.¹⁰³ Alexandria Ocasio-Cortez, a Democratic socialist who defeated twenty-year incumbent Representative Joe Crowley (D-NY) in the primaries, included abolishing ICE in her campaign platform.¹⁰⁴ In an interview with CNN, Senator Kirsten Gillibrand made a public call to abolish ICE and advocated for government officials to “reimagine ICE.”¹⁰⁵ New York City Mayor Bill de Blasio called to reform and abolish ICE.¹⁰⁶ He criticized, “ICE’s time has come and gone. It is broken, it has been sent on a very negative, divisive mission, and it cannot function the way it is.”¹⁰⁷ Senator Elizabeth Warren stated that she wanted to replace ICE as a result of the Trump administration’s zero-tolerance immigration policies.¹⁰⁸

However, not all supporters or activists of the movement recognize McElwee as the first person to fully conceptualize the abolition of ICE.¹⁰⁹ The majority of activists were inspired by a variety of issues and events, especially the Trump administration’s zero-tolerance policy and the separation of children and families.¹¹⁰ In response, McElwee simply mentioned that “he’s just a guy who put two words together on Twitter and found incumbents and challenger candidates who agreed.”¹¹¹

C. Events that led to “Abolish ICE”

As described briefly earlier in this note, immigration law has been a topic of much contention and reform throughout the history of the United States, even prior to the “Abolish ICE” movement.¹¹² Federal immigration law has been heavily reformed and reorganized throughout the twentieth and twenty-first centuries.¹¹³ For example, the Department of Homeland Security was established less than twenty years ago and

103. Marie Solis, *More 2018 Candidates Are Calling to Abolish ICE Under President Trump*, NEWSWEEK (April 6, 2018, 5:20 AM), <https://www.newsweek.com/randy-bryce-growing-number-2018-candidates-calling-abolish-ice-874306>.

104. Ella Nilsen, *The List of Democrats Calling to Abolish ICE Keeps Growing*, VOX (June 30, 2018, 2:26 PM), <https://www.vox.com/policy-and-politics/2018/6/29/17518176/democrats-to-abolish-ice-movement-gillibrand-de-blasio-ocasio-cortez>.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. Steven Perlberg, *How “Abolish ICE” Went From Twitter Slogan to Winning Over Progressives and Dividing Politics*, BUZZFEED NEWS (July 28, 2018), <https://www.buzzfeednews.com/article/stevenperlberg/abolish-ice-sean-mcelwee>.

110. *Id.*

111. *Id.*

112. *Immigration Trends and the Immigration Debate*, BIPARTISAN POLICY CTR. (Aug. 14, 2017), <https://bipartisanpolicy.org/report/immigration-trends-and-the-immigration-debate/>.

113. *Id.* at 5–6.

was simply a reorganization of previous federal agencies.¹¹⁴ In addition to the problems of restructuring federal agencies, several other events also led to the rise of the “Abolish ICE” movement.

One of the main events that led to the movement was the enactment of the Trump administration’s zero-tolerance policy. In April 2018, Attorney General Jeff Sessions announced the zero-tolerance policy to be implemented along the Southwest Border.¹¹⁵ The policy “direct[ed] each U.S. Attorney’s Office along the Southwest Border . . . to prosecute all [DHS] referrals”¹¹⁶ This meant that prosecutors had to report and give a removal order to any undocumented individual that they found at or near the border.¹¹⁷ According to the Attorney General’s announcement, the policy was the result of a DHS report of an increase in undocumented border crossings from March 2017 to March 2018, which included a thirty percent increase from February 2018 to March 2018 alone.¹¹⁸

Another event the led to the “Abolish ICE” movement was the Trump administration’s policy of separating children from their families at the border for deterrence purposes.¹¹⁹ Prior to the enactment of the zero-tolerance policy, former DHS secretary, John Kelly, confirmed a report in March 2017 that the Trump administration was considering the separation of families at the border to deter the exploitation of children.¹²⁰ Between October 2017 and May 2018, at least two thousand children were separated from their families after crossing the southern U.S. border.¹²¹ *Vox* reported that an average of forty-five children were

114. *Creation of the Department of Homeland Security*, DEP’T OF HOMELAND SECURITY, <https://www.dhs.gov/creation-department-homeland-security> (last visited June 21, 2021).

