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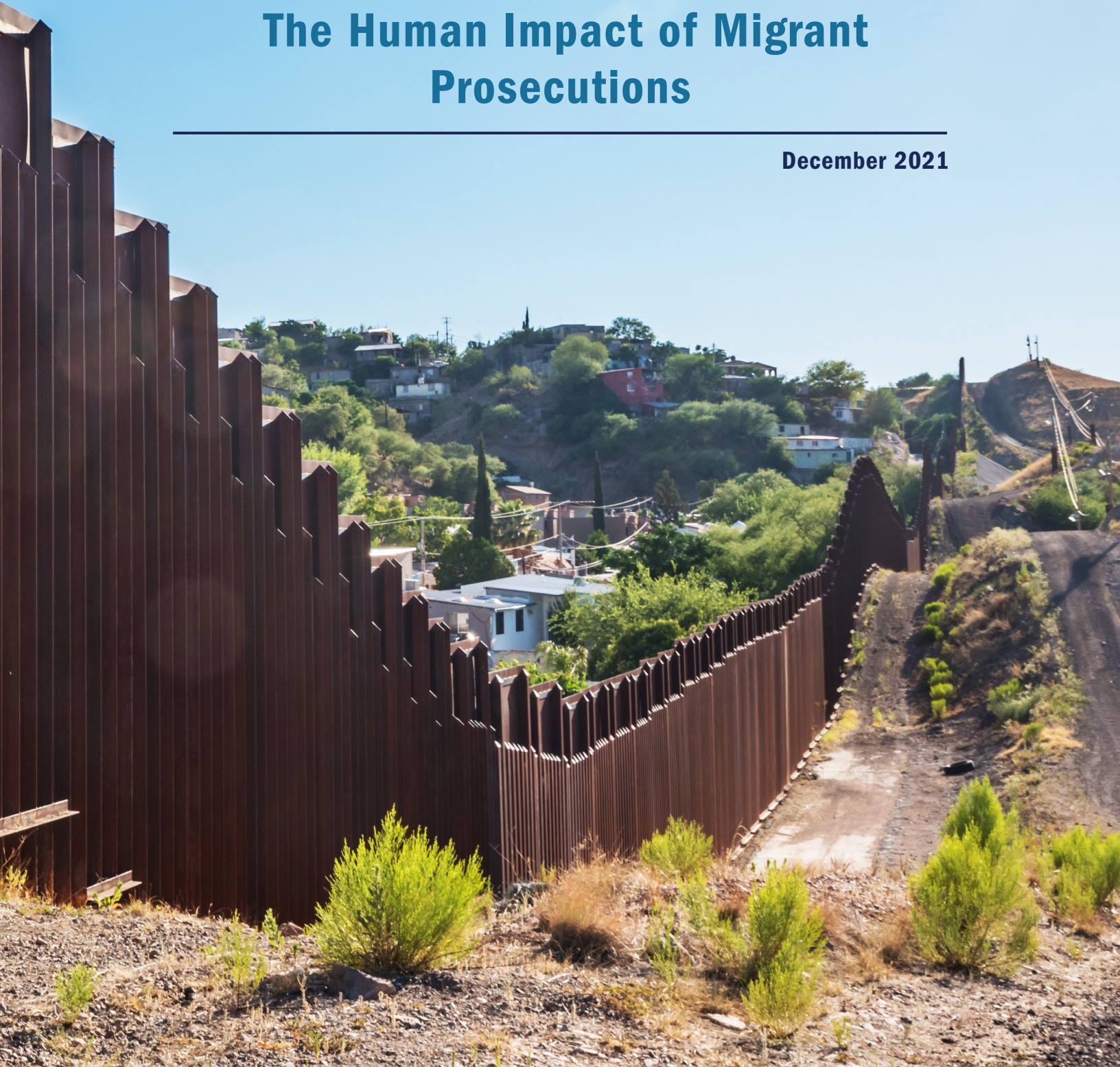
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# ROOTED IN RACISM

The Human Impact of Migrant  
Prosecutions

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December 2021



# ACKNOWLEDGMENTS

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# **INTRODUCTION**

Over the past two decades, unauthorized entry and re-entry prosecutions have become the most commonly prosecuted federal crimes. Passed into law over a century ago with [overtly white supremacist goals and rhetoric](#), their current impact continues to be directed disproportionately at Latinx people. In keeping with their racist origins and application, these laws cruelly punish immigrants and fuel the mass incarceration of Black and Brown people; waste government resources; destroy families; hurt communities; and deprive migrants seeking to come to the United States of vital protections.

