

TASK FORCE

The Donald C. Hellmann Task Force Program



Flight risk: ICE Air's secrecy and systemic abuse in King County and beyond

2019

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Executive Summary

U.S. Immigration and Customs Enforcement (ICE) deports tens of thousands of people each year through a system in which abuse is endemic and oversight is nonexistent. By failing to either regulate ICE or hold it accountable for abuse, the U.S. Federal Government is violating the human rights of deportees.

This report focuses on the final link in the deportation process: ICE Air Operations deportation flights. We begin with an analysis of ICE Air data released through the Freedom of Information Act (FOIA) from FY 2011-2018. In conjunction with analysis of this data, investigation into federal agency policy demonstrates that ICE Air Operations procedure is inconsistent, ambiguous, and unregulated. Secondly, we describe human rights abuses that have occurred aboard flights and analyze the efficacy of external accountability mechanisms, finding that while such abuses likely violate numerous U.S. statutes and international human rights agreements, privatized chains of contracting and subcontracting relationships mean there is virtually no accessible channel for oversight or remedy. The opacity of these private business relationships is demonstrated through the case study of King County, an immigrant-friendly jurisdiction that is nonetheless complicit in deportation flights, with an average of 300 deportees picked up from King County International Airport each month.

While extreme acts of physical violence may not occur on every ICE Air flight, the intentional regulatory ambiguity and lack of transparency means that there is no way to ensure that such abuses are not occurring. Our recommendations for increased oversight and regulation of ICE Air Operations include: meaningful congressional oversight that demands transparency and holds ICE and its contractors accountable for abuse; federal legislation enforcing human rights for deportees; ordinances at the county level that ensure adequate protections for immigrant communities and lowers local complicity in the deportation flight process; and negotiation of fixed base operator leases that include stipulations for enforceable rights protections and oversight as well as making such rights protections requisite for contractor expansion and land use permit approval from King County.

Introduction

The mass deportation of immigrants is one of the most urgent human rights problems in the United States today. U.S. immigration enforcement is rife with secrecy and abuse and lacks meaningful accountability mechanisms. This report focuses on the final step in the deportation process: deportation flights run by Immigration and Customs Enforcement (ICE) Air Operations (IAO). While reports of egregious abuses aboard these flights have been documented, little to no research has been previously conducted on this highly opaque link in the deportation chain. Datasets that the UW Center for Human Rights obtained through Freedom of Information Act (FOIA) requests to ICE provide one of the only comprehensive public records of ICE Air flights.

The goal of this report is to provide human rights defenders with crucial information on the extent and procedure of these flights so that they can work to stop the abuses endemic within the deportation process.

We begin by outlining the scope and trends of the ICE Air flight data. We describe known human rights abuses that have occurred aboard deportation flights and examine how the lack of meaningful regulation and oversight of ICE's privatized flight system has enabled abuses and fostered a systemic disregard for the basic dignity of deportees. Using King County as a case study, we examine the ways that immigration policies developed at the national level rely on the complicity of local institutions, and conclude with policy recommendations for enforceable rights protections and accountability at all levels.

I. Scope of Flights

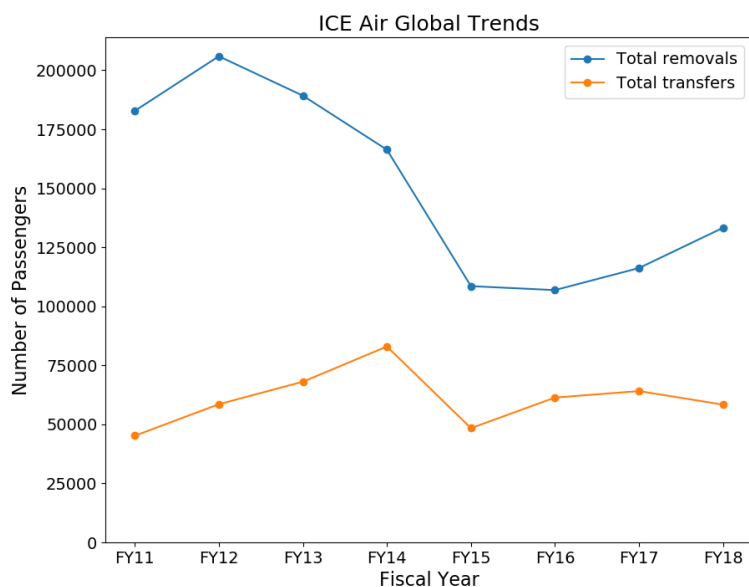
Through FOIA requests filed by the University of Washington Center for Human Rights (UWCHR), ICE released two sets of records from its Alien Repatriation Tracking System (ARTS). The first set of records contains ICE-operated flights arriving to or departing from King County International Airport (KCIA),¹ while the second dataset contains all ICE-operated flight transfers and removals at the national level.² For purposes of consistent record keeping, we utilized only the national dataset.

¹ U.S. Immigration and Customs Enforcement, *ARTS Passenger Data, FY 2011-2019*, released through FOIA request December 2018, copy on file with author.

² U.S. Immigration and Customs Enforcement, *ARTS Passenger Data, FY 2011-2019*, released through FOIA request January 2019, Copy on file with author.

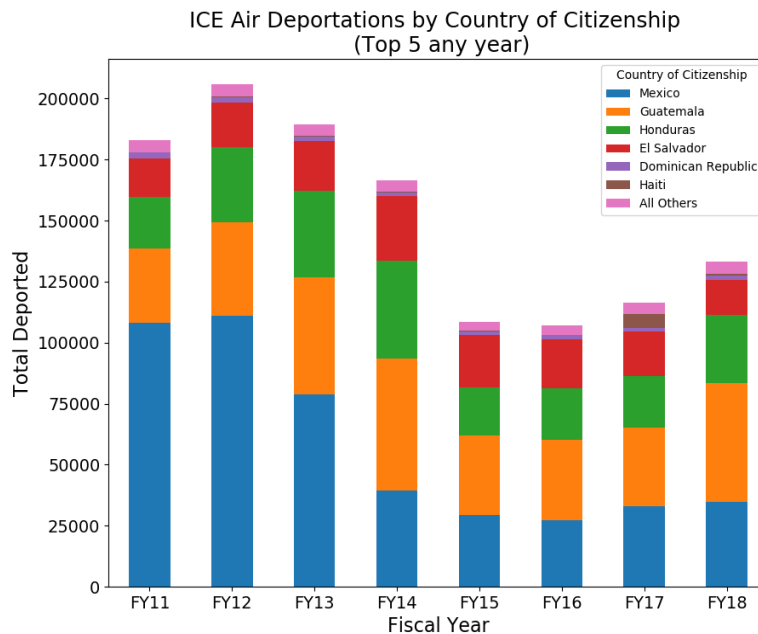
National Data

The ICE Air national data shows that deportation flights are frequent, systematic, and costly. Since fiscal year (FY) 2011 until the first quarter of FY 2019, up to 1.73 million passengers³ have been flown on 41,210 flights.⁴ ICE Air has conducted repatriation flights to 118 countries, not including the United States. The vast majority of flights are domestic transfers, which indicates that many of the passengers are bounced around the country until their final removal which may be days, weeks, or months later. The top pick-up locations -- where at least 100,000 passengers are picked up -- are Alexandria International Airport, Brownsville South Padre Island International Airport, Phoenix-Mesa-Gateway Airport, Valley International Airport, El Paso International Airport, and San Antonio International Airport. The top drop-off locations -- where at least 100,000 passengers are dropped off -- include La Aurora Airport (Guatemala), Ramon Villeda Morales International Airport (Honduras), Alexandria International Airport (Louisiana, U.S.A.), El Salvador International Airport (El Salvador), and Valley International Airport (Texas, U.S.A). The top six countries of citizenship for passengers on all flights are, respectively, Mexico, Guatemala, Honduras, El Salvador, Dominican Republic, and Haiti.



³ICE Data has a field for unique IDs for individuals, though this is not used systematically. It is not possible to conclusively identify individuals.

⁴ ICE Data includes unique Mission IDs and Mission Numbers though these do not identify unique flights. This number is based on unique pick-up and drop-off locations sorted by Mission Date and Mission Numbers.



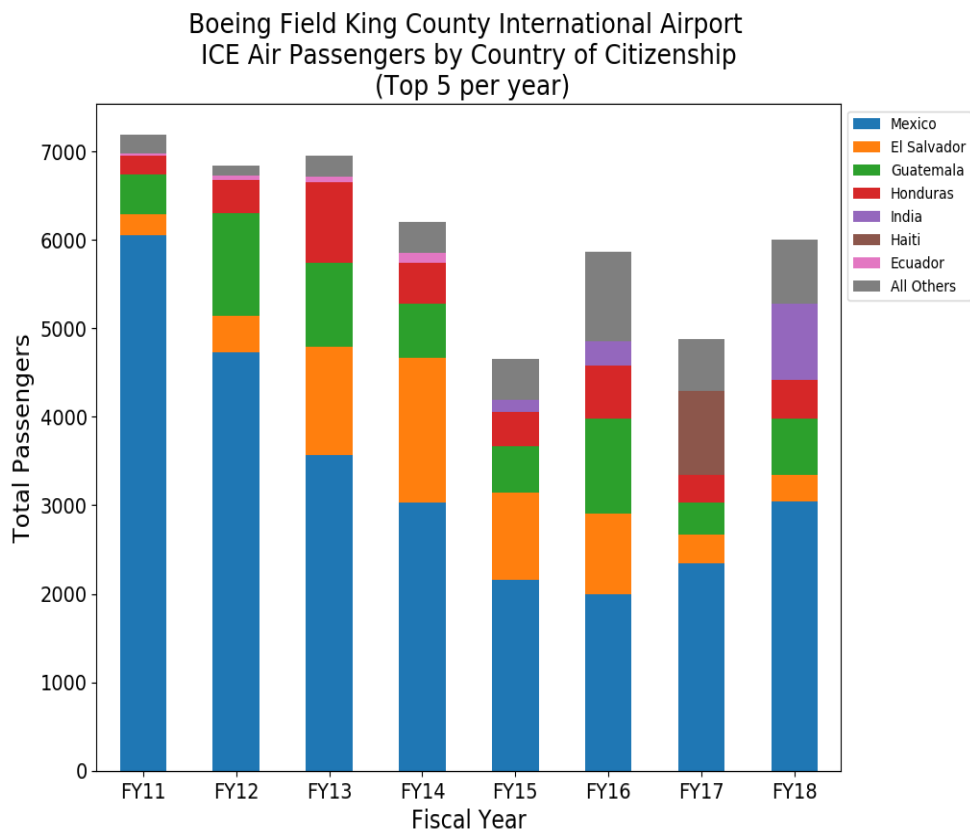
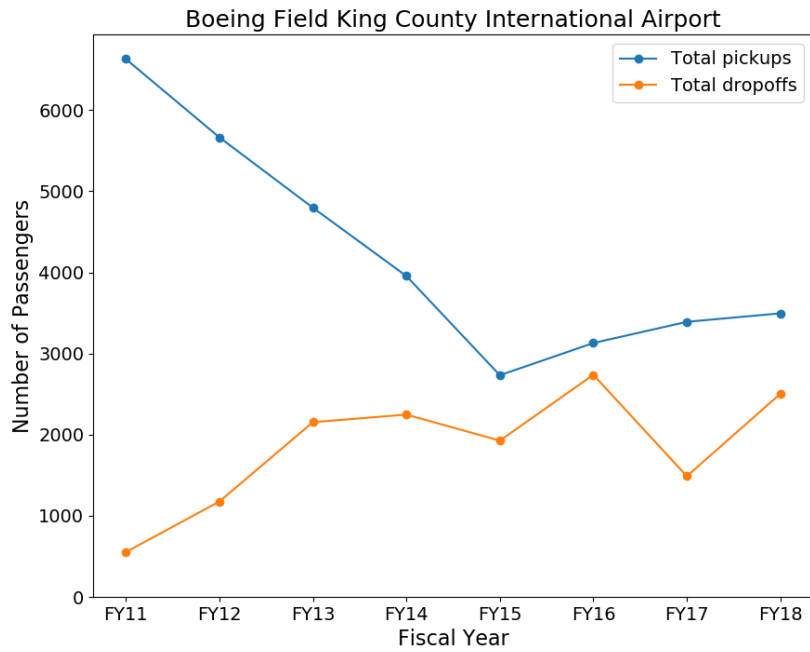
King County

In King County, 49,634 passengers have been picked up or dropped off at King County International Airport (KCIA, also known as “Boeing Field”) since 2011 on approximately 837 flights.⁵ More passengers are picked up at KCIA than are dropped off. Similarly to national trends, transfer flights make up the majority of ICE Air operations at KCIA. The top five transfer locations are El Paso International Airport, San Diego International Airport, Phoenix-Mesa Gateway Airport, Valley International Airport, and Alexandria International Airport. KCIA has serviced several removal flights to Guatemala, El Salvador, and China. The average monthly pickup across the data set is 348 passengers, though it should be noted that pickups have decreased overall. Despite this trend, the percent of immigrants picked up who are designated as “non-criminal” has increased. The top five countries of origin for passengers on flights operating through King County include Mexico, El Salvador, Guatemala, Honduras, and India.

Using a publicly available flight tracking website,⁶ we determined that ICE Air flights most frequently depart from Boeing Field on Tuesdays at around noon. These flights are distinguished by their unique callsign, RPN, which stands for repatriation.

⁵ See Footnote 2. ICE record keeping makes it difficult to identify individual flights.

⁶ “Live US DHS ICE Flight Status.” Flight Aware. Accessed March 03, 2019. <https://flightaware.com/live/fleet/RPN>.



Financial Cost

Due to ICE's inconsistent record-keeping, it is difficult to track the costs of each passenger's flight, especially when they are included in several travel segments over multiple days.

According to ICE Air's website, each charter flight costs approximately \$7,785 per hour.⁷ This is a flat cost, regardless of the number of passengers. Utilizing the data given, it can be estimated that \$35.6 million was spent for all deportation flights from Brownsville to Guatemala City over the entire dataset. This is just the most frequent flight path of thousands in the dataset.

Why Charter Flights and not Government Planes?

At one point, ICE did use a government-operated airline to transport and deport detainees. The Justice Prisoner and Alien Transportation System (JPATS) is "the only government-operated, regularly scheduled passenger airline in the nation," and was created in 1995 as a merger between the U.S. Air Marshal's air fleet and ICE in order to more effectively transport detained undocumented immigrants, especially those with criminal convictions.⁸ However, according to the U.S. Air Marshals, "As of Fiscal Year (FY) 2010, JPATS no longer transports illegal aliens for U.S. Immigrations and Customs Enforcement (ICE)."⁹ In our interview with Benjamin Shih, an official from ICE's Office of Acquisitions Management (OAQ), he explained, "it got to the point where financially it didn't make sense [...] it wasn't cost effective, and so that's when they started the ICE Air program."¹⁰ This switch is emblematic of neoliberal privatization and the outsourcing of government programs, reducing public entities' liability along with their cost.

