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I. Introduction

In response to the Commission's letter dated February 1, 2019, notifying Petitioners that their petition, *Oswaldo Marcelo Lucero et al. v. United States*, Case No. 13.735, was found to be admissible as it relates to Articles I, II, V, XVII and XVIII, in response to the Commission's Report on Admissibility 192/18 presented on December 31, 2018 in compliance with Article 37 of the Rules of Procedure, Petitioners now present these additional observations to assist the Commission as it moves forward in examining the merits.

It has been eleven years since this petition was originally filed, however the anti-immigrant climate in the United States that has fostered law enforcement's abuses as well as failures to protect Latino civilians from violence and harassment has only escalated and is now at levels unseen in decades. Petitioners' various supplemental filings to the Commission over this period demonstrate the foregoing. Latino and immigrant residents of the United States continue to be targets of hate crimes, racial profiling, massive deportations and either the active targeting by law enforcement or the silent complicity when failing to protect Latinos who far too often are unnecessary victims of crimes. Latinos continue to be targeted, harassed, abused and killed, often either directly by the state or in the face of vivid disinterest by law enforcement personnel to protect Latinos.

The highest levels of the U.S. federal government continue to actively encourage such hate-filled rhetoric, and there are numerous cases of federal and local law enforcement either abandoning their obligations to respect, protect and fulfill human rights obligations in securing the safety of all civilians, or they have affirmatively violated the dignity and well-being of Latino civilians. The anti-immigrant, anti-Latino climate has encouraged similar language and hate crimes among citizens who target Latino immigrants with overwhelming impunity. "Local, state, and national government participation in alarmist immigration rhetoric and laws embracing 'alien immigrant,' 'criminal,' and terrorist' as one in the same, lend legitimacy to a range of anti-immigration activities by civilians."¹

The disproportionate impact of failed immigration enforcement and policing policies on the Latino community comes at a time when the Commission has been paying close attention to the killing of African-American citizens at the hands of law enforcement in the United States,² recognizing the pattern of a failed criminal justice system from initial interaction with law enforcement to investigation, indictment, prosecution and conviction. It also comes at a time of increased vitriolic rhetoric by heads of state across the region, which includes xenophobic, misogynistic, racist, homophobic and anti-poor language that have been converted into official state practice, particularly in the United States. Within the U.S., this pattern of unchecked hate speech and state violence is not limited to any one particular state, but rather is occurring nationwide in cities and towns across the country.

¹ Mary Romero, *Are Your Papers in Order?: Racial Profiling, Vigilantes and "America's Toughest Sheriff"*, 14 HARV. LATINO L. REV. 337, 349 (2011).

² See IACHR Expresses Concern with the Deficiencies in the Investigation of Cases Relating to Killing of Afro-descendants by the Police in the United States (Aug. 23, 2016), http://www.oas.org/en/iachr/media_center/PReleases/2016/120.asp.

Latinos/as overwhelmingly recognize that their fear for their lives, citizen insecurity and targeting based on race and ethnicity is directly traceable to the highest levels of government and officials, including President Trump.³ In a recent survey by a credible polling organization, nearly half of Latinos/as say their situation worsened in 2018 and they feel insecure under President Trump, a significant increase from just prior to the 2016 presidential election.

Despite the United States' withdrawal from human rights mechanisms and showing reluctance, if not adversity, to participating in long-established forums intended to vindicate human rights, the United States is still responsible for complying with its international human rights obligations, including informing, training, monitoring, and enforcing compliance with relevant international law. Petitioners submit their request in light of the Commission's understanding of the same.

I. The Trump Administration's pattern of widespread hostility toward Latinx immigrant lives⁴ perpetuates a climate of fear and violence in America.

A. The latest round of racist and xenophobic language began during Trump's 2016 presidential campaign platform.

As the Commission correctly noted, Petitioners allege that the United States, both "through its actions and omissions, is responsible for encouraging a climate that fosters violence against Latinos residing in the country, which has resulted in an increase in the number of crimes committed against them by private individuals."⁵ Unfortunately, those facts have not changed since this petition was filed in 2008. In fact, they have only intensified. As Petitioners detail below, the United States continues to create climates encouraging of violence by "inadequate data collection, limited training of law enforcement officials regarding investigating and documenting hate crimes, delegation of immigration authority to localities, hostile and biased enforcement of immigration laws, as well as the failure to devote resources to monitor hate groups and institute policies to ensure protection."⁶ But more than that, the United States is now actively inciting violence against Latinos/as through racially incendiary language, implicit acceptance of private

³ Arelis Hernandez, *Pew survey: It's getting harder to be Latino in America*, Washington Post (Oct. 25, 2018), https://www.washingtonpost.com/local/immigration/pew-survey-its-getting-harder-to-be-latino-in-america/2018/10/25/1b11ea34-d649-11e8-83a2-d1c3da28d6b6_story.html ("Two-thirds of Hispanics say the government's actions — which include lowering the bar for deportations, a now-rescinded effort to separate families at the border, scaling back protections for immigrants brought to the United States as children and reversing parts of the Affordable Care Act — have been harmful to Hispanics.").

⁴ Throughout this submission, Petitioners (for the most part) reference immigrants as interchangeable with Latinos/as and the Latino community. The presumption and perspective throughout this petition are that the overwhelming majority of immigrants targeted by racist and xenophobic policies are in fact Latino. This by no means is intended to exclude Black, Muslim, Arab and Asian immigrants that are equally terrorized by these policies. However, by the Government's own admission, 97 percent of all immigrants deported in FY 16 were from Latin American countries, namely Mexico, Guatemala, Honduras and El Salvador. See U.S. Immigration and Customs Enforcement, *FY 2016 ICE Immigration Removals*, <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf>.

⁵ Report on Admissibility, No. 192-18, Doc. 217, para. 1 (Dec. 31, 2018).

⁶ *Id.*, para. 1.

violence, lack of investigative mechanisms or political will to respond to hate crimes against Latinos/as and

deputizing officials – federal and local – to engage in racial profiling and targeting of Latinos/as on the basis of their race, ethnicity and national origin.

Donald Trump made his breach into the 2016 presidential election donning the campaign slogan, “Make America Great Again,” which made white supremacy a fundamental, albeit implicit, pillar of the campaign. His campaign events were marked by references to violence or encouraging of the same.⁷ President Trump’s campaign attracted criticism for his openly anti-immigrant views, views that carried over into his subsequent presidency and manifested as xenophobic and racist policies. Among his many attacks against people of color—and Latino/a immigrants in particular—was his deliberate racialization of immigration policy by reducing a complex policy decision into a nationalist campaign against Latino/a immigrants.

Throughout his campaign, Trump’s declarations during publicized, broadcasted events were decorated with sentiments supporting white nationalism. Trump launched his campaign by announcing his plans for a Mexico-financed border wall, justifying it by spewing inaccurate fear-mongering statements about the migrant-Latino community and their countries of origin. In his presidential announcement speech, he infamously asserted that Mexican, Central, and South American immigrants were “killers” and “rapists” whose sole interest in coming to the United States is to bring drugs and crime into the country.⁸ President Trump used his campaign platform to explicitly target individuals based on their national origin and ethnic background, regardless of their actual citizenship status. When federal district court judge Gonzalo P. Curiel ruled against him in a fraud case, Trump accused the judge of bias because of his Latino heritage, stating, “he’s a Mexican. We’re building a wall between here and Mexico. The answer is, he is giving us very unfair rulings, rulings that people can’t even believe. . . now I say why? Well, I want to - I’m building a wall, OK...”⁹ During the Republican primary, he stated, “we have to have assimilation... This is a country where we speak English, not Spanish.”¹⁰ The anti-minority, anti-immigrant rhetoric were key points that fueled his campaign and, as a result, gave his voting base a platform on which to emulate this behavior against Latinos and other marginalized groups.

⁷ Ed Mazza, *Shocking Supercut Shows Trump Encouraging Violence Again And Again And Again*, Huffington Post (Oct. 25, 2018), https://www.huffpost.com/entry/donald-trump-rally-violence_n_5bd121b1e4b055bc94882565.

Trump’s violent outbursts or inciting violence at campaign rallies included encouraging supporters to “knock the crap” out of protestors at his events, stating that a protestor “should have been roughed up,” claiming that he personally wanted to punch a protestor in the face, and finally offering to pay the legal fees of any one of his supporters who attacked a protestor at one of his rallies.

⁸ “When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.” – Donald J. Trump. Speech available at <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/>.

⁹ Tom Kertscher, *Donald Trump’s racial comments about Hispanic judge in Trump University case*, Politifact.com (June 8th, 2016), <https://www.politifact.com/wisconsin/article/2016/jun/08/donald-trumps-racial-comments-about-judge-trump-un/>.

¹⁰ Paul Waldman, *Trump Thinks Immigrants Won’t Assimilate. He Couldn’t Be More Wrong.*, WASHINGTON POST (Sept. 1, 2016), https://www.washingtonpost.com/blogs/plum-line/wp/2016/09/01/trump-thinks-immigrants-wont-assimilate-he-couldnt-be-more-wrong/?utm_term=.c7ffbaeda4d5.

B. Anti-immigrant, xenophobic and racist rhetoric continues through Trump's presidency.

President Trump has continued to push a binary dichotomy that pits “innocent Americans” against “dangerous criminal aliens,”¹¹ disregarding immigrant contributions as well as the comparatively higher rates of native-born criminality.¹² He and cabinet-level officials have referred to Latinos and immigrants as rapists, animals and criminals.¹³ President Trump said that (mainly Latino) immigrants who are undocumented “pour into and infest” the United States and that unauthorized immigration is a “monstrosity.”¹⁴ He’s demanded that four Congresswomen of color – including a Latina – who are U.S.-born “go back” to their “home” countries. High-level officials in the Trump administration have consistently echoed the President’s anti-Latino views. Vice President Mike Pence vehemently opposed the resettlement of unaccompanied minors seeking asylum in Indiana, writing, “failure to expedite the return of unaccompanied children thwarts the rule of law and will only continue to send a distorted message that illegally crossing into America is without consequence.”¹⁵ Former Attorney General Sessions celebrated the administration’s pro-deportation policies in a speech on the Arizona border, noting “[i]t is here, on this sliver of land, where we first take our stand against this filth...under the President’s leadership and through his Executive Orders, we will secure this border and bring the full weight of both the immigration courts and federal criminal enforcement to combat this attack on our national security and sovereignty.”¹⁶

The racist and xenophobic directives from the President on down have permeated all levels of federal government. In an email circulated within the Department of Justice, public information officers and attorneys were ordered to favor the harmful term “illegal alien” over the term “undocumented immigrant”.¹⁷ The White House leadership itself has said that DREAMers—

¹¹ *Statement from President Donald J. Trump on House Passage of Kate’s Law and No Sanctuary for Criminals Act*, Office of the Press Secretary (June 29, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/29/statement-president-donald-j-trump-house-passage-kates-law-and-no>.

¹² In terms of actual criminality, it has been shown that immigrants are less likely to commit crimes. See Richard Pérez-Peña, *Contrary to Trump’s Claims, Immigrants Are Less Likely to Commit Crimes*, New York Times (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html>. This is proven by ICE’s own data. For example, in 2016, ICE had removed (deported) a total of 240,255 undocumented immigrants from the United States. Forty-two percent of those removed were “non-criminal immigration violators,” meaning they had no criminal records. See U.S. Immigration and Customs Enforcement, *FY 2016 ICE Immigration Removals*, <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf>.

¹³ *Supra* note 3; see also Gregory Korte, et al., “*Trump ramps up rhetoric on undocumented immigrants: ‘These aren’t people. These are animals.’*”, USA Today (May 17, 2018), <https://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/>.

¹⁴ Peter Baker and Michael Shear, *El Paso Shooting Suspect’s Manifesto Echoes Trump’s Language*, New York Times (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>.

¹⁵ Governor Pence Letter to Obama Regarding Unaccompanied Children (July 29, 2014), http://c4.nrostatic.com/sites/default/files/Governor_Pence_Letter_to_President_Obama_Regarding_Unaccompanied_Children.pdf.

¹⁶ *Attorney General Jeff Sessions Delivers Remarks Announcing the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement*, Nogales, AZ, Speech (Apr. 11, 2017) <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-department-justice-s-renewed>.

¹⁷ <https://edition.cnn.com/2018/07/24/politics/justice-department-illegal-aliens-undocumented/index.html>

young immigrants who were brought to the U.S. as children and who are overwhelmingly Latino—are “too lazy to get off their asses” and thus end up opting for government protections instead of employment.¹⁸ The use of this adverse fear-mongering language has become a tool of this administration and its supporters to ostracize and degrade undocumented people.

More than deterring access to public spaces and services, the Trump administration’s vile demonization of Latinos/as and immigrants has resulted in violence against the community. At a rally in Florida that Trump spoke at, he asked the audience for ideas on halting undocumented immigrants from arriving, saying, “how do you stop these people?” One man shouted out from the audience, “shoot them!” Trump smiled and responded, “that’s only in the Panhandle you can get away with that stuff. Only in the Panhandle.”¹⁹ Not only did he not rebuke the idea, but he implied his approval of it and lament that it couldn’t be done elsewhere outside of Florida.

Recently, on August 3, 2019, a domestic terrorist opened fire at a Wal-Mart store in El Paso, Texas – a border town – killing twenty-two civilians, all Latinos. The gunman said that he was targeting “Mexicans,”²⁰ and that he was inspired by President Donald J. Trump’s views, rhetoric and policies.²¹ Just weeks later, a man was arrested in Seattle, Washington for threatening to kill a Latina restaurant worker as part of a “racial war” that is inspired by President Trump. In a post on social media, the man – Eric Lin – said, “I Thank God everyday President Donald John Trump is President and that he will launch a Racial War and Crusade to keep the N----s, Spics and Muslims and any dangerous non-White or Ethnically or Culturally Foreign group 'In Line' by in line it is meant that they will either be sent to 'Concentration Camps' or dealt with Ruthlessly and Vigorously by the United States Military.”²² (Sic). Violence against Latinos/as and immigrants is on the rise, and the perpetrators are drawing their inspiration, their mandate and their immunity directly from the highest levels of authority in the U.S. government.

The State asserts that even if the anti-immigrant rhetoric used by federal government agencies and the nation’s highest officials demonizes and degrades the Latino community, “it is not at all convincing in 2015.”²³ On the contrary, under President Trump, anti-immigrant and anti-Latino rhetoric has crystalized into discriminatory, anti-immigrant policy-making.²⁴ Nine years

¹⁸ John Kelly dismisses some DREAMers as ‘too lazy to get off their asses’, *The Week* (Feb. 6, 2018), <https://theweek.com/speedreads/753602/john-kelly-dismisses-some-dreamers-lazy-asses>.