115. Press Release, Department of Justice Office of Public Affairs, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

116. *Id.*

117. Brett Samuels, *Sessions Unveils ‘Zero Tolerance’ Policy at Southern Border*, THE HILL (May 7, 2018), <https://thehill.com/homenews/administration/386634-sessions-illegal-border-crossers-will-be-prosecuted-families-may-be>.

118. Department of Justice Office of Public Affairs, *supra* note 115.

119. Maya Rhodan, *Border Crossings Dropped Nearly 20% Under Trump’s ‘Zero Tolerance’ Policy*, TIME MAG. (July 5, 2018), <http://time.com/5331196/border-crossings-dropped-nearly-20-under-trumps-zero-tolerance-policy/>.

120. Aaron Hegarty, *Timeline: Immigrant Children Separated from Families at the Border*, USA TODAY (June 27, 2018), <https://www.usatoday.com/story/news/2018/06/27/immigrant-children-family-separation-border-timeline/734014002/>; *see also* Daniella Diaz, *Kelly: DHS is Considering Separating Undocumented Children from Their Parents at the Border*, CNN (Mar. 7, 2017), <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/>.

121. Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018, 12:03 PM), <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

removed from their parents each day between October 2017 and May 2018.¹²² The New York Times further reported that at least a hundred of the separated children were under the age of four.¹²³ Yet, on April 11, 2018, DHS Secretary Nielsen testified that there was no policy calling for the separation of families as deterrence.¹²⁴ By June, Nielsen stated the administration did not need to apologize for its job, prosecuting those who crossed the border undocumented.¹²⁵ Nonetheless, a public outcry poured out calling for an end to the separation of children and families as a result of media coverage of detainment conditions and images of caged children crying.¹²⁶

Another issue that instigated the “Abolish ICE” movement was the future status of the Deferred Action for Childhood Arrivals (“DACA”), a program that protects thousands of qualified individuals who were brought to the United States as children and allows them to work legally in the United States as well as attend school.¹²⁷ In September 2017, the Trump administration asserted that it would no longer accept new DACA applications nor renew or process anyone whose statuses expire by March 5, 2017.¹²⁸ Thus, this sparked legislation and judicial debate as to the extent of the Executive Branch’s authority and whether, once DACA status had been revoked, ICE would issue Notices to Appear to former DACA recipients.

Americans were also enraged over reports and publications of ICE officials’ sexually assaulting children and women in detention

122. *Id.*

123. Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*, N.Y. TIMES (Apr. 20, 2018), <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

124. John Bacon, *Amid Outrage, Homeland Security Chief Kirstjen Nielsen ‘Will Not Apologize’ for Separating Families*, USA TODAY (June 18, 2018), <https://www.usatoday.com/story/news/nation/2018/06/18/homeland-security-chief-denies-policy-separates-families-border/709378002/>; *see also* Hegarty, *supra* note 120.

125. Bacon, *supra* note 123; *see also* Hegarty, *supra* note 119.

126. Caroline Matas, *In Rare Bipartisan Outcry Against Migrant Family Separation, White Evangelicals Avoid Implicating Trump*, HARV. DIVINITY SCH. RELIGIOUS LITERACY PROJECT (June 24, 2018), <https://rlp.hds.harvard.edu/news/rare-bipartisan-outcry-against-migrant-family-separation-white-evangelicals-avoid>; Dave Elias, *Public Outcry Causes Trump to End Separation Between Families at Border*, NBC-2 NEWS (June 20, 2018), <http://www.nbc-2.com/story/38471334/public-outcry-causes-trump-to-end-separation-between-families-at-border>.

127. Dara Lind, *Nine Facts that Explain DACA, the Immigration Program Trump is Ending*, VOX (Jan. 30, 2018), <https://www.vox.com/policy-and-politics/2017/8/31/16226934/daca-trump-dreamers-immigration>; *see also* Lori Robertson, *The Facts on DACA*, FACTCHECK.ORG (Jan. 22, 2018), <https://www.factcheck.org/2018/01/the-facts-on-daca/>.