Current ICE Air Operations

Today, ICE uses both charter and commercial services to deport detainees under its custody. Charter services are privately contracted by ICE for the sole purpose of running deportation flights, while commercial services entail the transport of one deportee accompanied by one or more ICE officers onboard a commercial airline flight not otherwise involved in deportations.¹¹

IAO began using charter flights in 2006 because they provide "IAO with cost effective and highly

⁷ U.S. Immigration and Customs Enforcement. "ICE Air Operations Prioritizes Safety and Security for Its Passengers." Last modified December 07 2011. <https://www.ice.gov/features/ICE-Air>

⁸ U.S. Marshals Service, *JPATS Celebrates 30 Years of Owned Aircraft Operations*. (n.d). <https://www.usmarshals.gov/jpats/>.

⁹ U.S. Marshals Service, *Review of Privacy Impact Assessment for the Justice Prisoner and Alien Transportation System*, by William Brodley, reviewed by Luke J. McCormack, approved by Joo Y. Chung, (2013), p. 2. <https://www.justice.gov/opcl/docs/pia-jmis-may2013-aug-opcl.pdf>

¹⁰ Benjamin Shih. Personal Interview with ICE Office of Acquisition Management official, March 1, 2019.

¹¹ Shih, Personal Interview

flexible flight services.”¹² They also allow IAO to facilitate mass deportations of specific nationalities from “countries with high volume of removals,”¹³ as each chartered Boeing 737 can transport 135 detainees. For this reason, ICE uses charter flights at a much higher rate than they use commercial services: in 2015, while around 5,800 people were deported on commercial flights, over 100,000 were transported via charter flights.¹⁴

Our research enables us to sketch a preliminary outline of the network of private companies involved in the deportation process. Today, ICE contracts directly with a single “Air Charter Broker.”¹⁵ ICE Air originally had five separate contracts for firms in each of its “hub” airports: Miami, Florida (MIA), Alexandria, Louisiana (AEX), Brownsville, Texas (BRO), San Antonio, Texas (SAT), and Mesa, Arizona (IWA).¹⁶ Some of these contractors include: Air Partner,¹⁷ Private Jet Services,¹⁸ Brookfield Relocation,¹⁹ and Vision Relocation.²⁰ However, at one point, CSI Aviation won all five contracts, rendering them ICE’s main operator of deportation flights.²¹ Classic Air Charter recently acquired CSI’s previous contract, and is the current Air Charter Broker for ICE’s hub airports as well as Special High Risk Charter (SHRC) flights.²² The government also directly contracts with airlines or security firms for specific operations. For example, ICE has a current contract with Zephyr to provide services from Miami, Florida to

¹² “ICE Air Operations,” U.S. Immigrations and Customs Enforcement, last modified July 7, 2017. <https://www.ice.gov/factsheets/ice-air-operations>.

¹³ “ICE Air Operations,” U.S. Immigrations and Customs Enforcement.

¹⁴ Catherine E. Shoichet, “ICE Air: How US Deportation Flights Work,” *CNN*, May 29, 2017. <https://www.cnn.com/2017/05/26/us/ice-air-deportation-flights-explainer/index.html>.

¹⁵ Shih, Personal Interview. These contractors are found through the General Services Administration schedule of an “existing pool of contractors who have already been vetted by GSA. The General Services Administration schedule includes a list of “indefinite delivery, indefinite quantity” contracts. ICE then picks among these contractors (who are competing among each other to get an award from ICE) and add a “Task Order” to this existing “indefinite delivery/quantity” contract with “specific terms and conditions.” Using GSA contractors “streamlines” the process of acquiring new contracts.

¹⁶ Shih, Personal Interview.

¹⁷ USAspending.gov. *Contract Summary*. Awarding Agency: Department of Homeland Security, Recipient: Air Partner, Inc. 10/10/2017-10/31/2017. <https://www.usaspending.gov/#/award/8287751>

¹⁸ USAspending.gov. *Contract Summary*. Awarding Agency: Department of Homeland Security, Recipient: Private Jet Services Group Inc. 06/09/2015-10/01/2016. <https://www.usaspending.gov/#/award/23820102>

¹⁹ USAspending.gov. *Contract Summary*. Awarding Agency: Department of Homeland Security, Recipient: Brookfield Relocation Inc. 12/06/2018-10/31/2019. <https://www.usaspending.gov/#/award/75558320>

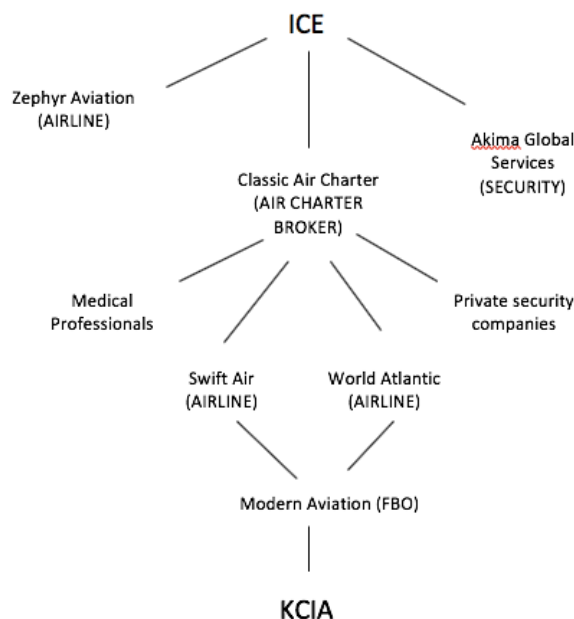
²⁰ USAspending.gov. *Contract Summary*. Awarding Agency: Department of Homeland Security, Recipient: Vision Relocation Group, LLC. 08/13/2012-08/12/2017. <https://www.usaspending.gov/#/award/68914997>

²¹ Shih, Personal Interview.

²² Eric J. Marcotte, et. al, “Decision - Matter of: CSI Aviation, Inc.” Government Accountability Office, February 7, 2018, <https://www.gao.gov/assets/700/690147.pdf>.

Havana, Cuba;²³ and also contracts with security companies such as Akima Global Services²⁴ and Trailboss Enterprises.²⁵

According to documents received through public records requests and Shih (who manages ICE Air Operations' contracts), Swift Air is the primary subcontracting airline for ICE, and World Atlantic Airways is the second.²⁶ Other reported IAO airlines include Xtra Airways²⁷ and Omni Air.²⁸ Below is a visualization of the contracting process for ICE Air flights occurring out of KCIA. Later sections will analyze how the regulatory opacity of this contracting chain allows and propagates human rights abuses.



II. Human Rights Abuses

²³ USAspending.gov. *Contract Summary*. Awarding Agency: Department of Homeland Security, Recipient: Zephyr Aviation, LLC. 5/31/2017-5/31/2022. <https://www.usaspending.gov/#/award/23820160>

²⁴ "ICE Air Operations Contract Application Website," Akima Global Services, AGS, November 16, 2017. <http://www.akimaglobal.com/careers/iceairops/>.

<https://govtribe.com/vendors/akima-global-services-llc-5uvq9>

²⁵ USAspending.gov

²⁶ Shih, Personal Interview.

²⁷ Justin Rohrlach, "Exclusive: Airline Flies Snowbirds to Mexico, Deports Immigrants for ICE," *Daily Beast*, June 21, 2018. <https://www.thedailybeast.com/exclusive-airline-flies-snowbirds-to-mexico-deports-immigrants-for-ice>.

²⁸ "Omni Air International: Stop Cambodian American Deportations," 18MR, December 14, 2018. <https://action.18mr.org/omni-air-stop-deportation/>.

Despite international agreements protecting the rights and dignity of deportees, mistreatment is systematically worked into the process of deportation, and egregious human rights abuses still occur during ICE flights. Human rights violations that have taken place during ICE Air operations include physical violence, family separations, and denial of due process protections.

Physical Abuse

Firstly, ICE officers have used excessive force on passengers aboard flights. Abusive conduct includes dragging, beating, kicking, shoving, stepping on shackles, body slamming, and throwing passengers to the ground. These abuses are evidenced by sworn testimonies of passengers aboard a 2017 failed deportation flight to Somalia. The Somali flight was forced to return to the U.S., which allowed testimonies of abuse to be heard.²⁹ Suhel Ahmed, a passenger from a Bangladeshi deportation flight in 2016, witnessed ICE agents administering “electric shocks” to four detainees.³⁰ The excessive use of force by ICE agents likely violates Article 3 of the UN Code for Law Enforcement Officials, which states that officers of the law may only use force “when strictly necessary to the extent required for the performance of their duty.”³¹

On multiple occasions, ICE officers have reportedly made excessive use of restraints. This is evidenced by full body restraints, called either “humane restraint blankets” (pre-2017), or “The Wrap” (post-2017)³² by ICE and referred to as “body bags” by detainees.³³ These kinds of restraints were used on both the Bangladeshi flight³⁴ and the Somali flight. “The Wrap” reportedly has been the cause of multiple deaths including some due to asphyxiation. In addition to adult sizing, these wraps are also available in juvenile sizing to fit small children.³⁵ Excessive and unnecessary use of restraints is further evidenced by ICE’s practice of shackling people tightly at the wrists, waists, and legs for the duration of long flights, sometimes hours before even boarding the plane.³⁶

²⁹ United States District Court Southern District of Florida Miami Division, December 19, 2017, pages 26, 31, 33, 35.

³⁰ Aviva Stahl, “South Asian migrants say they were put in ‘body bags’ for deportation from US,” *The Guardian*, May 27, 2016. <https://www.theguardian.com/us-news/2016/may/27/south-asian-migrants-body-bags-deportation-us>

³¹ United Nations Human Rights Office of the High Commissioner, General Assembly, “Code of conduct for law enforcement officials,” Article 3, December 17, 1979.

<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>

³² Ken Klippenstein, “ICE orders dozens of straitjacket-like restraints,” *TYT Network*, August 16, 2018.

<https://legacy.tyt.com/2018/08/16/ice-orders-dozens-of-straitjacket-like-restraints/>

³³ Stahl, “South Asian migrants put in body bags,” 2016.

³⁴ Stahl, “South Asian migrants put in body bags,” 2016.

³⁵ Klippenstein, “ICE orders dozens of straitjacket-like restraints,” 2018.

³⁶ United States District Court, 26, 27, 31.

In addition to excessive use of physical restraints, ICE officers have also refused to allow movement during tarmac delays. Numerous passengers aboard the Somali flight recall not being able to move during the approximately 20 hours spent on the tarmac, and also facing retaliation if they asked to get up.³⁷ This denial of physical movement has even extended to bathroom access aboard long deportation flights. Somali flight passenger Ismael Mohamed recalled being poked in the eye and threatened after asking to use the bathroom.³⁸ Several other passengers also claimed to have been denied bathroom privileges.³⁹

ICE officers have denied detainees their over-the-counter and prescription medication while onboard flights. One woman on the Somali flight was denied her antidepressant medications.⁴⁰ Other passengers aboard the Somali flight requested pain medication and were also denied.⁴¹ Refusing to provide passengers with necessary medical treatment violates an international precedent set in 2005 that the state must “provide detainees with regular medical examinations, assistance, and adequate treatment whenever required,” as ruled by the Inter-American Court on Human Rights in the case of *García-Asto and Ramírez-Rojas v. Peru*.⁴²

Furthermore, ICE agents have failed to make accommodations for especially vulnerable populations, including the mentally ill. A case study of immigrants deported from the U.S. to Jamaica found that the majority of deportees returned without medical records, and that as a result, “mental disabilities can remain undiagnosed until some incident makes the person’s condition apparent.”⁴³

Procedural and Due Process Violations

Human rights abuses occur not only aboard the flights themselves, but throughout the entire deportation process. Firstly, there are numerous reports of detainees who have been deported without proper documentation. Somali passenger Ismail Abdullah was deported without any

³⁷ United States District Court, 28, 26-36.

³⁸ United States District Court, 33.

³⁹ United States District Court, 26-36.

⁴⁰ United States District Court, 31.

⁴¹ United States District Court, 29.

⁴² Razeen Zaman and Rodrigo Ricxu Bacus, “Smuggled into Exile: Immigration and Customs Enforcement’s Practice of Deporting Non-Citizens Without Valid Travel Documents,” *Families for Freedom* (September 2015): 20. <https://familiesforfreedom.org/sites/default/files/resources/Smuggled%20into%20Exile%201.pdf>

⁴³ Rachel S. Taylor. “Sent ‘home’ with nothing: The deportation of Jamaicans with mental disabilities,” *Georgetown Law Human Rights Institute* (2011): 42.

documentation.⁴⁴ Clive Wilson, an immigrant from Jamaica who had been living in the U.S. as a legal permanent resident since 1972, was detained by ICE in 2005 after entering a plea deal for a crime of weapons possession and sale of drugs. ICE detained him for five years and eventually deported him back to Jamaica despite failure to obtain proper travel documents from the Jamaican government: Wilson was deported without proper documentation because ICE blatantly ignored Jamaica's policy on document issuing.⁴⁵

Secondly, deportation frequently occurs before legal protections have been exhausted. A U.S. District Court judge determined that in the process of raiding and detaining a group of Cambodians for deportation, ICE violated their rights to due process and transgressed the agency's own procedures.⁴⁶ This violates the 9th Article of the UN International Convention on Civil and Political Rights, to which the U.S. is a signatory. This Convention states that, "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."⁴⁷

In conjunction with violation of due process, detainees are often not given adequate time to prepare for deportation. ShaCorrie Tunkara, the wife of a man deported directly from the Seattle area, recalled that the detention center where her husband was detained called her in the middle of the night, gave her less than an hour to bring him his basic belongings, and did not allow Tunkara to say goodbye to his wife or children before he was flown out.⁴⁸ Not allowing detainees proper time to prepare for deportation violates the draft articles on the Expulsion of Aliens, which were adopted by the International Law Commission in June 2014. Chapter III, Article 21 states that "In voluntary departure of the alien or forcible implementation of the expulsion decision — paragraph 3 requires the expelling State to give the alien a reasonable period of time to prepare for his or her departure, taking into account all circumstances."⁴⁹

⁴⁴ United States District Court, 29.

⁴⁵ Zaman, "Smuggled into exile," 22.

⁴⁶ Julianne Hing, "How a Group of Immigration Attorneys Stopped a Deportation Flight to Cambodia," *The Nation*, December 19, 2017. <https://www.thenation.com/article/how-a-group-of-immigration-attorneys-stopped-a-deportation-flight-to-cambodia/>

⁴⁷ "International Covenant on Civil and Political Rights," opened for signature on December 16, 1966, *United Nations Human Rights Office of the High Commissioner*. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁴⁸ Melissa Hellmann, "Did ICE retaliate against a detainee over Seattle Weekly report?" *Seattle Weekly*, November 5, 2018. <https://www.seattleweekly.com/news/did-ice-retaliate-against-inmate-over-seattle-weekly-report/>

⁴⁹ United Nations, "Draft articles on the expulsion of aliens, with commentaries," 2014. http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf

Separation of families is another egregious abuse present within the system of deportation flights under the Trump administration's "zero-tolerance" policy. Article 16 of the International Declaration on Human Rights states that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."⁵⁰ While national immigration policies are left to the discretion of individual national governments, international monitoring bodies are not tasked with ensuring that individuals' right to family life is being respected. This violation is highlighted in the 2017 Cambodian deportation flight case where multiple individuals were to be deported to Cambodia, separating them from their families and established lives in the U.S.⁵¹ The Order Granting Preliminary Injunction for this specific case stated that, "many [deportees] have parents, siblings, spouses, and young children who are U.S. citizens. These family members rely on [deportees] for financial and emotional support."⁵²

International laws, principles, and agreements forbid the vast majority of the abuses reported on flights. These international conventions and agreements assert that even detainees who are not citizens and are flying between national jurisdictions have rights and protections under the law. Article 6 of the Universal Declaration for Human Rights states that "everyone has the right to recognition everywhere as a person before the law."⁵³ The International Covenant on Civil and Political Rights further enforces that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."⁵⁴ The American Convention on Human Rights also specifies in Article 5 that "every person has the right to have his physical, mental, and moral integrity respected." It also dictates that nobody will be subjected to "cruel, inhuman, or degrading punishment."⁵⁵ Furthermore, the Convention Against Torture defines torture as "severe pain or suffering, whether physical or mental, intentionally inflicted on a person," and mandates in Article 4 that each state party will take necessary measures to establish its jurisdiction over offenses that occur, among other places, on board aircraft registered in the pertaining state.⁵⁶

⁵⁰ "The Universal Declaration of Human Rights," opened for signature on December 10, 1948, *General Assembly of the United Nations*. <http://www.un.org/en/universal-declaration-human-rights/>

⁵¹ See Cambodian Appendix.

