

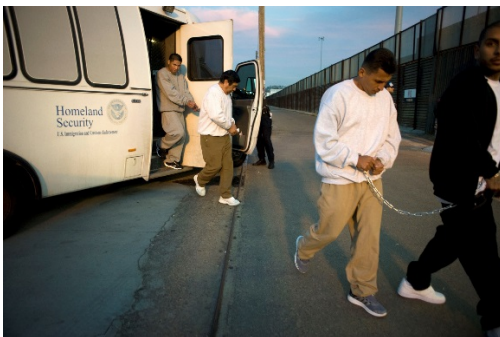


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Immigration Arrests Are Up, But Actual Deportations Are Down

Immigration courts are fighting severe backlogs that are preventing cases from moving through the system. Experts say much of that is because the administration's zero-tolerance policy for undocumented immigrants is loading more cases into the court system that might have previously been dismissed as low priorities.

Maya Srikrishnan
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Men are led off a bus to a deportation gate at the U.S.-Mexico border in 2015. / Photo by David Maung

More undocumented immigrants are being arrested by border and immigration agencies under an enforcement push by the Trump administration, but that has yet to translate into increased deportations.

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U.S. Customs and Border Protection has apprehended fewer people trying to cross the U.S.-Mexico border illegally, which suggests fewer people are trying to cross the border.

Immigration and Customs Enforcement officers are also arresting more people: Between Jan. 22 and Sept. 2, the agency arrested 97,482 people, up from 68,256 arrests in the same period the previous year.

Yet new data from the Transactional Records Access Clearinghouse, a research center at Syracuse University, shows a decline in “notices to appear,” charging documents signaling the initiation of removal proceedings.

Deportations are also down. ICE data from October shows the agency has deported roughly 211,068 people so far in 2017. ICE removed 240,255 people during the government’s 2016 fiscal year.

So why are arrests on the rise, while actual deportations are down?

“These results clearly reflect the continued prioritization of enforcement resources on aliens who pose a threat to national security, public safety and border security,” said ICE spokeswoman Lauren Mack in a statement. “Additionally, the decline in border apprehensions earlier this year had an impact on overall removal numbers, as the vast majority of arriving aliens are processed under the provisions of expedited removal.”

It also comes down to the types of enforcement actions agencies are taking, and how the enforcement is coming through the immigration court system.

One reason might be the types of enforcement cases that agencies are pursuing, said Ginger Jacobs, a San Diego-based immigration attorney.

For instance, ICE is targeting people with prior removal orders, who have already been deported; people with prior removal orders who return to the U.S. don’t go through legal proceedings in the same way as those going through it for the first time. And those who have reason to fear returning to their home country go through a different process to try to get a form of asylum.

“We have seen a major uptick of reinstatements with our clients and within the community,” Jacobs said. “They’re re-deporting. We’ve seen it happening almost systemically, almost like they’re going down a list.”

An ICE spokesperson said the agency doesn’t have 2017 data showing how many of its arrests and removals were of people with prior removal orders.

Deportations through prior removal orders, though, aren’t new. A 2012 TRAC report found 35 percent of removals were from prior removal orders.

Matt Holt, another immigration attorney in the county, said he's noticed more enforcement actions through things like traffic stops, which could be due to racial profiling.

"There have been more reports in San Diego officers pulling people over for non-immigration violations and then discovering their lack of immigration status," Holt said.

Those cases, Holt said, often don't hold up in court because ICE would need to show cause for making the stop. He speculates the Department of Homeland Security may not be filing many of the cases because they may be difficult to prosecute.

Holt said it may also be a sign of people going through a voluntary departure process, keeping their departures from entering the court system or being registered as deportations.

That practice would also not be entirely new: In 2013, the American Civil Liberties Union of San Diego & Imperial Counties and other groups sued Border Patrol and ICE alleging they coerced people to choose voluntary departure, when they may have had strong claims to stay in the United States.