¹⁹ Peter Baker and Michael Shear, *El Paso Shooting Suspect’s Manifesto Echoes Trump’s Language*, *New York Times* (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>.

²⁰ Alexia Fernández Campbell, *The El Paso shooter told police that he was targeting*, *Vox.com* (Aug. 9, 2019) <https://www.vox.com/2019/8/6/20756750/el-paso-shooter-targeted-latinx-walmart>.

²¹ Peter Baker and Michael D. Shear, *El Paso Shooting Suspect’s Manifesto Echoes Trump’s Language*, *New York Times* (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>.

²² Lin expressed admiration for President Trump and for his “Racial War” that would result in the extermination of all non-whites. *Maryland man arrested in Seattle, accused of threatening to kill all Hispanics*, *KOMO News* (Aug. 20, 2019), <https://komonews.com/news/local/md-man-arrested-in-seattle-accused-of-threatening-to-kill-all-hispanics>.

²³ U.S. Resp. 15.

²⁴ See, *International Refugee Assistance Project v. Trump*, 857 F.3d 554 (4d Cir. 2017); *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017) (noting explicit anti-Muslim and anti-immigrant sentiments behind policies); *Dept. of Homeland Security, et al. v. Regents of University Of California, et al.*, ___ U.S. ___ (2020), see Amicus Curiae Brief of NAACP Legal Defense & Educational Fund, Inc., and LatinoJustice PRLDEF (arguing on behalf of young and mainly Latinx immigrant youth recipients of the Deferred Action for Childhood Arrivals program [DACA] that the United States’ actions in removing immigration protections for this class of people were motivated by racial bias). See also CHILD

have passed since the State's response, and the nation has not seen such biased, bigoted, and discriminatory language used publicly to describe almost a quarter of the population in decades.

II. The Trump Administration has made terrorizing Latino/a immigrants and targeting them based on racially biased profiling and xenophobia a fundamental platform of federal policies and conduct.

A. Criminalization of immigrants

Aggressive and invasive enforcement of immigration law by federal agents has increasingly become more violent. Hostility by both public and private actors towards undocumented immigrants continues to be a norm in American society. Since the first year of the Trump administration, the criminalization of immigrant activity, behavior and even presence became official government policy. According to federal government reports, there has been a dramatic increase in immigration arrests since Trump's inauguration.²⁵ The latest effort to criminalize Latino/a immigrant presence comes in the form of a proposed rule that the Department of Homeland Security will issue that would allow the agency to collect DNA samples of immigrants being held in federal immigration custody (regardless whether it's in a local or federal facility) to be entered into a national criminal database.²⁶ The gathering of immigrants' DNA is totally unrelated to whether any criminal acts have occurred, they are being accused or have been convicted of a crime or have a criminal record. It is merely based on their act of migration, which the United States deems to be criminal in and of itself and thus engages in targeted enforcement based on the ethnicity, race and/or national origin of the immigrant.

Beyond the arrests, the threatening and terrorizing tone of the federal government is to let immigrants know that they will be viewed and treated as criminals, and to put any and all immigrants in the United States on permanent notice that at any moment, their lives could be disrupted and they could be removed from their families, arrested, detained and deported. Official government policy changed from prioritizing immigrants with criminal convictions or orders for removal to criminalizing the very presence of millions of undocumented immigrants, most of whom have families that include U.S. citizens, and whose lives have been built in the United States. The narrative of all immigrants as criminals permeates how the federal government views immigration enforcement, and any policy that could implicate immigrant access of basic and fundamental human rights and public services.

As President, Trump has advocated for increasingly nativist, anti-immigrant legislation that pushes a narrative of immigrants as criminals. The direction coming out of this administration has

SEPARATIONS BY THE TRUMP ADMINISTRATION, Staff Report Committee on Oversight and Reform U.S. House of Representatives (July 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>.

²⁵ Immigration and Custom Enforcement, Fiscal Year 2017 Enforcement and Removal Operations Report, <https://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/>.

²⁶ Caitlin Dickerson, *U.S. Government Plans to Collect DNA From Detained Immigrants*, New York Times (Oct. 3, 2019), https://www.nytimes.com/2019/10/02/us/dna-testing-immigrants.html?campaign_id=60&instance_id=0&segment_id=17525&user_id=6c233b84523292cf42a3ffbe52348d10®i_id=34783000ing-news.

signaled to Congress that any legislation that curbs the rights of immigrants – focusing in particular on Latino/a immigrants – will have the support of the Trump administration. As a result, in 2017, the U.S. House of Representatives passed Kate’s Law, a bill that increases criminal penalties for undocumented individuals who re-enter the U.S. after deportation. Attacks on municipalities who support immigrants initially came through Executive Order 13768, titled “Enhancing Public Safety in the Interior of the United States,”²⁷ which states that “sanctuary jurisdictions” that refuse to comply with immigration enforcement measures would not be “eligible to receive Federal grants, except as deemed necessary for law enforcement purposes” by the U.S. Attorney General or Secretary of Homeland Security. The Executive Order also prioritized the deportation of individuals his administration deemed to “pose a public safety or national security risk” and reinstated “Secure Communities,” a deportation program discontinued under the Obama administration which uses local law enforcement arrest data to identify individuals residing in the U.S. without legal permission.²⁸ Executive Order 13768 was immediately challenged in court and was found to be unconstitutional,²⁹ however the U.S. House of Representatives continued carrying the anti-immigrant torch and passed the “No Sanctuary for Criminals Act,” which attempted to defund cities known as “sanctuary cities” that limit cooperation with federal immigration law enforcement.³⁰ As both were passed by the House, President Trump immediately took to his personal Twitter feed and posted, “MAKE AMERICA SAFE AGAIN!” and “#SaveAmericanLives”.³¹ In another anti-immigrant Executive Order issued just a couple of weeks later on February 9, 2017, Trump continued feeding the erroneous and dangerous narrative that immigrants are inherently criminals by incorrectly citing immigration as a major cause for violence.³²

Following these Executive Orders, Trump continued to misidentify immigrants as disproportionately responsible for committing crimes. On February 20, 2017, the Trump administration created an office specifically to highlight crimes committed by immigrants. John Kelly, the then-director of the Department of Homeland Security (DHS) during that time, created the Victims of Immigrant Crime Enforcement (VOICE) on the non-factual basis that “criminal aliens routinely victimize U.S. citizens and other legal residents.”³³ The following month, Trump continued to equate immigrants from Latin America with criminality when he told a police union, “[w]e will work every day to remove the gang members, drug dealers, and violent criminals from your communities — and we already are. They’re being moved very quickly. In fact, [Department of Homeland Security Secretary] General Kelly, as you know, has done a fantastic job on the

²⁷ Executive Order 13768 was signed on Jan. 25, 2017 by President Trump. Available at

<https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

²⁸ <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

²⁹ A nationwide preliminary injunction was originally issued in *Cty. of Santa Clara v. Trump*, 267 F. Supp. 3d 1201 (N.D. Cal. 2017), appeal dismissed as moot sub nom. *City & Cty. of San Francisco v. Trump*, No. 17-16886, 2018 WL 1401847 (9th Cir. Jan. 4, 2018). The Executive Order was later permanently enjoined and found to be unconstitutional.

³⁰ H.R. 3003 (115th Congress).

³¹ <https://twitter.com/realDonaldTrump/status/880489358431850496>.

³² The Executive Order states that, “A focus on law and order and the safety and security of the American people requires a commitment to enforcing the law and developing policies that comprehensively address illegal immigration, drug trafficking, and violent crime.” <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-enforcing-federal-law-respect-transnational-criminal-organizations-preventing-international-trafficking/>.

³³ This point is discussed further below in Section IV(B)(2).

border. Down 61 percent since inauguration. People coming in down 61 percent, which is a tremendous number.”³⁴

Equating immigrants – namely Latino/a immigrants and Latinos/as as a whole – with criminality was quickly adopted by the administration as a whole. During a visit to Long Island, New York – not too far from the area where Petitioner Marcelo Lucero was murdered –former Attorney General Jeff Sessions visited the area and announced stricter policies on migrant children arriving from El Salvador. While noting that the gang MS-13 was present in that particular community, Sessions equated all Salvadoran youth in the area and in the country with illicit gang activity, when in fact most youth who arrive to the U.S. are fleeing gang and criminal violence and often seek asylum, including from death threats or extortion to them and their families.³⁵ They are not the perpetrators of gang violence, they are the victims of it. One high school student in Long Island was arrested and suspended for posing in a picture with the Salvadoran flag that displayed the area code of the country. Instead of recognizing the picture as a benign image reflective of cultural pride and expressed by millions of immigrants worldwide, the student was accused of being a gang member because he was Salvadoran. President Trump fully supported and adopted Sessions’ criminalizing narrative, saying of MS-13 gang members – who are presumed to be all Salvadoran youth - “[t]hese aren’t people. These are animals.”³⁶ In an equally cruel policy choice and as an implicit nod to the fact that many Latino/a immigrants are escaping gang violence in their home countries – but refusing to acknowledge their legitimate fears or alter the criminalizing narrative of immigrants as a whole – the Department of Justice under Sessions changed the criteria for asylum seekers to enter the United States by removing gang violence and domestic violence as long-established and accepted criteria.³⁷

B. Racial profiling, harassment and the targeting of Latino/a immigrants

1. *Arrests and raids by Immigrations and Custom Enforcement*

In June 2017 during a congressional hearing, Thomas Homan, then acting Director of Immigration and Customs Enforcement (ICE), told members, “you should be uncomfortable. You should look over your shoulder. You need to be worried. No population is off the table.”³⁸ ICE Enforcement and Removal Operations made a total of 143,470 arrests in 2017, which represents a 30% rise from the prior year.³⁹ Raids on homes, work sites and in public spaces have permeated the government’s attacks on immigrant communities. On June 17, 2019, President Trump

³⁴ <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-fraternal-order-police/>.

³⁵ Jonathan Blitzer, *The Teens Trapped Between a Gang and the Law*, *The New Yorker* (Dec. 25, 2017), <https://www.newyorker.com/magazine/2018/01/01/the-teens-trapped-between-a-gang-and-the-law>.

³⁶ <https://www.npr.org/sections/thetwo-way/2018/05/17/611877563/during-roundtable-trump-calls-some-unauthorized-immigrants-animals>; https://www.washingtonpost.com/news/the-fix/wp/2018/05/21/white-house-feeds-trump-base-with-news-release-doubling-down-on-ms-13-animals/?utm_term=.014cfe66d18b.

³⁷ *Matter of A-B-*, *Respondent*, 27 I&N Dec. 316 (A.G. 2018), available at <https://www.justice.gov/eoir/page/file/1070866/download>.

³⁸ Adam Harris, *When ICE Raids Homes*, (July 17, 2019), available at <https://www.theatlantic.com/family/archive/2019/07/when-ice-raids-homes-immigration/594112/>.

³⁹ Kristin Bialik, *ICE arrests went up in 2017, with the biggest increases in Florida, northern Texas, Oklahoma* (February 8, 2018) available at <https://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/>.

announced via his personal Twitter account, “[n]ext week ICE will begin the process of removing the millions of illegal aliens who have illicitly found their way into the United States. They will be removed as fast as they come in.”⁴⁰ In response to this statement, a former Department of Homeland Security officer, Theresa Cardinal Brown, stated, “My guess is that for the next 48 hours or so, you will see a lot of immigrant kids who are not in school, [and] parents [that] are not going to show up for work.”

On July 12, 2019, Trump issued a statement concerning the announced raids, stating “It starts on Sunday and [ICE is] gonna take people out and they’re going to bring them back to their countries or they’re gonna take criminals out, put them in prison, or put them in prison in the countries they came from.”⁴¹ Three anonymous Department of Homeland Security (DHS) officials were reported discussing plans to detain and deport families who have received a deportation notice, and “collateral” immigrants, including children, who happen to be near the raids at the time.⁴² Speaker of the House of Representatives, Nanci Pellosi, called the ICE raids “brutal” and said they would “tear families apart.”⁴³ And yet the raids persisted.

On August 7, 2019, ICE engaged in the largest single-state raid in U.S. history, arresting and detaining 680 immigrant workers at three poultry plants owned by Koch corporation.⁴⁴ The raid came just days after a gunman assassinated twenty-two Latino civilians in El Paso, Texas. Despite claims by DHS officials that employers should take note of enforcement actions when undocumented workers are hired, there has been no known action taken against the poultry plant owner and operator.⁴⁵ The perpetual threat of raids and the presence of ICE agents at or near namely Latino immigrant communities, including daycare centers,⁴⁶ courthouses,⁴⁷ schools,⁴⁸

⁴⁰ <https://twitter.com/realDonaldTrump/status/1140791400658870274>.

⁴¹ Jasmine Aguilera, *President Trump Called This Weekend's ICE Raids 'Very Successful.' Here's What We Know So Far*, (July 15, 2019), available at <https://time.com/5625372/president-trump-ice-raids/>.

⁴² Zolan Kanno-Youngs, *Thousands Are Targeted as ICE Prepares to Raid Undocumented Migrant Families*, (July 11, 2019) available at <https://www.nytimes.com/2019/07/11/us/politics/ice-families-deport.html>.

⁴³ Jasmine Aguilera, *President Trump Called This Weekend's ICE Raids 'Very Successful.' Here's What We Know So Far*, (July 15, 2019), available at <https://time.com/5625372/president-trump-ice-raids/>.

⁴⁴ Abigail Hauslohner, *ICE agents raid Miss. work sites, arrest 680 people in largest single-state immigration enforcement action in U.S. history*, Washington Post (Aug. 7, 2019), https://www.washingtonpost.com/immigration/ice-agents-raid-miss-work-sites-arrest-680-people-in-largest-single-state-immigration-enforcement-action-in-us-history/2019/08/07/801d5cfe-b94e-11e9-b3b4-2bb69e8c4e39_story.html.

⁴⁵ See Mihir Zaveri and Christine Hauser, *Mississippi Plants Knowingly Hired Undocumented Workers, ICE Says*, New York Times (Aug. 15, 2019), <https://www.nytimes.com/2019/08/15/us/ice-raids-mississippi-plants.html>.

⁴⁶ Hannah Matthews, et al., IMMIGRATION POLICY’S HARMFUL IMPACTS ON EARLY CARE AND EDUCATION, CLASP (March 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf.