In this report, we highlight trends and stories of people prosecuted for unauthorized entry and re-entry under 8 U.S.C. § 1325 (section 1325) and 8 U.S.C. § 1326 (section 1326), respectively, and the implementation and enforcement practices of Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and the federal courts. The stories are based on a survey of legal practitioners and community advocates that the National Immigration Project conducted in July 2021. They demonstrate the extreme inhumanity of these laws, and the pressing need to repeal them and to step away from criminalization in favor of just and humane immigration policies.

## **FAMILY SEPARATION**

The Trump administration used migrant prosecutions for unauthorized entry to separate families, a horrific practice it called its “Zero-Tolerance policy.” Under this cruel policy, parents and guardians were ripped apart from their children in order to be criminally prosecuted. Most were not united until after class action litigation against the government forced their reunification, and some remain separated to this day.

### **D-G-**

D-G- fled her home country with her eleven-year-old son in order to escape domestic violence. Her arm was still in a sling from her abuser’s most recent attack when they arrived at the U.S. border in July 2017. D-G- and her son became one of the first families subjected to the Trump administration family separation policy. She was placed in federal custody for prosecution under section 1325, to which she pled guilty and was sentenced to fifteen days in jail. After completing her sentence, she was transferred to immigration detention, where she spent nearly another two years separated from her son.

### **Jorge De La Mora-Cobian**

Jorge first came to the U.S. at eighteen years old, but returned to Mexico in 2004 on voluntary departure after a DUI conviction. In Mexico, Jorge started a new life, married, and had three children. However, in 2016, he was kidnapped and held for ransom, and had the tip of his finger cut off. After this, Jorge and his family traveled to the U.S. and requested asylum at a port of entry. His wife and children were allowed to enter to pursue their claims, but Jorge was separated from them and his asylum claim was rejected. No explanation was given for this different treatment, but Jorge chose not to appeal his denial because he did not want to remain detained, where he would continue to be separated from his family. He was deported to Mexico via an abbreviated process called expedited removal. He eventually managed to enter the U.S. without inspection in order to reunite with his family.

**“No explanation was given for this disparate treatment, but Jorge chose not to appeal his denial because he did not want to remain detained...”**

In April 2019, ICE became aware of Jorge's presence and arrested him. He was charged under section 1326 for illegal re-entry and offered a plea deal, but he rejected the offer because it involved jail time, which would once again separate him from his family. Instead, he continues to fight back against the government's charges, and his case is now pending before the U.S. Court of Appeals for the Ninth Circuit.

### **Maria Miguel-Juan**

Maria, a Guatemalan national, was forcibly separated from her granddaughter at the U.S. border. Maria is deaf due to a traumatic brain injury caused by her abusive husband and later aggravated by a fall. She is also Mayan and understands almost no Spanish. She has no criminal record and was last deported almost a decade ago. Despite these circumstances, the government prosecuted her for unlawful entry and pressed for trial, and she spent nearly two months in jail before the government dismissed the case due to the inconvenience of getting multiple interpreters for the trial.

### **Nazario**

Nazario fled Guatemala with his five-year-old daughter to escape extortion and death threats from a local gang. They were apprehended in May 2018 while entering the U.S. and forcibly separated in order for Nazario to be criminally prosecuted under section 1325. Nazario was told by CBP officers that he would be in jail for two or three days and then returned to his daughter, but this did not happen. After two weeks in jail away from his daughter, Nazario decided to plead guilty, give up on his asylum claim, and agree to deportation in order to be reunited with his daughter. He was sentenced to time served and then transferred into immigration detention, where he spent another two weeks before being able to speak to an ICE officer about abandoning his asylum case. Nazario was deported and flown back to Guatemala on June 20, 2018, the very same day President Trump signed an executive order halting the family separation policy, but his daughter was not with him. Nazario was not reunited with his daughter until over a month later; during this entire period, Nazario and his wife were not able to speak with their daughter, who was too choked with tears to talk every time they attempted a phone call.

