



# DETENTION, DEPORTATION, AND DEVASTATION:

THE DISPROPORTIONATE EFFECT OF DEPORTATIONS  
ON THE LATINO COMMUNITY



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**A JOINT REPORT OF  
THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND  
THE NATIONAL DAY LABORER ORGANIZING NETWORK  
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# DETENTION, DEPORTATION, AND DEVASTATION: THE DISPROPORTIONATE EFFECT OF DEPORTATIONS ON THE LATINO COMMUNITY

Since immigration reform again became a national policy priority after the 2008 presidential election,<sup>1</sup> no congressional legislation has emerged for presidential action that would address and ameliorate the inequities in our existing immigration system, which continue to affect Latino immigrants and potential immigrants in particular. At the same time, the Obama Administration has implemented and pursued immigration enforcement policies and practices that have resulted in historically unprecedented numbers of removals/deportations of immigrants living—in some cases, for decades—in the United States.

The confluence of legislative inaction with aggressive enforcement in deportations has had a particularly pronounced impact on the Latino community. This is significant not only as a matter of civil rights and fairness, but also because the Latino voting community is widely perceived as the main impetus for immigration reform being again on the national priority policy agenda. Indeed, a great political irony is that, while pundits nearly universally interpreted the Latino vote in the November 2012 election as a strong call to action on immigration reform, that call has been answered by inaction. Yet, the greater irony is that the Latino community, which had such a remarkable electoral impact, has continued to be subjected to disproportionate, direct harm through immigration enforcement. In short, the political decision makers in the nation's capital have been guilty of harming the Latino community through not only errors of omission in the form of legislative inaction, but errors of commission in the form of aggressive and excessive immigration enforcement.

For many Latinos, the Administration's deportation record is a sustained attack on Latino families and communities, reaching almost two million deportations, virtually all of which were carried out on Latinos.<sup>2</sup> The Administration's immigration enforcement choices carved swaths of devastation across the Latino community, leaving a humanitarian and moral crisis in its wake. And while the Administration eventually exercised its executive prerogative<sup>3</sup> to cease defending the Defense of Marriage Act,<sup>4</sup> reduce prison sentences for certain drug offenders,<sup>5</sup> issue prosecutorial discretion memoranda,<sup>6</sup> and even create the Deferred Action for Childhood Arrivals (DACA) program,<sup>7</sup> it steadfastly refuses to acknowledge that it has the legal authority to halt some or all deportations and expand affirmative relief for the vast majority of the undocumented population.<sup>8</sup>

Deportations weigh heavily upon the Latino community because most deported individuals are of Latino descent,<sup>9</sup> and nearly one quarter of all Latinos personally know someone who was deported or detained by immigration authorities.<sup>10</sup> The Latino community, correctly, assigns culpability to the Obama Administration due to the Executive Branch's plenary role in the execution of immigration enforcement. President Obama's falling approval ratings correlate with the Administration's continued record of high number of deportations, with about half of Latinos today approving of the President's job performance, down from 63 percent in September of 2013.<sup>11</sup>

This brief reviews the Administration's enforcement and deportation policies from a Latino perspective, and assesses why the Obama Administration has earned the

dubious distinction of breaking deportation records.

## I. LATINOS IN THE CROSSHAIRS

No community has felt a larger impact as a result of the prevailing immigration enforcement policies than Latinos. In 2013, 96.7 percent, or 356,303, of all deportations were of Latino descent.