⁴⁷ Renae Reints, *ICE Arrests in Courthouses Leave Local Communities on Edge*, Fortune (May 17, 2019), <https://fortune.com/2019/05/17/ice-courthouse-arrests-sanctuary-cities/>.

⁴⁸ The National Education Association issued a bulletin to its state members advising them what they can do if ICE agents show up at school looking for a student. *Your Students And Immigration Raids: What You Can Do*, <https://www.nea.org/assets/docs/ice-raids-fact-sheet-1.pdf>.

religious institutions,⁴⁹ health care facilities⁵⁰ and supermarkets,⁵¹ have inevitably led to a deterrence effect among immigrant families from attending to their basic needs.⁵²

2. *Deaths of Latinos at the hands of law enforcement: racial disparities in the arbitrary execution of Criminal Justice*

Since 2008 when Petitioners brought to the Commission's attention the systematic and racialized policing that leaves Latinos and Latinas vulnerable to violence, not much has changed. Latinos still face consistent discrimination and brutality when interacting with law enforcement, whether local, state or federal. Policies that have been denounced and litigated – and even declared unconstitutional – such as the racial profiling practice in New York City known as “stop and frisk” – continue to this day. In 2017, 90 percent of all stops were for Latino and African American citizens between the ages of 14 – 24.⁵³

Cases of the use of extreme or deadly force by law enforcement have not halted in the past eleven years either since Petitioners raised these issues before the Commission. Local police departments nationwide continue to contribute to the atmosphere of violence that the United States is leading the charge on, leaving Latinos vulnerable to present and future harm. From January - July 2016, an estimated 94 Latinos were killed by police, around 16% of the 585 police-involved killings in that timespan.⁵⁴ Among the victims are the following, whose stories are indicative of the dangers that Latinos and Latinas face in interacting with, relying on and turning to law enforcement to ensure their safety:

- In 2013, Ricardo Díaz Zeferino was shot eight times by an officer in Los Angeles after Díaz' own family called police for help in searching for one of the family member's bikes that was stolen.⁵⁵ Díaz and two of his friends—both Latino, though only one of whom survived a shot in the back—were looking for his brother's stolen bike. Though the family called 911 to report the stolen bike, when the police arrived, they treated Mr. Díaz as the robber, not the victim. Mr. Díaz tried to explain

⁴⁹ Nick Pinto, *ICE Is Entering Churches, Targeting Immigrant Rights Leaders*, The Intercept (Jan. 19, 2018), <https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/>.

⁵⁰ David M. Perry, *ICE Keeps Raiding Hospitals and Mistreating Disabled Children*, Pacific Standard (Jan. 15, 2018), <https://psmag.com/social-justice/ice-keeps-raiding-hospitals-and-harming-disabled-children/>; Jorge Rivas, *Hospitals Now Have to Train to Keep ICE Agents Out of Their Buildings*, Splinter News (April 6, 2018), <https://splinternews.com/hospitals-now-have-to-train-to-keep-ice-agents-out-of-t-1825048010>.

⁵¹ Hamed Aleaziz and Adolfo Flores, *Not A “Brown Face” To Be Seen As Immigrant Neighborhoods Brace For ICE Raids*, BuzzFeed (July 14, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-communities-ice-raids-fear>.

⁵² See Caitlin Dickerson, et al., *With ICE Raids Looming, Immigrants Worry: ‘Every Time Someone Knocks, You Get Scared’*, New York Times (July 13, 2019), <https://www.nytimes.com/2019/07/13/us/ice-raids.html>; Ashton Pittman, *‘No one is coming out’: Ice raids leave Latino community paralyzed with fear*, The Guardian (Aug. 11, 2019), <https://www.theguardian.com/us-news/2019/aug/11/ice-raids-latino-community-mississippi-fear> (noting that children had not yet gone back to school for fear of what would happen to them now that their parents had been arrested and detained).

⁵³ <https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page>.

⁵⁴ See, e.g., Kenya Downs, *Why aren't more people talking about Latinos killed by police?*, PBS.org (Jul. 14, 2016), available at <http://www.pbs.org/newshour/rundown/black-men-werent-unarmed-people-killed-police-last-week/>.

⁵⁵ Charlene Muhammad, *Outrage over police killings of Latinos - #JusticeOrElse*, The Final Call (Jul. 22, 2015, 10:18 AM), http://www.finalcall.com/artman/publish/National_News_2/article_102497.shtml.

to the officers that he and his family had called for help. He held his hands on his head, then to his sides, removed his hat and raised his arms again. Once he dropped his hands a second time, the police open fired, shooting him eight times. The entire incident was recorded on a dashboard camera inside one of the officer's vehicles. Despite ample and clear evidence of state killing, the District Attorney for Los Angeles declined to press charges against the officers after an investigation determined that the officer acted within his duties.⁵⁶ In a separate case, Dominic Fuller, an unarmed 24-year-old Latino, was killed by police in Auburndale, Florida on September 21, 2015. Police officers responded to reports of suspicious activity in the area unrelated to Fuller. When police came up to him, Fuller raised his right hand holding a stapler and was immediately shot and killed.⁵⁷

- Richard Jacquez, an unarmed 40-year-old Latino, was killed by police officers in San Jose, California on August 17, 2015. Police followed him in his vehicle on a homicide suspicion. Initially, the officers claimed they shot him when he reached for his waistband, but they later recanted their story, admitting that they actually shot him in the back as he ran.⁵⁸
- Ruben Garcia Villalpando, an unarmed 31-year-old man, was shot and killed by police in Grapevine, Texas on February 20, 2015. After a car chase, Garcia Villalpando stopped and exited the vehicle with his hands up, saying, "Are you going to kill me?" The officer ordered him to stop, shouting profanities, and fired two shots as Garcia Villalpando was shuffling toward him. Most of the encounter following the chase was captured on the officer's dashboard camera.⁵⁹
- In 2017 a police officer in Vallejo, California shot and killed 21-year-old Angel Ramos, an unarmed Latino man.⁶⁰ Police records show that the majority of people killed by police officers in Vallejo, California are Black and Latino. Latino deaths at the hands of law enforcement remain at large, and largely ignored.⁶¹

⁵⁶ Almost unanimously in cases of police violence, the police officers who kill civilians are found to be acting within their duties and rarely, if ever, face consequences, much less criminal liability. See German Lopez, *Cops are almost never prosecuted and convicted for use of force*, Vox (Nov. 14, 2018), <https://www.vox.com/identities/2016/8/13/17938234/police-shootings-killings-prosecutions-court>.

⁵⁷ *The Counted: People killed by the police in the US*, The Guardian, <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-policekillings-us-database#dominic-fuller-859>.

⁵⁸ Robert Salonga, *San Jose: Family files wrongful-death suits in 2015 police killing of homicide suspect*, Mercury News (Sept. 20, 2016), <https://www.mercurynews.com/2016/09/20/san-jose-family-files-wrongful-death-suit-in-2015-police-killing-of-homicide-suspect/>.

⁵⁹ Dianne Solís, *Protesters demand justice for Mexican immigrant killed by Grapevine officer*, Dallas News (March 2015), <https://www.dallasnews.com/news/crime/2015/03/03/protesters-demand-justice-for-mexican-immigrant-killed-by-grapevine-officer>.

⁶⁰ Brendan Weber, *'Justice for Angel Ramos': Family Members, Friends Clamor for Due Process After Officer-Involved Shooting in Vallejo*, NBC News (Jan. 28, 2017), <https://www.nbcbayarea.com/news/local/Angel-Ramos-Vallejo-Police-Officer-Involved-Shooting-Vigil-Rally-412060723.html>.

⁶¹ Nicole Santa Cruz, Ruben Vives, and Marisa Gerber, *Why the Deaths of Latinos at the Hands of Police Haven't Drawn as Much Attention*, Los Angeles Times (July 18, 2015), <http://www.latimes.com/local/crime/la-me-0718-latino-police-20150718-story.html>.

- Anthony Nuñez was 18-years-old when he was fatally shot by police at his residence in San Jose, California. Nuñez suffered from mental health concerns and was reportedly suicidal prior to police arrival. Family members have questioned why the police did not use other tactics to subdue him prior to firing their weapons.⁶²
- Gilbert Flores, age 41, was fatally shot by police in San Antonio, Texas after police responded to a domestic dispute. Video evidence recorded at the time of the killing shows that Flores held his hands up in apparent surrender prior to being shot and killed by police officers.⁶³
- Antonio Montes-Zambrano, age 35, was unarmed when he was shot to death by police in Pasco, Washington. A nearby civilian videotaped the incident, showing Montes-Zambrano running and being subsequently shot by officers. A total of 17 shots were fired by the police. None of the three police officers wore body cameras at the time of the shooting and no charges were ever brought.⁶⁴
- On July 28, 2019, a police officer with the South Whitehall Township in Pennsylvania shot Joseph Santos, a Puerto Rican man with potential mental health issues and who was unarmed. Santos walked away from the police vehicle and showed no signs of a weapon when police shot him five times, killing him.⁶⁵

It is notable that instances of police violence against Latinos fail to galvanize public outcry since Latinos are often viewed as foreigners by other Americans, making them unsympathetic victims. This is a narrative perpetuated by the United States and that attempts to legitimize private citizens' racist violence while offering blanket protection to public officers who violate the sanctity of life with little to no repercussions.

⁶² Robert Salonga, *Federal civil jury finds two San Jose cops liable for excessive force in fatal 2016 police shooting*, Mercury News (July 3, 2019), <https://www.mercurynews.com/2019/07/02/federal-civil-jury-finds-officers-liable-for-excessive-force-in-fatal-2016-police-shooting/>.

⁶³ Rick Rojas & Samantha Schmidt, *Amid Protests Over Police Shootings of Black Men, Latinos Not a Disparity*, New York Times (Jul. 14, 2016), available at https://www.nytimes.com/2016/07/15/us/amid-protests-over-police-shootings-of-black-men-latinos-note-a-disparity.html?_r=1, See also John Tedesco, *New video reveals details in fatal shooting of Gilbert Flores by deputies in San Antonio*, my San Antonio (Dec. 11, 2015), available at <http://www.mysanantonio.com/news/local/article/New-video-reveals-details-in-fatal-shooting-of-6692051.php>.

⁶⁴ Phil Helsel, *No Charges for Pasco Police Officers Who Killed Antonio Zambrano-Montes, Man Who Threw Rocks*, NBC NEWS (Sep. 9, 2015) available at <http://www.nbcnews.com/news/us-news/no-charges-pasco-police-officers-who-killed-antonio-zambrano-montes-n424571><http://www.nbcnews.com/news/us-news/no-charges-pasco-police-officers-who-killed-antonio-zambrano-montes-n424571>.

⁶⁵ Julia Jacob, *Pennsylvania Police officer Charged with Voluntary Manslaughter of Unarmed Man*, ABC News (), <https://abcnews.go.com/US/pennsylvania-police-officer-charged-voluntary-manslaughter-unarmed-man/story?id=57095705>.

C. Collaboration with, and deputizing of, local law enforcement to unconstitutionally arrest and detain immigrants.

1. *ICE detainers and 287(g)*

The United States claims that since Petitioners filed their claim in 2008, “there have been significant changes in U.S. immigration policies and practices.”⁶⁶ While it is true that the U.S. 287(g) Task Force Model agreements expired in late 2012, the Jail Enforcement Model, under which 287(g) still operates, is deeply tied to the racial profiling of Latinos and still remains in effect today. This program allows local police officers to check the legal presence of those who have been arrested as they are processed into county or state jails. ICE has 287(g) agreements with 45 law enforcement agencies in 18 different states across the United States, thus giving local law enforcement the authority to detain immigrants as though they were federal agents.⁶⁷ While in theory the agreement authorizes local law enforcement to question an individual *after* they are in custody, in reality the practice has been used as a pretext for racially profiling Latinos by local police who have no experience in immigration enforcement. In practice, Latinos are often racially profiled while driving or “looking suspicious,” or on the pretext of a traffic violation, which is then used to inquire into their immigration status. From 2008 - 2012, ICE issued detainers for at least 834 U.S. citizens and 28,489 legal permanent residents.⁶⁸ Officers often use “foreign-sounding” last names, place of birth, or racial appearance as a reason for reporting someone for an immigration investigation.⁶⁹ Such law enforcement initiatives overwhelmingly identify Latinos for deportation, with officers using race as an indicator of immigration status.⁷⁰ In August 2019, a Latino man was stopped in Louisiana on a traffic charge, then held illegally for days because the local sheriff’s office wrongly suspected based on his name and ethnicity that he was undocumented.⁷¹ If the person stopped can’t prove authorized status at that point, they are arrested and detained, and held for federal intervention. This latest example of racial profiling is exactly what programs like 287(g) and unlawful detainers are designed to do yet are precisely what the constitution and this Commission’s jurisprudence forbid.

A recent report found that of 2,556 counties that were analyzed nationwide, 1,922 counties hold undocumented immigrants on ICE detainers and 2,414 counties will notify ICE when

⁶⁶ U.S. Response, 11.

⁶⁷ The number of jurisdictions participating in the 287(g) program has increased by 16 since President Trump’s election in November 2016; two jurisdictions were added within a month of President Trump’s election, three prior to his inauguration, and another eleven since then. *See* Immigration and Customs Enforcement, factsheet, *available at* <https://www.ice.gov/factsheets/287g>.

⁶⁸ *See* ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents, Transactional Records Access Clearinghouse (TRAC), Syracuse University (Feb. 2013), <http://trac.syr.edu/immigration/reports/311/>.

⁶⁹ *See Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Morales v. Chadbourne*, F.Supp. 2d, 2014 WL 554478 (D. R.I. Feb. 12, 2014).

⁷⁰ *See generally*, Aarti Kohli et al., *Secure Communities By the Numbers: An Analysis of Demographics and Due Process*, Chief Justice Earl Warren Institute on Law & Social Policy (2011), http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

⁷¹ *A U.S. citizen was put in jail because of his Latino name and skin color, lawsuit says*, Associated Press (Aug. 22, 2019) <https://www.nbcnews.com/news/latino/u-s-citizen-was-put-jail-because-his-name-skin-n1045166>.

undocumented immigrants will be released from custody.⁷² Harris County, Texas, for example, is deeply entrenched in the agreement; it collaborates with ICE to deport close to 300 people every month,⁷³ and unlawfully engages in racial profiling of Latinos/as. The State claims that “non-U.S. citizens who are not arrested for a crime are outside the scope of the 287(g) program.”⁷⁴ However, Latinos (both U.S. citizens and non-U.S. citizens) are regularly arrested solely based on the racist and xenophobic suspicion that they may be undocumented based on how they look, not because probable cause exists to suspect them of a crime. For example, Eddy Arias, a Latino teacher in Houston, spent 45 days in Harris County Jail for driving through a yellow traffic light. The officer asked him if he was from the United States and he replied honestly, telling him that he was not. The officer laughed and said, “I knew it.” Arias was held in solitary confinement for one week, and due to his immigration status was transferred to a Texas ICE detention center,⁷⁵ only to be released when authorities cleared him of any wrongdoing.⁷⁶ The criminalization of presence is evident in Arias’ case, where his only crime was being a Latino immigrant.