## **IGNORING STRONG EQUITIES AND TIES TO THE U.S.**

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In prosecuting people under sections 1325 and 1326, and particularly when making bond determinations, ICE, CBP, and the federal courts have consistently ignored significant equities and strong ties to the United States. These stories illustrate how these laws have broken homes, weakened communities, and caused human misery and even death. Referrals for prosecution actively harm people's ability to pursue their immigration cases as well, since it impacts their ability to find counsel, their bond determinations in immigration court, and also leads to prolonged detention and wrongful deportation for people who have strong claims to relief.

### **Edgar Lopez**

Edgar, a Guatemalan national, had lived in the U.S. for over twenty-two years when he was arrested in August 2019 during one of the largest workplace immigration raids in U.S. history. He and his wife were some of the first to settle in the now thriving Guatemalan community in Carthage, Mississippi. There, they raised three children, four grandchildren, devoutly attended church, and worked at the local chicken plants.

After the raids, around half of the 680 people arrested were released on the basis that they had family in the U.S. and no criminal record. Despite meeting these criteria, however, Edgar was not released and was instead criminally charged under section 1326 because he had been removed from the U.S. twenty-two years prior. The judge in his unlawful reentry case found it appropriate to release him on bond, and his family paid the \$10,000 for his release, but ICE officers picked him up and transferred him into immigration detention instead.

Recognizing the low likelihood of winning the case and wanting to avoid additional time in detention, Edgar pled guilty to illegally re-entering the country. The judge sentenced Edgar to one day in prison and noted: "It hurts my heart to see what this great nation is doing to you." Despite Edgar having already completed his one-day sentence, ICE kept him in detention, where he spent the next eight months being transferred between facilities as COVID-19 surged.

In July 2020, after eleven months behind bars and during the height of the pandemic, Edgar was deported to Guatemala. He desperately wanted to reunite with his family, but he was afraid of trying to re-enter the U.S. without authorization and being jailed again. However, his desire to see his family eventually outweighed his fears. In January 2021, Edgar traveled to the U.S. border but tragically died when he and eighteen others were shot, dumped in the back of a truck, and set on fire. Though the motivations behind the killings are still unknown, twelve Mexican police officers, three of whom had received training from the U.S. State Department, have been charged with homicide.

### William Diaz Castro

William came to the U.S. in 2007 to escape increasing violence in Guatemala and was later joined by his wife. The two settled in New Orleans, where they established a new life, became part of the community, and lived peacefully until 2012, when William was arrested by ICE and deported while his wife was pregnant. He managed to re-enter without authorization and made it back just in time for the birth of his child. Then, in 2016, ICE agents came to William's home. They had no arrest warrant or permission to enter the home, and they were looking for someone

**“The arrest traumatized the family, and William’s absence caused the family further hardship...”**

else, but they arrested him anyway in front of his wife and child. The arrest traumatized the family, and William's absence caused the family further hardship, with William's wife once again left alone to maintain the household and care for their family, while his son was left without a father and with a profound fear of police officers. Meanwhile, William was criminally charged under section 1326 for illegal re-entry and detained.

Following his arrest, the New Orleans community came together to support William. The Congress of Day Laborers, an organization of day laborers who helped rebuild the city after Hurricane Katrina, in which William was a leader, held a twenty-four hour vigil to protest his arrest and to demand that his charges be dropped. William remained in jail for ten months, pled guilty to a reduced charge, and was sentenced to time served. He was then transferred back into immigration custody and later released following a request for prosecutorial discretion. William is now reunited with his family and checks in with ICE every six months. His son still cries when



William leaves or when he sees police officers because he thinks they will take his father away.