"There are more profile stops, more arrests," Holt said. "If they aren't getting to court, then what is happening after they get stopped? Either the case is getting thrown out, or these people are being coerced into administrative voluntary departure."

ICE data suggests there has been a change in the way its agents find and arrest undocumented immigrants. For one, ICE is ramping up its arrests of undocumented immigrants without criminal records.

The number of detainees with criminal records has increased, and still represents the majority of those arrested. But detainees without criminal records have grown at a faster rate – nearly tripling from 10,031 between January and September 2016 to 28,011 in the same timeframe in 2017. The number of convicted criminals arrested increased roughly 16 percent during the same period.

But there's also a bottleneck with charging documents, said retired Chicago immigration Judge Robert Vinikoor, who was sent to help clear the case backlog in Otay Mesa for two weeks in April. After an arrest, cases need to go through an administrative review process before being filed in court. That can result in a lag of up to six months, Vinikoor said.

Even while court filings have decreased under the Trump administration, the backlog of immigration cases has been rising.

The administration this year announced plans to temporarily send more judges, like Vinikoor, to border courts to help with the backlog. The attorney general is implementing a streamlined hiring plan for immigration judges. Neither strategy seems to have made a dent in the backlog, but on Friday, the Department of Justice unveiled further plans to slash the massive immigration court backlog in half by 2020, according to the Washington Post.

Immigration courts currently have approximately 640,000 pending cases, according to the Department of Justice's Executive Office for Immigration Review. That office estimates it has cleared roughly 2,700 additional cases by sending judges to border courts. Of those, 447 were in San Diego and Imperial Counties.

Part of the backlog started under the Obama administration. Judge Dana Leigh Marks, president emeritus of the National Association of Immigration Judges, said immigration judges are also still dealing with the surge of Central American migrants and unaccompanied youths from a few years ago – many of whom have complex asylum cases that take longer to resolve.

But the Trump administration's aggressive enforcement policies are causing the backlog to grow even more.

Marks said people arrested through "interior enforcement" – people apprehended after they've been in the country for some time, rather than as they're crossing the border – often have stronger legal cases. Given that arrests are up, but apprehensions specifically near the border are down, it seems that more of this interior enforcement is happening. In addition, Jacobs, the immigration attorney, said she's noticed the Department of Homeland Security is setting higher bonds for those awaiting their immigration hearing – or flat-out refusing to even set a bond for many people. That means more people are being brought into court so judges will set bonds, rather than DHS just setting them.

"The Trump administration is detaining people at a higher rate than Obama, so people are asking for bond hearings," Jacobs said. "ICE is denying bonds to everyone, so they have to go to court to bond out."

That all increases courts' workloads.

Marks and Vinikoor both said they've noticed a lot of bond hearings, as well.

When Vinikoor was in Otay Mesa, roughly half his cases were bond cases and half were removal cases, he said.

The Trump administration has basically said everyone is a priority for removal, so cases in which law enforcement officers might have previously decided someone wasn't a priority for removal have moved forward, thus increasing caseloads.

"Immigration was given the authority to, if they had an encounter with someone with no criminal record, strong family ties, caring small children, they could just give a warning," Jacobs said. "They were explicitly told they had that authority, and many officers used it. Trump has revoked that authority. So now if ICE has an encounter with someone who is removable, they've basically been told, 'We don't have discretion anymore.'"

According to TRAC data, from February through June of 2016, the Obama administration closed an average of approximately 2,400 cases per month through law enforcement exercising discretion. During the same period in 2017, the Trump administration closed fewer than 100 cases per month.

“DHS attorneys are taking a zero-tolerance position in all cases,” Vinikoor said. “That means cases that used to be resolved very quickly, through administrative closure, are taking longer.”

Despite the backlog and low deportation numbers, the Executive Office for Immigration Review noted an increase in both removal orders and voluntary departures of 33 percent since last year.

Written By

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