COUNTRY	NUMBER	PERCENTAGE OF ALL DEPORTATIONS
MEXICO	241,493	65.51%
GUATEMALA	47,769	12.96%
HONDURAS	37,049	10.05%
EL SALVADOR	21,602	5.86%
DOMINICAN REPUBLIC	2,462	0.67%
ECUADOR	1,616	0.44%
BRAZIL	1,500	0.41%
COLOMBIA	1,429	0.39%
NICARAGUA	1,383	0.38%
JAMAICA	1,119	0.31%
TOP TEN TOTAL	357,422	96.98%

The bulk of these 2013 deportations were from Mexico (66 percent), Guatemala (13 percent), Honduras (10 percent), and El Salvador (6 percent).<sup>13</sup> Latin-American countries represented the top nine countries with the highest rate of deported nationals in 2013.<sup>14</sup> When the Administration reaches the two million deportations mark—likely later this year—the number of Latino deportees will equal the populations of Wyoming, Vermont, and North Dakota combined.<sup>15</sup>

The overrepresentation of Latinos in deportations is not simply a byproduct of the large undocumented Latino population, but also a direct result of discriminatory policies at the federal, state, and local level.

### Federal Enforcement.

The federally-sanctioned targeting of Latinos dates back four decades to *United States v. Brignoni-Ponce*, where the Supreme Court held that U.S. Customs and Border Patrol (CBP) may target individuals

near the border based on the individual's race or ethnicity,<sup>16</sup> essentially codifying racial profiling and leading to increased law enforcement scrutiny of Latinos. As recently as 2012, the Supreme Court, in *Arizona v. United States*, held that police officers, under the authority of state law, could inquire about an individual's immigration status during a stop.<sup>17</sup> In regards to federal immigration enforcement, the Criminal Alien Program and similar federal programs, especially those with mobile biometric facilities, are inextricably tied to the racial profiling of Latinos.<sup>18</sup> In the employment context, the Administration's I-9 audits regularly target industries and businesses that overwhelmingly employ Latino workers.<sup>19</sup> Supreme Court precedent, and the enforcement mechanisms built around that precedent, create and sustain a deportation framework where Latinos are significantly more likely to be targeted, detained, incarcerated, and deported.

“WHEN THIS ADMINISTRATION REACHES THE TWO MILLION DEPORTATIONS MARK —LIKELY LATER THIS YEAR— THE NUMBER OF LATINO DEPORTEES WILL EQUAL THE POPULATIONS OF WYOMING, VERMONT, AND NORTH DAKOTA COMBINED.”

### State Enforcement.

At the state level, several states enacted immigration laws that criminalize the mere presence of undocumented immigrants and empower state and/or local police officers to enforce immigration laws, encroaching on a historically federal responsibility.<sup>20</sup> These state laws fail to recognize that immigration enforcement is an incredibly complex area of law and delegation to state and/or local authorities inevitably leads to the improper and, often racially-based, application of that law. States also turned to creative charging strategies to use state laws, unrelated to immigration, as proxies to conduct immigration enforcement.<sup>21</sup>



## Local Enforcement.

At the local level, municipalities and cities enacted ordinances to target undocumented immigrants and exclude them from critical services,<sup>22</sup> making them more vulnerable to identification, detention, and deportation. These state and local anti-immigrant laws have a chilling effect on the Latino community, displacing local businesses, emptying classrooms, and uprooting homes and families.<sup>23</sup> Local law enforcement agencies also undertook immigration enforcement activities, both inside and outside the framework of federal cooperation, that employed racial profiling and the targeting of Latinos.<sup>24</sup>

“WHILE THE DEPARTMENT OF HOMELAND SECURITY . . . RELEASED A SERIES OF MEMORANDA AND TOOK ADMINISTRATIVE STEPS DESIGNED TO END THE TARGETING OF LOW-PRIORITY INDIVIDUALS, THESE EFFORTS WERE LARGELY INEFFECTUAL . . .”

## II. FAILURE OF PROSECUTORIAL DISCRETION

While the Department of Homeland Security (DHS), under the direction of the Administration, released a series of memoranda and took administrative steps designed to end the targeting of low-priority individuals,<sup>25</sup> these efforts were largely ineffectual due to a failure of implementation and the over-inclusive definition of high-priority targets.<sup>26</sup> The Administration’s efforts at prosecutorial discretion have proved unsuccessful. The much maligned “Morton Memos” and their progeny suffered from a wide-scale failure of implementation.