The fact that Suffolk County in New York and Shennendoah County in Pennsylvania have not participated in the 287(g) program (as the United States noted in its response) is irrelevant to the fact that 287(g) significantly contributes to the overall hostile environment towards Latinos in the United States. Despite lack of a formal agreement, ICE detainers in Suffolk County are often adhered to. This is a complete reversal of a previous Suffolk County policy which specifically required a judge’s order prior to detaining undocumented immigrant inmates solely for federal deportation agents.⁷⁷ According to Sheriff DeMarco, Suffolk County continues to work closely with ICE, going so far as allowing ICE to have an office in their correctional facility with access to any information on detained immigrants.⁷⁸ Further, Sheriff DeMarco met with the Department

⁷² *Searching for Sanctuary: An Analysis of America’s Counties & Their Voluntary Assistance with Deportations*, IMMIGRANT LEGAL RESOURCE CENTER (Dec. 2016),

https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf

⁷³ Eesha Pandit, *The government’s cold-blooded anti-immigrant scam: How ICE is outsourcing detention and deportation to local police*, SALON (May 9, 2016) available at

http://www.salon.com/2016/05/09/the_governments_cold_blooded_anti_immigrant_scam_how_ice_is_outsourcing_detention_and_deportation_to_local_police/.

⁷⁴ U.S. Response, 13.

⁷⁵ Eddy Arias, *Immigrant’s nightmare began with traffic stop*, Houston Chronicle (December 22, 2015),

<http://www.houstonchronicle.com/opinion/outlook/article/Immigrant-s-nightmare-began-with-traffic-stop-6716258.php>.

⁷⁶ Eesha Pandit, *The government’s cold-blooded anti-immigrant scam: How ICE is outsourcing detention and deportation to local police*, SALON (May 9, 2016) available at

http://www.salon.com/2016/05/09/the_governments_cold_blooded_anti_immigrant_scam_how_ice_is_outsourcing_detention_and_deportation_to_local_police/.

⁷⁷ Victor Manuel Ramos, *Suffolk sheriff reverses policy on holding immigrant inmates*, Newsday, Dec. 25, 2016, available at <http://www.newsday.com/long-island/suffolk/suffolk-sheriff-reverses-policy-on-holding-immigrant-inmates-1.12799163>.

⁷⁸ When interviewed by local media, Sheriff DeMarco said:

Federal ICE agents have access to our jail management system so they can track the inmate they’re interested in and they can know when they’re going to court, what their release dates are, when they’re sentenced, when they’re going upstate – cause some inmates to get sentenced go upstate. That detainer will follow them up to a state prison and ICE can get them when they’re released from state prison. So we work very, very closely with them and we’re always trying to enhance our relationship.

of Homeland Security in late 2016 to figure out how to continue working together after Suffolk County received a letter by civil rights organizations detailing the illegality of holding undocumented immigrants solely on a detainer request. At ICE's request and up until late 2018, Suffolk County continued to unlawfully hold many undocumented immigrants for up to 48 hours after their criminal charges have been released.⁷⁹

Federal courts have repeatedly found that ICE detainers are unconstitutional because they exceed the government's authority to hold prisoners without a warrant.⁸⁰ Darrel Stephens, Director of the Major Cities Chiefs Association, has expressed the concerns of himself and other police chiefs nationwide, noting that a "good many jails, and even states, have said that they will not honor the detainer requests without a warrant. This is not an unreasonable request and certainly doesn't mean they're unwilling to cooperate. They just want to ensure they are operating within the law."⁸¹ Indeed, ICE detainers have consistently been found to be an impermissible basis for continued detention.⁸² Courts have stated that "local law enforcement agencies are free to disregard detainers and cannot use them as a defense of unlawful detention."⁸³

Besides being an unconstitutional practice, it is an expensive one for most municipalities. Local police departments that refuse to cooperate with federal immigration authorities in the arrest and detention of immigrants could face penalties and litigation expenses for holding a detainee beyond the constitutionally permissible time. Detainers and ICE collaboration is made even more challenging for counties and cities that have declared themselves to be sanctuaries.⁸⁴ Given these financial and moral concerns, all 58 sheriffs in California counties have refused to withhold inmates past their release dates for ICE.⁸⁵ Even sheriffs who willfully comply with other ICE requests—such as information on a currently detained person—have refused to honor ICE's detainer requests for fear of being hauled into court and facing expensive litigation costs.⁸⁶

See Jessica Opatich, *Suffolk County Reverses Policy, Will Now Hold Immigrants for Deportation*, WSHU Public Radio (Dec. 28, 2016), available at <http://wshu.org/post/suffolk-county-reverses-policy-will-now-hold-immigrants-deportation#stream/0>.

⁷⁹ *Id.*

⁸⁰ Tim Henderson, *Sheriffs Still Looking for Clarity on Deportation*, THE PEW CHARITABLE TRUSTS (Feb. 10, 2017), available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/02/10/sheriffs-still-looking-for-clarity-on-deportation><http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/02/10/sheriffs-still-looking-for-clarity-on-deportation>.

⁸¹ *Id.*

⁸² *Legal Issues with Immigration Detainers*, IMMIGRANT LEGAL RESOURCE CENTER (Nov. 2016), available at https://www.ilrc.org/sites/default/files/resources/detainer_law_memo_november_2016_updated.pdf; See also *Testimony Regarding Immigration Detainers*, NEW YORK CIVIL LIBERTIES UNION (Oct. 15, 2014), available at <https://www.nyclu.org/en/publications/testimony-regarding-immigration-detainers>.

⁸³ See *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014); *Villars v. Kubiowski*, 45 F.Supp.3d 791, 802 (N.D. Ill. 2014) (federal courts and all relevant federal agencies and departments consider ICE detainers to be requests).

⁸⁴ For more information on the sanctuary city movement and the local protections it intends to offer immigrants, see *Sanctuary, Safety and Community*, LATINOJUSTICE PRLDEF AND DEMOS, https://www.latinojustice.org/sites/default/files/Sanctuary_Safety_Community_LatinoJustice_Demos_ENG.pdf.

⁸⁵ Joel Rubin & Paloma Esquivel, *For some California sheriffs, it's not politics stopping them from fully helping ICE: It's the legal risk*, Los Angeles Times (Mar. 31, 2017), <http://www.latimes.com/local/lanow/la-me-ice-detainers-sheriffs-20170330-story.html><http://www.latimes.com/local/lanow/la-me-ice-detainers-sheriffs-20170330-story.html>.

⁸⁶ Sheriff Adam Christianson of Stanislaus County, California has argued that sheriffs are concerned of the legal ramifications that may come should they decide to comply with ICE detainers. "Sheriffs aren't going to come close to a Fourth Amendment violation that is going to expose them to liability." *Id.*

Despite widely accepted authority of the illegality of ICE detainers and the recognition that they are merely civil requests, not federal warrants, former U.S. Attorney General Jeff Sessions consistently attempted to mandate and persuade jurisdictions to commit to the 287(g) program. He pushed for undeterred communication between local law enforcement and ICE, often going so far as threatening local jurisdictions with taking away their federal funding if they refused to do so.⁸⁷ When commenting on jurisdictions that do not comply with the 287(g) program, Attorney General Sessions stated, “It is not acceptable for jurisdictions to refuse to cooperate with federal law enforcement by releasing criminal aliens back into our communities when our law required them to be deported. The Department of Justice will use all lawful authority to ensure that criminals who are illegally in this country are detained and removed swiftly and to hold accountable jurisdictions that willfully violate federal law.”⁸⁸

Contrary to what the United States claims, local law enforcement that receives training by ICE under the 287(g) program has not proven to show that they understand and promote the “utmost respect for civil rights and civil liberties” of those targeted, arrested and detained.⁸⁹ The United States claims that the ICE Office of Professional Responsibility (OPR) conducts an inspection of the 287(g) program at least every two years, at which time it considers compliance with civil rights and civil liberties protections. During these inspections, the agency supposedly “researches the programs before inspection to determine which complaints have been lodged against officers or the program itself.” However, an internal audit to assess compliance with the constitution and federal law protections does not insulate the Department from scrutiny or assuage Petitioners – or this Commission – that in fact they have done just that, particularly in light of the egregious history and current practices in targeting and terrorizing immigrant communities of color, like those that Petitioners come from. There is no guarantee, or public confidence, that the OPR assessment: 1) is adequate or accurate; 2) in the case of a program not adhering to civil rights, it offers a remedial measure to either cancel the program or hold the responsible officers

⁸⁷ Delivering remarks on sanctuary jurisdictions in Washington D.C., Attorney General Sessions stated, Today I am urging all states and local jurisdictions to comply with all federal laws, including 8 U.S.C. Section 1373. Moreover, the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with Section 1373 as a condition for receiving these awards. This policy is entirely consistent with the Department of Justice’s Office of Justice Programs (OJP) guidance issued last July under the previous administration. This guidance requires state and local jurisdictions to comply and certify compliance with Section 1373 in order to be eligible for OJP grants. It also made clear that failure to remedy violations could result in withholding of grants, termination of grants, and disbarment or ineligibility for future grants. The Department of Justice will also take all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates Section 1373.

See Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions, Dep’t of Justice, Office of Public Affairs (Mar. 27, 2017), available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions>.

⁸⁸ *Statement by Attorney General Jeff Sessions on the U.S. Immigration and Customs Enforcement Declined Detainer Outcome Report*, Dep’t of Justice, Office of Public Affairs (Mar. 20, 2017), available at <https://www.justice.gov/opa/pr/statement-attorney-general-jeff-sessions-us-immigration-and-customs-enforcement-declined>.

⁸⁹ U.S. Response, 12. “Including the U.S. Department of Justice’s 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, sexual Orientation, or Gender Identity in training materials is insufficient to avoid responsibility and liability for the known racial profiling that occurs under the 287(g) program.”

accountable who abused their authority; and 3) that the reports will be fully public and transparent.⁹⁰ The same lack of confidence and accountability is true of the DHS Office for Civil Rights and Civil Liberties, which purports to “investigate[s] complaints related to the implementation of 287(g) programs, and has participated in some of the program inspections.”⁹¹ There are no reports from the Office for Civil Rights and Civil Liberties available on their website, or anywhere else on the DHS platform, contributing to the lack of transparency and ultimate accountability for both the offender programs and the supposed checks on abuse.⁹²

Lastly, the State refers the Commission to the DHS’s Office of Inspector General as an office that addresses internal allegations of misconduct or excessive use of force, however the number of investigations and prosecutions executed by this office against its employees is unknown, as is the number of penalties assigned compared with the number of complaints received. The hotline and form do not appear to be available in Spanish either, which is the primary language of the majority of Latinos targeted for detention and deportation.

2. *Consent Decrees*

In an era where police brutality against people of color has been at the forefront of sociopolitical conversations, former Attorney General Jeff Sessions announced that the Trump administration will scale back on reform efforts of troubled police agencies.⁹³ This Obama-initiated Department of Justice (DOJ) approach was meant to respond to a history of violence by numerous police departments against communities of color – namely Black and Latino - by increasing accountability, visibility, and transparency. However, these goals have been discarded as no longer legitimate or worthwhile policy and legal objectives and have been replaced instead by a Department that openly promotes impunity and protection for police officers and departments that profile, harass and even kill civilians.

As a U.S. Senator, Jeff Sessions wrote that “one of the most dangerous, and rarely discussed, exercises of raw power is the issuance of expansive court decrees,” which constitute an “end run around the democratic process.”⁹⁴ The State argues that the Department of Justice “has opened more than 20 pattern and practice investigations of law enforcement agencies in the last six years, and is currently enforcing 16 landmark agreements.”⁹⁵ However, that was prior to the confirmation of Sessions as Attorney General. Since assuming his position, Sessions has drastically reduced federal oversight of local police departments, and consent decrees have been

⁹⁰The only report available on the OPR’s website is from January – July 2007. See IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICE OF PROFESSIONAL RESPONSIBILITY, <https://www.ice.gov/leadership/opr>.

⁹¹ U.S. Response, 12.

⁹² The State mentions in its Response that the U.S. Customs and Border Protection (CBP) created a “Use of Force Reporting System,” which is a separate agency within DHS from ICE. Whether ICE has a similar reporting structure is unclear, and if so, its availability to the public remains unknown.

⁹³ Eric Lichtblau, *Sessions Indicates Justice Department Will Stop Monitoring Troubled Police Agencies*, New York Times (Feb. 28, 2017), <https://www.nytimes.com/2017/02/28/us/politics/jeff-sessions-crime.html>.

⁹⁴ *Consent Decrees in Institutional Reform Litigation: Strategies for State Legislatures*, ALABAMA POLICY INSTITUTE (2008), <https://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf>. He also stated that, “certain governmental agencies secretly delight in being sued because they hope a settlement will be reached resulting in the agency receiving more money than what the legislative branch or other funding source would otherwise have deemed justified.”

⁹⁵ U.S. Resp. at 22.

particularly targeted for elimination. In March 2017, Attorney General Sessions issued a two-page memorandum instructing the Justice Department to immediately review all “collaborative investigations and prosecutions, grant making, technical assistance and training, compliance reviews, *existing or contemplated consent decrees*, and task force participation.”⁹⁶ That same month, the Justice Department tried unsuccessfully to block a federal court in Baltimore from approving a consent decree between the city and the Baltimore Police Department to rein in discriminatory police practices that the department itself had negotiated over a multi-year period. While the Justice Department has not entirely abandoned consent decrees, there is a presumption against their use, with attorneys being instructed to avoid settlements with court oversight absent an “unavoidable reason.”⁹⁷ That presumption has been continued by Sessions’ successor, William Barr, the current Attorney General.⁹⁸

The Department of Justice’ distaste for consent decrees is especially troubling for police-community relations because it is motivated in part by the belief that holding police departments accountable hinders their efficiency. It is troubling that the Department of Justice has stated that, “investigations and consent decrees...can turn bad. They can reduce the morale of the police officers.”⁹⁹ In remarks to the National Association of Attorneys General, he said that “we need...[to] help police departments get better, not diminish their effectiveness...and I’m afraid we’ve done some of that. So we’re going to try to pull back on this...one of the big things out there that’s, I think, causing trouble and where you see the greatest increase in violence and murders in cities is...we undermine the respect for our police and made...their job more difficult.”¹⁰⁰ Given the high level of prosecutorial discretion the Attorney General enjoys, it is likely police oversight of departments with a history of violence against the Latino and Black communities will only continue to be reduced instead of heightened.