⁵² Order granting preliminary injunction, United States district court central district of California southern division, January 25, 2018, 10. https://www.advancingjustice-alc.org/wp-content/uploads/2018/01/2018-01-25-Order-Granting-Preliminary-dckt-74_0.pdf

⁵³ "The Universal Declaration of Human Rights," 1948.

⁵⁴ "International Covenant on Civil and Political Rights," 1976.

⁵⁵ "American Convention on Human Rights," opened for signature on November 22, 1969, *Inter-American Commission on Human Rights*. <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

⁵⁶ "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," opened for signature on December 10, 1984, *United Nations Human Right Office of the High Commissioner*.

The U.S. is also a signatory to multilateral agreements such as the Constitution of the International Organization for Migration (1953), Convention between the American Republics regarding the Status of Aliens and their respective territories (1928), and the 1967 Protocol Relating to the Status of Refugees.⁵⁷ However, similarly to other international human rights agreements, adherence is voluntary and none provide specific or enforceable policy for repatriation via air or the protection of rights of deportees.

The abuses mentioned above are egregious acts of violence systematically perpetrated by the United States and appear embedded in the regular operations of ICE Air. These accounts show that even while abuses of this scale may not occur on every flight, a lack of regard for the dignity and humanity of deportees is engrained in ICE Air's culture and system. Thousands of deportation flights occur every year and are virtually unregulated. Once the flights have landed and dropped off their detainees, there is typically no meaningful avenue of recourse for passengers or families of passengers who have endured abuses. The limited number of deportees who are able to describe their experiences onboard ICE Air flights means that abuses most likely extend beyond the examples given here.

III. Procedural Ambiguity and Lack of Accountability

Human rights abuses arise because of the inconsistencies in the processes that govern treatment of deportees on deportation flights and the lack of accountability for state and non-state actors involved in this system. This extends to both flight procedure guidelines and accountability mechanisms in U.S. law, internal agency policy, and contracts between ICE and private companies.

Procedure

U.S. Federal Agency Policy

The federal government does not provide explicit procedures and treatment standards for all deportees onboard IAO deportation flights. Instead, a web of various ICE materials and bilateral agreements between the United States and specific countries show that treatment standards

⁵⁷ United States Department of State, *Treaties in Force*, (January 1, 2018), 531, <https://www.state.gov/s/l/treaty/tif/>.

are convoluted and variable. This lack of clarity is intentionally built into the ICE Air deportation process and allows ICE to act with unlimited discretion and perpetrate abuse.

While certain pieces of federal legislation and regulation apply to airline passenger rights and humane treatment of detainees, there is no U.S. Code, Department of Homeland Security, Immigration and Customs Enforcement, Department of Transportation (DOT), or Federal Aviation Administration (FAA) regulation that provides a clear set of rules explicitly governing procedure for treatment of deportees onboard deportation flights.

The Department of Transportation issues various fact sheets that outline “Consumer Rights” aboard airlines. These rights primarily refer to ticket issues and flight delays that only apply to ticket-buying passengers.⁵⁸ The DOT also provides several fact sheets on its website that prohibit discrimination aboard airlines under U.S. Code, but these too are clearly geared toward consumers.⁵⁹ Beyond these documents, there are no regulations governing the transportation of deportees on airplanes. Similarly, the FAA provides no relevant procedural regulations for the air transport of deportees beyond rules for charter flights in general.⁶⁰

Most concerning is that neither DHS nor ICE itself have explicit procedural rules for their own flights. The primary internal ICE treatment procedure is the “Performance-Based National Detention Standards” (PBNDS). This manual includes a section on transport of detainees by land, however, there is only brief mention of air transportation in the entire manual, under the “Food Service” section.⁶¹ Additionally, a specific ICE Air Operations manual is referenced in an ICE “Juvenile Coordinator” manual.⁶² However, the citation for this IAO manual is simply a citation back to the “Juvenile Coordinator” manual. We have submitted a FOIA request for the ICE Air Operations manual, but as of time of writing have not yet received it. ICE’s response to

⁵⁸ U.S. Department of Transportation, *Aviation Consumer Protection*, (2018).
<https://www.transportation.gov/airconsumer>

⁵⁹ U.S. Department of Transportation, *Guidance for Airline Personnel on Non-Discrimination in Air Travel*, (n.d), <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/295216/guidance-airline-personnel-non-discrimination-air-travel.pdf>

⁶⁰ “PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT,” *Code of Federal Regulations*, title 14: chap. 1 subpart G.
https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0bb96b748f2afdc4dd20a9cc10f5461&tpl=/ecfrbrowse/Title14/14cfr135_main_02.tpl

⁶¹ U.S. Customs and Immigration Enforcement, *2011 Operations Manual ICE Performance-Based National Detention Standards* (Revised 2016), 242, <https://www.ice.gov/doclib/detention-standards/2011/4-1.pdf>

⁶² U.S. Customs and Immigration Enforcement, *Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook, Section 3.4: Removals and Returns*. (2018), 72-74,
https://www.ice.gov/doclib/foia/dro_policy_memos/juvenileprotocolmanual2006.pdf

this request will answer two important questions: firstly, is ICE willing to make this document available to the public and therefore subject to oversight, and secondly, what, if any, internal guidelines govern ICE Air's treatment of deportees.

Without current access to an ICE Air Operations manual, an assortment of other internal ICE documents and policies point to incomplete and murky guidelines regarding use of force and conditions in flight. An ICE use of force policy provides general use of force guidelines.⁶³ The ICE Air website includes a page that lists the Enforcement and Removal Operations (ERO) personnel who are present onboard the flights.⁶⁴ An IAO draft "Statement of Work" used for contracting purposes outlines various procedures and roles of onboard personnel.⁶⁵ These documents still do not provide a complete picture of DHS/ICE agency policy that governs what is happening onboard these flights.

Additionally, ICE's data on deportees transported via air is inconsistent, filled with errors and omissions, and frequently kept secret. This data includes information such as nationality, pick-up and drop-off location, and criminal status. Data analysis of ICE Air national data from FY 2011 – FY 2019 shows these inconsistencies. Firstly, there is no consistent record keeping guide, meaning that several of the fields have multiple unique values. For example, in the gang member field, there are multiple formats of writing "no" such as "nO", "no", and "NONE". At times, this field even includes what we assume are gang names. Additionally, some fields like the "Family Unit Flag" or "Minor" are never marked, and the Mission IDs and Mission Numbers are confusing and not intuitive.⁶⁶

The DHS Office of the Inspector General published an audit of IAO⁶⁷ that further describes the disorganization and mismanagement of ICE Air recordkeeping, stating, "There were 23,597 detainees listed as being "picked up" or "dropped off" at locations not on the charter flight route" and "The 'Status' field is not restricted to specific entry choices. It contains 894 different entries and is blank for 31,209 detainees." ICE's incomplete recordkeeping makes systemic abuse and

⁶³ Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Interim: ICE Use of Force Policy* (2004), <https://www.dhs.gov/sites/default/files/publications/ice-use-of-force-policy.pdf>

⁶⁴ Department of Homeland Security. *ICE Air Operations prioritizes safety and security for its passengers*. (2017), <https://www.ice.gov/features/ICE-Air>

⁶⁵ U.S. Immigration and Customs Enforcement, ICE Air Operations Division, *Daily Charter Flight Services: Statement of Work*. (n.d), *Daily Charter FY2017-21 TOSOW Sources Sought Draft 10272016.docx*

⁶⁶ U.S. Immigration and Customs Enforcement. *ARTS Passenger Data, FY 2011-2019*. Released through FOIA request January 2019. Copy on file with author.

⁶⁷ Department of Homeland Security, Office of the Inspector General, *ICE Air Transportation of Detainees Could Be More Effective*, (2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-57_Apr15.pdf

discrimination against immigrants far more difficult to track, increasing the likelihood that human rights abuses will occur, and further preventing accountability.

Bilateral Agreements

While ICE's ability to repatriate individuals is contingent upon the cooperation of receiving countries, few bilateral agreements, policies, or protocols exist which formally govern the repatriation process. Among the 23 countries deemed "cooperative" by ICE as of 2016,⁶⁸ the agreements or national protocols for repatriation vary significantly in regard to factors such as the number of flights and persons allowed into the country by air,⁶⁹ the treatment of passengers from vulnerable demographics onboard flights, and the reception procedure and services provided to individuals. Furthermore, ICE's compliance is unclear and language governing the rights of deportees to dignified treatment and other human rights protections is vague, all of which signals a confusing ad hoc system which is difficult to regulate and ripe for human rights violations.

From FY 2011 to FY 2018, the leading receiving countries for removals were Mexico, El Salvador, Guatemala, and Honduras, respectively.⁷⁰ For Mexico, this volume is matched by significant bilateral coordination and a proliferation of local and international agreements governing repatriation: in 2016 alone, the U.S.-Mexico Bilateral Repatriation Team (RESPECT)⁷¹ implemented nine separate Local Repatriation Agreements which cover the entire U.S. border and stipulate flight times, numbers of persons permitted, and "specific measures for vulnerable populations, such as unaccompanied minors and those with medical conditions."⁷² However, ICE's adherence to the procedures and protections stipulated in these agreements is extremely difficult to regulate, and experiences described by deported Mexican nationals indicate noncompliance with these standards.⁷³

⁶⁸ Criteria used to determine cooperativeness include: hindering ICE's removal efforts by refusing to allow charter flights into the country; country conditions and/or the political environment, such as civil unrest; and denials or delays in issuing travel documents (see pp. 4), "Recalcitrant Countries: Denying Visas to Countries that Refuse to Take Back their Deported Nationals," Homeland Security Digital Library, Committee on Oversight and Government Reform, July 14, 2016, <https://www.hsdl.org/?view&did=796788>.

⁶⁹ "ICE Air Transportation of Detainees," Department of Homeland Security, Office of the Inspector General.

⁷⁰ ICE, *ARTS Passenger Data*.

⁷¹ Department of Homeland Security, "Repatriation Strategy and Policy Executive Coordination Team (RESPECT) Fact Sheet," DHS & Mexico: Co-Management and Co-Responsibility, January 24, 2017, <https://www.dhs.gov/sites/default/files/publications/respect-fact-sheet.pdf>

⁷² "United States and Mexico Sign Updated Repatriation Agreements," DHS Press Office, Department of Homeland Security, February 23, 2016, <https://www.dhs.gov/news/2016/02/23/united-states-and-mexico-sign-updated-repatriation-arrangements>

⁷³ Eleazar Hernandez Cardona, Personal Interview, Also see Appendix B.

While it is far from comprehensive, Mexico's level of bilateral coordination with ICE appears to be anomalous: other top receiving countries, such as El Salvador, appear to have *no* bilateral agreements with the U.S. governing deportation, and only recently created a National Policy for the Protection and Development of Salvadoran Migrants and their Families in 2017 to ensure "ordered, informed, safe, and dignified migration."⁷⁴ This national policy has yet to be formally implemented and offers no procedural guidelines for ICE or regulatory or enforcement mechanisms. Similarly, the Honduran government provides only soft law protocol for repatriation,⁷⁵ yet acknowledges constant and permanent communication with ICE regarding the number of deportees and flights allowed into the country as well as hours of arrival.⁷⁶ The Guatemalan government also has a national protocol,⁷⁷ but claims to have no memorandum, agreement, or communication in force with the U.S. government governing repatriation of Guatemalan nationals.⁷⁸ These inconsistencies raise questions about the *de facto* repatriation procedure, the rights and treatment of deportees on flights, and the discretionary power of ICE during this process.

The overwhelming majority of receiving countries have no agreements with ICE or accessible national protocol governing repatriation, irrespective of significant demographic representation of their nationals, increases in deportation, high trafficking risks, and documented occurrences of egregious human rights violations on deportation flights. For example, Somalia, which was considered highly recalcitrant by ICE until 2015,⁷⁹ has no bilateral agreements or protocols in place regarding deportation of its nationals, despite U.S. government recognition of the high risk conditions faced by returning Somalis⁸⁰ and numerous reports of abuse on ICE Air flights by

⁷⁴ "Política Nacional para la Protección y Desarrollo de la persona Migrante Salvadoreña y su Familia," Ministro de Relaciones Exteriores y Consejo Nacional para la Protección y Desarrollo de la Persona Migrante y su Familia (CONMIGRANTES), pp. 54, July 2017. <https://rree.gob.sv/wp-content/uploads/2018/04/Pol%C3%81tica-Nacional-para-la-Protecci%C3%81n-y-Desarrollo-de-la-Persona-Migrante-Salvadoren%C3%83a-y-su-Familia.pdf>

⁷⁵ "Protocolo de Protección inmediata, Repatriación, Recepción y Seguimiento de Ninas y Ninos Migrantes", Honduras Directorate of Children, Adolescence and Family (DINAF), 2017, https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_ADR_HND_23865_S.pdf

⁷⁶ Secretary of Exterior Relations and International Cooperation, Transparency Unit, *Information request No. 127*, (Honduras February 2, 2019), Copy of response in author's possession.

⁷⁷ Guatemala Ministry of Exterior Relations et al., *Protocolo Nacional para la Recepción y Atención de Niñez y Adolescencia Migrante*, (February 2017), <https://www.refworld.org/es/pdfid/5c002c1c4.pdf>.

⁷⁸ Guatemalan Directorate General of Migration, *Information request No. 105, Office of Social Communication*, (January 23, 2019), Copy of response in author's possession, <https://drive.google.com/file/d/1PHxmtovdzcH5TPkTJYNwgUyQEymsJWIn/view>

⁷⁹ "Recalcitrant Countries: Denying Visas to Countries that Refuse to Take Back their Deported Nationals," Homeland Security Digital Library, Committee on Oversight and Government Reform, July 14, 2016, Retrieved from <https://www.hsdl.org/?view&did=796788>.

⁸⁰ Office to Monitor and Combat Trafficking in Persons, *U.S. Department of State, 2018 Trafficking in Persons Report, Special Case: Somalia*, (June 2018), <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282747.htm>.

ERO personnel.⁸¹ Furthermore, there are several reports of ICE issuing incorrect or false documents to the Somali government for deportation and arbitrarily sending Somali nationals to detention centers in other countries during the deportation process.⁸² Despite these trends, deportation numbers of Somali nationals have dramatically increased since 2015,⁸³ which raises human rights concerns and questions of how ICE's repatriation policy is implemented and regulated for different countries in the absence of formal bilateral coordination.