Similarly, the Administration’s “parole in place” policy for undocumented relatives of service members has been hamstrung by various enlistment policies that paradoxically prohibit these same individuals from enlisting.<sup>27</sup> Even the Administration’s relatively successful DACA program excludes individuals over thirty

and those with so-called “significant” misdemeanors, a previously non-existent category of offenses.<sup>28</sup>

“MOREOVER, ICE CONTINUES TO INCLUDE NON-CRIMINAL RE-ENTRANTS AND IMMIGRATION FUGITIVES AS HIGH-PRIORITY TARGETS EVEN THOUGH THEY REPRESENT NO THREAT TO PUBLIC SAFETY . . .”

Line immigration enforcement agents resistant to the Administration’s directives have turned to litigation and lobbying in an effort to continue to target low-priority immigrants.<sup>29</sup> This systematic refusal to follow administrative directives leads to a mismatch between the Administration’s rhetoric and the actual implementation of immigration policy, leaving some non-criminal immigrants susceptible to deportation based on the whims of the local Immigration and Customs Enforcement (ICE) or CBP district office.

Moreover, ICE continues to include non-criminal re-entrants and immigration fugitives as high-priority targets even though they represent no threat to public safety and are two categories that former high-ranking ICE officials have urged the Administration to de-prioritize.<sup>30</sup> This over-inclusion is supplemented by the ever-expanding definition of “aggravated felony,” a tendency to classify arrests of individuals within 100 miles of the border as “border removals,” and classifying immigrants who entered within the last three years as “recent border crossers.”<sup>31</sup>

As a result, while ICE boasts that 98 percent of deportations meet one or more of its stated civil immigration enforcement priorities, ICE artificially inflates these priorities with non-criminal immigrants that it has repeatedly said it would not target.<sup>32</sup> Consequently, two-thirds of all deportations under President Obama involve individuals “who had committed minor traffic violations, or had no criminal record at all.”<sup>33</sup>



### III. INCREASE IN IMMIGRATION ENFORCEMENT

The unprecedented allocation of resources and personnel to immigration enforcement made the targeting of non-criminal immigrants significantly easier. The Administration spends more on immigration enforcement than all other forms of federal enforcement combined.<sup>34</sup> Coupled with the increase in resources was an expanded form of immigration enforcement that sought to enlist local law enforcement officers as a “force multiplier”<sup>35</sup> to identify undocumented immigrants: Secure Communities (S-COMM).<sup>36</sup>

S-COMM partly supplanted 287(g) agreements and worksite raids, two staples of the prior Administration’s enforcement regime.<sup>37</sup> S-COMM, however, is significantly more destructive to the Latino community, sweeping up individuals charged with misdemeanors, civil immigration violations, or, in some cases, with nothing at all.<sup>38</sup> And while it is now clear that S-COMM incentivizes racial profiling<sup>39</sup> and affirmatively undermines public safety,<sup>40</sup> DHS still has not taken adequate measures to address its demonstrable problems,<sup>41</sup> and the Congressional Hispanic Caucus has now called for the wholesale termination of S-COMM.<sup>42</sup> State-based laws that criminalize immigrants further supplement federal-enforcement efforts by funneling low-priority immigrants into jail and ICE custody. Complementing this enforcement is the federal government’s use of private detention facilities for immigrants, which have spawned an entire lobbying industry designed to encourage Congress to detain more immigrants in private facilities and dramatically increase resources for immigration enforcement, as well as profits for the owners of private prisons.<sup>43</sup>

### IV. DEVASTATING VULNERABLE COMMUNITIES

The massive immigration enforcement efforts undertaken by this Administration affect not only the deported individual, but the family and community they leave behind. Latino families face high rates of poverty, unemployment, and single-parent households.<sup>44</sup> Deportations exacerbate these existing conditions, hampering families by often removing the sole source of income, further increasing economic uncertainty. In other cases, deportation leads to the removal of both parents, leaving children in care of relatives or the foster care system.<sup>45</sup>

“RECENT DEPORTATION POLICIES CONTRIBUTE TO THE EXISTENCE OF AN ENTIRE CADRE OF LATINO CHILDREN THAT ARE PARENTLESS AND MIRED IN POVERTY.”