D. Immigrant Detention Facilities

- i. *Most immigrants held in detention are Latinos, and are subjected to cruel, inhumane and degrading treatment.*

Immigrant detention facilities are known to be rights-less spaces, where detainees that are held in prison-like conditions, have no right to counsel, receive limited access to legal

⁹⁶ *Supporting Federal, State, Local, and Tribal Law Enforcement*, Office of the Attorney General (Mar. 31, 2017), <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>.

⁹⁷ See, Jessica Huseman and Annie Waldman, *Trump Administration Quietly Rolls Back Civil Rights Effects Across Federal Government*, ProPublica (June 15, 2017), <https://www.propublica.org/article/trump-administration-rolls-back-civil-rights-efforts-federal-government>.

⁹⁸ In Attorney General Barr’s comments to a police officer society, he affirmed the fullest commitment to defending the police, even when they have engaged in wrongful arrests or detention. Attorney General William P. Barr Delivers Remarks at the Grand Lodge Fraternal Order of Police’s 64th National Biennial Conference (Aug. 12, 2019), <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-grand-lodge-fraternal-order-polices-64th>.

⁹⁹ Andrew Kaczynski, *AG Jeff Sessions: Consent decrees can ‘reduce morale of the police officers’*, CNN (Apr. 14, 2017), <http://www.cnn.com/2017/04/14/politics/kfile-sessions-consent-decrees/>.

¹⁰⁰ Eric Lichtblau, *Sessions Indicates Justice Department Will Stop Monitoring Troubled Police Agencies*, New York Times (Feb. 28, 2017), <https://www.nytimes.com/2017/02/28/us/politics/jeff-sessions-crime.html?action=click&contentCollection=U.S.&module=RelatedCoverage®ion=EndOfArticle&pgtype=article>.

representation, are placed far from their communities, families and resources and have little to no oversight. This all while being forced to survive in inhumane, cruel and dangerous conditions. The Theo Lacy Facility—Orange County, California’s largest detention facility—is representative of detention facilities across the nation, where some immigrants are held in solitary confinement for 24 hours a day,¹⁰¹ violating established international human rights law which establishes prolonged solitary confinement for more than fifteen days as torture.¹⁰²

Mass detentions and deportations, along with an unprecedented allocation of resources to immigration and border enforcement,¹⁰³ have long since been official government policy. The State guarantees 34,000 beds in detention facilities to the privately-run prison and immigrant detention facility industry,¹⁰⁴ namely the Corrections Corporation of America (CCA), which has conducted some of the most egregious acts of terror. Today, one in six migrant children are being detained at shelters operated by a private equity tycoon.¹⁰⁵ The bed limit has been anything but, with the average daily detainee population consistently exceeding 37,000 since the summer of 2016.¹⁰⁶ Of the mainly Latino immigrants detained, approximately 73% are detained in privately run facilities, 15% in county jails, and only 12% in federally-owned (public) facilities.¹⁰⁷ About 7,000 additional immigrants languish in local jails as a result of the ICE detainers mentioned above. Immigrants who may be unlawfully held could wait anywhere between 24 hours to several months¹⁰⁸ to be transferred to a detention facility where they could be held even longer awaiting deportation.

After being subjected to unlawful detention, Latino and other immigrants are then transferred to federal immigrant detention facilities that operate under deplorable conditions that fall far below internationally mandated safety and sanitary standards. Over ninety percent of detainees nationwide are of Latino origin.¹⁰⁹ Widespread human rights violations in immigrant detention facilities are well documented and continue despite repeat litigation, advocacy and denouncement. Detention facilities notoriously engage in inhumane treatment of detainees and

¹⁰¹ *Id.*

¹⁰² Torture and other cruel, inhuman or degrading treatment or punishment, Note by the Secretary General, A/66/268 (Aug. 5, 2011). The United States’ use of solitary confinement has been condemned as torture by the United Nations special rapporteur on torture. (“[I]t is safe to say that the United States uses solitary confinement more extensively than any other country, for longer periods, and with fewer guarantees.”).

¹⁰³ See *Removal Statistics*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <http://www.ice.gov/removal-statistics> (last visited May 18, 2016) (From FY 2008 to FY 2015, approximately 2,878,672 individuals have been removed).

¹⁰⁴ Cite 41k detained number and any additional facts.

¹⁰⁵ <https://www.forbes.com/sites/denizcam/2019/04/10/one-in-six-migrant-children-in-the-us-are-staying-at-a-shelter-operated-by-a-private-equity-tycoon/?fbclid=IwAR09pHrM9Ulovq03BQ1bKUCp-bkuqvXsf4zXh2z2YMB9AY6s3hURweCgoTY#3e356e47687e>

¹⁰⁶ *Shutting Down The Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons*, AMERICAN CIVIL LIBERTIES UNION (Sept. 2016), https://www.aclu.org/sites/default/files/field_document/white_paper_09-30-16_released_for_web-v1-opt.pdf.

¹⁰⁷ *Id.*

¹⁰⁸ I know there are cases of this; we need to find some!

¹⁰⁹ Emily Ryo, et al. *The Landscape of Immigration Detention in the United States*, AMERICAN IMMIGRATION COUNCIL (Dec. 5, 2018), <https://americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states> (noting “Mexican nationals by themselves made up about 43 percent of the detainee population, and individuals from the Northern Triangle region of El Salvador, Guatemala, and Honduras made up about 46 percent of the detainee population.”)

conditions and have been compared to concentration camps.¹¹⁰ At the most basic level, immigrant detainees who are held are subject to conditions that are so unsanitary that they facilitate the transmission of contagious diseases. Outbreaks of measles and mumps in privately owned detention facilities have caused hundreds of detainees to be held in quarantine.¹¹¹

Detainees continue to suffer verbal and physical abuses, and vulnerable populations like women and LBGTTQI detainees are at risk for gender-based abuse and violence.¹¹² After a visit to several detention centers in Texas in June 2019, Congresswoman Alexandria Ocasio-Cortez, joined by several other Congressmembers, claimed witnessing female detainees being kept in cells without access to water and were told by border patrol agents to “drink from the toilet”.¹¹³ This was the same facility where, just a month prior, over 300 children were removed after information was leaked that they were not fed properly and were forbidden from showering for weeks.¹¹⁴ During a hearing in front of federal appeals court, the Department of Justice defended cruel, inhumane, and degrading treatment of child detainees who were forced to sleep on concrete floors all night with the lights on with nothing but an aluminum blanket, and were not provided soap or toothbrush.¹¹⁵ Despite an outpouring of questions and concerns by the panel of judges, the DOJ attorney remained firm in the defense of these conditions falling under the “safe and sanitary” requirement because the exact definition of that requirement was, according to the DOJ, not solidified. The court later determined that in fact basic sanitary items like soap and a toothbrush—which had been denied all children detainees—were absolutely required items that the government had an obligation to provide them.¹¹⁶ The fact that the State argued that it bore no obligation to do so and that something as simple as ensuring that Latino immigrant children could wash themselves had to be litigated to force the State to do what has long been established under

¹¹⁰ Anna Lind-Guzik, *I’m a Jewish historian. Yes, we should call border detention centers “concentration camps.”*, Vox (June 20, 2019), <https://www.vox.com/first-person/2019/6/20/18693058/aoc-alexandria-ocasio-cortez-concentration-camps-immigration-border>.

¹¹¹ <https://www.texastribune.org/2019/03/01/nearly-200-immigrant-detainees-have-mumps-texas/>

¹¹² See Sharita Gruberg, *ICE’s Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, CENTER FOR AMERICAN PROGRESS (May 30, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>. The findings of the report showed that:

ICE reported [] that it received 227 reports of sexual abuse and assault in FY 2017. Twenty-eight of these reports involved an LGBT victim. In FY 2017, ICE detained 323,591 people. ICE [] that in FY 2017, 467 immigrants disclosed being LGBT during intake to a detention facility. This means that although LGBT people were 0.14 percent of the people ICE detained in FY 2017, they accounted for 12 percent of victims of sexual abuse and assault in ICE detention that year. In other words, assuming each report of sexual violence is substantiated and involves a separate victim, LGBT people in ICE custody are 97 times more likely to be sexually victimized than non-LGBT people in detention.

See also Victoria López, *Rampant Abuses in Immigration Detention Prove ICE Is Rotten to the Core*, AMERICAN CIVIL LIBERTIES UNION (March 1, 2019), <https://www.aclu.org/blog/prisoners-rights/rampant-abuses-immigration-detention-prove-ice-rotten-core> (finding that “1,655 pregnant women were booked into ICE custody over a 10-month period between 2017-2018 and that 28 women may have miscarried in ICE custody over the past two years.”); Ryan Kocian, *CCA Guard Accused of 8 Sexual Assaults*, Courthouse News (Apr. 15, 2015), <https://www.courthousenews.com/cca-guard-accused-of-8-sexual-assaults/>.

¹¹³ <https://www.newsweek.com/alexandria-ocasio-cortez-claims-cbp-forced-women-drink-out-toilets-1446954>.

¹¹⁴ <https://apnews.com/46da2dbe04f54adbb875cfbc06bbc615>.

¹¹⁵ Video of the oral argument is available at https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000015907.

¹¹⁶ *Flores v. Barr*, No. 17-56297, 2019 WL 3820265, at *5 (9th Cir. Aug. 15, 2019).

domestic and international human rights law speaks directly to the State's malicious intent to systematically deprive Latinos of their fundamental human rights.

In June of 2017, the State terminated a program known as the Family Case Management Program that functioned to keep immigrant families with children out of immigration detention, further endangering vulnerable and often traumatized mothers and children seeking asylum.¹¹⁷ The program prioritized the protection of vulnerable families, including those with children and/or spoke only indigenous languages, who were offered an alternative to crowded detention centers as they awaited asylum proceedings. Since removing the program, ICE has since resorted to deplorable alternatives to monitoring refugee and asylee presence, including branding asylum seekers with stigmatized ankle monitors and excessive government check-ins that impedes mothers' abilities to provide childcare.

Conditions discovered at a separate detention facility also in June 2019 found that infants and toddlers were sleeping on concrete floors. Among the children there, there was a lice outbreak among twenty children, to which the facility responded by providing two lice combs and telling the children to "work it out."¹¹⁸ Guards at the facility would punished the children by taking away their sleeping mats and blankets, leaving them to sleep with no protection on the floor. In addition, guards created a hierarchy among the children detainees by assigning a "child boss" to patrol and police the other children. For their compliance, these child "bosses" would be rewarded with extra food.¹¹⁹

The abhorrent conditions inside the Stewart Detention Center in Georgia rival those of federal prisons: there are sixty men to a unit who share a shower area with only six showers, three toilets and three urinals. The detainees themselves are responsible for cleaning the bathrooms and only receive a payment of \$1 - \$2 a day.¹²⁰ Detainees have often described the food served in the facility as rotten and the water green, smelling of feces. The lack of access of drinking water forces detainees to boil their water prior to washing their clothes or drinking from it.¹²¹ These conditions were the same found by the Department of Homeland Security's Office of Inspector General in the Theo Lacy Facility, where hundreds of detainees were forced to consume foul, expired lunch meat, use moldy showers and did not have access to working telephones.¹²²

¹¹⁷ Aria Bendix, *ICE Shuts Down Program for Asylum-Seekers*, The Atlantic (June 9, 2017), <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>. As of a few months prior to its termination, there were 630 families enrolled.

¹¹⁸ These horrific conditions were discovered through interviews conducted by Warren Binford, a law professor at Willamette University, in June 2019 at the Clint border patrol facility in Texas. Most of the children interviewed were from Honduras, Guatemala and El Salvador. More than 100 children were under the age of 13, while 18 children were ages four years old or younger, including the youngest child, who was just four and a half months old.

¹¹⁹ Serena Marshall, et al., *Doctor compares conditions for unaccompanied children at immigrant holding centers to 'torture facilities'*, ABC News (June 23, 2019), <https://abcnews.go.com/Politics/doctor-compares-conditions-immigrant-holding-centers-torture-facilities/story?id=63879031>.

¹²⁰ PENN STATE LAW CENTER FOR IMMIGRANTS' RIGHTS CLINIC & PROJECT SOUTH, *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers*, 31 (May 2017), available at http://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf.

¹²¹ *Id.* at 32.

¹²² Matt Hamilton, *Spoiled food and moldy showers: Poor conditions for immigrant detainees in O.C. jail, report says*, L.A. Times (Mar. 8, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-oc-jail-inspection-20170308-story.html>; see also DETENTION WATCH NETWORK, *Expose & Close: Executive Summary* (Nov. 2012),

In addition to exposing detainees to egregious and inhumane conditions, the State has done so to the wrong people. ICE and US Customs and Border Patrol (CBP)¹²³ officials have wrongfully arrested, detained, and held US citizens in their custody. Since 2012, more than 1,480 U.S. citizens have been released from custody after an investigation into their citizenship was conducted. Immigration officers unjustly target these victims and assume that they are lying about their citizenship based on racial profiling and bias. From the overall investigations conducted into citizenship claims by detainees, over twenty percent were determined to have shown that the detainee was in fact a U.S. citizen.¹²⁴ Most recently, one 18-year-old Latino citizen who was detained by CBP officials said that the conditions in the detention center were so bad that he almost self-deported. During his 23-day detainment, he lost twenty-six pounds, was not provided adequate food, and was not allowed to shower. He was held in an overcrowded area with other men, some of whom were ill and bitten by ticks, and slept on the floor with nothing but an aluminum foil blanket.¹²⁵

Beyond detaining immigrants, the State has also been responsible for immigrant detainee deaths in their custody. Government records outlining investigations into the deaths of eighteen migrants in federal immigrant detention centers from 2012 - 2015 concluded that subpar care contributed to nearly half of the deaths.¹²⁶ There were ten detention center related deaths in 2017 alone,¹²⁷ which was the same amount of detainees who died in ICE custody in 2016. Those numbers are up from the proceeding years, when seven detainees died in 2015, three detainees died in 2014, and seven detainees died in 2013.¹²⁸ Of the ten detainee deaths in 2017, seven were from Latin America.¹²⁹ One of those deaths was Rolando Meza Espinoza, a Honduran immigrant and father of three. Meza Espinoza was wrongly detained by ICE on April 1, 2017, and died in ICE custody two months later of negligent medical attention.¹³⁰ While detained, Meza Espinoza

<http://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Executive%20Summary.pdf>, See also Madison Pauly, *This May Be America's Worst Immigration Detention Center*, Mother Jones (Mar. 9, 2017), available at <http://www.motherjones.com/politics/2017/03/theo-lacy-immigration-detention-conditions/>.