Accountability Mechanisms

The U.S. government has obligations to protect deportees from human rights violations under U.S. Code and international human rights agreements. However, the accountability structures that should enable deportees on ICE Air flights to pursue justice under these laws are weak and inconsistent, and the laws themselves are frequently vague or unenforceable. As a result, the U.S. legal system and ICE's own reporting mechanisms have failed to hold ICE Air agents and their contractors accountable for abuses onboard deportation flights.

Federal Laws

The U.S. statute that most explicitly provides for the rights of detainees is the Detainee Treatment Act of 2005.⁸⁴ This act establishes a "Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government," and applies directly to the abuses that have occurred onboard deportation flights. This law was specifically developed in response to U.S. torture in Guantanamo Bay, and the majority of the cases prosecuted under this law are related to these specific violations.⁸⁵

The abuses that have occurred onboard ICE Air flights likely fall under the definition of torture established in the Torture Act. The Torture Act⁸⁶ states that torture "means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." However, since this law went into effect in 1994, only one

⁸¹ Appendix A

⁸² Michele Garnett McKenzie, Deputy Director of The Advocates for Human Rights, personal interview, February 15 2019.

⁸³ Appendix A

⁸⁴ *Detainee Treatment of 2005* U.S. Code 42 (2005), § 21D

⁸⁵ U.S. Library of Congress, Congressional Research Service, *Interrogation of Detainees: Requirements of the Detainee Treatment Act*, by Michael John Garcia, RL33655 (2009).

⁸⁶ *The Torture Act*, U.S. Code (1994), § 2340-2340A

prosecution has been made under it,⁸⁷ again demonstrating that while protections against these egregious violations exist, the ability of deportees to seek remedy under U.S. law is systematically undermined.

Under the U.S. Constitution,⁸⁸ ratified treaties are considered U.S. law, meaning that all human rights agreements are legally binding and *should* act as accountability mechanisms for abuses carried out aboard ICE Air flights. However, Congress has amended the domestic power of such human rights treaties by establishing that particular articles are “not self-executing.” This means that they need specific legislation in order to be implemented in the U.S.⁸⁹ Therefore, while all protections in human rights treaties that the U.S. has signed remain binding under international law, the extent to which the applicable treaties (notably, the Convention Against Torture and the International Covenant for Civil and Political Rights) can be enforced under domestic law is limited to The Detainee Treatment Act and the Torture Act.

Finally, the Deprivation of Rights Under Color of Law⁹⁰ prohibits subjecting persons to punishment or pain due to that person’s status as an “alien”, their race, or their color. The abuses that have occurred onboard deportation flights are perpetrated entirely against people of “alien” status: the process of deportation is centered on removing them from the U.S., and every step of deportation is driven by the targeting, detainment, and removal of this particular group. The systematic “punishment or pain” inflicted upon deportees onboard deportation flights therefore likely constitutes a deprivation of rights under this code. 42 U.S. Code § 1983⁹¹ establishes civil protections for these same constitutional rights violations. Specifically, under this code, the Supreme Court has held “that government has an affirmative duty to care for prisoners who, because they have been deprived of liberty by the state, cannot care for themselves.” It has been used numerous times to protect the rights of detainees particularly in regard to the eighth and fourteenth amendments.⁹²

⁸⁷ North Carolina Torture Report, *North Carolina’s Role in the CIA Rendition and Torture Program*, (2018), Chap. 9, <http://www.nctorturereport.org/ncchp9.shtml>.

⁸⁸ U.S. Constitution Supremacy Clause. Art. 6, Sec. 2.

⁸⁹ 138 Cong. Rec. S4781-01 (“[T]he United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing.”); Cong. Rec. S17486-01 (“[T]he United States declares that the provisions of Articles 1 through 16 of the Convention are not self-executing.”)

⁹⁰ *Deprivation of Rights Under Color of Law*. U.S. Code 18 (1988), § 242.

⁹¹ *Civil action for deprivation of rights*, U.S. Code 42 (1996), § 1983.

⁹² Roberta M. Saielli, “DeShaney v. Winnebago County Department of Social Services: The Future of Section 1983 Actions for State Inaction,” *Loyola University Chicago Law Journal* 21, no. 169 (1989) <http://lawecommons.luc.edu/lucj/vol21/iss1/7>

Aviation Policy

In addition to torture and humane treatment laws, the federal government has obligations under aviation-specific U.S. Code to protect airline passengers. 49 USC §41712 and §41702 stipulate that the Department of Transportation secretary may open an investigation into any carrier that engages in “unfair and deceptive practices,”⁹³ and also states that an air carrier must provide a “safe and adequate”⁹⁴ flight. While the human rights abuses occurring onboard ICE Air flights certainly fall under these descriptors, this language is vague and subject to the discretion of the Secretary of Transportation, is designed primarily to protect ticket-buying consumers, and therefore is difficult to apply to the protection of deportees.

The U.S. is also a signatory to several international commercial agreements that establish principles on the rights of people on board aircrafts. These agreements create important guidelines of global conduct to reference in the case of ICE abuses; however, they are mostly unenforceable.

Under the International Civil Aviation Organization, “During the period when [...] a person to be deported is under their custody, the state officers concerned shall preserve the dignity of such persons and take no action likely to infringe such dignity.”⁹⁵ While directly applicable to deportees and clearly violated by ICE Air Operations without repercussion, like domestic aviation policy, this language is non-explicit and therefore difficult to enforce.

Article 17 of the Convention for the Unification of Certain Rules for International Carriage by Air states that: “The carrier is liable for damage sustained in case of death or bodily injury of a passenger.”⁹⁶ This agreement is ratified by the U.S., and is theoretically applicable to deportees, however it is limiting in that damages awarded are compensatory only, not punitive, and have a two year statute of limitations. Additionally, it is likely that the “carrier” would refer to not ICE, but the private charter companies that ICE contracts with.⁹⁷ This means that blame would be deflected from ICE itself. The private air carriers have multi-million-dollar insurance plans that

⁹³ *Unfair and deceptive practices and unfair methods of competition*. U.S. Code 49 (1994), §41712.

⁹⁴ *Interstate air transportation*. U.S. Code 49. (1994), §41702.

⁹⁵ U.N Security Council, Counter-Terrorism Committee, *ICAO Best Practices Annex 9 Chapter 5: Inadmissible persons and deportees*, (March 2016), <https://www.un.org/sc/ctc/news/document/icao-best-practices-annex-9-chapter-5-inadmissible-persons-and-deportees/>

⁹⁶ International Air Transport Association, “Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air ” 1999, https://www.iata.org/policy/Documents/MC99_en.pdf. Article 17.

⁹⁷ Shih, personal interview.

protect them from liability and make the compensatory limit in the Montreal Convention negligible.⁹⁸

Investigation and Prosecution of Crimes Occurring Under these Laws

The federal government has an unquestionable legal obligation to protect deportees from human rights violations under these numerous U.S. statutes. However, the combination of the vague language used in these laws and the inadequacy of IAO's reporting and investigating systems make pursuing remedy a near impossibility for deportees aboard ICE flights.

49 U.S.C. § 46506 establishes the "Special Aircraft Jurisdiction" of the U.S.,⁹⁹ which makes punishable certain crimes—including assault—that occur onboard an aircraft and establishes that they fall under the jurisdiction of the FBI.¹⁰⁰ This means that the FBI has the authority to open an investigation into abuses committed by personnel on deportation flights. However, this would require that a deportee was both aware of the FBI's jurisdiction over flights and able to contact an agent. ICE's inadequate internal complaint and grievance system makes it unlikely that deportees onboard flights are aware of reporting channels, much less empowered to utilize them.

ICE Air's internal reporting systems are ambiguous, inconsistent, and not clearly extended to deportees. The grievance system that does exist for detainees does not effectively hold ICE accountable for abuses. It is problematic when an agency is in charge of investigating abuses that occur under its own supervision. According to a report on ICE detainees, "Unlike the USCIS (U.S. Citizen and Immigration Services), there is no independent ombudsman to receive detainee complaints against ICE, or to generate reports to Congress about ways ICE can improve."¹⁰¹ Without an independent third party, it is unlikely that deportee reports and complaints questioning the legitimacy of ICE's operations will be thoroughly investigated.

The inadequacy of ICE's investigative process is demonstrated through data. The Government Accountability Office reported that between 2014-2016 more than two-thirds of ICE misconduct

⁹⁸ Anonymous, personal interview, January 25 2019.

⁹⁹ *Special maritime and territorial jurisdiction of the United States defined* U.S. Code 18 (2001), §7.

¹⁰⁰ *Application of certain criminal laws to acts on aircraft* U.S. Code 49 (1994), §46506.

¹⁰¹ Kelsey E. Papst, "Protecting the Voiceless: Ensuring ICE's Compliance with Standards That Protect Immigration Detainees," 281, no. 40 (40 McGeorge L.) <https://scholarlycommons.pacific.edu/mlr/vol40/iss1/9>

cases reported resulted in no action.¹⁰² Additionally, an independent report¹⁰³ submitted to the DHS Civil Rights and Liberties Office in May 2017 found, through complaints released to them by FOIA, that while 33,126 complaints were made, only 570 investigations were carried out. ICE received the largest amount of complaints within DHS.

Without examination of an ICE Air Operations manual, it is unclear whether deportees onboard flights are even able to file one of these complaints. The process by which detainees make complaints regarding abuses to ICE is stipulated in the ICE Manual for Performance-Based National Detention Standards. This chapter establishes that detainees can internally file complaints to the facilities in which they are held or with an ICE field office, and that they “shall be informed about the facility’s informal and formal grievance system in a language or manner they understand.”¹⁰⁴ Because there is no specific mention of these same requirements outside of detention facilities, it is questionable whether deportees on flights are made aware of the FBI’s flight jurisdiction, their right to file a complaint, or through whom they would do so.

In conclusion, the lack of clear procedural guidelines on deportee treatment from any federal agency up to and including ICE itself sets up a process that from the beginning is opaque and vulnerable to human rights abuses. ICE’s shoddy internal reporting systems combined with a lack of explicit federal law governing air transport of deportees means that there is no adequate channel for prosecution or remedy after these human rights violations occur. Therefore, not only ICE but the entire federal government has failed to establish a system of deportation via air transport that protects the human rights of the tens of thousands of people a year who are deported on these flights.

¹⁰² U.S. Government Accountability Office, *DHS: Components Could Improve Monitoring of the Employee Misconduct Process*, GAO-18-405, Washington, DC, 2018, Accessed February 2019. <https://www.gao.gov/products/GAO-18-405>.

¹⁰³ “Sexual Assault in Immigration Detention,” Community Initiatives for Visiting Immigrants in Confinement, (2017). <http://www.endisolation.org/sexual-assault-in-immigration-detention/>

¹⁰⁴ U.S. Customs and Immigration Enforcement, *2011 Operations Manual ICE Performance-Based National Detention Standards*, (Revised 2016), 242. <https://www.ice.gov/doclib/detention-standards/2011/4-1.pdf>. The grievance system outlined in this manual includes the right to complain to the DHS Inspector General, the DHS Civil Rights and Liberties offices, the ICE Office of Professional Responsibility, or finally, file a lawsuit.

Contracting

The movement away from a government-operated deportation service like JPATS¹⁰⁵ and the decreasingly common use of commercial flights¹⁰⁶ has pushed deportation flights away from the public eye and farther into secrecy. The long and unclear chain of contracts and subcontracts between numerous corporations effectively privatizes public operations and enables abuses to occur in secrecy.

Although the specifics of contracts between ICE and privately contracted charter airlines are largely inaccessible, a previous, publicly released contract between ICE Air and CSI Aviation Inc. from 2008 makes it possible to examine the way ICE established its relationship with this prior contractor.¹⁰⁷ Additionally, ICE Air Operations' 2017 solicitation of contracts for Daily Charter Flight Services provides a more current description of the relationship standards between ICE Air and contractors. While each of these documents contains detailed regulations on procedure such as frequency of flights, payment information, and operating locations, there are few explicit contractual guidelines that regulate the treatment of deportees.

FAA Regulations and Lack of Contract Availability

FAA regulatory procedure is largely focused on the overall safety of the aircraft and does not include any provisions directly related to the treatment of air passengers except regarding emergency procedures. However, Sec 121.713 of the FAA regulations stipulates that each commercial operator "who conducts intrastate operations for compensation or hire" must keep a record of each written contract, and in the case of a verbal agreement, must keep a memorandum outlining the elements of the contract.¹⁰⁸ Therefore, according to this regulation ICE must have written agreements with each of the various air charter companies it contracts with. We submitted a FOIA request for all contracts between ICE Enforcement and Removal Operations and private airline companies. We have yet to receive these records.

Privatized Chains of Contracting and Subcontracting

¹⁰⁵United States Marshal Service, *Review of Privacy Impact Assessment for the Justice Prisoner and Alien Transportation System*, by William E. Bordley, reviewed by Luke J. McCormack, and approved by Joo Y. Chung, September 24, 2013. <https://www.justice.gov/opcl/docs/pia-jmis-may2013-aug-opcl.pdf>

¹⁰⁶Catherine E. Shoichet, "ICE Air: How US Deportation Flights Work," *CNN*, May 29, 2017. <https://www.cnn.com/2017/05/26/us/ice-air-deportation-flights-explainer/index.html>.

¹⁰⁷U.S. Immigration and Customs Enforcement, *FY 2008 Mexican Interior Repatriation Program (MIRP) Performance Work Statement*, (2008). <https://www.ice.gov/doclib/foia/contracts/hsceop07a00041orderhscecr08jcl020csi.pdf>

¹⁰⁸"Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire," *Code of Federal Regulations*, title 14 CFR (n.d.). § 121.713. <https://www.law.cornell.edu/cfr/text/14/121.713>

In addition to ICE's direct contracts with air charter companies, security companies, and other aircraft personnel providers, private companies also use subcontractors to carry out services for ICE Air Operations. While these subcontracts are deeply connected to ICE operations and therefore should be public, they are between two private companies and thus not subject to the same oversight as primary government contracts.¹⁰⁹ The complexity of these relationships creates a system that is compartmentalized and disconnected, with no accountability for any of the entities involved in air operations. Each actor independently ensures that they are protected from liability: the air charter brokers and private jet companies have massive insurance claims that provide a liability cushion, and ICE itself has recently sought increased protection by adding more links to its subcontracting chain.¹¹⁰ According to Benjamin Shih, an official from the ICE Office of Acquisition Management (OAQ), it made sense for ICE to "streamline" the process, and only communicate with one air charter broker who would facilitate all operations regarding deportation flights. However, the same official also notes how having one air charter broker¹¹¹ is problematic: "You get into a situation where if that one contractor fails, then we're really in trouble. That contractor ends up having a lot of power. There's always the tension where we go with one to lighten the administrative burden, or spread it out so that we avoid risk."¹¹² An air charter broker has "a lot of power," because they are required to provide not only the aircraft but security guards, an in-flight nurse, and other flight personnel.¹¹³ This relinquishing of power allows ICE to point its finger at the contractor if something goes wrong. For example, if a back-up flight crew doesn't show up and detainees are stuck on a plane for an extended period of time without access to food, water, or a bathroom¹¹⁴ and the plane has to return to the U.S. "that would be a very realistic scenario where that is sort of the contractors fault."¹¹⁵ On the opposite end of this contracting line, an employee from Private Jet Services, a previous contractor for

¹⁰⁹This complex and private chain of subcontracts is demonstrated through a complaint to the Government Accountability Office (GAO) from CSI. In this complaint, GAO states that in its request for quotation for the IAO contract, CAC "entered into initial agreements" with three air carriers, also known as subcontractors, for access to 24 aircraft for the stipulated airports. Ten of these aircrafts must be dedicated exclusively to ICE at these locations, and fourteen 14 must be on standby. This means that while CAC may itself hold a number of planes, it also contracts out to at least 3 air carriers which do not have a direct contract with ICE.