Over 5.5 million children have a parent who is undocumented, and 4.5 million of those children are U.S. citizens.<sup>46</sup> Indeed, between 2010 and 2012, the Administration deported more than 200,000 individuals with U.S. citizen children.<sup>47</sup> Recent deportation policies contribute to the existence of an entire cadre of Latino children that are parentless and mired in poverty. Beyond those most directly affected, entire communities of children grow up seeing federal and local law enforcement as a threat and predator, rather than a public servant.

### V. THE PATH FORWARD

In light of Congress’ failure to enact immigration reform, the Administration must take clear and concrete steps to address the humanitarian crisis resulting from its uneven and blunt enforcement of immigration policy. The Administration began this process by recently announcing a review to determine methods to “more humanely” conduct immigration enforcement.<sup>48</sup>



However, if the Administration's past efforts are any indication, such review risks being part of a long line of broken promises and failed exercises of prosecutorial discretion.

President Obama has the authority to halt deportations using various forms of

prosecutorial discretion, and he has the authority to expand affirmative relief. Until the Administration decides to exercise and implement that authority, the Latino community will continue to disproportionately suffer the consequences of a dysfunctional and unjust immigration system.

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<sup>1</sup> Josh Hicks, Obama's Failed Promise of a First-Year Immigration Overhaul, WASHINGTON POST, Sep. 25, 2012,

[http://www.washingtonpost.com/blogs/fact-checker/post/obamasfailed-promise-of-a-first-year-immigration-overhaul/2012/09/25/06997958-0721-11e2-a10c-fa5a255a9258\\_blog.html](http://www.washingtonpost.com/blogs/fact-checker/post/obamasfailed-promise-of-a-first-year-immigration-overhaul/2012/09/25/06997958-0721-11e2-a10c-fa5a255a9258_blog.html).

<sup>2</sup> ERO Annual Report: FY 2013 ICE Immigration Removals, U.S. Immigration and Customs Enforcement, Dec. 2013, <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf> (hereinafter "FY 2013 ICE Immigration Removals").

<sup>3</sup> Compare Tom Cohen, Obama Appears to Rule Out Acting on His Own on Immigration, CNN, April 28, 2011, available at <http://www.cnn.com/2011/POLITICS/04/28/obama.immigration/> ("However, actress Eva Longoria, who attended Thursday's meeting, told reporters afterwards that it wasn't a matter of Obama being able to act on his own. 'We like to blame Obama for the inaction, but he can't just disobey the law that's written,' Longoria said."), with Letter from Hiroshi Motomura et. al, Professor of Law, UCLA School of Law, to President Barack H. Obama, President of the United States, (May 28, 2012), available at <http://www.law.uh.edu/ihelg/documents/ExecutiveAuthorityForDREAMRelief28May2012withSignatures.pdf> ("We write . . . to explain that there is clear executive authority for several forms of administrative relief for DREAM Act beneficiaries, deferred action, parole-in-place, and deferred enforced departure."), and Memorandum from Jeanne Butterfield et. al on Executive Branch Authority Regarding Implementation of Immigration Laws and Policies, (April 29, 2011), available at [http://www.immigrationpolicy.org/sites/default/files/docs/Memo\\_exec\\_branch\\_authority.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Memo_exec_branch_authority.pdf) (outlining the different forms of administrative relief that the executive branch may exercise).

<sup>4</sup> Jennifer Steinhauer, House Republicans Move to Uphold Marriage Act, N.Y. TIMES, March 4, 2011, available at <http://www.nytimes.com/2011/03/05/us/politics/05marriage.html>.

<sup>5</sup> Matt Apuzzo, Holder Endorses Proposal to Reduce Drug Sentences in Latest Sign of Shift, N.Y. TIMES, March 13, 2014, available at <http://www.nytimes.com/2014/03/14/us/politics/holder-endorses-proposal-to-reduce-drug-sentences.html>.