128. Lind, *supra* note 126.

facilities.¹²⁹ For the past decade, thousands of people have reported sexual abuse while in U.S. immigration detention centers and ICE custody.¹³⁰ The Office of the Inspector General from ICE reported only 1,310 allegations of sexual abuse between 2013 and 2017.¹³¹ With this data, Philip Miller, former Deputy Executive Associate Director of ICE, reported that less than one percent of detainees were sexually assaulted.¹³² He argued that a majority of those reported cases were deemed inconclusive.¹³³ As a result, he stated that he does not believe ICE has a culture of abuse.¹³⁴ However, watchdog organizations reported much higher numbers, and reporter Emily Kassie argued otherwise that this abuse by ICE officials would inevitably continue as Trump expanded his zero-tolerance policy and pushed for more detention facilities.¹³⁵

Moreover, another issue that led to the “Abolish ICE” movement was the concept of sanctuary cities and ICE raids. A sanctuary city is defined by its special procedures for how state and local law enforcement can hold or detain individuals at the request of federal immigration authorities.¹³⁶ For example, in a sanctuary city or state, the police can release an arrested immigrant after he or she has been cleared of charges, posted bail, or completed jail time.¹³⁷ A non-sanctuary city will typically hold an individual until ICE arrives to pick up or charge the individual with a removal order.¹³⁸ In 2017, California Governor Jerry Brown signed a landmark decision for California to become a “sanctuary state” in order to expand protections for immigrants.¹³⁹ This decision resulted in both praise and backlash from cities within

129. Emily Kassie, *Sexual Assault Inside ICE Detention: Two Survivors Tell Their Stories*, N.Y. TIMES (July 17, 2018), <https://www.nytimes.com/2018/07/17/us/sexual-assault-ice-detention-survivor-stories.html>; see also Alice Speri, *Detained, Then Violated*, THE INTERCEPT (Apr. 11, 2018), <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

130. Emily Kassie & Hari Sreenivasan, *While in ICE Custody, Thousands of Migrants Reported Sexual Abuse*, PBS NEWSHOUR (July 22, 2018), <https://www.pbs.org/newshour/show/while-in-ice-custody-thousands-of-migrants-reported-sexual-abuse>.

131. *Id.*

132. Kassie, *supra* note 129.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Immigration 101: What is a Sanctuary City?*, AMERICA’S VOICE (Apr. 25, 2017), <https://americasvoice.org/blog/what-is-a-sanctuary-city/> (last updated Oct. 9, 2019).

137. *Id.*

138. *Id.*

139. Jazmine Ulloa, *California Becomes ‘Sanctuary State’ in Rebuke of Trump Immigration Policy*, L.A. TIMES (Oct. 5, 2017), <http://www.latimes.com/politics/la-pol-ca-brown-california-sanctuary-state-bill-20171005-story.html>.

California.¹⁴⁰ At least thirty-five cities, including San Francisco and Los Angeles, have embraced the “sanctuary” label.¹⁴¹ On the other hand, Los Alamitos stated it was against the decision and would draft an exemption to the statewide ordinance, citing constitutional concerns.¹⁴² Regardless of a city’s stance or position, ICE continued to conduct raids in designated “sanctuary cities” in accordance with the Trump administration’s deportation initiatives.¹⁴³ In 2017, ICE conducted “Operation Safe City” which targeted raids on sanctuary cities like New York, Los Angeles, Philadelphia, and Baltimore to deport undocumented individuals.¹⁴⁴

D. *So, What Does Everyone Think?*

Various activists and groups have taken differing positions as to what “Abolish ICE” actually means to them. Some organizations and politicians argue that it should be completely abolished whereas others contend that ICE should not be dismantled. These next sections will analyze the various positions and the sliding scale of interpretations of whether ICE should be abolished.

E. *Completely Abolish ICE*

As indicated in the phrase, the first main position is to completely abolish ICE. This position ranges from abolishing merely a single division within ICE to totally de-establishing the entire agency. As a result of what this massive government structural change would entail, some individuals have proposed the United States return to the older immigration systems or agency models of the federal government. Whereas, others encourage leaving it to voters or social activists to decide.

When McElwee first tweeted about abolishing ICE, he wrote an opinion piece detailing his thoughts and those of like-minded politicians.¹⁴⁵ In “It’s Time to Abolish ICE,” McElwee begins first with an interview of Dan Canon, taken while Canon ran for Indiana’s Ninth

140. Jazmine Ulloa, *California Lawmakers Approve Landmark ‘Sanctuary State’ Bill to Expand Protections for Immigrants*, L.A. TIMES (Sept. 16, 2017), <http://www.latimes.com/politics/la-pol-ca-california-sanctuary-state-bill-20170916-story.html>.