[See: "Decision - Matter of: CSI Aviation, Inc." Government Accountability Office. Eric J. Marcotte, et. al, February 7, 2018. <https://www.gao.gov/assets/700/690147.pdf>.]

¹¹⁰ Tanzer, Phillip. "Questions about Akal Security." *Medium*, August 26, 2018. <https://medium.com/@philliptanzer/questions-about-akal-security-8bcf932bb42d>.

Until recently, ICE contracted out directly to Akal Security for on-board security. However, amidst collective organizing of security workers, Akal was sued. Akal subsequently sued ICE and CBP, which triggered the change in contracting as ICE realized the need to protect itself from this kind of accountability.

¹¹¹ See Section I "Scope of flights" - "Why Charter Flights and not Government Planes?"

¹¹² Benjamin Shih, personal interview.

¹¹³ ICE, "FY 2008 Mexican Interior Repatriation Program," 2008.

¹¹⁴ See Appendix A.

¹¹⁵ Shih, personal interview.

ICE, claims that, “if someone wanted to fly something illegally, PJS as a company is protected through our contract, so it's just going to come back on the person that's doing it... If you've got the money, we're going to fly you where you want to go.”¹¹⁶ These contrasting claims reflect the disconnect from responsibility at all systemic levels of ICE Air Operations which allow for human rights abuses to occur.

A key component to the secrecy of this subcontracting process is the relationship between public airports and private fixed base operators (FBOs).¹¹⁷ FBOs rent land at federally-obligated airports but manage aviation services for air carriers moving through these airports within private contracts and agreements. In this context, the private status of FBOs allows them to enjoy minimal regulation and exemption from information disclosure while also performing services under the color of law for the federal government.

Accountability Within Contracts

All government entities are supposed to “do their best” to procure services through “performance based contracting.”¹¹⁸ Part of this process includes a Quality Assurance Surveillance Plan” (QASP), which in ICE’s case is called a “Performance Work Statement”, through which ICE measures the quality of a contractor’s operations, especially relating to: maintaining aircraft availability, on-time departures, readiness of crew, safety reports, accident/incident reports, invoicing, and protection of sensitive information (passenger manifests).¹¹⁹ At the end of each fiscal year, ICE creates a Contract Performance Assessment Report. These performance metrics are almost entirely focused on efficiency and vehicular safety and maintenance, without any direct assessment of the contractor’s treatment of passengers. The only place where passenger treatment performance issues could be inspected is in the “accident/incident reports” section, but these reports rely on contractors or ICE officials to report an instance of detainee mistreatment. Given that contractors can be held financially responsible for problems on flights, as well as professional repercussions for both ICE officials and contracted employees, this self-reporting is not likely to occur.¹²⁰

¹¹⁶ Anonymous Interviewee, personal interview, Jan 25, 2019.

¹¹⁷ King County Department of Transportation, Airport Division, *King County Minimum Standards 2007*, approved by Robert I. Burke, (2007) pp. 36: “Fixed-Base Operator (FBO) means any operator which maintains facilities specifically defined herein at the airport for the purpose of engaging in the retail sales of aviation fuels and associated line service, aircraft airframe and powerplant repair and maintenance, and a minimum of three (3) of the following: flight instruction/aircraft rental, aircraft sales, air taxi and aircraft charter operation, avionics, instrument, propeller repair, aircraft storage, or aircraft parking (tie-down)”

¹¹⁸ Benjamin Shih. Personal Interview.

¹¹⁹ Shih, private interview.

¹²⁰ Shih, private interview.

ICE oversight over subcontractors is even farther removed. ICE maintains “privity of contract”, meaning the actions of subcontractors are the sole responsibility of the contractor.¹²¹ The contract between ICE and CSI requires that “if the Contractor utilizes multiple subcontractors to fulfill the scope of the contract, subcontractors are expected to cooperate with each other to fulfill the requirements of the contract.”¹²² However, the only mechanism by which ICE ensures that the subcontractor is fulfilling such requirements is through a “Summary Contract Report” submitted by the contractor.¹²³ It is unclear what this summary must include in regards to flight conditions and treatment of passengers onboard the plane. Additionally, this report is one private company summarizing its relationship with another private entity, meaning that the actual details of these agreements are hidden within a private contract. Therefore, both the government and the general public hold minimal oversight over standards and procedures.

Lack of Passenger Treatment Guidelines in Contracts

The lack of clarity and oversight within these subcontracting relationships gives full discretion to ICE Officers and contracted or subcontracted personnel regarding treatment standards for deportees onboard ICE Air Flights. According to the contract with CSI, “ICE will not provide a training program for contractor personnel.”¹²⁴ Likewise, the 2017 Statement of Work states that “The Contractor will be required to provide training, at their expense, for the contract guards in the following areas: cabin safety training equivalent to training provided by Flight Attendant and Cockpit Training Seminars (FACTS), or Civil Aerospace Medical Institute (CAMI), defensive tactics training, security training, handcuffing, and foreign language for non-fluent contract staff to meet contract staffing levels.”¹²⁵ However, neither of these documents explicitly provide use of force or general passenger treatment guidelines for either ICE or its contractor.

This lack of consistency in the relationship between ICE officers, contracted security guards, and detainees creates ambiguity as to who is responsible for passenger safety and the extent of authority granted to security guards, especially relating to physical force. While the contract states that crew members are “under the supervision of the ICE Officers, and will comply with

¹²¹Shih, private interview.

¹²² “FY 2008 MIRP Performance Work Statement,” 12.

¹²³ “FY 2008 MIRP Performance Work Statement,” 7.

¹²⁴“FY 2008 MIRP Performance Work Statement,” 2.

¹²⁵ United States Immigration and Customs Enforcement, *Draft Statement of Work for ICE Air Operations Division Daily Charter Flight Services*, October 27, 2016, p. 19 <https://www.govcb.com/government-bids/ICE-Air-Operations-Division-Daily-ADP14775935150000230.htm>.

their directions,”¹²⁶ it also states that in the case that no ICE officer is on board, the “senior contractor security officer will be responsible for the care and security of the passengers and direction of the security crew,”¹²⁷ and that they must ensure that “the passengers are transported in an orderly, safe, secure and humane manner.” Both descriptions are vague, and do not adequately provide for proper treatment of deportees.

In conclusion, the small number of publicly available documents in the privatized chain of IAO contracts and subcontracts show that there are few, if any, enforceable rules governing the roles, responsibilities, and training of the people most directly responsible for the well-being of deportees onboard IAO flights. ICE requires that contractors fulfill the majority of security and medical duties on deportation flights which places the responsibility for detainee safety onto private companies, therefore making effective accountability impossible.

IV. King County as a case study

Seattle and King County have been recognized by ICE as “sanctuary jurisdictions.”¹²⁸ While the classification of “sanctuary” does not have a precise legal definition, it has come to represent any jurisdiction which passes legislation restricting the collaboration of local government with federal immigration enforcement. In addition to denying ICE detainers,¹²⁹ the City of Seattle has also adopted a “Welcoming Cities” Resolution, which affirms Seattle’s will to “[foster] a culture and environment that makes it a vibrant, global city where our immigrant and refugee residents can fully participate in and be integrated into the social, civic, and economic fabric of Seattle.”¹³⁰ However, limiting local law enforcement’s cooperation with federal immigration enforcement does not create an environment of complete safety for immigrants and refugees, including undocumented people. There is a significant gap between the immigrant-friendly language of King County’s ordinance and its concrete, enforceable provisions. Specifically, the case of King County International Airport demonstrates how ICE Air’s complex and nebulous relationships

¹²⁶ “FY 2008 MIRP Performance Work Statement,” 4.

¹²⁷ FY 2008 MIRP Performance Work Statement,” 3.

¹²⁸ U.S. Immigration and Customs Enforcement, *Declined Detainer Outcome Report*, February 17, 2017. https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf

¹²⁹ A detainer is a written request from ICE to a local law enforcement agency which requests that a local jail detain an individual for an additional 48 hours after they would be released to provide ICE agents sufficient time to determine whether that individual should be apprehended. “Immigration Detainers.” American Civil Liberties Union, Accessed March 03, 2019. <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses/immigration-detainers>.

¹³⁰ *Welcoming Cities Resolution*, City of Seattle, January 30, 2017. <http://www.seattle.gov/council/issues/past-issues/welcoming-cities-resolution>

with private companies result in the absence of enforceable rights protections and oversight, even within a county known for its progressive policies.

In 1948, the U.S. government transferred ownership of KCIA to King County. Pursuant to the 1944 Surplus Property Act and the 1949 Federal Property and Administrative Services Act, transfer of ownership was conditional on the U.S. Government having “the right to make non-exclusive use of the landing area of the airport” in perpetuity.¹³¹ Furthermore, assurances in subsequent Airport Improvement Program (AIP) grants received by KCIA dictate that the county will “make available all of the facilities of the airport developed with Federal financial assistance.... for use by Government aircraft in common with other aircraft at all times without charge.”¹³² Yet while county officials indicated that federal assurances made it impossible to ban the deportation flights at KCIA—asserting that these private planes were, in effect, “government aircraft,” the county declined to release Clay Lacy Aviation’s (the KCIA FBO which provides subcontracting services for ICE Air) records of these flights, stating that Clay Lacy Aviation “is a private company operating at the airport as a tenant and [the King County Department of Transportation] does not have access to their private business records under the Washington State Public Records Act.”

During an interview with staffers from the King County Executive’s office and the Boeing Field airport director, the County indicated that their authority over airport operations is limited. As the owners of the airport, the Executive’s role is primarily to facilitate rent and lease operations which produce the majority of the airport’s income. When asked about their ability to monitor flights in order to ensure human rights abuses are not occurring, the County replied that their jurisdiction does not extend to specific flights; they do not have the authority to check the manifests, and ultimate regulatory authority instead falls to the FAA. Therefore, according to the county, local oversight of agencies operating out of KCIA is difficult due to the limited authority of the Department of Executive Services.¹³³

However, King County retains some control over the FBO’s use of King County land. Modern Aviation (the FBO who bought Clay Lacy) recently announced its planned expansion at Boeing

¹³¹ *Instrument of Transfer*. General Services Administration. May 26th, 1948.

¹³² Federal Aviation Administration, *Airport Improvement Program Assurances for Airport Sponsors*, March, 2014. https://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf

¹³³ Gina Topp, Timothy Barnes, Michael Colmant, John Parrott, Dylan Ordonez and Bookda Gheisar, interview with the King County Executive’s Office, February 20 2019.

field.¹³⁴ This expansion will require the negotiation of a new lease with King County.¹³⁵ The county will also be responsible for approving and issuing permits for this land use. Because Modern Aviation is the primary FBO providing airport operation services to ICE deportation flights, the County's approval of this expansion means that it is actively facilitating ICE Air flights. Through lease negotiation and permit approval, the County potentially has the means to regulate these flights.

The case of King County demonstrates that holding ICE Air contracted and subcontracted agencies accountable for potential abuses is extremely difficult because they appear subject to the rules and privileges of both private and public entities. To the extent that they are considered government agencies, the operation of contracted entities is protected by AIP grants assurances and the 1948 Airport Transfer Deed, and can continue operating in KCIA in perpetuity. Yet when asked to present records, these operations are viewed as those of a private business and not subject to public records requests. Transparency, accountability, and oversight by both civilians and the U.S. government become difficult when these agencies are doubly shielded by the protections assigned to both government agencies and private businesses.

V. Conclusion and Recommendations:

ICE Air Operations is a government agency branch that operates with all the secrecy of a private business. While extreme acts of physical violence may not occur on every ICE Air flight, the intentional regulatory ambiguity and lack of transparency means that there is no way to ensure that such abuses are not occurring. By failing to either regulate this agency or hold it accountable for systemic abuse, the U.S. federal government is violating the human rights of deportees. The use of county land and resources demonstrates the complicity of local jurisdictions in this abuse, even jurisdictions like King County that seek to protect the rights of their immigrant communities. Reform of this entire process is necessary in order to remedy these abuses and ensure that the government respects basic human rights. The following are recommendations for improvement.

¹³⁴ "Modern Aviation Acquires FBO at Boeing Field in Seattle," *Market Watch*, December 26 2018. <https://www.marketwatch.com/press-release/modern-aviation-acquires-fbo-at-boeing-field-in-seattle-2018-12-26?fbclid=IwAR2rVVw0feQ5WRG3F9XMMQ5tnNPFex2pKy9-zHWDv8vvYSvU1AqWD5kl3Zw>

¹³⁵Gina Topp et al., interview with the King County Executive's Office, February 20 2019.

Federal Oversight

Oversight of the executive branch is a fundamental duty of Congress. Regulation of DHS and ICE is often highly partisan and has been severely lacking since the Agency's creation post 9/11.¹³⁶ The House and Senate Judiciary committees and relevant subcommittees must exercise their oversight responsibility and call hearings on ICE Air Operations as a first step towards investigation, accountability, and legislative actions.

1. The House and Senate Committees should call for the following: all contracts and subcontracts in ICE Air Operations with private airlines, air charter brokers, and other flight personnel must be made public; the ICE Air Operations manual should be made available to Congress for evaluation of its protection of detainee rights; the DHS Office of Inspector General must be called on to audit ICE Air for abuses on flights and lack of transparency regarding procedures and record keeping.
2. Legislation as result of committee hearings must ensure that the human rights of deportees are protected. Along with free standing bills, such legislation should include amendments to the FAA Reauthorization Act of 2020 implementing treatment standards for deportees. Additionally, legislation should establish a third-party ombudsman to receive complaints from individuals or organizations and make annual reports to Congress and annual recommendations to ICE based on these complaints.¹³⁷

Contracting and Local Government

Local Ordinances

1. In order to ensure that individuals in deportation proceedings receive legal services before they are boarded onto planes, we recommend King County create a position and hire an experienced immigration lawyer to screen all individuals who are facing deportation before they step foot on a plane to ensure ICE Air is not deporting individuals who have not exhausted all

¹³⁶ Heather Timmons, "The House committee tasked with keeping ICE legal hasn't held a hearing about it in years," *Quartz*, July 11 2018, <https://qz.com/1326207/us-immigration-house-judiciary-committee-hasnt-held-oversight-hearing-on-dhs-and-ice-since-2015/>

¹³⁷ The ombudsman would serve as a direct point of contact between Congress and ICE Air. Another branch of DHS, USCIS has an ombudsman that functions similarly.

legal avenues. This position could fall under the Immigrant and Refugee Assistance Fund,¹³⁸ established in the King County Immigration Ordinance,¹³⁹ and be designed in collaboration with the needs of local immigrant advocacy organizations.