¹²³ Both are agencies within the Department of Homeland Security.

¹²⁴ Paige St. John and Joel Rubin, *Must Reads: ICE held an American man in custody for 1,273 days. He's not the only one who had to prove his citizenship*, Los Angeles Times (April 27, 2018), <https://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htmlstory.html>.

¹²⁵ Caitlin O'Kane, *18-year-old U.S. citizen detained by border officials said conditions were so bad he lost 26 pounds, almost self-deported*, CBS News (July 26, 2019) <https://www.cbsnews.com/news/us-citizen-detained-by-ice-francisco-erwin-galicia-border-officials-conditions-bad-almost-self-deported/>.

¹²⁶ *US: Deaths in Immigration Detention*, HUMAN RIGHTS WATCH (Jul. 7, 2016), <https://www.hrw.org/news/2016/07/07/us-deaths-immigration-detention>.

¹²⁷ U.S. Immigration and Customs Enforcement, *New York-area ICE detainee passes away* (Jun. 12, 2017), <https://www.ice.gov/news/releases/new-york-area-ice-detainee-passes-away>; see also Roque Planas, *Salvadoran Immigrant Dies In ICE Custody as Detainee Deaths Rise*, Huffington Post (Jun. 13, 2017), http://www.huffingtonpost.com/entry/ice-detention-deaths_us_59403e6de4b09ad4f8e3b96f.

¹²⁸ Anna Giaritelli, *UK woman dies in ICE custody*, Washington Examiner (Oct. 26, 2016), <http://www.washingtonexaminer.com/uk-woman-dies-in-ice-custody/article/2605692>.

¹²⁹ Jorge Rivas, *When Your Obituary is Written by ICE: A List of ICE In-Custody Deaths in 2017*, Fusion (Apr. 5, 2017), <http://fusion.kinja.com/when-your-obituary-is-written-by-ice-a-list-of-ice-in-1793859278><http://fusion.kinja.com/when-your-obituary-is-written-by-ice-a-list-of-ice-in-1793859278>.

¹³⁰ Andrew Keshner, *Sick Honduran immigrant mistakenly cuffed by ICE dies in custody*, N.Y. Daily News (Jun. 20, 2017), <http://www.nydailynews.com/new-york/sick-honduran-immigrant-mistakenly-cuffed-ice-dies-custody-article-1.3263023>, see *supra* note 127, *Salvadoran Immigrant Dies In ICE Custody As Detainee Deaths Rise*.

was only given medication for his diabetes, but he received no medical attention for his documented anemia or cirrhosis, despite asking a nurse in the detention center for additional medications. Meza Espinoza's cause of death as stated by ICE was gastrointestinal bleeding and hemorrhagic shock. The State's systemic negligence to tend to detainees' medical conditions while actively promoting the unsafe and inhumane cages where they are housed is an integral part of the pattern and practice of racial profiling and targeting of Latinos in the U.S.

E. Border policies

1. *The border policies of "Zero Tolerance" and family separation*

For the past several years, and certainly in 2019, the world has watched while the United States has violated domestic and international law by interfering with asylum seekers' legitimate rights and claims to asylum, criminalizing the very attempt to seek asylum or refugee status, and subjecting children and their parents—both survivors of trauma, torture and death threats—to torturous conditions. The Department of Homeland Security and Department of Justice jointly announced an interim final rule to block people from claiming asylum if they enter the United States outside legal ports of entry.¹³¹ The law per the 1997 *Flores* settlement provides that children cannot be held in prolonged detention,¹³² the State has opted to hold both their parents for far longer than the 20-day period allowed.¹³³ Since children must be guaranteed bare minimum protections – which aren't being adhered to – the State began in 2018 to impose a "zero-tolerance" policy to separate migrant children from their families so that parents could be prosecuted and held for extended periods in detention centers while their children are sent elsewhere.¹³⁴

Separation was not a new policy and in fact has been going on for several years now.¹³⁵ The change to separating families as official government policy was emphasized by former Attorney General Sessions, who declared in a public gathering, "if you don't want your child to be separated [from you], then don't bring them across the border illegally."¹³⁶ The former Secretary of the Department of Homeland Security characterized the practice of separating families at the

¹³¹ 84 FR 33829; *see also*

¹³² *Flores v. Sessions*, 862 F.3d 863, 866 (9th Cir. 2017). The agreement, which was entered in 1997, in sum: [E]stablished a "nationwide policy for the detention, release, and treatment of minors in the custody of the INS." The *Flores* Settlement set minimum standards for the detention, housing, and release of non-citizen juveniles who were detained by the government and obliged the government to pursue a "general policy favoring release" of such juveniles. The settlement also provided that minors in deportation proceedings would be afforded a bond redetermination hearing before an immigration judge. Finally, the settlement defined a "minor" as "any person under the age of eighteen (18) years who is detained in the legal custody of the INS.

Lopez v. Sessions, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *5 (S.D.N.Y. June 12, 2018) (internal quotations omitted).

¹³³ *Supra* note 117, *ICE Shuts Down Program for Asylum-Seekers*.

¹³⁴ Memorandum For Federal Prosecutors Along The Southwest Border, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), U.S. Department of Justice (April 6 2018), <https://www.justice.gov/opa/press-release/file/1049751/download>.

¹³⁵ Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*, New York Times (April 20, 2018), <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

¹³⁶ Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration, U.S. Department of Justice (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

border as a means of deterring people from attempting to cross the border into the United States to assert valid claims seeking asylum.¹³⁷ Under the policy of family separation, immigrant families crossing the U.S. — Mexico border were prosecuted at a higher rate than were people crossing the border without children, placing the most vulnerable migrants in an even more traumatized and precarious positions.¹³⁸ Immigrant families then face the very real possibility that the United States will take their children from them and place them in other facilities and maybe even other states or with “foster” families while they and their parents await to be adjudicated.¹³⁹ On June 9, 2018, a Latino immigrant and father committed suicide while in immigration detention after he was separated from his child at the U.S.-Mexico border.¹⁴⁰ The horrific and high cost of having to lose your child as a result of embarking on a journey to escape threats to your life and well-being are intentionally designed to target Latino immigrants in order to disrupt the social, communal and family networks upon which successful immigration is based.

Despite the State’s claim that they are ending the policy of family separation, the practice continues, as does the fearmongering of using this cruel tactic, which is often accompanied by the anti-immigrant rhetoric that permeates all immigration-related policies targeting the Latino community. Along the southern border, the State has stopped just short of declaring war on namely Latino/a immigrants seeking asylum or refugee status. President Trump attempted to incite fear among the nation by claiming that the migrant caravan that was making its way from Central America to the U.S. - Mexico border was “a pending invasion,”¹⁴¹ which inspired bigoted civilians to organize militias along the border and take enforcement matters into their own hands by capturing and holding asylum-seeking families at gunpoint near the border.¹⁴² This bashing of Latino immigrants as a way to justify the unlawful and inhumane attacks on their dignity and right to migrate, residence and life are repeated by the highest levels of government.

F. Lack of access to justice

1. *Courthouse arrests*

Courthouse arrests by ICE officers deters both documented and undocumented people from properly accessing justice, directly undermining the purpose of our justice system. In 2018, ICE substantially expanded the number of arrests, raids, surveillance operations and geographical

¹³⁷ William Cummings, *John Kelly defends separating immigrant families, saying ‘name of the game is deterrence’*, USA Today (May 11, 2018), <https://www.usatoday.com/story/news/politics/2018/05/11/john-kelly-splitting-migrant-families-laws-trump/602982002/>.

¹³⁸ Noah Lanard, *New Data Shows How Trump Administration Prosecuted Migrant Parents With Children Instead of Adults Traveling Alone*, Mother Jones (July 24, 2018), <https://www.motherjones.com/politics/2018/07/new-data-shows-how-trump-administration-prosecuted-migrant-parents-with-children-instead-of-adults-traveling-alone/>.

¹³⁹ *Deported parents may lose kids to adoption, investigation finds*, Associated Press (Oct. 9, 2018), <https://www.nbcnews.com/news/latino/deported-parents-may-lose-kids-adoption-investigation-finds-n918261>.

¹⁴⁰ Nick Miroff, *A family was separated at the border, and this distraught father took his own life*, Washington Post (June 9, 2018), https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html.

¹⁴¹ *Trump tried to create ‘hysteria’ over migrant caravans, says progressive lawmaker*, The Hill (Nov. 15, 2018), <https://thehill.com/hilltv/rising/417006-trump-tried-to-create-hysteria-over-migrant-caravans-says-progressive-lawmaker>.

¹⁴² Ryan Devereaux, *The Bloody History Of Border Militias Runs Deep — And Law Enforcement Is Part Of It*, The Intercept (April 23, 2019), <https://theintercept.com/2019/04/23/border-militia-migrants/>.

scope of them, including into federal, state, and local courthouses.¹⁴³ Immigrants who come to testify or show up for court appearances, and their family members who support them, are at risk for removal or detention. While courthouses have traditionally been seen as places where justice is sought and litigants are encouraged to come before the court to solve disputes peacefully, ICE claims that immigrants who show up there “pose[] a threat to public safety or interfere[] with ICE’s enforcement actions.”¹⁴⁴ As though they were engaged in a covert operation, ICE agents enter courthouses disguised in plainclothes, use intrusive surveillance and at times violent force to arrest immigrants who show up to comply with a court order to do so for unrelated issues, to seek protection from abusive situations or to hold accountable those who have violated their rights.¹⁴⁵ As a result of trusting the neutrality of courthouses as a place to vindicate rights, they are subjected to arrests and detention, serving as a strong deterrence for other immigrants to seek justice, including for state violence such as that mentioned here.

Between 2017 - 2018, ICE operations in and around courthouses continued to increase, bringing arrests to unprecedented levels.¹⁴⁶ These operations increased by 17% compared to 2017 and by 1700% compared to 2016. ICE agents conduct operations at all levels of the judiciary, including municipal courts, criminal courts and in courts designed to be rehabilitative instead of punitive. These changes underline ICE’s increasing reliance on city and state court system as a place to trap and detain immigrants. In New York, ICE set no limits on who they targeted, meaning that immigrants who appeared in a diversion court for victims of human trafficking or survivors of domestic violence seeking orders of protection against their aggressors were arrested and detained. In fact, ICE agents aggressively targeted immigrants who are survivors of domestic violence, survivors of human trafficking, and youth.¹⁴⁷ ICE also increased their arrests of minors, despite being eligible for special forms of immigration relief like the Deferred Action for Childhood Arrivals (DACA).¹⁴⁸

In addition to courthouse arrests, ICE is also using courthouses and judicial proceedings to surveil immigrants.¹⁴⁹ In one case, ICE followed an attorney and her client as they left the courthouse together until they went separate ways, at which point undercover ICE officers surrounded the client and arrested him. They kept the arrestee, who is married to a U.S. citizen, incarcerated in immigration detention for more than four months before being scheduled for his first hearing in immigration court.

The legal profession has called on ICE to immediately halt its persecution of immigrants in spaces where justice is sought, recognizing it as a great deterrence for complying with court orders, enforcing court decisions and installing faith among the public in the judiciary’s ability to adjudicate without drastic collateral consequences to immigrants. In 2017, the American Bar

¹⁴³ *Civil Immigration Enforcement Actions Inside Courthouses*, U.S. Immigration And Customs Enforcement (January 10, 2018),

<https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

¹⁴⁴ *Id.*

¹⁴⁵ *The Courthouse Trap*, IMMIGRATION DEFENSE PROJECT (January 2019), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 10.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 4.

Association called on the U.S. Congress to add courthouses to the list of “sensitive locations” where immigration authorities cannot make arrests except in emergency situations.¹⁵⁰ In 2018, 67 former state and federal judges sent a letter to ICE expressing concern about courthouse arrests.¹⁵¹ In the New York City alone, 71% of surveyed law enforcement officers reported that the lack of trust and cooperation from immigrant survivors of crime or those with limited English proficiency had an adverse impact on their ability to investigate and prosecute crime. In addition, 67% reported an impact on their ability to protect immigrant crime survivors while 64% reported an adverse impact on officer safety.¹⁵²

III. Failure to protect

Petitioners have consistently informed the Commission since the filing of the original petition of the numerous ways the State by design or de facto fails to protect its Latino/a residents. The increase in the number of hate crimes committed against Latinos/as and the subsequent lack of protections and justice they receive has worsened over the life of this petition but has dramatically worsened under President Trump. The horrific massacre in El Paso, Texas of 22 Latino/a civilians this summer is just the latest example, and Petitioners fear it may not be the last.

A. Increase in hate crimes

The criminalization of Latino presence, racial profiling, demonizing Latino immigrants as criminals and not “real” Americans and the xenophobic and anti-immigrant rhetoric and policies of the State have emboldened the worst tendencies in civilians, including resulting to hate-filled violence against Latinos and Latinas. As the Commission knows from Petitioners’ supplemental submission dated May 22, 2012, in which a 14-page chart documented more than 100 hate crimes committed against Latinos/as in the past decade, attacks against Latino/a citizens are not new. However, they have increased as a result both of President Trump and administration officials use incendiary language that incites violence, in addition to the lack of any meaningful consequences to perpetrators of such violence. As a result, already troubling rates of anti-Latino hate crimes in the U.S. have risen since President Trump’s election.

This rise in hate crimes is not contemporaneously represented in annual FBI national hate crime reports, which are at least two years behind in reporting and have problematic framing of hate crimes to diminish the showing of actual violence against people of color.¹⁵³ Despite the lack of either tracking or accurate data by the State, civil society groups documented 1,094 hate incidents in the month following Trump’s election alone.¹⁵⁴ Anti-immigrant attacks were the most common, representing 20% of all incidents reported; overall, 152 hate incidents specifically

¹⁵⁰ *Legal experts say ICE arrests at courthouses threaten justice*, American Bar Association (2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/01/panelists-say-ice-arrests/>.