141. Ulloa, *supra* note 138.

142. Sarah Holder, *As California Protects Immigrants, Cities Revolt*, CITYLAB (Apr. 3, 2018), <https://www.citylab.com/equity/2018/04/california-cities-fight-their-sanctuary-state/556973/>.

143. Erik Ortiz, *‘Sanctuary’ Cities Targeted by ICE in Immigration Raids as Nearly 500 Arrested*, NBC NEWS (Sept. 29, 2017), <https://www.nbcnews.com/storyline/immigration-border-crisis/sanctuary-cities-targeted-ice-immigration-raids-nearly-500-arrested-n805796>.

144. *Id.*

145. McElwee, *supra* note **Error! Bookmark not defined.**

Congressional District seat.¹⁴⁶ Canon believed that ICE should be abolished entirely.¹⁴⁷ He stated, “ICE as it presently exists is an agency devoted almost solely to cruelly and wantonly breaking up families. The agency talks about, and treats, human beings like they’re animals.”¹⁴⁸ Further, Canon argued that the agency should be completely defunded for its unethical and abusive actions and behavior.¹⁴⁹

McElwee argued that the goal of abolishing the agency is to obliterate its function as it is “a genuine threat to democracy, and it is destroying thousands of lives.”¹⁵⁰ He discussed how ICE was formed as a direct product of the post-9/11 “panic culture” and described how it was formed under the then-new Department of Homeland Security.¹⁵¹ Further, he described how the Acting Director of ICE, Thomas Homan, had repeatedly made clear that all undocumented residents should be afraid of ICE agents and raids in schools, hospitals, and other public areas and spaces.¹⁵² Therefore, McElwee noted that ICE has been purposely used as a scare tactic to intimidate and threaten undocumented immigrants.¹⁵³

Alexandria Ocasio-Cortez is one of the most prominent politicians who supports McElwee’s view.¹⁵⁴ Throughout her campaign for office (specifically in the primaries), Ocasio-Cortez called for immigrant justice.¹⁵⁵ One of her main campaign platforms was specifically to abolish ICE.¹⁵⁶ She argued that ICE under the Trump Administration was practically operating without any restrictions and was destroying families.¹⁵⁷ Specifically, Ocasio-Cortez called to abolish the agency for its “draconian enforcement” and violation of civil rights.¹⁵⁸

Ocasio-Cortez clarified that her position is not to have open borders,

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. McElwee, *supra* note **Error! Bookmark not defined.**

152. *Id.*

153. *Id.*

154. Jeff Stein, *What Ocasio-Cortez Wants for America After Beating Joe Crowley*, THE WASH. POST (June 27, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/06/27/ocasio-cortez-beat-joe-crowley-campaigning-on-medicare-for-all-guaranteed-jobs-and-abolishing-ice/?utm_term=.dc79d40f4bc1.

155. Alexandra Ocasio-Cortez, *Mi Plataforma: Justicia Inmigratoria / Abolir ICE*, <https://ocasio2018.com/issues?lang=es> (last visited Sept. 21, 2018) (translated in English).

156. *Id.*

157. *Id.*

158. Jeremy Scahill, *An Interview with Alexandria Ocasio-Cortez, the Young Democratic Socialist Who Just Shocked the Establishment*, THE INTERCEPT (June 27, 2018), <https://theintercept.com/2018/06/27/an-interview-with-alexandria-ocasio-cortez-the-young-democratic-socialist-who-just-shocked-the-establishment/>.

but to return to an older system that solely focused on intense operations.¹⁵⁹ She suggested that the INS should replace ICE, so it would only focus on “human trafficking, child sex trafficking, child pornography and, of course, just standard immigration in and out.”¹⁶⁰ Ocasio-Cortez added that other federal government departments and agencies would still be responsible for portions of immigration enforcement, such as the Department of Justice with removal proceedings, Federal Bureau of Investigations for investigations, and CPB for border control.¹⁶¹ Moreover, Ocasio-Cortez specified that she does not just want to return to INS but to go “all the way back to the root of our immigration policy to begin with.”¹⁶² To do this, she asserts: “[W]e need to really reimagine our immigration policy based around two things . . . foreign policy and criminal justice. . . .”¹⁶³