<sup>6</sup> Memorandum from John Morton, Director of U.S. Immigration and Customs Enforcement, to all ICE Agents on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

<sup>7</sup> See Memorandum from Janet Napolitano, Secretary of Homeland Security, to David V. Aguilar, Alejandro Mayorkas, and John Morton on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

<sup>8</sup> Daniel Gonzalez, President Obama Urged to Halt Deportations For Now, ARIZONA REPUBLIC, Jan. 28, 2014, available at <http://www.azcentral.com/news/politics/articles/20140127obama-urged-halt-deportations.html>.

<sup>9</sup> See FY 2013 ICE Immigration Removals, supra note 2.

<sup>10</sup> Mark Hugo Lopez et. al, As Deportations Rise to Record Levels, Most Latinos Oppose Obama's Policy, Pew Hispanic Research Center, Dec. 28, 2011, available at <http://www.pewhispanic.org/files/2011/12/Deportations-and-Latinos.pdf>.

<sup>11</sup> Jens Manuel Krogstad et. al, Support for Obama, Health Care Law Has Eroded Among Hispanics, Pew Research Center, March 27, 2014, available at <http://www.pewresearch.org/fact-tank/2014/03/27/support-for-obama-health-care-law-has-eroded-among-hispanics/>.

<sup>12</sup> See FY 2013 ICE Immigration Removals, supra note 2.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> See Population Estimates: State Totals, U.S. Census Bureau, Jan. 23, 2014, <http://www.census.gov/popest/data/state/totals/2013/tables/NST-EST2013-01.xls>; See also Infographic: The Lost City, Center for American Progress (April 3, 2014), available at <http://www.americanprogress.org/issues/immigration/news/2014/04/03/87036/infographic-the-lost-city/> (asserting that the two million undocumented immigrants deported since 2009 are equivalent to the size of four major cities combined).

<sup>16</sup> 422 U.S. 873 (1975).

<sup>17</sup> 132 S. Ct. 2492, 2492-93 (2012).

<sup>18</sup> Sake Soni et al., The Criminal Alien Removal Initiative in New Orleans, New Orleans Workers' Center for Racial Justice, Dec. 2013, available at <http://nowcrj.org/wp-content/uploads/2008/11/CARI-report-final.pdf>.

<sup>19</sup> ICE Cracks Down On the Hiring of Undocumented Workers Through "Silent Raid," Fox News Latino, Sep. 13, 2013, <http://latino.foxnews.com/latino/news/2013/09/13/ice-cracks-down-on-hiring-undocumented-workers/>.