## **Sergio Miramontes-Maldonado**

Sergio first came to the U.S. in 1990 when he was sixteen to work and send money back to his family in Mexico, as well as to sustain his partnership with a U.S. citizen whom he met in Mexico and had been dating since they were both fourteen. The two eventually married and created a life together. Today, they have four U.S. citizen children and six U.S. citizen grandchildren.

Sergio was removed in 2000 and re-entered without inspection to rejoin his family, but otherwise has spent thirty-one years in the U.S. – the majority of his life. In this time, he has worked in agricultural fields and then the restaurant industry, where he has owned several restaurants and managed several others. He has raised children and grandchildren and become a role model in his community. As the judge in his sentencing hearing said, “in every single way acted exactly as we would want any U.S. citizen to act.”

ICE targeted and arrested Sergio in February 2019, but due to the changing enforcement priorities under the Trump

Administration. He was referred for criminal prosecution and charged under section 1326 for illegal re-entry. With the priority of reuniting with his family, Sergio and his attorney crafted an unconventional strategy for his criminal case. The federal government proposed a sentence for time served, but Sergio knew this would result in his immediate transfer into ICE custody and the continuation of his removal proceedings. Instead, Sergio requested a one-day sentence from the judge because this would allow him to appeal the decision.

**“ICE targeted and arrested Sergio in February 2019, not for anything he did, but simply due to the changing enforcement priorities under the Trump Administration...”**

The judge, recognizing Sergio’s value to the community and the unfair outcome that would result from a time-served sentence, decided that justice in this case required “doing something extraordinary to achieve something that is really called for by the unique facts of the case.” Accordingly, he gave Sergio a one month sentence and

made a finding that he does not pose a risk of flight or danger to the community. Sergio immediately filed an appeal to the decision and is currently out of detention, living with his family while he awaits a decision on his case.

### **Martha Perez-Hernandez**

Martha was born in Mexico and has lived in the U.S. for over twenty years, since she was a child. Her husband is a lawful permanent resident, and together they have four U.S. citizen children as well as one child who has DACA. After her mother became ill, Martha traveled to Mexico to visit her. While she was there, her nephew was attacked and her friend's son was murdered. On her way back to the U.S., Martha was attacked, robbed, and thrown into the Rio Grande. Still injured, Martha presented herself at a point of entry and tried to explain her situation. However, a CBP officer grabbed her and told her to "sit down and shut up," twisting her arm in the process and aggravating her injuries to the point of making her cry. She was told to return to Mexico, so she decided to enter the U.S. without authorization.

Upon entry, she was apprehended and charged under section 1326. Martha was granted bond, but was then transferred to ICE custody and kept in detention. She was ultimately convicted for crossing the border.

**"Martha was granted bond, but was then transferred to ICE custody and kept in detention..."**

### **Blanca Sanchez-Herrera**

Blanca was born in Mexico and lived in the U.S. for fifteen years where she had a U.S. citizen husband and U.S. citizen children. She also volunteered at her church. Blanca was arrested by ICE agents as she was pulling out of her home to pick her kids up from school. She had no prior contact with the criminal legal system and her last removal from the U.S. had happened almost ten years prior. She was charged with illegal reentry under 1326. Although she was granted bond while her charges were pending, she could not afford to pay it. Blanca ultimately pled guilty to avoid extended time in jail.

## **Reyna Mendoza-Garcia**

Reyna was born in Mexico and lived in the U.S. for over ten years with her minor U.S. citizen children. She was removed in 2018. Martha moved her children to Veracruz and tried to start a new life, but faced gang violence. During a party at her cousin's house, gang members in a municipal police truck raided the home and pointed guns at her children. Separately, gang members shot and killed her nephew at a park. As a result, Reyna sent her children back to the U.S. to live with their father. She then tried to enter the U.S. without inspection in order to reunite with her children, but she was detained and charged under section 1326. Reyna pled guilty to a lower charge.