In July 2018, Democrats introduced a bill in the House of Representatives to shut down ICE.¹⁶⁴ The purpose of the bill, sponsored by Representatives Mark Pocan (D-WI), Pramila Jayapal (D-WA), and Adriano Espaillat (D-NY), was specifically to abolish ICE.¹⁶⁵ They believed ICE was too corrupt to reform.¹⁶⁶ In place of ICE, the sponsors suggested a commission that would “determine how best to ‘transition its essential functions to other agencies and ensure that these functions comport with our values and are subject to appropriate oversight, accountability, and transparency measures.’”¹⁶⁷ However, as of the publication of this Note, the bill has failed to pass.¹⁶⁸

F. *Support ICE*

Critics of the “Abolish ICE” movement suggest that neither the idea itself nor recent legislation attempts are as straightforward as the slogan suggests.¹⁶⁹ Moreover, critics are concerned about what would occur if a six-billion-dollar agency was completely dismantled:¹⁷⁰ whether

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. Lee Harris, *Progressive Democrats Introduce Bill to Abolish ICE*, ABC NEWS (July 12, 2018), <https://abcnews.go.com/Politics/progressive-democrats-introduce-bill-abolish-ice/story?id=56537797>.

165. *Id.*

166. *Id.*

167. *Id.*

168. Establishing a Humane Immigration Enforcement System Act, H.R. 6361, 115th Cong. (2018).

169. Matt Ford, *OK, Abolish ICE. What Then?*, THE NEW REPUBLIC (July 18, 2018), <https://newrepublic.com/article/149945/ok-abolish-ice-then>.

170. *Id.*

20,000 people employed under the agency would be laid off or moved;¹⁷¹ whether any of the agency’s responsibilities such as those that are specifically unrelated to immigration enforcement would be moved to a different agency or terminated.¹⁷²

In response to the movement, several politicians have explicitly supported the protection of ICE. In July 2018, President Trump stated, “[w]e protect ICE . . . [t]hey protect us and we protect them” at a campaign rally event in Montana.¹⁷³ That same month, a non-binding resolution passed in the House which expressed support for ICE.¹⁷⁴ Sponsored by Louisiana Republican Clay Higgins, the resolution passed 244 to 35, and it applauded ICE’s efforts in rescuing people caught in human-trafficking and the narcotics trade.¹⁷⁵

In addition, Republican senators, led by Senator John Kennedy (R-LA), called for the Senate to approve a resolution and put on the record its support of ICE in July 2018.¹⁷⁶ Kennedy stated, “[a]bolishing ICE is unthinkable . . . ICE officers are in the trenches fighting those threats and protecting American families from the cross-border crime and illegal immigration that endanger our families. ICE deserves our gratitude and respect, not scorn and ridicule.”¹⁷⁷ However, the resolution was blocked on the Senate floor by Kamala Harris (D-CA).¹⁷⁸

A majority of Republican voters also disagreed with the movement and voted in favor of the preservation of ICE in a recent survey.¹⁷⁹ Further, fifty-four percent of polled Americans voted in support of the preservation of ICE.¹⁸⁰ With regard to individual parties’ support, seventy-nine percent of registered Republicans and fifty-four percent of registered Independents supported keeping ICE.¹⁸¹

171. *Id.*

172. *Id.*

173. Sabrina Siddiqui, ‘We Protect ICE’: Trump Supporters Rally Behind Immigration Slogan, THE GUARDIAN (July 8, 2018), <https://www.theguardian.com/us-news/2018/jul/08/ice-immigration-customs-enforcement-trump-democrats>.

174. Alex Pappas & Chad Pergram, *GOP Bill Applauding ICE Approved in House, as Dems Lament ‘Stunt’*, FOX NEWS (July 18, 2018), <https://www.foxnews.com/politics/gop-bill-applauding-ice-approved-in-house-as-dems-lament-stunt>.

175. *Id.*

176. Stephen Dinan, *How GOP Senators Are Rushing to Support ICE*, WASH. TIMES (July 12, 2018), <https://www.washingtontimes.com/news/2018/jul/12/gop-senators-push-measure-support-ice/>.