¹⁵¹ *Id.*

¹⁵² American Civil Liberties Union, *Freezing Out Justice*, (2018) https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

¹⁵³ [2017 Hate Crime Statistics, Federal Bureau of Investigations \(2017\)](https://ucr.fbi.gov/hate-crime/2017), <https://ucr.fbi.gov/hate-crime/2017>

¹⁵⁴ *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, SOUTHERN POVERTY LAW CENTER (Dec. 16, 2016), <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election>.

targeted Latinos. Of the total hate incidents reported in the month following the election, around 37% directly referenced then President-elect Donald Trump's campaign slogans.¹⁵⁵

Since his candidacy and inauguration, Trump-inspired anti-Latino hate crimes have been reported throughout the United States. Most recently, a shooting massacre was committed at a Walmart in El Paso, Texas—a city that is 80% Latino—by an emboldened white supremacist whose intent was to target Mexicans.¹⁵⁶ The shooter travelled 600 miles to the border town armed with assault rifles and protective gear and described Latino immigrants an “invasion,” precisely the same language used by President Trump to describe the same population, including immediately after the massacre happened.¹⁵⁷ Trump resorted to his same narrative that is inspiring racist violence nationwide, calling immigrants at the southern border “criminals” and that their arrival is an “invasion.” The El Paso assassin had a photograph posted on his social media account of his assault weapons laid out to spell the name “Trump.”¹⁵⁸

The message of anti-Latino hate and violence has spread nationwide and people are finding inspiration in Trump's message to go after the “criminal” immigrants. Among the incidents include:

- In Boston, one of two brothers who allegedly beat a homeless Latino man cited Trump's message on immigration as a motivation for the attack. “Donald Trump was right, all these illegals need to be deported,” Scott Leader, 38, told officers.¹⁵⁹
- In California, three men were charged with hate crimes after an unprovoked attack on a group of Latino men who were playing soccer in a public park. The suspects were identified as white supremacists who were “screaming racial slurs: ‘Heil Hitler’, ‘AV Skins,’ just numerous racial slurs toward the Hispanics.”¹⁶⁰
- In New York, a man assaulted a Latino victim as he yelled racial slurs at a train station in Long Island, not far from where Petitioner Lucero was murdered.¹⁶¹
- In New Jersey, high school students staged a walkout after a video surfaced of a teacher telling students that U.S. soldiers are “not fighting for your right to speak Spanish, they're fighting for your right to speak American.”¹⁶²

¹⁵⁵ *Id.*

¹⁵⁶ Alexia Fernández Campbell, *The El Paso shooter told police that he was targeting*, Vox.com (Aug. 9, 2019) <https://www.vox.com/2019/8/6/20756750/el-paso-shooter-targeted-latinx-walmart>.

¹⁵⁷ CNN panel criticizes Trump's use of 'invasion' after massacre, CNN, <https://www.cnn.com/videos/politics/2019/03/15/donald-trump-invasion-invaders-ashamed-new-zealand-terror-attack-sot-lead-vpx.cnn>.

¹⁵⁸ Peter Baker and Michael Shear, *El Paso Shooting Suspect's Manifesto Echoes Trump's Language*, New York Times (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>.

¹⁵⁹ Russell Berman, *A Trump-Inspired Hate Crime in Boston*, The Atlantic (Aug. 20, 2015) <http://www.theatlantic.com/politics/archive/2015/08/a-trump-inspired-hate-crime-in-boston/401906/>.

¹⁶⁰ Liam Stack, *3 Men Charged with Hate Crimes in Attack on Hispanics in California*, New York Times (Mar. 4, 2016), <http://www.nytimes.com/2016/03/05/us/hate-crime-charges-lake-los-angeles-california.html>.

¹⁶¹ Ashley Soley-Cerro, *Man faces hate crime charge after yelling racial slurs, attacking man at LIRR station* (March 15, 2018), <https://pix11.com/2018/03/15/man-faces-hate-crime-charge-after-yelling-racial-slurs-attacking-man-at-lirr-station-police/>.

¹⁶² Cristian Benavides, *Students Walk Out After Teacher Orders: Speak 'American'*, NBC News (Oct. 16, 2017), <https://www.nbcnews.com/news/all/students-walk-out-after-teacher-tells-students-speak-american-n811256>.

- In Austin, Texas, middle school students walked out in protest of a teacher allegedly telling a student to “go back to Mexico” after hearing the student speaking Spanish.¹⁶³
- In San Antonio, Texas, fake cards were distributed offering a money reward to anyone who reported an “undocumented alien” to ICE.¹⁶⁴
- In San Diego, the city’s Immigration Museum was vandalized with messages reading, “too much immigration! Go back to your country. This one is ours!”¹⁶⁵
- In Los Angeles, a 92-year-old Latino man was beaten with a brick by a woman who was reported yelling, “go back to your country, why are you here?”¹⁶⁶
- In San Francisco, a man verbally and physically assaulted a Latina childcare provider as she was taking care of two small children, telling her, “no Latinos here.”¹⁶⁷
- In Washington, a man chased a neighborhood woman with a knife and threatened to blow her up when he discovered that she immigrated from Mexico.¹⁶⁸

While United States claims that federal hate crime legislation exists and that many states have incorporated hate crimes provisions into their penal codes, including New York and Pennsylvania (where the crimes against the named petitioners occurred), they are largely unused and inadequate.¹⁶⁹ The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, a federal statute, is an insufficient and largely symbolic condemnation of hate crimes that leaves the primary responsibility of prosecution with local authorities.¹⁷⁰ Federal jurisdiction under the Shepard Byrd Act is limited to circumstances where: 1) the state where the crime occurred lacks jurisdiction; 2) the state invites the federal government to assume jurisdiction; 3) state prosecution fails to vindicate federal interests; and 4) federal prosecution is in the public interest and necessary to secure substantial justice.¹⁷¹ In sum, the federal government may not pursue prosecutions in states that have enacted analogous hate crimes legislation, regardless of whether

¹⁶³ Melissa Taboada, *Austin students protest, accuse teacher of saying “go back to Mexico”*, The Statesman (Nov. 25, 2018), <https://www.statesman.com/news/20171117/austin-students-protest-accuse-teacher-of-saying-go-back-to-mexico>.

¹⁶⁴ Alex Zielinski, *Fake Cards Appear in San Antonio, Offering \$100 to Anyone Who Reports Undocumented Immigrants to ICE*, San Antonio Current (Aug. 10, 2017), <https://www.sacurrent.com/the-daily/archives/2017/08/10/fake-cards-appear-in-san-antonio-offering-100-to-anyone-who-reports-undocumented-immigrants-to-ice?media=AMP+HTML>.

¹⁶⁵ Steve Walsh, *Anti-Immigrant Graffiti Found At San Diego Museum Entrance*, KPBS (Nov. 29, 2016), <https://www.kpbs.org/news/2016/nov/28/new-americans-museum-reacts-slogans-scrawled-entra/>.

¹⁶⁶ Aris Folley, *92-year-old man attacked with brick, told to ‘go back to your country:’ reports*, The Hill (July 9, 2018), <https://thehill.com/blogs/blog-briefing-room/news/396078-92-year-old-man-attacked-with-brick-told-to-go-back-to-your>

¹⁶⁷ Jay Barmann, *Latina Woman Victim Of Alleged Hate Attack While Watching Children Near Fort Mason*, SFist (Nov. 15, 2016), http://sfist.com/2016/11/15/latina_woman_victim_of_alleged_hate.php.

¹⁶⁸ *Auburn man charged with hate crime for attacking Mexican neighbor*, KGMI (April 11, 2017), <https://kgmi.com/news/007700-auburn-man-charged-with-hate-crime-for-attacking-mexican-neighbor/>.

¹⁶⁹ N.Y. PENAL LAW § 485.05 (McKinney 2010) (“A person commits a hate crime when he or she commits a specified offense and . . . intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, [or] national origin . . . of a person.”; 18 PA. CONS. STAT. § 2710 (2003) (“A person commits the offense of ethnic intimidation if, with malicious intention towards the race, color, religion or national origin of another individual or group of individuals, he commits an offense . . .”).

¹⁷⁰ Simmons and Kavis, *Subverting Symbolism: The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act and Cooperative Federalism*, 49 AM. CRIM. L. REV 1863, 1888 (2013).

¹⁷¹ *Id.* at 1883.

those states are vigorously prosecuting hate crimes in practice.¹⁷² In addition, the Shepard Byrd Act does little to assist local jurisdictions with their efforts to ramp up hate crimes prosecution. State, local, and tribal law enforcement agencies seeking funding under the Act must submit an application first, and the amount they could receive is minimal.¹⁷³ The federal government does not mandate a standard definition for hate crimes across states, nor is there mandatory reporting of hate crimes or crimes committed based upon a perceived protected category (for states with state-level hate crimes legislation). In addition, the categorization by the federal government of what constitutes a hate crime and who is a victim is extremely problematic, makes invisible where actual bias-based criminal activity is targeted and against whom, and shows a fundamental misunderstanding of what hate crimes are and against who they're perpetuated.

B. Unreported and underreported crimes – including hate crimes - against Latinos due to federal government aggression, persecution and negligence

Even more telling than the State's explicit statements is its silence and unwillingness to recognize, prosecute and protect against incidences of racially charged violence against Latinos. The administration's reluctance to address or even acknowledge hate crimes committed by white supremacists suggests to the American people an implied approval of this kind of criminal behavior targeting people of color. The Department of Justice estimates that over half of violent hate crimes go unreported,¹⁷⁴ and the Federal Bureau of Investigation has recently identified at least 120 federal agencies that are failing to report hate crimes in violation of federal law.¹⁷⁵ The resulting difficulty in obtaining and interpreting accurate data on the prevalence and characteristics of hate crimes leaves states unable to understand the scope and nature of hate-motivated violence. Because of the State's both overt encouragement of harassing and violent behavior towards Latinos while simultaneously removing protections for Latino victims of crime, Latinos are understandably reluctant to report hate crimes and police misconduct – regardless of immigration status - due to fears of deportation and collusion between local law enforcement and immigration authorities.

Nowhere is this more visible than in gender-based violence, where survivors of the same are increasingly hesitant to report their abuse and abusers to law enforcement, even when it means they will have to forgo any protections. In Houston alone, the number of Latinas who reported sexual assault dropped nearly 43 percent in the first three months of 2017 and the number of Latino victims of robberies and aggravated assaults were down 12 percent.¹⁷⁶ In Los Angeles, sexual assault reporting among Latina survivors dropped 25 percent in 2017.¹⁷⁷ In general, 78% of

¹⁷² *Id.* at 1871. (check article for whether this is true or just how it turns out in practice)

¹⁷³ Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. (2009-2010), available at: <http://thomas.loc.gov/cgi-bin/query/z?c111:S.909:/>

¹⁷⁴ Noa Yadidi, *DOJ Report: Majority of hate crimes go unreported*, CNN POLITICS (June 29, 2017), <http://www.cnn.com/2017/06/29/politics/doj-hate-crime-report/index.html>.

¹⁷⁵ A.C. Thompson and Ken Schwencke, *More Than 100 Federal Agencies Fail to Report Hate Crimes to the FBI's National Database*, PROPUBLICA (June 22, 2017), <https://www.propublica.org/article/more-100-federal-agencies-fail-report-hate-crimes-fbi-national-database>.

¹⁷⁶ John Burnett, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*, NPR (May 25, 2017), <http://www.npr.org/2017/05/25/529513771/new-immigration-crackdowns-creating-chilling-effect-on-crime-reporting>.

¹⁷⁷ *Id.*

immigrant survivors of domestic violence, sexual assault and human trafficking have reported to advocacy groups that they now have concerns about contacting police due to fears of being deported or other immigration consequences, including having ICE officials show up at courthouses where they may have proceedings to seek relief from a violent situation.¹⁷⁸ As a result, legal advocates are now uncertain how to advise immigrant survivors about the consequences of reporting their abuse or abusers if they call the police or go to court to seek restraining orders.¹⁷⁹

C. Cutting enforcement for civil rights violations and creating sensational unit, “Victims of Immigrant Crime” (VOICE)

1. *De-funding of civil rights enforcement*

The State has openly and unapologetically abandoned its duty to protect all residents found within its jurisdiction, irrespective of citizenship, and has instead aggressively weakened protections for Latinos by fostering an environment ripe for abuse, exploitation and violence against them. The State has weakened civil rights initiatives and enforcement mechanisms across federal agencies and has chosen to focus its prosecutorial power not on the perpetrators of hate crimes *against* Latino immigrants – which are by far the majority of crimes involving immigrants - but by them. In 2018, the Administration put forth a proposed budget to defund the Justice Department’s Civil Rights Division, which employs 750 attorneys who have historically fought discrimination and defended civil rights.¹⁸⁰ The intent of the State later became obvious: the administration’s goal was to “redirect resources of the Justice Department’s civil rights division toward investigating and suing universities over affirmative action admissions policies deemed to discriminate against white applicants.”¹⁸¹ While the proposed budget was rejected, President Trump then put forth a nominee for the DOJ Civil Rights Division with a history of representing companies in discrimination suits to lead the agency designed to ensure worker protections.¹⁸²

Similar cuts were proposed to civil rights enforcement and protections across the administration. The proposed 2018 budget by the U.S. Department of Education would have cut over 40 positions from the Department’s Office of Civil Rights, and the Department of Labor sought to dissolve the office that handles discrimination complaints – a central and significant function of the agency. The Environmental Protection Agency proposed cutting 31% of the agency’s overall budget and eliminating the environmental justice program, which largely

¹⁷⁸ 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors, TAHIRIH JUSTICE CENTER, <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>; see also above commentary on courthouse arrests.

¹⁷⁹ *Id.*

¹⁸⁰ Taylor Tepper, *President Trump Wants to Kill These 17 Federal Agencies and Programs. Here’s What They Actually Cost (and Do)*, Time (Jan. 24, 2017), <http://time.com/money/4639544/trump-ne-a-sesame-street-budget-cut/>.

¹⁸¹ Charlie Savage, *Justice Dept. to Take On Affirmative Action in College Admissions*, New York Times (Aug. 1, 2017), <https://www.nytimes.com/2017/08/01/us/politics/trump-affirmative-action-universities.html>.

¹⁸² Diamond Naga Siu, *Activists Unhappy with Trump’s Nominee to Lead Civil Rights Unit*, Politico (June 29, 2017), <http://www.politico.com/story/2017/06/29/activists-oppose-trump-civil-rights-pick-240112>.

addresses the concerns of communities of color.¹⁸³ That same year, the administration's proposed budget would have eliminated the Office of Federal Contract Compliance Programs (OFCCP) and transfer its functions to the Equal Employment Opportunity Commission (EEOC), which would impede the work of both the OFCCP and EEOC as each have distinct missions and expertise, undermining the civil rights protections that employers and workers have relied on for almost 50 years.¹⁸⁴ In addition, the Department of Housing and Urban Development proposed a rule in 2019 seeking to restrict housing assistance for families with mixed-citizenship status.¹⁸⁵ The agency's own analysis showed that the proposal could lead to 55,000 children becoming temporarily homeless.