## **Nader Caraveo-Galvez**

Nader, a Mexican national, lived in the U.S. for over ten years with his U.S. citizen wife and U.S. citizen minor children. Nader had convictions for a misdemeanor DUI and driving without a license. He was removed from the U.S. and attempted to enter without authorization to reunite with his family, but was apprehended and convicted under section 1326. Ultimately, he was deported and his U.S. citizen children were forced to emigrate to Mexico in order for them to avoid being separated from each other.

## **Ana**

Ana first came to the U.S. from Mexico in 1991 at the age of seventeen. She spent the next twenty-six years building a life, raising her three U.S. citizen children and her U.S. citizen grandchild. In 2017, Ana traveled to Mexico to see her dying mother, not knowing this trip would leave her permanently separated from her children. While taking care of her mother in Mexico, she attended a long-awaited visa interview, but her application was denied and she was subjected to a ten-year bar which meant that she could not apply again for another ten years. Facing threats in Mexico, and desperate to see her children again, she attempted to return to the U.S. without authorization in 2019, but was arrested, prosecuted for illegal entry under section 1325, and ultimately deported. Today, Ana remains in Mexico, separated from her family and the life that she built.

## Luis Mayea Pulido

Luis was brought to the U.S. from Mexico as a baby in 1979. He became a lawful permanent resident in 1986, but was deported in 2003 following a theft conviction that today would likely not be considered a deportable offense. Luis later returned to the U.S. without authorization in order to escape threats of violence in Mexico and to reunite with his family.

In 2017, Luis was arrested while standing at a bus stop near the U.S.-Mexico border and referred for prosecution for illegal re-entry under section 1326. At trial, Luis argued that he had acquired U.S. citizenship through his father, but the court rejected this claim and sentenced him to six years in federal prison. Luis is now serving this sentence while appealing the conviction on constitutional grounds.

## Juan

Juan first came to the U.S. at the age of fifteen. He is now thirty-seven years old and has five U.S. citizen children. In 2008, he was deported without an immigration court

**“He tried many times to return to the U.S. to be with his children but was faced with deportation each time...”**

hearing even though he was eligible for a path to citizenship at the time. He tried many times to return to the U.S. to be with his children but was faced with deportation each time. In 2018, he was arrested and referred for criminal prosecution under section 1326. Juan was released on bond and successfully had his case dismissed, but he was arrested by ICE agents as he left the courthouse. From February to June 2020, he was shuffled between California detention centers, resulting in his infection with COVID-19.

## Arnoldo Munoz-Mendez

Arnoldo is a Mayan man who was paroled into the U.S. as a child on humanitarian grounds after fleeing persecution in Guatemala with his mother and sisters. Arnoldo grew up in the U.S., where he attended school and learned fluent English. During his senior year of high school, he was in a car with a friend when they were pulled over by police. The officer found a tiny amount of marijuana in the side of the car opposite

to Arnoldo, and Arnoldo denied possession, but the officer arrested everyone in the car for possession of marijuana. The case was dismissed for lack of evidence, but ICE nevertheless revoked his humanitarian parole and deported him to Guatemala. Arnoldo attempted to return to the U.S. without authorization to reunite with his family, but was arrested, convicted under section 1326, and deported.

### **Alejandra Garcia-Zamarron**

Alejandra was brought to the U.S. as a child from Mexico. She grew up in the U.S., received DACA, and had U.S. citizen children. After being sexually abused, she fell into a depression and did not renew her DACA. One day, she was pulled over by traffic police and arrested for giving a false name and date of birth out of fear of being deported. After a year of fighting her removal, she accepted voluntary departure because she could not bear to continue to be in detention and separated from her children. Alejandra attempted to return to the U.S. without authorization so she could reunite with her children, but she was apprehended and removed. Shortly thereafter, she was arrested again while attempting to enter the U.S. and transferred for criminal prosecution under section 1326. Alejandra filed a U-visa application but was ultimately convicted and transferred back to ICE custody. While detained, she was coerced into agreeing to deportation by an abusive ICE officer who told her “all you people bring to this country is problems.” Alejandra is currently living in Mexico, separated from her U.S. citizen children and awaiting a decision on her U-visa application.