177. *Id.*

178. Pappas & Pergram, *supra* note 173.

179. Steven Shepard, *Poll: Voters Oppose Abolishing ICE*, POLITICO (July 11, 2018), <https://www.politico.com/story/2018/07/11/immigration-ice-abolish-poll-708703>.

180. Li Zhou, *Most Americans Oppose Abolishing ICE*, VOX (July 11, 2018), <https://www.vox.com/2018/7/11/17553330/abolish-ice-poll>.

181. *Id.*

III. PICKING SIDES: A PARTISAN ISSUE

With just these two positions, the “Abolish ICE” movement has forced both Democrats and Republicans to pick polar, arguably extremist, sides: completely eliminate ICE or support ICE and praise its efforts for the past fifteen years. This has caused splits within both the Democratic and Republican parties, forcing them to clarify and justify their position on ICE.¹⁸²

A majority of Republicans support keeping ICE¹⁸³ while a plurality of Democrats are in favor of abolishing ICE.¹⁸⁴ This issue has caused voters to reevaluate who they elect based on their political parties’ views on immigration reform.¹⁸⁵ Prior to the “Abolish ICE” movement, immigration reform was problematic primarily within the Republican Party due to Trump’s extreme campaign policies of “building a wall” and his administration’s tactics, including the zero-tolerance policy.¹⁸⁶ As a result, the majority of the country sided with Democrats’ immigration platform, according to Pew Research Center.¹⁸⁷

However, voters are now more open to having Republicans handle immigration issues and potential reform due to the fact that a growing number of Democrats support the movement to “Abolish ICE,” a slogan connoted to be completely open-ended on its immigration reform and regulation effects.¹⁸⁸ Moreover, Republican politicians are thrilled because the movement will potentially swing voters in upcoming elections to vote against Democrats who seek to abolish an entire agency within the federal government.¹⁸⁹ Even more so, the movement is causing voters of the Democratic Party to split their views on immigration reform, which could greatly impact election results.¹⁹⁰ Former Attorney General Eric Holder argued that this debate turned the

182. Valerie Richardson & Dave Boyer, *Feud Over Whether to Abolish ICE Exposes Democrats Ideological Split*, WASH. TIMES (July 1, 2018), <https://www.washingtontimes.com/news/2018/jul/1/abolish-ice-calls-expose-democrats-ideological-spl/>.

183. Zhou, *supra* note 179.

184. *Id.*

185. See Dara Lind, “Abolish ICE” Shows How Far Left Democrats Have Moved on Immigration, VOX (July 9, 2018), <https://www.vox.com/policy-and-politics/2018/7/9/17548062/abolish-ice-democrats-immigration-plan>.

186. Maria Liasson, *Four Questions About the Call to Abolish ICE*, NAT’L PUB. RADIO (July 3, 2018), <https://www.npr.org/2018/07/03/625507824/4-questions-about-the-call-to-abolish-ice>.

187. *Id.*; *Voters More Focused on Control of Congress – and the President – Than Past Midterms*, PEW RES. CTR. (June 20, 2018), <http://www.people-press.org/2018/06/20/voters-more-focused-on-control-of-congress-and-the-president-than-in-past-midterms/>.

188. Gregory J. Wallace, “Abolish ICE” is going hurt Democrats in the midterms, THE HILL (July 17, 2018), <https://thehill.com/opinion/immigration/397301-abolish-ice-is-going-to-hurt-democrats-in-the-midterms>.

189. *Id.*

190. *Id.*

focus away from the Trump administration's problems (i.e. the separation of children and families at the border) to solely on eliminating a federal agency.¹⁹¹ He stated, "[i]n some ways, you're giving the Republicans a gift by saying we're going to have a debate now about whether ICE [s]hould be abolished."¹⁹²

However, not all Republicans support ICE nor do all Democrats support the abolishing it.¹⁹³ The House passed a nonbinding resolution sponsored by Republicans. It was served to address family separations and state its clear support for ICE, and Congressman Justin Amash (R-MI¹⁹⁴) was the only Republican that voted against it.¹⁹⁵ Amash tweeted, "[t]he House voted today on an inane resolution regarding ICE. The resolution makes several dubious claims and denounces calls to abolish ICE. I wouldn't abolish ICE without an alternative, but there's no reason to treat a federal agency as though it's beyond reproach and reform."¹⁹⁶ Eighteen Democrats voted in favor of the resolution, supporting ICE.¹⁹⁷

From the evidence above alone, it is clear that not all Republicans or Democrats voted in accordance with their political parties' platforms.¹⁹⁸ Yet, it is clear that a plurality of politicians will vote in accordance with their political parties and, as a result, will likely continue to make immigration reform a partisan issue for voters.¹⁹⁹

191. Justin Wise, *Eric Holder: Calls to abolish ICE are 'a gift to Republicans'*, THE HILL (July 13, 2018), <https://thehill.com/homenews/396989-eric-holder-calls-to-abolish-ice-are-a-gift-to-republicans>.