FBO Lease and Permit Negotiations

In consideration of the current lack of fixed base operation oversight by the King County International Airport staff and the King County Department of Executive Services (airport sponsor and manager of airport), we recommend that all current and future fixed base operator leases (including, but not limited to Modern Aviation¹⁴⁰) with King County be amended¹⁴¹ (and the KCIA minimum standards to which they adhere) to include mandatory human rights protections for all passengers departing from Boeing Field (irrespective of legal status). Human rights protections should be implemented and regulated in the following ways:

1. Renegotiate fueling operations permit requirements¹⁴² and cost certification process¹⁴³ for FBOs to include human rights protections and transparency regarding operations as “required information” (by ordinance, if necessary). Specifically: proof of adherence to Human trafficking protections procedure as stipulated in *Victims of Trafficking and Violence Protection Act of 2000* (TVPPA); names of airlines operating through FBO; requirement for KCIA to produce a monthly

¹³⁸ King County, WA, Municipal Code 4A.200.365. “The fund shall be used to collect revenue from state, local and other funding sources and to expend direct service and related administration dollars to provide legal representation for indigent immigrants and refugees in deportation proceedings in immigration court and to support citizenship services for these citizens.” https://www.kingcounty.gov/council/legislation/kc_code/07_Title_4A.aspx

¹³⁹ Striking Amendment to Proposed Ordinance 2017-0487. 01/05/2018. <https://thechurchcouncil.org/wp-content/uploads/2018/01/2017-0487-Striking-Amendment-V.1-1-5-18-CC.pdf>

¹⁴⁰ Modern Aviation is in the process of expanding its operations, which would require a new lease to be created with King County.

¹⁴¹ FBO leases are frequently amended, especially in the context of FBO expansion, changes in quality of service, time of performance, and scope of work. See “King County Manage Oracle Contract Agreements”. <https://www.kingcounty.gov/depts/finance-business-operations/procurement/for-government/service-requests/manage-contracts.aspx>. Also see pp. 22 of “Airport Operator Options for Delivery of FBO Services”, Airport Cooperative Research Program, Kramer et al., 2018. Retrieved from <https://www.nap.edu/catalog/25039/airport-operator-options-for-delivery-of-fbo-services>. Ex: Modification to FBO lease, Bellingham Airport

¹⁴² King County Department of Transportation, Airport Division, *King County Minimum Standards 2007*, approved by Robert I. Burke. (2007). see pp. 39, Section 5.7.1, KCIA “Airport Minimum Standards”, March 2007: “The County shall issue or annually renew a fueling operations permit within thirty (30) days of receipt of an application unless one (1) or more of the following is found to be true: (a) The applicant has failed to provide required information or has provided false information in their application (b) The applicant's proposed fueling operations will violate an applicable law, ordinance, or regulation.” <https://www.kingcounty.gov/depts/transportation/airport/~media/depts/transportation/airport/planning/bfi-minimum-standards-2007.ashx>

¹⁴³ “Modern Aviation 7017 Gateway LLC Executed Lease,” King County International Airport, 2018. Copy on file with author: “Lessee shall submit to King County's Department of Development and Environmental Services and to King County International Airport, final plans and specifications for New Improvements, together with a certification of the cost thereof (“Cost Certification”) prior to county approval”

report of RPN flights operating through the FBO, including total number of flights, dates, times, and airline name, to be released to King County for the inspection of county officials as well as human rights groups¹⁴⁴

2. Amendment of “Inspection” requirement of FBO contracts¹⁴⁵ to encompass random, monthly inspections (published in a publicly-accessible report) of embarking and debarking 737 aircrafts by a King County official. Inspection should include checks on passenger well-being, including but not limited to: use of restraints, evident injuries, and food and water supply. It should also document number and type of personnel on board and on the tarmac: i.e. security guards, airport police, in-flight nurses, flight attendants. This applies to the interior and exterior of the plane.

¹⁴⁴National Academies of Sciences, Engineering, and Medicine 2018. Sponsored by the Federal Aviation Administration. *Airport Operator Options for Delivery of FBO Services*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25039>. See p. 39: FBOs must “keep true and accurate books and records on its operations at the airport, and airport sponsor representatives [...] have the right to inspect and audit such books”.

¹⁴⁵See pp. 22 of “7017 Gateway LLC Executed Lease:” “King County reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Lease, provided that King County shall not interfere unduly with Lessee’s operations.”

Appendix A: Somalia

I. Deportation Data

The ICE Air dataset shows that there were close to no deportations of Somali nationals before FY 2016, those deported between FY 2012 and 2014 were flown to Kenya, and a spike of 342 deportees in FY 2017 with continued deportations accorded in FY 2018 and 2019.¹⁴⁶ The first reported deportation flight to Somalia was January 24th, 2017, with 90 passengers.¹⁴⁷ ICE Air went from not charting any deportation flights to Somalia before FY 2017, to Somali nationals now representing the 11th largest group for total removals.¹⁴⁸ The data set that the University of Washington Center for Human Rights (UWCHR) received of all deportation flights leaving the United States from FY 2010-2019 is inconsistent with the numbers publicly released by ICE. In the Fiscal Year 2017 ICE Enforcement and Removal Operations Report, ICE released the removals by country of citizenship and states that removals of Somali Nationals total to 198 in FY 2016 and 521 in FY 2017.¹⁴⁹

Total Removals of Somali Nationals by Fiscal Year

Fiscal Year	2011	2012	2013	2014	2015	2016	2017	2018	2019
# of Removals	0	9	10	2	0	0	342	151	66 ¹⁵⁰

¹⁴⁶ICE spreadsheet of all flights with Somali Nationals: 2010- 2018.' Alien Repatriation and Tracking System, U.S. Immigration and Customs Enforcement. Released to UWCHR December 2018.

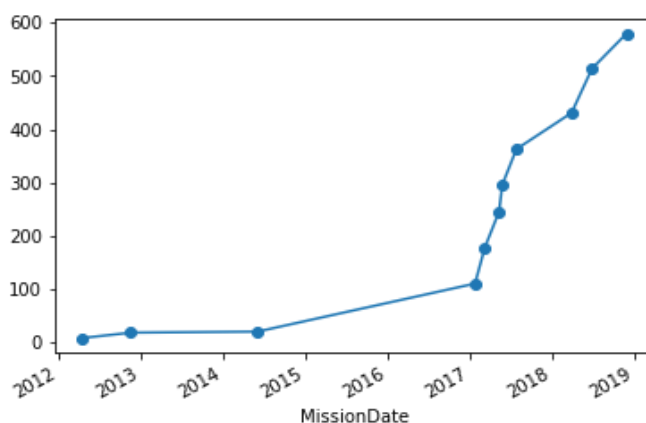
¹⁴⁷ICE spreadsheet of all flights with Somali Nationals: 2010- 2018.' Released to UWCHR December 2018.

¹⁴⁸ ICE spreadsheet of all flights with Somali Nationals: 2010- 2018.' Released to UWCHR December 2018.

¹⁴⁹U.S. Immigration and Customs Enforcement, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report" December 13, 2017. <https://www.ice.gov/removal-statistics/2017>

¹⁵⁰ This data only reflects the first two months of FY 2019.

Cumulative Removals of Somali Nationals



II. Somalia deportation flight December 2017

Deportation flights to Somalia came to the attention of international media due to a failed ICE Air deportation flight on December 7, 2017. This flight was not recorded in ICE Air flight data. In a motion for Temporary Restraining Orders (TRO) on deportations for those on the ICE Air flight, sworn testimony of the events aboard the flight on December 7th was given.

The ICE Air flight departed from Louisiana en route to Somalia, but only made it as far as Dakar, Senegal before being forced to return.¹⁵¹ The 92 detainees on the ICE Air flight sat on the runway in Senegal for 23 hours where they were handcuffed at their hands, waist, and feet without access to bathrooms.¹⁵² In sworn statements, passengers described the abuses they endured from ICE agents including being kicked, struck, immobilized with straightjackets or full-body restraints, dragged down the aisle of the plane, and abused verbally.¹⁵³ ICE publicly denied these abuses, despite the evidence of injuries sustained and sworn testimony from passengers.¹⁵⁴

¹⁵¹ *IBRAHIM v. ACOSTA*, pg 2, United States District Court Southern District of Florida Miami Division (December 2017).

¹⁵² *IBRAHIM v. ACOSTA*, pgs 26-36.

¹⁵³ *IBRAHIM v. ACOSTA*, pgs 26-36.

¹⁵⁴ *IBRAHIM v. ACOSTA*, pg 5.

Somali-American communities have voiced strong concerns about deportations due to the instability and violence in Somalia. Human Rights Watch has reported on unlawful killing and arbitrary executions on both sides of the armed conflict between Al Shabaab, an Islamist armed group, and the Somali Government, and has also highlighted the graveness of the ensuing humanitarian crisis with “over half of the country’s 12.4 million population still in need of emergency humanitarian assistance”.¹⁵⁵ The U.S. Citizen and Immigration Services has even extended the Temporary Protected Status¹⁵⁶ for Somali nationals through March 17, 2020.¹⁵⁷ In *Ibrahim v. Acosta*, it was cited that those deported from the United States to Somalia are considered Westernized and “targeted by the anti-American, anti-Western terrorist organization, Al Shabab.”¹⁵⁸

In a conversation with Michele Garnett McKenzie, one of the lawyers representing the 92 passengers on the December 7th flight, we discussed the status of the TRO issued in that case. The class action case of *Ibrahim v. Acosta* resulted in the reopening of each individual immigration case.¹⁵⁹ Through the reopening of individual cases it has been found that many on the flight were not legally deportable in the first place, having had pending immigration cases, and a few had received Somali travel documents from ICE but were not in fact Somali nationals.¹⁶⁰

III. Evolution of U.S.-Somalia deportation relationship

ICE regularly creates a list of “Recalcitrant Countries,” the highest level of non-cooperation of accepting returned citizens. This designation is based on: “(1) refusal to conduct consular interviews for issuance of travel documents or accept charter removal missions; (2) a high

¹⁵⁵ “World Report 2018: Rights Trends in Somalia,” Human Rights Watch, (2018), <https://www.hrw.org/world-report/2018/country-chapters/somalia>

¹⁵⁶ U.S. Citizen and Immigration Services, *Temporary Protected Status*, U.S. Citizen and Immigration Services, (n.d.), <https://www.uscis.gov/humanitarian/temporary-protected-status>

The Secretary of Homeland Security ‘designate[s] a foreign country for TPS [Temporary Protected Status] due to conditions in the country that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.’ these conditions can be an ‘ongoing armed conflict (such as civil war), an environmental disaster (such as earthquake or hurricane), or an epidemic, [or] other extraordinary and temporary conditions’

¹⁵⁷ U.S. Citizen and Immigration Services, *Temporary Protected Status Designated Country: Somalia*, (n.d.), <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-somalia>

¹⁵⁸ *IBRAHIM v. ACOSTA*, pg. 3.

¹⁵⁹ Darrin P. Gayles, *Ibrahim v. Acosta*, Casetext. Accessed March 03, 2019. <https://casetext.com/case/ibrahim-v-acosta>.

¹⁶⁰ Michele Garnett McKenzie, lawyer with the Advocates for Human Rights, personal interview, February 15, 2019.

percentage of releases when compared to removals; and (3) a high average length of time between issuance of a removal order and removal.”¹⁶¹ The Removal Cooperation Initiative, developed by ICE and the Department of State, identifies and works to assure that recalcitrant countries accept repatriations. In *Executive Order: Enhancing Public Safety in the Interior of the United States*, Section 12, it was stipulated that the Secretary of State shall “ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States”.¹⁶² These responses include “issue a demarche or series of demarches; hold a joint meeting with the Ambassador to the United States, Assistant Secretary for Consular Affairs, and Director of ICE; consider whether to provide notice of the U.S. Government’s intent to formally determine that the subject country is not accepting the return of its nationals and that the U.S. Government intends to exercise authority under section 243(d) of the INA¹⁶³ to encourage compliance; consider use of 243(d) of the INA; and call for an interagency meeting to discuss withholding of aid or other funding”¹⁶⁴

Somalia was one of 23 countries listed as Recalcitrant as of May 27, 2016.¹⁶⁵ In a written statement submitted to the U.S. House of Representatives on July 14, 2016, the Assistant Secretary of the Bureau of Consular Affairs at the U.S. Department of State reported that, “ICE informally notified State that Somalia was uncooperative. Since then, we have met with the Somali Director of Immigration and Naturalization to discuss and agree upon improved procedures to obtain Somali travel documents and repatriate Somali citizens. We also have

¹⁶¹ U.S. Department of Homeland Security, Congressional Justification, *U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2018*, (2018), pg. 196.

¹⁶²“Executive Order: Enhancing Public Safety in the Interior of the United States.” *Code of Federal Regulations*, (2017), <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

¹⁶³*Penalties related to removal*, U.S. Code 8 (1996), § 1253.

<https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-7179.html#0-0-0-5621>

243(d) of the INA states, ' Discontinuing Granting Visas to Nationals of Country Denying or Delaying Accepting Alien.- On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.'

¹⁶⁴U.S. Congress, Senate, Judiciary Committee, *Declining Deportations and Increasing Criminal Alien Releases - The Lawless Immigration Policies of the Obama Administration: Requested Imposition of Visa Sanctions*, testimony of The Honorable Charles E. Grassley, pg 15.

¹⁶⁵ *Declining Deportations and Increasing Criminal Alien Releases*, pg 10.

engaged with other levels of the Somali government to ensure officials understand the importance of this issue and potential consequences if they do not cooperate.”¹⁶⁶

An acknowledged tool of ICE and DOS is to withhold aid money in order to penalize countries that are uncooperative in accepting the return of its nationals.¹⁶⁷ There have been multiple reports of ICE and DOS “demarches” and “engagement” with Somalia in 2016, which lead to ICE Air resuming deportation flights to Somalia in December of 2017. On December 5th, 2017 USAID announced a landmark Development Objective Assistance Agreement, the “first comprehensive bilateral development agreement signed between the U.S. government and the Federal Government of Somalia in over 30 years,” just six months after topping the DOS and ICE list for uncooperative countries.¹⁶⁸

It is clear that there is intent for the United States to deport a mass number of Somali detainees that could not previously be deported due to Somalia’s lack of cooperation with repatriation and the Temporary Protected Status of Somali nationals. The ICE Budget for FY 2018 includes a justification for a Removal Cooperation Initiative by indicating success “as a result of a demarche in December 2016 and continued high level RMD [Removal Management Division] engagement, Somalia approved the first ever SHRC [Special High-Risk Charter Mission] which successfully occurred on January 24, 2017. The charter resulted in the removal of 90 Somali nationals. An additional SHRC occurred in March 2017 resulting in the removal of 68 Somali nationals. RMD has also gained assurances from the Government of Somalia to accept 3 additional SHRCs before July 1, 2017.”¹⁶⁹ The failed Somalia deportation flight of December 2017 was not mentioned in any report. In the ICE Budget for FY 2018, \$164.3 million for additional transportation costs associated with higher detention capacity and expanded immigration enforcement activity cited “specific factors driving increased TRP [Transportation and Removal Program] requirements include three large charters going to Somalia.”¹⁷⁰

¹⁶⁶ U.S. Congress, Senate, Judiciary Committee. *Recalcitrant Countries: Denying Visas to Countries that Refuse to Take Back Their Deported Nationals*. July 14, 2016. (testimony of Michele Thoren Bond, Daniel Ragsdale). Page 7.

¹⁶⁷ U.S. Congress, Senate, Judiciary Committee. *Declining Deportations and Increasing Criminal Alien Releases - The Lawless Immigration Policies of the Obama Administration: Requested Imposition of Visa Sanctions*, July 14, 2016. testimony of The Honorable Charles E. Grassley. Pg 15.