**“While detained, she was coerced into agreeing to deportation by an abusive ICE officer...”**

### **Martín Gutierrez-Barba**

Martín has lived in Arizona since he was 7, and nearly all his family members are U.S. citizens and lawful permanent residents. He had a child with his high school girlfriend, but she later developed a debilitating addiction. Martín fought for and received full custody of his son, now 15. About five years ago, Martín married and had a child with his wife. Tragically, their daughter was born extremely premature and with a breathing condition that required round-the-clock care from both parents.



Martín was arrested and prosecuted for illegal reentry, and only released from pre-trial custody when the Phoenix Children’s Hospital contacted the court to alert them that his daughter was dying. She died shortly after he was released, at the age of 16 months. Martín provides for his family, attends his church, and is a valued member of his community. None of that stopped the government from going after him for the simple act of crossing the border to be with his loved ones.

## **DUE PROCESS VIOLATIONS**

Due process violations are widespread in the immigration system, and ICE and CBP’s treatment of people they refer for prosecution under sections 1325 and 1326 compounds this problem. These violations have harmed thousands, and include failing to screen people for asylum, destroying their documents, placing them in dangerous conditions, criminal procedure rule violations, coerced pleas, inhumane pre-trial conditions, inadequate language access—and they have resulted in untold harm and suffering for thousands. These stories demonstrate just a few of the litany of violations for which ICE and CBP are rarely held accountable; instead it is the agencies’ victims who suffer grievous consequences.

### **Failure to Screen for Asylum**

#### **Alexis**

Alexis, who is transgender, fled Guatemala after suffering violence due to her sexual orientation and gender identity. She presented herself at the U.S. border, but CBP officers failed to screen her for asylum. Afraid of staying in a dangerous environment near the border, Alexis crossed into the U.S. without authorization in August 2019 and was arrested by CBP. Once again, she was not given the opportunity to present her asylum claim, and was instead referred for prosecution under section 1325 for illegal entry.

While in custody, Alexis experienced several forms of abuse and discrimination. Officers yelled at her, cursed at her, insulted her, grabbed her by the hair, and told her they would hit her if she spoke. She was also placed in an “icebox” – a freezing cold border patrol cell – and then placed in detention with men instead of people of her gender identity. Throughout her detention, she experienced cold, hunger, and depression. She felt scared and powerless.

Ultimately, Alexis was deported without ever being interviewed for asylum, despite having repeatedly told officers that she feared for her life in Guatemala. She was able to return to the U.S. and seek asylum only after attorney intervention.

## James

In 2010, James was pulled over in a routine traffic stop and turned over to ICE because he could not prove lawful status. He was then coerced into accepting voluntary departure and sent to Mexico the same day. ICE never informed James of the consequences of taking voluntary departure or his right to a hearing.

In Mexico, James was subject to cartel violence and death threats from criminal drug networks with ties to the police. Fearing for his life, he decided to return to the U.S. to seek protection. In July 2019, James was apprehended at the border and referred for criminal prosecution under section 1325 without being given an opportunity to explain his fear or pursue his asylum claim. In October 2019, the charges were dismissed, but he was arrested by DHS agents in the courtroom and taken to a CBP holding facility where he had virtually no contact with the outside world, including family and counsel. James was finally transferred to ICE detention weeks later after counsel filed a writ of habeas corpus demanding his release.

**“...he was arrested by DHS agents in the courtroom and taken to a CBP holding facility where he had virtually no contact with the outside world, including family and counsel...”**

## Over-Detention

### Noe Ortiz Villagran

In 2018, Noe fled Guatemala with his children after being targeted by the Barrio 18 gang who had recently killed his brother-in-law. He entered the U.S. without inspection and immediately turned himself in to immigration authorities. Noe was put into U.S. Marshals custody for prosecution under section 1325 and was separated from his children, who were transferred to the Office of Refugee Resettlement. Upon intake, Noe, who has an amputated left foot, had his specialized walking boot taken from him and was given only a sock to replace it, despite his multiple requests for accommodations.