192. *Id.*

193. Renk, *Michigan Republican Congressmen Votes No on Supporting ICE*, NEWS TALK WPBCK 95.3 (July 19, 2018), <http://wbckfm.com/michigan-republican-congressmen-votes-no-on-supporting-ice/>.

194. Amash has since become an Independent in Congress.

195. Matt Fuller & Elise Foley, *House Republicans Pass Immigration Resolution to Own the Libs*, HUFFINGTON POST (July 18, 2018), https://www.huffingtonpost.com/entry/house-republicans-ice_us_5b4fa39fe4b0de86f48962e6.

196. Justin Amash (@justinamash), TWITTER (July 18, 2018, 7:22 PM), https://twitter.com/justinamash/status/1019724160858312704?ref_src=twsrc%5Etfw.

197. Lissandra Villa (@LissandraVilla), TWITTER (July 18, 2018, 3:56 PM), <https://twitter.com/LissandraVilla/status/1019672217997758464>; Sophie Weiner, *Eighteen Democrats Join Hands with Nearly the Entire House Republican Caucus to Say: ICE Rules*, SPLINTER (July 18, 2018), <https://splinternews.com/eighteen-democrats-join-hands-with-nearly-the-entire-ho-1827702662>; see also Lissandra Villa, *Eighteen House Democrats Voted to Condemn The "Abolish ICE" Movement and Support the Agency*, BUZZFEED NEWS (July 18, 2018), <https://www.buzzfeednews.com/article/lissandravilla/almost-20-house-democrats-voted-to-express-their-support>.

198. Fuller & Foley, *supra* note 195.

199. *Id.*

IV. REFORM ICE: A MIDDLEMAN APPROACH

As a result of the two polar opposite partisan sides, some members of both parties have called for a centrist approach in addressing ICE and have demanded reform of the federal agency. For example, Former Homeland Security Secretary under the Obama administration Jeh Charles Johnson called to reform ICE, not abolish it.²⁰⁰ Johnson stated that abolishing an entire defense department would compromise national security and public safety.²⁰¹ Johnson explained that the calls to abolish ICE serve only to greater divide America's public and damages "any remaining prospect of bipartisan immigration reform."²⁰² Further, Johnson stated that reform must come from a compromise requiring both political risk and political courage.²⁰³

On the other side of the aisle, journalist and Fox News contributor Geraldo Rivera has also stated that ICE should be reformed.²⁰⁴ He suggested separating ICE's investigations from its enforcement tactics.²⁰⁵ "ICE investigations are the heroes in the eyes of fellow law enforcement and the people. But the . . . enforcement and the removal [of] people, it's a very difficult thing. It's not fair to them," Rivera said.²⁰⁶

Moreover, individuals agree that reform is a more approachable way to discuss and handle potential immigration reform. Cecilia Munoz, former director of the White House Domestic Policy Council under President Obama, contended that abolishing ICE is not realistic.²⁰⁷ She stated, "I . . . think the ["Abolish ICE"] argument has the effect, has the potential to push away folks who ultimately we need on our side in order to make the kinds of reforms in the way ICE behaves and in the immigration laws themselves."²⁰⁸ In accordance, Juan Escalante, an immigrant advocate, argues that simply dismantling ICE without a solid

200. Jeh Charles Johnson, *Abolishing ICE Is Not a Serious Policy Proposal*, WASH. POST: OPINIONS (July 6, 2018), https://www.washingtonpost.com/opinions/ice-needs-reform-not-abolition/2018/07/06/5d2cec0e-8133-11e8-b658-4f4d2a1aeef1_story.html?utm_term=.9d8ee6a4a2ff.