¹⁶⁸ “Somalia and U.S. sign landmark Development Objective Assistance Agreement (DOAG),” USAID, Somalia, 2017, December 05. <https://www.usaid.gov/somalia/press-releases/dec-5-2017-somalia-and-us-sign-landmark-development-objective>

¹⁶⁹ U.S. Department of Homeland Security, Congressional Justification, *U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2018*, 197, (2018).

¹⁷⁰ *U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2018*, pg 19.

The emerging cooperation of Somalia in accepting deportees affects many people who thought that deportation was not a viable threat. Given the years in which the United States was not actively deporting Somali nationals, there was a de-prioritization of fighting criminal and immigration convictions, leading to people pleading guilty out of ease and not fighting misdemeanor convictions and immigration violations.¹⁷¹ Since the U.S.-Somalia relationship has changed, people with criminal records, even 20+ year old convictions for misdemeanors, are now being deported. This is despite factors such as previous time served or community service, established families, strong community ties, and even permanent residency.¹⁷²

VI. Conclusion

A rare case where a deportation flight returned provided a glimpse into the abuses linked to ICE Air flights. While the physical abuse that occurred on the December 7th flight was abnormal, it points to clear institutional flaws in ICE Air's ability to resolve issues like tarmac delays and flight crew issues. In the efforts to fill flights, especially the Special High-Risk Charter Missions, and carry out deportations quickly, detainees are being deported before they have had the ability to exhaust all legal avenues. This trend is evident not only among Somalis. Two plaintiffs were put on a deportation flight to El Salvador in the middle of a trial, causing the judge to demand that the flight return.¹⁷³ Changing deportation relationships has caused Somalis with criminal records to experience a double punishment in which they served their time and have rebuilt lives, but are then unexpectedly deported for convictions that happened years ago. The focus on trends and circumstances surrounding deportations of Somali nationals brings to light the United States' relationships with uncooperative nations and abuses embedded within the deportation flight process.

¹⁷¹ McKenzie, interview.

¹⁷² Jake Bleiberg, "Somali Man ICE Arrested in Court Is a Permanent Resident Who's Lived in U.S. for 20 Years." Bangor Daily News, September 26, 2017, <https://bangordailynews.com/2017/04/11/news/state/somali-man-ice-arrested-in-court-is-a-permanent-resident-whos-lived-in-u-s-for-20-years/>.

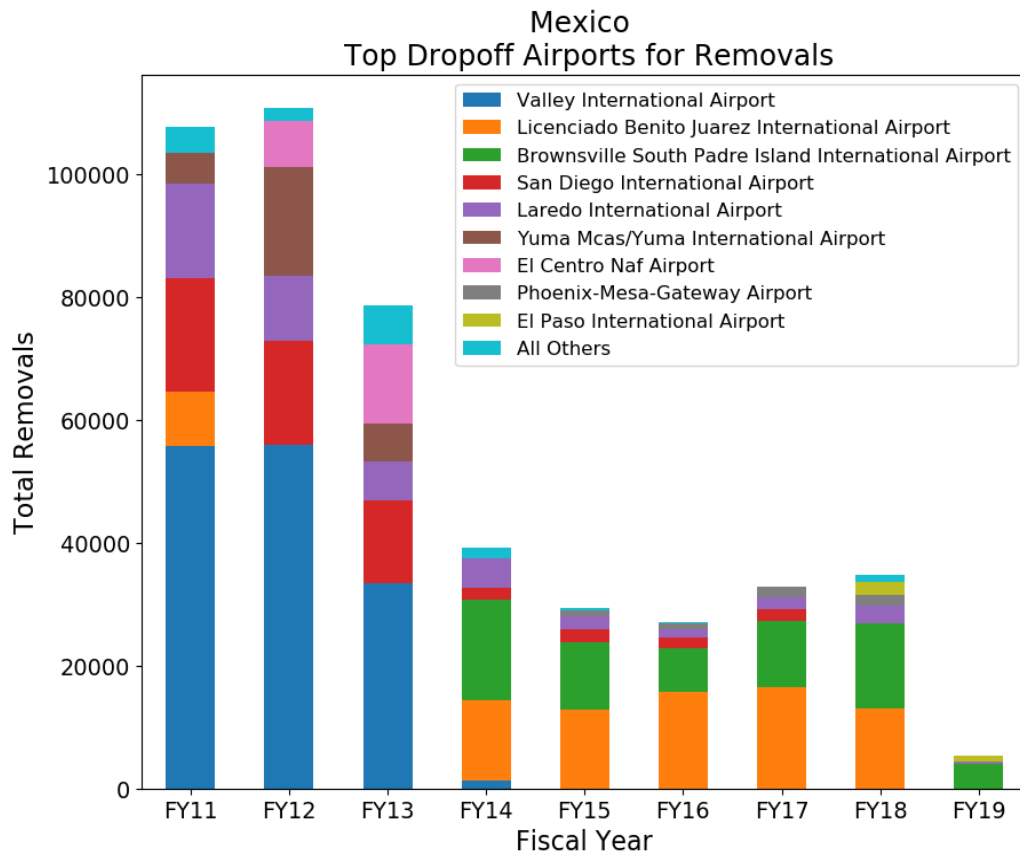
¹⁷³ Amrit, Cheng, "Turn the Plane Around": Government Wrongfully Deports Asylum Seekers." American Civil Liberties Union, August 09, 2018. <https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/turn-plane-around-government-wrongfully-deports>.

Appendix B: Mexico

I. Trends

Mexican nationals are the largest demographic represented in the ICE data set, both nationally and for King County specifically. More seats on ICE Air flights are filled by Mexican nationals than any other group. (Refer to Scope and Demographics section for more information). Mexico also has the most extensive bilateral cooperation regarding deportation. Furthermore, Mexican nationals are often dropped at the border, in Mexico City, or in a place other than their city of origin to which they have no connection.

Below: Orange in the chart represents the Mexican nationals dropped off in Mexico City, in the airport of Licenciado Benito Juarez, the only airport within Mexico that is a drop off point for ICE Air. The rest represent drop off points at the U.S.-Mexico border. At the time of writing, fiscal year 2019 has not been completed.



II. Issues of Concern

Border towns are overburdened, dangerous, and unable to meet migrants' needs. For example, Tijuana has historically been a top deportation destination for Mexican nationals, yet it has only about 15 shelters.¹⁷⁴ Additionally, the growing number of Mexican nationals in recent years who have been deported/are being deported to Mexico City may not be receiving the promised transportation to their place of origin by the Mexican government.¹⁷⁵

The U.S. has externalized the responsibility of maintaining the safety of deportees who arrive to unfamiliar, potentially dangerous locations. There is a lack of regulatory mechanisms within bilateral agreements in place to ensure that the needs of deportees are being met and proper resources provided, and to monitor Mexico's compliance with the terms of agreements. Likewise, Mexican nationals' entitlement to dignified treatment, family unity, information and other rights may not be met. Despite a number of agreements (listed below) that declare these rights, cooperation may not be upheld.

III. U.S.-Mexico Bilateral Agreements governing repatriation of Mexican nationals:

Mexico is a unique case among countries that have bilateral agreements with the U.S. because it has a wide range of location-specific bilateral agreements. For example, the U.S. has specific agreements with Mexico regarding treatment and procedures for detainees in Nogales, El Paso, San Diego, etc. The U.S.-Mexico Bilateral Repatriation Team (RESPECT) was working on implementing 17 Local Repatriation Agreements as of 2016.¹⁷⁶ Nine of these agreements were signed in 2016 alone.¹⁷⁷ The following will discuss the assertions made in two noteworthy, broad bilateral agreements that are not region specific: firstly, the Local Repatriation Arrangement Base Document, and secondly the Memorandum of Cooperation.

¹⁷⁴Nina Lakhani, "This is what the hours after being deported look like," *The Guardian*, December 12, 2017. <https://www.theguardian.com/inequality/2017/dec/12/mexico-deportation-tijuana-trump-border>

¹⁷⁵Eleazar Hernandez Cardona, (A founder of Estado 33 Azatlán: organization in Mexico City providing support to deportees) personal interview, February 2019.

¹⁷⁶ U.S. Department of Homeland Security, *Repatriation Strategy and Policy Executive Coordination Team (RESPECT) Fact Sheet, DHS & Mexico: Co-Management and Co-Responsibility* (January 24, 2017). <https://www.dhs.gov/sites/default/files/publications/respect-fact-sheet.pdf>

¹⁷⁷ "United States and Mexico Sign Updated Repatriation Agreements," *DHS Press Office, Department of Homeland Security*, February 23, 2016. <https://www.dhs.gov/news/2016/02/23/united-states-and-mexico-sign-updated-repatriation-arrangements>

The Base Document

While the base document in theory offers imperative protections for Mexican nationals, the following stipulations cannot be easily enforced.¹⁷⁸ Provisions include the right to consular notification, the preservation of family unity, and that the Mexican government should adequately staff points of repatriation to insure the safety of Mexican nationals. Section eleven specifies that “the Participants should repatriate persons with special needs during daylight hours,” where people with special needs refers to minors, pregnant women, and anyone with mental or physical limitations. The individual local agreements¹⁷⁹ include repatriation schedules which stipulate when (exact times of day) different groups of people may be repatriated. Finally, if additional preparation is necessary to receive an unaccompanied minor or an individual with medical, mental or other special needs, the U.S. is required to pass that information to Mexico under section twelve.

There are many areas of ambiguity within this agreement, especially in regard to who must carry out the requirement and what mediums of enforcement are present. For instance, the above agreement mentions “the Participants” many times, which refers to Mexico and the United States.¹⁸⁰ As can be seen in section eleven, it becomes unclear which party is responsible for ensuring that people with special needs receive their fair treatment. Likewise, the parties listed for carrying out responsibilities are not homogenous across agreements, and at times there are no specific parties listed at all. This makes the question of how Mexico is holding up their end of the agreement difficult to evaluate. Secondly, there are few apparent enforcement mechanisms for failing to abide by the rules. How, for example, is ICE insuring that prior to deportation, information regarding special treatment due to medical concerns or unaccompanied minors has been passed to Mexico? In the same way, how can it be assured that Mexico has adequately staffed the repatriation sites?

According to the firsthand account of Eleazar Hernández Cardona, one of the founders of Estado 33 Aztlán, an organization providing support to deportees located in Mexico City, the stipulated hours of drop-off and special treatment are not always observed. The discretionary power of ICE over bilateral agreements is apparent in the case of Hernández. He was not assumed to qualify as disabled even though it was a serious work injury in the U.S. that resulted

¹⁷⁸ U.S. Department of Homeland Security, *Local Arrangement for Repatriation of Mexican Nationals*, The U.S. and Mexico (2016). <https://www.dhs.gov/sites/default/files/publications/LRA-Base.pdf>

¹⁷⁹ “United States and Mexico Sign Updated Repatriation Agreements,” 2016.

¹⁸⁰ *Local Arrangement for Repatriation of Mexican Nationals*, 2016.

in his hospitalization, and subsequent deportation, that left him with a disability. Likewise, he reported that the mandatory drop-off hours (for minors and people with disabilities) were frequently not observed by ICE.¹⁸¹

The Memorandum of Cooperation

In another noteworthy agreement between the U.S. and Mexico, the Memorandum of Cooperation,¹⁸² a number of similar rights and protections are listed. It ensures the right to humane treatment and prohibits the deportation of unaccompanied minors. It additionally claims that families are not to be separated and all individuals must be in good health. Good health is referred to specifically as the ability to fly without worsening any illness or putting others at risk. A particularly key assertion made is that individuals who are repatriated to the interior of the country must be given “specially contracted ground transportation to the final destination that each detainee recognizes as his place of residence.” This ground transportation must be provided by the government of Mexico. According to Hernández, Mexican nationals in the process of deportation often do not receive further ground transportation after landing in Licenciado Benito Juárez airport. Another issue he brought forward was that often deportees are asked where they were born. Ground transportation, if available, may be to a city of birth which is problematic, since many times this is not the city where the individual was last residing, nor is it where their family and social networks are.

III. Initiatives/Agreements¹⁸³

Two critical U.S. initiatives that impact the deportation of Mexican nationals are the Interior Repatriation Initiative and the Alien Transit Exit Program. These initiatives are solely applicable to the deportation of Mexican nationals.¹⁸⁴

¹⁸¹ Eleazar Hernandez Cardona, 2019.

¹⁸² Secretary Janet Napolitano to Secretary Alejandro Poire Romero, February 27, 2012, U.S. Department of Homeland Security, “Memorandum on Coordination on Repatriation Procedures between the Department of Homeland Security of the United States and the Secretariat of Governance of the United Mexican States.” <https://migrationdeclassified.files.wordpress.com/2013/07/20120227-acuerdo-eng.pdf>

¹⁸³ Bilateral agreements updated in 2016: *Brownsville Repatriation Arrangement* *Del Rio; Repatriation Arrangement*; *McAllen Repatriation Arrangement*; *Nogales Repatriation Arrangement* *Presidio Repatriation Arrangement*; *Laredo Repatriation Arrangement* *San Diego Repatriation Arrangement*; *Yuma Repatriation Arrangement*.

¹⁸⁴ “Department of Homeland Security Border Security Metrics Report,” The Department of Homeland Security, May 1, 2018, https://www.dhs.gov/sites/default/files/publications/BSMR_OIS_2016.pdf

IRI (Interior Repatriation Initiative)¹⁸⁵

The IRI began in 2013 and was formerly active under the name “MIRP.” The purpose of this initiative as stated by the IRI is “to reduce recidivism and border violence by returning Mexican nationals to their cities of origin, where there is a higher likelihood that they will reintegrate themselves back into their communities.”¹⁸⁶ The IRI states that ICE's Enforcement and Removal Operations (ERO) will provide air transportation to Benito Juárez International Airport in Mexico City and the government of Mexico will provide additional transportation to the cities of origin. Note in the first graphic that after 2013 the number of individuals deported to Mexico City increased dramatically. It rose to account for more than half of Mexican deportees in 2016.

This initiative is concerning because it can result in the repatriation of Mexican nationals to Mexico City regardless of where their hometown is. This signifies that Mexican individuals are relocated to Mexico City and left there in the case that the government of Mexico does not provide further ground transportation to cities of origin. Although the program is voluntary, ICE has pushed for making it obligatory for all Mexican deportees despite the wishes of the government of Mexico.¹⁸⁷ Additionally, the program is very wasteful, with up to 40% of seats left empty on the expensive charter flights. Three million dollars were spent on unused seats in 2007.¹⁸⁸ To make the program more cost-effective ICE recommended expanding the program to include removal of nationals from Honduras, El Salvador, and Guatemala. The acting director of the ICE Office of Policy wrote that the plane could land in Mexico City, Mexican nationals would depart, and then the Mexican government could fill the plane with deportees from Honduras, El Salvador and Guatemala.¹⁸⁹ Although the this tentative suggestion to the Mexican government does not appear to have been implemented, it reveals deeper systemic issues with the IRI and the number of deportees that are required in order to keep the system running.

¹⁸⁵“US and Mexico Resume Interior Repatriation Initiative,” *US Immigration and Customs Enforcement*, July 11, 2013. <https://www.ice.gov/news/releases/us-and-mexico-resume-interior-repatriation-initiative>

¹⁸⁶ US Immigration and Customs Enforcement, *Reconstruction of the 2009 Mexican Interior Repatriation Program* (June 8, 2009). <https://migrationdeclassified.files.wordpress.com/2013/07/20090608-torrestomortononmirp.pdf>

¹⁸⁷ “IRI Agreement: Emails,” US Immigration and Customs Enforcement, February 20, 2012.