Noe pled guilty to the section 1325 charge and was sentenced to 35 days to include time served. Noe was not released from detention at the end of his sentence, but

**“Noe was not released from detention at the end of his sentence, but was instead unlawfully held for a full 46 days beyond the date he completed his sentence...”**

was instead unlawfully held for a full 46 days beyond the date he completed his sentence. Despite his many requests, officials never told him why he was still being detained and he was only released after his children hired an attorney who intervened on his behalf. Noe was eventually transferred to ICE custody and released on bond a month later.

## No Translation Provided

### E.C.V.

E.C.V. is a Mayan woman and survivor of domestic violence. In 2015, she fled Guatemala to seek protection in the U.S., where she was quickly processed for expedited removal. Despite only speaking Mam, E.C.V. was not provided translation, and officers instead spoke to her in Spanish. E.C.V. was deported to danger in Guatemala without ever being screened for asylum.

After a brief period in hiding, E.C.V. once again fled Guatemala to seek protection in the U.S. After entering without authorization, she was referred for prosecution under section 1325. During her trial, she was not provided with an interpreter and therefore had no understanding of the criminal charges, the trial, or her conviction. Ultimately, E.C.V. was sentenced to twenty days of incarceration, after which she was transferred into ICE custody for removal proceedings.

## **PROCEDURAL ERROR**

### **Jorge Apodaca**

Jorge, a Mexican national, had lived in El Paso, Texas, for over twenty-five years. He was married to a U.S. citizen and had minor U.S. citizen children. In October 2010, the National Visa Center sent Jorge a letter misinforming him of his eligibility to adjust status. In May 2019, Jorge applied for adjustment of status based on this misinformation. Less than a month later, ICE agents detained Jorge as he was leaving his home, which led to him being criminally charged under section 1326 for illegal re-entry. Jorge had no prior contact with the criminal legal system and only a single prior removal from 2002. Nevertheless, he was denied bond. Eventually, the 1326 charge was dismissed for violating the statute of limitations, but Jorge was ultimately deported. His daughter has suffered depression as a result of missing her father.

### **Noe Flores-Perez**

Noe was first brought to the U.S. by his uncles as a teenager to work and send money back home to family in Mexico. In 2001, he was ticketed by a police officer for illegal pollution because of an oil spill. This led to immigration officers issuing him a Notice to Appear (NTA) for a removal hearing in immigration court. However, the officers incorrectly recorded his address and gave him an NTA that did not contain a date and time. As a result of the immigration officers' mistake, he did not receive a subsequent notice and was ordered removed in absentia by the immigration judge when he did not appear to the hearing. Had he attended the hearing, he would have been eligible for and likely received voluntary departure.

Unaware of the removal order, Noe continued with his life. He married, had a U.S. citizen child, and raised another child from his wife’s previous relationship as his own. Then, in 2009, he was deported after a traffic stop revealed his outstanding removal order. While in Mexico, Noe learned that his wife was pregnant and that it was a high risk pregnancy, so he re-entered the U.S. without authorization to be with his family.

In December 2018, Noe was arrested and charged with illegal re-entry. During discovery, he learned about his 2001 in absentia removal and the immigration officer’s error in recording his address. Noe filed a motion to dismiss, but it was rejected on the basis that he had not exhausted administrative remedies by filing a motion to reopen—which he could not have filed because he was unaware of the prior removal order. Today, Noe has filed a motion to reopen his immigration case and an appeal of his criminal case remains pending.

## Documents Destroyed/Not Returned

### Elder Lara

Elder, a Honduran asylum-seeker, was forcibly separated from his eight year old daughter at the border and charged under section 1326. He had no prior contacts with the criminal legal system and only a single deportation eight years prior. During the arrest, Elder’s documents establishing paternity were taken by CBP agents, who then processed his daughter as an “unaccompanied child” and placed her in a shelter in New York City. Elder managed to contact his daughter from jail and obtained replacement documents from his daughter’s mother in Honduras. He also requested a DNA test, but was unable to afford the \$500 price. Despite all this, the government still refused to acknowledge his paternity.