The State has shown its disdain for the immigrant community, not only in rhetoric but also in the closing of nearly two dozen U.S. Citizenship and Immigration Services field offices around the world.¹⁸⁶ These offices help Americans who want to bring family to the United States, process refugee applications, and enable overseas citizenship applications.¹⁸⁷

2. *Establishment of the Office of Victims of Immigration Crime Engagement (VOICE)*

The States' increased focus on crimes committed by immigrants, combined with its neglect of immigrant victims of crime, has left Latino communities unable to trust law enforcement at all levels. Despite a post-election surge in anti-Latino hate incidents, the Justice Department has not charged or indicted a single perpetrator of anti-Latino violence with federal hate crimes charges.¹⁸⁸ Instead, the United States has decided to immediately terminate and reallocate "any and all resources that are currently used to advocate on behalf of illegal aliens" to a new scapegoating initiative called the Victims of Immigration Crime Engagement (VOICE) Office.¹⁸⁹ Housed within ICE (to create a nexus to "bad" immigrants who commit the "criminal offense" of migration), former DHS Director Kelly stated that VOICE was created because "[c]riminal aliens routinely victimize U.S. citizens and other legal residents." He went on to say that victims of immigrant crime are "unique" because they are "casualties of crimes that should never have taken

¹⁸³ See Jessica Huseman and Annie Waldman, *Trump Administration Quietly Rolls Back Civil Rights Effects Across Federal Government*, ProPublica (June 15, 2017), <https://www.propublica.org/article/trump-administration-rolls-back-civil-rights-efforts-federal-government>.

¹⁸⁴ Trump Administration Civil and Human Right Rollback, THE LEADERSHIP CONFERENCE ON CIVIL & HUMAN RIGHTS (2019), <https://civilrights.org/trump-rollbacks/>.

¹⁸⁵ 84 FR 20589.

¹⁸⁶ Vanessa Romo, *Trump Administration Seeks To Close International Immigration Offices*, NPR (March 12, 2019), <https://www.npr.org/2019/03/12/702807908/trump-administration-seeks-to-close-international-immigration-offices>.

¹⁸⁷ Yeganeh Torbati, *U.S. Immigration Agency to Close its Overseas Offices*, Reuters (March 12, 2019), <https://af.reuters.com/article/worldNews/idAFKBN1QT2OJ>.

¹⁸⁸ The Justice Department is still investigating whether or not to charge the assassin in the El Paso massacre of 22 people with a hate crime. The FBI agent responsible for investigating the massacre refused to follow the state of Texas' lead in calling it a hate crime, saying, "I did not call it a hate crime, I said we're looking at other aspects... before we can label any type of investigation, we have to ensure the evidence and the precursors are there and they have to be reviewed." Tara Law, *Everything We Know About the Possible Hate Crime Investigation in the El Paso Shooting*, Time (Aug. 5, 2019), <https://time.com/5643306/el-paso-shooting-hate-crime-investigation/>.

¹⁸⁹ Enforcement of Immigration Laws to Serve the National Interest, DEPARTMENT OF HOMELAND SECURITY (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

place, because the people who victimized them often times should not have been in the country in the first place.”¹⁹⁰

Among the VOICE Office’s initiatives is the Victim Information and Notification Exchange (VINE) hotline, an automated service that allows victims and their families to track the immigration custody status of undocumented perpetrators of crime. VINE has proven itself controversial and problematic from the moment of its inception. On the day it became operational, VINE listed minors as young as two-years-old among its “illegal alien perpetrators of crime.” While DHS eventually removed minors’ names from the database, it continues to publish a substantial list of detained immigrants with no context for their detention.¹⁹¹ Advocates have noted that anyone seeking to threaten an asylum seeker’s family back home can easily do it, because VINE publishes all ICE detainees over the age of 18 by name and country of origin, including asylum seekers.¹⁹² While some of these services were already offered by ICE’s community engagement office,¹⁹³ the current shift in emphasis on crime victims demonizes all immigrants and contradicts actual crime data, which consistently shows that immigrants are less likely to commit crimes than native-born U.S. citizens.¹⁹⁴

D. Failure to adequately investigate, prosecute, and convict officers.

1. *Case study: Suffolk County*

Suffolk County in Long Island, New York is where the attacks on Petitioners Lucero, Loja, Sierra, and John Doe 1 and 2 occurred. These attacks were a consequence of the Suffolk County Police Department’s (“SCPD”) disturbing practice of simultaneously neglecting Latino crime victims and racially profiling law-abiding Latino residents. The SCPD’s racially-biased policing created an environment where attacks on Latinos could take place with impunity. The United States claims that Suffolk County has adopted new hate crimes training, and that the SCPD has improved under the 2009 U.S. DOJ Civil Rights Division’s investigation and supervision agreement.¹⁹⁵ As evidence of this improvement, the U.S. quotes a vague January 2015 compliance report that discusses compliance check-ins, “technical assistance” provided, and revision of

¹⁹⁰ DHS announces launch of new office for victims of illegal immigrant crime, DEPARTMENT OF HOMELAND SECURITY (Apr. 26, 2017), <https://www.ice.gov/news/releases/dhs-announces-launch-new-office-victims-illegal-immigrant-crime>. Ironically, DHS officials also told reporters that VOICE will focus on crimes committed by anyone who could potentially face deportation, a group that could include legal permanent residents with every right to be in the U.S.

¹⁹¹ Julio Ricardo Varela, *The Trump Administration has already botched its new programs on immigrant crime*, Washington Post (May 4, 2017), https://www.washingtonpost.com/posteverything/wp/2017/05/04/the-trump-administration-has-already-botched-its-new-programs-on-immigrant-crime/?utm_term=.5c6e39b43624.

¹⁹² *Id.*

¹⁹³ P.R. Lockhart, *Trump Administration Launches Office Focused on Crimes by Immigrants*, Mother Jones (Apr. 26, 2017), <http://www.motherjones.com/politics/2017/04/trump-homeland-security-launches-voice-office-victims-immigrant-crime/>.

¹⁹⁴ Richard Perez-Pena, *Contrary to Trump’s Claims, Immigrants Are Less Likely to Commit Crimes*, N.Y. Times (Jan. 26, 2017), https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html?_r=0. See also Vera Bergengruen, *Trump Created an Office to Highlight Immigrant Crime. A Year Later, The Results Are Underwhelming*, BuzzFeed (July 1, 2018), <https://www.buzzfeednews.com/article/verabergengruen/trump-immigrant-crime-calls-voice-john-kelly>.

¹⁹⁵ Former Attorney General Sessions mandated a presumption against consent decrees, which the DOJ has maintained as a position, believing that they reduce police morale.

policies – but fails to address the practical impact of the hate crime training, the actual implementation of the revised policies, and whether the changes yielded substantive improvements, such as decreased arbitrary abuse, arrests, and detentions.¹⁹⁶ Given the Department of Justice’s disdain for consent decrees—which SCPD is covered by—there is little public confidence in their ability or interest to reign in predatory policing in Suffolk County against Latinos/as, let alone remedy systemic inequities that continue to run rampant.¹⁹⁷

In reality, the SCPD’s disregard for Latino lives has continued in spite of the DOJ’s supervision. In 2010, a gang of white teenagers brutally attacked two Latino day laborers, killing one and seriously injuring the other. Over four years later, the SCPD still refused to provide information to the victims’ families, claiming that the investigation remained “open.”¹⁹⁸ In October 2015, a 40-year-old mother named Lilia Aucapina from the section of Long Island known as the Hamptons disappeared, days after a judge issued a protective order against her abusive husband as part of a divorce proceeding. Six weeks later, a hunter found her body a few hundred feet from her home, in woods the police claimed to have thoroughly searched. Police quickly ruled her death a suicide, but disbelieving relatives have demanded an autopsy report or certificate of death from authorities.¹⁹⁹ Residents compare the case to a 2014 incident where another Ecuadorian woman’s death was quickly ruled a suicide under similarly suspicious circumstances.²⁰⁰

Anti-Latino sentiment continues to permeate Suffolk County and the SCPD. Outside of New York City, Suffolk County reports the highest rate of hate crimes in New York State, yet less than 20% of such crimes lead to an arrest.²⁰¹ As recently as June 2017, with Suffolk County authorities investigating a possible hate crime after a man was beaten by four white men in Hampton Bays yelling anti-Hispanic slurs, the Southampton Police Chief said that local authorities “don’t see this as a pattern.”²⁰² The year prior in September 2016, the bodies of two Latina teenagers were found in the Long Island community of Brentwood, beaten with machetes and baseball bats, prompting an investigation that led police to the skeletons of three teenage boys. Parents who reported their teenage sons missing months before the girls’ bodies were found say that police disregarded their complaints, believing that the Latino boys had run away to join the MS-13 gang that was eventually believed to have murdered them.²⁰³ In April of 2017, four more Latino boys’ bodies were found in the woods. Police have provided no closure to the victims’

¹⁹⁶ U.S. Resp. 8.

¹⁹⁷ *Plaintiffs #1-21 v. County of Suffolk, et al.*, Case No. 15-cv-2431 (E.D.N.Y.).

¹⁹⁸ Kirk Semple, *4 Years Later, Still No Answers in Killing of a Long Island Laborer*, New York Times (July 28, 2014), https://www.nytimes.com/2014/07/29/nyregion/four-years-after-a-deadly-night-on-long-island-no-answers.html?rref=collection%2Ftimestopic%2FLucero%2C%20Marcelo&action=click&contentCollection=timesto pics®ion=stream&module=stream_unit&version=latest&contentPlacement=5&pgtype=collection&_r=0.

¹⁹⁹ Kate Briquet, *The Hamptons ‘Suicides’ Nobody’s Buying*, Daily Beast (Jan. 4, 2016), <http://www.thedailybeast.com/the-hamptons-suicides-nobodys-buying>.

²⁰⁰ Zaira Cortes, *Latinos Demand Equal Justice in the Hamptons*, Voices of NY (Nov. 30, 2015), <https://voicesofny.org/2015/11/latinos-demand-equal-justice-in-the-hamptons/>.

²⁰¹ Brian Denvir, *HATE CRIME IN NEW YORK STATE 2015 ANNUAL REPORT*, NYS Division of Criminal Justice Services (Aug. 2016), <http://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2015-annual-report.pdf>.

²⁰² Zachary R. Dowdy, *Cops probe possible hate crime in Southampton*, Newsday (June 19, 2017), <http://dailynewsliks.com/cops-probe-possible-hate-crime-in-southampton/>.

²⁰³ Arielle Dollinger and Liz Robbins, *Four Bodies Found on Long Island Appear Linked to Gang Violence*, New York Times (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/nyregion/bodies-found-central-islip-park-long-island.html?_r=0.

parents, some of whom have not been allowed to view their son's body. Instead of recognizing Latinos/as victims as precisely that, local law enforcement insists they are part of gangs—a narrative coopted and continued by President Trump and former Attorney General Sessions. One grieving mother said, "Sometimes I think if it had been an American boy, they would be moving heaven and earth, but since they are Latino boys with Latino parents ..."²⁰⁴ Suffolk County police to this day still fail to promptly investigate crimes against Latino communities.

Instead of working to remedy Suffolk County's abuses, the Trump administration has joined the SCPD in the scapegoating of Latino residents. In April 2016, then-candidate Donald Trump held a Republican fundraiser in Suffolk County, three minutes walking distance from where Marcelo Lucero was murdered by seven white teenagers engaged in "hunting Latinos." Community organizers called the event a "finger in the eye" of Patchogue's Ecuadorian community. Latino civil society groups held a rally, a vigil, a church service, and a "Make America Love Again" (as a quip to Trump's on-going campaign slogan, "Make America Great Again") march to protest the event, but the Suffolk County Police Department defended the event.²⁰⁵ On April 28, 2017, former Attorney General Sessions visited Suffolk County and in a speech to local law enforcement pledged to eradicate the gang MS-13 by cracking down on illegal immigration. "We cannot continue with this transporting across our border illegal immigrants who have not been properly vetted and actually are part of criminal organizations," Mr. Sessions said. He offered no assurances to Long Island's sizable immigrant community that they could safely report crimes to police regardless of immigration status, nor recognized that the victims of violent crime had in fact been Latinos/as. Instead, he called the notion of strict immigration enforcement eroding trust an "exaggerated argument."²⁰⁶ The State's painting of Suffolk County as a remedied place that has purged its racist, anti-Latino and anti-immigrant actions is merely an effort to whitewash the harsh truths and reality that Latinos face living and working there, and to diminish the violence they have survived.

²⁰⁴ Liz Robbins and Nadia T. Rodriguez, *The Gang Murders in the Suburbs*, New York Times (July 12, 2017), <https://www.nytimes.com/2017/07/12/nyregion/ms-13-murders-long-island.html>.

²⁰⁵ See, Joanna Walters, *Trump urged to cancel event near place where Latino man was killed in 2008*, The Guardian (Apr. 14, 2016), <https://www.theguardian.com/us-news/2016/apr/14/donald-trump-long-island-hate-crime-marcelo-lucero>. See also, The Editorial Board, *Mr. Trump Reopens the Wounds of a Hate Crime*, New York Times (Apr. 8, 2016), https://www.nytimes.com/2016/04/09/opinion/mr-trump-reopens-the-wounds-of-a-hate-crime.html?_r=0 (calling the event "a disgraceful provocation by the Suffolk County Republicans and their chairman, John Jay LaValle, who invited him.").

²⁰⁶ Liz Robbins, *On Long Island, Sessions Vows to Eradicate MS-13 Gang*, New York Times (Apr. 28, 2017), <https://www.nytimes.com/2017/04/28/nyregion/jeff-sessions-ms-13-gang-long-island.html>. Ahead of Sessions' visit, former County Executive Steve Levy wrote a column attributing the County's problems with MS-13 to the arrival of unaccompanied minors from Central America, many of whom had fled gang violence in their own countries. "It is time to stop the political correctness and rid our streets of those here illegally and killing our youth," Levy wrote, "continuing to ignore the link between these recent murders and our lax immigration laws is suicidal." Steve Levy, *Levy: Coddling violent illegal aliens contributed to violent Islip MS-13 murders*, Long Island Business News (Apr. 26, 2017), <http://libn.com/2017/04/26/levy-coddling-violent-illegal-aliens-contributed-to-islip-ms-13-murders/>.