201. *Id.*

202. *Id.*

203. *Id.*

204. Gabriella Munoz, *Geraldo Rivera: ICE Should Be Reformed*, WASH. TIMES (Aug. 3, 2018), <https://www.washingtontimes.com/news/2018/aug/3/geraldo-rivera-ice-should-be-reformed>.

205. *Id.*

206. *Id.*

207. Isaac Chotiner, *Why "Abolish ICE" Is Not the Answer*, SLATE (May 21, 2018), <https://slate.com/news-and-politics/2018/05/why-abolish-ice-is-not-the-answer.html>.

208. *Id.*

replacement strategy could lead to the agency’s current role.²⁰⁹ He further notes, “We can’t create a sequel to ICE until we have a clear idea of what we, the American people, are for—not just against—when it comes to immigration.”²¹⁰

In addition to at least some political unity for reform, enforcement officials within ICE also see a reason to reform the agency. In June 2018, nineteen special agents from the Homeland Security Investigations unit within ICE sent a letter to DHS Secretary Nielson and called to reform ICE.²¹¹ As a result of Trump’s “zero-tolerance” policy, the separation of families in the media, and advocates calling for the abolishment of ICE, the agents called for Nielson to make the Homeland Security Investigations unit within ICE a separate agency under DHS and not completely eliminate it.²¹² They argued that the investigations unit is responsible for investigating “threats to national security, organized crime, narcotics smuggling and human trafficking.”²¹³ Thus, the enforcement officials proposed to create a standalone investigation unit and a sperate agency to handle immigration detention and deportation.²¹⁴

CONCLUSION

In February 2018, the United States Citizenship and Immigration Services changed its official mission statement and dropped the phrase “a nation of immigrants.”²¹⁵ This shows that the United States changed its view of immigration law and how the movement to “Abolish ICE” impacted it. María Cristina García, a history professor at Cornell University, explained that knowing how each federal department handled immigration “reveals a great deal about how a society views

209. Juan Escalante, *I’m a Dreamer. Abolishing ICE Isn’t the Answer*, HUFFPOST (July 13, 2018), https://www.huffpost.com/entry/opinion-escalante-abolish-ice_n_5b47b900e4b022fdcc579c56.

210. *Id.*

211. Alexia Fernández Campbell, *Nineteen Top ICE Investigators Ask DHS Officials to Split up the Agency*, VOX (June 29, 2018), <https://www.vox.com/policy-and-politics/2018/6/29/17517870/ice-agents-dhs-break-up-ice>; Letter from Homeland Security Investigation Special Agents to Kirstjen Nielsen (June 27, 2018), <https://www.documentcloud.org/documents/4562896-FILE-3286.html>; see also Jason Buch, *ICE Criminal Investigators Ask to be Distanced from Detentions, Deportations in Letter to Kirstjen Nielsen*, TEX. OBSERVER (June 27, 2018), <https://www.texasobserver.org/ice-hsi-letter-kirstjen-nielsen-criminal-civil-deportation-zero-tolerance/>.

212. Buch, *supra* note 211.

213. *Id.*

214. Campbell, *supra* note 211.

215. Kim Hjelmgard & Alan Gomez, *America Is No Longer a ‘Nation of Immigrants’*, USA TODAY (Feb. 23, 2018), <https://www.usatoday.com/story/news/world/2018/02/23/america-no-longer-nation-immigrants-uscis-says/366207002/>.

immigration.”²¹⁶ Further, she asserted that the federal department that oversees immigration plays a key role in determining how the government will regulate and manage immigration. She explained, “Placing immigration in the national security sector . . . reveals a changed focus on the idea of potential safety threats represented by immigrants, asylum seekers, and refugees.”²¹⁷

The “Abolish ICE” movement was a response to not only a growing federal transition which viewed immigration law as a national security concern, but also to recent events that sparked the movement. Further, it is important to recognize the truth in what exactly ICE does and address any misconceptions. From this, one can understand how the agency has grown to be so massive and complex as well as question what would occur if the agency were abolished. Through this, voters and politicians can understand and interpret their own potential solution to the “Abolish ICE” movement and the future of federal immigration regulations.

216. Olivia B. Waxman, *The ‘Abolish ICE’ Movement Is Growing. Here’s Why the U.S. Immigration and Customs Enforcement Agency Was Created*, TIME MAG. (June 29, 2018), <http://time.com/5325492/abolish-ice-history/>.

217. *Id.*