**“Elder’s documents establishing paternity were taken by CBP agents, who then processed his daughter as an ‘unaccompanied child’...”**

While in jail, Elder was mistreated by a guard who mocked him and laughed at him for signing a legal form with an “X” because he did not know how to read or write.



In violation of their public relations policy, the US Marshals also instructed the local jail not to allow journalists to speak with Elder and to have guards “check in” on who he was talking to during attorney visits. Ultimately, Elder pled guilty to the section 1326 charge and he and his daughter both agreed to a deportation so they could reunite in Honduras.

## Gustavo

In November 2019, Gustavo and his girlfriend presented themselves at a U.S. port of entry to request asylum protection, but were told they needed to wait in Mexico. Facing threats from organized criminal networks in Mexico and worried about her injured leg, they found themselves with no choice but to enter the U.S. without authorization. Upon entry, they were apprehended by CBP and Gustavo’s girlfriend was placed in ICE detention, but Gustavo was instead referred for criminal prosecution under section 1325. Gustavo had all his belongings confiscated, including his paperwork documenting the persecution he fled, which was never returned to him.

## Placed in Dangerous Conditions

### Oliver

In 2019, Oliver fled death threats from gangs tied to corrupt police in Honduras. He requested asylum at a U.S. port of entry, but was not allowed to enter the country. After three months waiting in Mexico, he entered the U.S. without authorization and was arrested by CBP, who referred him for criminal prosecution under section 1325. Oliver was released on bond after three months in detention and his charges were dismissed in February 2020, but he was arrested by ICE while leaving the courthouse. Despite the onset of the coronavirus pandemic, he was transferred between detention centers and was never tested for the virus or provided with a mask. Oliver had to resort to using his own shirt as a mask and was only released in June 2020 after attorney intervention. He is currently pursuing his asylum claim.

**“Oliver was released on bond after three months in detention and his charges were dismissed in February 2020, but he was arrested by ICE while leaving the courthouse...”**

## Durvi Martinez

In January 2020, Durvi, a transgender woman and a brave, outspoken advocate for immigrant and LGBTQ rights, was prosecuted under section 1326 after local police transferred them to Border Patrol custody. They spent three months in detention, where they were held in an all-male section of the prison, denied diabetes medication, and suffered severe weight loss. In March 2020, Durvi was in the process of preparing an asylum application based on violence and persecution they

**“...they were held in an all-male section of the prison, denied diabetes medication, and suffered severe weight loss...”**


experienced in Mexico as a trans person when the coronavirus pandemic began spreading through detention centers. Rather than releasing Durvi, ICE chose to quickly deport them without notifying their attorney and ignoring their asylum claim. Durvi died on July 1, 2020 from COVID-19.

## Margo

Margo first came to the U.S. in 2014, but was quickly detained and deported. She returned in November 2018, fleeing gang violence and police corruption in Honduras. She was apprehended upon entry and referred for criminal prosecution under section 1326 for illegal re-entry, but pled guilty to a lower charge of illegal entry. After completing her sentence, she was transferred back to ICE detention, where she was placed in a cell with ex-members of the same gang that had threatened her life in Honduras. Margo was finally released from detention in June 2020, after months of attorney intervention, during which more than 100 people in the detention center tested positive for COVID-19.

## CONCLUSION

The criminalization of migration is a harmful, racist practice that punishes people for seeking to reunite with their families. The increasing and callous implementation of these laws has resulted in thousands of separated families and damaged communities; countless due process violations; and violence and harm to people deported. The stories shared in this report demonstrate the need



to repeal these laws in favor of a system which recognizes people as people, not targets for criminalization.

The Biden administration should suspend criminal prosecutions for unauthorized entry and reentry and should undertake a review of the racist history and disparate impact of these prosecutions. The administration should also take measures to phase out the use of criminal prosecutions for migration offenses entirely, and to stop the practice of incarcerating people for the simple act of crossing the border. The Biden administration has the power to end the kind of suffering described in this report. Ending migrant prosecutions would be a significant step forward in achieving its twin stated goals of advancing racial justice and creating more humane immigration policies.

**n a t i o n a l**  
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