- <sup>20</sup> Arizona v. United States, 132 S. Ct. 2492, 2492-93 (2012); United States v. South Carolina, 720 F.3d 518 (4th Cir. 2013); United States v. Alabama, 691 F.3d 1269 (11th Cir. 2012) cert. denied, 133 S. Ct. 2022 (U.S. 2013).
- <sup>21</sup> Montgomery: I'm Not Targeting Immigrants, ARIZONA CAPITOL TIMES, Feb. 18, 2013, available at <http://azcapitoltimes.com/news/2013/02/18/maricopa-county-attorney-bill-montgomery-im-not-targeting-immigrants/>.
- <sup>22</sup> Villas at Parkside Partners v. City of Farmers Branch, 726 F.3d 524 (5th Cir. 2013) cert. denied, 13-516, 2014 WL 801104 (U.S. 2014).
- <sup>23</sup> See, e.g., Letter from Thomas Perez, Assistant Attorney General, Department of Justice, to Dr. Thomas R. Bice, State Superintendent of Education, Alabama State Department of Education at 2 (May 1, 2012), available at [http://images.politico.com/global/2012/05/doj\\_letter\\_5-1-12.html](http://images.politico.com/global/2012/05/doj_letter_5-1-12.html) (documenting that 13.4 percent of Alabama's Hispanic school children withdrew from Alabama public schools in the wake of H.B. 56 being in effect for ten days).
- <sup>24</sup> Press Release, Department of Justice, Department of Justice Files Lawsuit in Arizona Against Maricopa County, Maricopa County Sheriff's Office, and Sheriff Joseph Arpaio, (May 10, 2012), available at <http://www.justice.gov/opa/pr/2012/May/12-crt-602.html>.
- <sup>25</sup> Memorandum from John Morton, Director of Immigrations and Customs Enforcement, to all ICE employees on Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens (Mar. 2, 2011) available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.
- <sup>26</sup> See Nina Rabin, Victims or Criminals? Discretion, Sorting, and Bureaucratic Culture in the U.S. Immigration System, 23 S. CAL. REV. L. & SOC. JUST. \_\_\_ (2014 Forthcoming).
- <sup>27</sup> See United States Navy, Navy Recruiting Manual 1130.8H, 67 (May 2008); United States Navy, Navy Recruiting Manual 1130.8J, 64 (May 17, 2011); United States Marine Corps, Marine Corps Recruiting Command Enlistment Processing Manual 1101.1, 76 (Nov. 9, 2011).
- <sup>28</sup> See Frequently Asked Questions for Childhood Arrivals, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/childhoodarrivals> (last updated Jan. 18, 2013).
- <sup>29</sup> Jordy Yager, Napolitano Sued Over New Immigration Policy, THE HILL, Aug. 23, 2012, available at <http://thehill.com/blogs/blog-briefing-room/news/244957-napolitano-sued-over-new-immigration-policy->.
- <sup>30</sup> John Sandweg, Who Should Be Deported?, L.A. TIMES, March 27, 2014, available at <http://www.latimes.com/opinion/commentary/la-oe-sandweg-ice-obama-humanitarian-reform-20140327,0,5454163.story>.
- <sup>31</sup> Misplaced Priorities: Most Immigrants Deported by ICE in 2013 Were a Threat to No One, Immigration Policy Center, March 2014, <http://www.immigrationpolicy.org/just-facts/misplaced-priorities-most-immigrants-deported-ice-2013-were-threat-no-one>.
- <sup>32</sup> See id.
- <sup>33</sup> Ginger Thompson et al, More Deportations Follow Minor Crimes, Records Show, N.Y. TIMES, April 6, 2014, available at [http://www.ny-times.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?\\_r=0](http://www.ny-times.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?_r=0).
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- <sup>36</sup> Michelle Waslin, The Secure Communities Program: Unanswered Questions and Continuing Concerns, Immigration Policy Center, Nov. 2011, available at [http://www.immigrationpolicy.org/sites/default/files/docs/SComm\\_Exec\\_Summary\\_112911.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/SComm_Exec_Summary_112911.pdf).
- <sup>37</sup> See id.
- <sup>38</sup> See id.
- <sup>39</sup> Restoring Community: A National Community Advisory Project on ICE's Failed "Secure Communities" Program at 10, National Community Advisory Commission, Aug. 2011, available at <http://altopolimigra.com/documents/FINAL-Shadow-Report-regular-print.pdf>.
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- <sup>44</sup> Algernon Austin, Reducing Poverty and Increasing Marriage Rates Among Latinos and African Americans, Economic Policy Institute, Sep. 8, 2011, available at <http://s2.epi.org/files/2011/IssueBrief313.pdf>.
- <sup>45</sup> Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System, Applied Research Center, Nov. 2011, available at <http://act.colorlines.com/acton/attachment/1069/f-0079/0/-/-/sf-cl-7014000000T6DHAAO-000f/l-sf-cl-7014000000T6DHAAO-000f:e217/file.pdf>.
- <sup>46</sup> See id.
- <sup>47</sup> Seth Freed Wesler, Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years, COLORLINES, Dec. 17, 2012, [http://colorlines.com/archives/2012/12/us\\_deports\\_more\\_than\\_200k\\_parents.html](http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html).
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