<https://migrationdeclassified.files.wordpress.com/2013/07/20120220-ice-emails2.pdf>

¹⁸⁸ Secretary Susan Cullen to Secretary Paul Rosenzweig, March 1, 2007, US Department of Homeland Security, “Position on Mexico Repatriation Program,” *US Immigration and Customs Enforcement*.

<https://migrationdeclassified.files.wordpress.com/2013/07/20070301-ice-iri.pdf>

¹⁸⁹ “Position on Mexico Repatriation Program,” 2007.

Alien Transfer Exit Program (ATEP)

While the IRI is supposed to be voluntary, the Alien Transfer Exit Program functions in a way that funnels many Mexican nationals into this repatriation framework. This program began in 2008 and laterally repatriates detainees, meaning that Mexican nationals are intentionally returned to parts of Mexico far from the spot where they were apprehended.¹⁹⁰ The U.S. claims this breaks the smuggling cycle by preventing deportees from returning to the same smuggling operation in order to attempt repeated border crossings. ATEP is a joint effort between ICE, ERO and CBP. Mexican nationals apprehended in one sector of the southwest border are transported for removal through a different sector regardless of where their hometown is. Mexican nationals are placed into dangerous, unfamiliar surroundings, and this process breaks apart families when deportees are returned to Mexico at ports of entry thousands of miles from where they started.¹⁹¹ This practice violates the principles of both the Base Document and the Memorandum of Cooperation.

In the House of Representatives in 2017, the Border Security and Accountability Act of 2017 called for a reevaluation of ATEP.¹⁹² Its concerns specifically included the rates of violent crime and the availability of infrastructure and social services in Mexico near drop off points. The bill stipulated that a report needed to be produced by the Secretary of the Department of Homeland Security within a year, but this report, if complete, is not accessible to the general public. It is unclear to what extent ICE has allocated resources away from ATEP as it says it has since 2013.¹⁹³ Regardless, faced with lateral deportation and criminal prosecution,¹⁹⁴ this program has pushed Mexican nationals to opt-into IRI, a “voluntary” repatriation scheme that the government of Mexico is concerned is no longer voluntary.¹⁹⁵ In other words, Mexican nationals can still opt out of IRI, but the excessively burdensome nature of ATEP, and also Operation Streamline,

¹⁹⁰ Jason De Leon, “The Efficacy and Impact of the Alien Transfer Exit Programme: Migrant Perspectives from Nogales, Sonora, Mexico,” *International Migration* (2013).

<https://deepblue.lib.umich.edu/bitstream/handle/2027.42/97258/imig12062.pdf?sequence=1&isAllowed=y>

¹⁹¹ De Leon, “Impact of the Alien Transfer Exit Programme,” 2013.

¹⁹² U.S. Congress, House, *Border Security and Accountability Act of 2017*, HR 3474, 115th, introduced in House July 27, 2017. <https://www.govtrack.us/congress/bills/115/hr3474/text>

¹⁹³ US Department of Homeland Security, *ICE Enforcement and Removal Operations Report*, December 19, 2014. https://drive.google.com/file/d/1Rek-ZdpyTcM2v9I7T0A5qHvms9_oP46U/view

¹⁹⁴ ICE, *Reconstruction of the 2009 Mexican*, 2009.

¹⁹⁵ ICE, *Reconstruction of the 2009 Mexican*, 2009.

makes IRI the de facto method of deportation. An increase in participants in the IRI in 2008, the year ATEP started, can be seen in ICE's data.¹⁹⁶

IV. Human Rights Violations

Repatriation to a place Mexican nationals have no attachment to puts them in danger. Hernández described instances in which bilingual Mexican nationals deported to Mexico City are especially targeted by gang recruitment due to the experience they have with English and the U.S.¹⁹⁷ Simultaneously, they often do not have other connections or resources. Both ATEP, which intentionally laterally repatriates deportees, and the IRI, which fails at times to provide ground transportation, result in precarious situations for Mexican nationals. While bilateral agreements between the U.S. and Mexico stipulate that ICE is not able to drop off certain individuals during the night time, and that Mexican officials must be present to provide support and resources, there is often noncompliance. Hernández confirmed with his own personal experience that ICE officials paid no attention to his disability and made no attempt to coordinate with him or the Mexican government¹⁹⁸ as stipulated in section twelve of the Base Document. Likewise, the organization has reportedly worked with deportees deserving of drop-off hours during daylight, due to age or disabilities, that were dropped off during the late night or early morning.

Additionally, neither the bilateral agreements nor the initiatives address in detail the rights of passengers during ICE Air flights. Specifically, they lack the procedure to follow if they experience abuse. The secrecy of ICE Air operations and lack of procedure governing the treatment of deportees on repatriation flights makes it difficult to investigate the types of human rights violations that occur. However, Hernández's account provides insight. According to Hernández, even though he is disabled, he experienced being pushed by authorities and restricted bathroom access. He himself, along with acquaintances on different flights, experienced verbal insults directed at Mexican nationals including statements telling them "they never should have left their country."¹⁹⁹ Further, Hernández reported that they were forced to

¹⁹⁶ US Immigration and Customs Enforcement, *MIRP (YUM only) FY2004 - FY2009* (October 8, 2009).

https://migrationdeclassified.files.wordpress.com/2013/07/20100809ca-mirpandatep_stats1.pdf

¹⁹⁷ Eleazar Hernandez Cardona, 2019.

¹⁹⁸ Eleazar Hernandez Cardona, 2019.

¹⁹⁹ Eleazar Hernandez Cardona, 2019.

keep their heads down and not speak. While these types of abuses are not unique to Mexican nationals, their occurrence impacts the Mexican community.

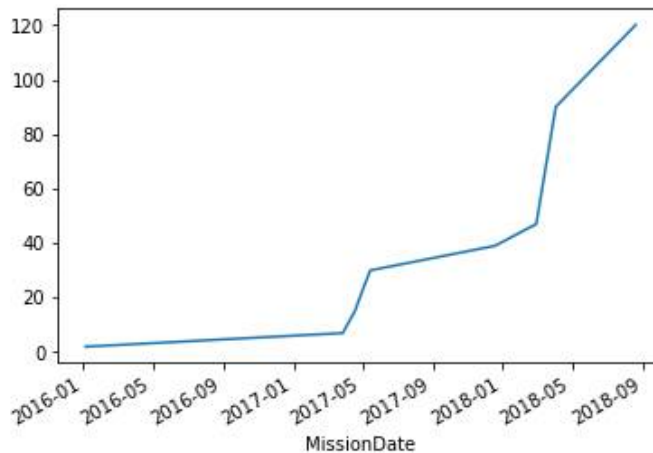
V. Conclusion

The welfare of Mexican nationals deported through ICE Air operations is in the hands of ambiguous regulations, and responsibility for their wellbeing is unclear. Although Mexico has more bilateral agreements with the U.S. than any other country, ICE's adherence to the procedures and protections set forth in these agreements is difficult to ascertain. (For more information on laws and regulations governing ICE Air, refer to the accountability mechanisms section.) Furthermore, personal accounts from Mexican nationals have exposed noncompliance. The U.S. externalizes the responsibility of returning Mexican nationals to their city of origin in the case of the IRI and often disregards it completely in the case of the ATEP. Bilateral agreements should not be pursued as a method to prevent mistreatment. The creation of new bilateral agreements should be deprioritized, and focus should be put instead on providing oversight from within the U.S. (See section on recommendations for more information.) The U.S. cannot rely on Mexico to uphold agreement standards, nor should the responsibility of deportees be externalized to the government of Mexico.

Appendix C: Cambodia

I. Scope

According to the data released to us through FOIA requests to ICE, there have been 120 removals of Cambodian legal permanent residents from the United States since fiscal year 2011. There is evidence of two removals in FY 2016, 28 removals in FY 2017, and 90 removals in FY2018. There have been nine total repatriation flights to Cambodia since 2015. All of the removals originated in Phoenix, El Paso or Alexandria, and ended in the Cambodian Capital, Phnom Penh. The number of people on a given removal flight ranged from two to 43. The graph below illustrates the cumulative removals from FY 2016 to FY 2018.²⁰⁰



The majority of the Cambodian deportees have criminal convictions. This correlates to the 2002 Repatriation Agreement²⁰¹ between the U.S. and Cambodia, by which Cambodians were to be targeted for deportation based on criminal history. The INA included the aggravated felony provision, which then automatically labeled 1,600 Cambodians as deportable because of offenses they had committed prior to the passing of the act. According to this agreement, “under current law, a lawful permanent resident of the United States can be deported peremptorily for such trivial offenses as Driving Under the Influence (DUI), shoplifting, or a misdemeanor

²⁰⁰U.S. Immigration and Customs Enforcement. *ARTS Passenger Data, FY 2011-2019*. Released through FOIA request January 2019. Copy on file with author.

²⁰¹ David Cheng. “Émigrés of the Killing Fields: The Deportation of Cambodian Refugees as a Violation of International Human Rights,” *Law Digital Commons*, (2005): 221.
<https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1094&context=twlj>

battery.”²⁰² As a result of this agreement, the trend of deportations to Cambodia should be steadily increasing since 2002.

It is important to note that published ICE data on Cambodia deportees differs greatly from the numbers that ICE provided in response to our FOIA request.²⁰³ According to their published data, 79 Cambodians were deported during FY2016, 29 in FY2017, and 110 in FY2018.²⁰⁴ This demonstrates the lack of consistency endemic in ICE Air’s deportation process.

Many in the Cambodian community are survivors of the Khmer Rouge and originally immigrated to the United States under protected refugee status in the 1970s. Therefore, the majority of these individuals immigrated legally to gain legal permanent residency and have built lives and strong communities in the U.S. over the past 45 years. The government failed to provide them with adequate information regarding the importance of gaining legal citizenship.²⁰⁵ Some were not even born in Cambodia, but rather in refugee camps in Thailand, therefore many don’t even speak Khmer, the native language of Cambodia.²⁰⁶

II. Case Study

ICE’s systemic disorganization and disregard for the legal rights of deportees is demonstrated through the case of a 2017 Cambodian deportation flight. On December 17, 2017 a repatriation flight was scheduled to leave from Texas to Phnom Penh carrying 50 Cambodians. The federal government and ICE had arrested these individuals and moved them around the country to Arizona, Texas, Louisiana, and California. The shuffling of detainees made it impossible for attorneys to correspond consistently with their clients, violating ICE’s own processes and the detainees’ right to due process.²⁰⁷ This shuffling corresponds to trends found in our data on King

²⁰² Cheng, “Émigrés of the Killing Fields,” 223.

²⁰³ United States Immigrations and Customs Enforcement. *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*. (2017): 16.

<https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf>

²⁰⁴ Denise Couture and Ashley Westerman. “U.S. Depots Dozens More Cambodian Immigrants, Some For Decades-Old Crimes.” *NPR*, December 18, 2018. www.npr.org/2018/12/18/677358543/u-s-deports-dozens-more-cambodian-immigrants-some-for-decades-old-crime

²⁰⁵ Pichayada Promchertchoo, “Up to 200 Cambodian American Deportees Expected in 2018 as US Repatriates more Immigrants.” *Channel News Asia*, April 15, 2018. <https://www.channelnewsasia.com/news/asia/cambodian-american-deportees-2018-us-repatriates-immigrants-10130636>

²⁰⁶ Promchertchoo, “Cambodian American Deportees Expected,” 2018.

²⁰⁷ Julianne Hing, “How a Group of Immigration Attorneys Stopped a Deportation Flight to Cambodia,” *The Nation*, December 19, 2017. <https://www.thenation.com/article/how-a-group-of-immigration-attorneys-stopped-a-deportation-flight-to-cambodia/>

County: there has been one flight a year out of KCIA with a varying number of Cambodians per flight, none of which have gone directly to Cambodia.²⁰⁸ As a result, the attorneys filed a lawsuit against ICE, and a U.S. district-court judge granted a temporary month-long restraining order to allow time for the Cambodian nationals, many whom were refugees, to exercise their legal rights. The Cambodian Americans involved in the lawsuit—all legal permanent residents—had been previously convicted of a crime that made them eligible for deportation. However, after serving their sentences and being detained by ICE, they were released because they were deemed neither a flight or national security risk. At the time they were detained by ICE (before 2002), the U.S. and Cambodia did not have a repatriation agreement, so they were eventually released from government custody and had become contributing members to society. The month-long temporary restraining order delayed the deportation orders until early February 2018.²⁰⁹ Despite the legal action taken, 43 Cambodian nationals were deported in April of 2018.²¹⁰

ICE's actions throughout the course of this case constituted numerous human rights violations. The first was a violation of due process as "the federal government did not prove why any of the potential deportees had all of a sudden become a national security or flight risk; it did not offer people an opportunity to refute such a characterization, as it's also required to do; and it sent this newly apprehended group of people to screenings with the Cambodian consulate only after they'd been detained."²¹¹ This directly violates ICE policy of removal orders by failing to "verify that no appeal is pending." ICE also did not sufficiently inform the Cambodians of their rights.²¹² These actions are also in violation of international human rights law: the 9th Article of the UN International Convention on Civil and Political Rights, to which the U.S. is a signatory, states that, "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."²¹³

²⁰⁸U.S. Immigration and Customs Enforcement. *ARTS Passenger Data, FY 2011-2019*.

²⁰⁹ Hing, "Immigration Attorneys Stopped a Deportation Flight," 2017.

²¹⁰ Agnes Constante, "As Cambodian Deportations Resume, Community Looks for Ways to Cope," *NBC News*, April 20, 2018. <https://www.nbcnews.com/news/asian-america/deportation-cambodian-refugees-u-s-devastates-community-n867096>

²¹¹ Hing, "Immigration Attorneys Stopped a Deportation Flight," 2017.

²¹² US Immigration and Customs Enforcement, *Detention and Deportation Officer's Field Manual*, (March 27, 2006): 22. <https://www.scribd.com/document/26149841/ICE-DRO-Detention-and-Deportation-Officer-s-Field-Manual>

²¹³"UN International Convention on Civil and Political Rights," Opened for Signature December 16, 1966, *Article 9*. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

The second human rights violation that occurred was the lack of travel documentation provided to the Cambodian detainees by ICE themselves.²¹⁴ This is in clear violation of ICE policy in the DRO Officer's Field Manual which states that: "field offices will work to obtain a travel document for all aliens in custody with a final order."²¹⁵ Failure to issue travel documents also violates U.S. and International law through the fourth article of the Montreal Convention which declares that "States are juridically equal, enjoy the same rights, and have equal capacity in their exercise."²¹⁶ Therefore, this equal capacity clause would have to apply to the reciprocity of the demand for travel documents. If the U.S. requires specific travel documents for entry they must supply them for exit.²¹⁷

III. Jane Chan's Story

Jane Chan, a Cambodian American from Washington, was devastated when she found out her uncle, Thouy Phok, had a deportation order to Cambodia in late 2018. This was particularly traumatizing for Chan, as her father had been deported to Cambodia just a year earlier. Phok had stepped in as her father figure after her father was removed from the country by ICE. When asked how she felt about the news of her uncle's deportation orders in an interview, she responded, "I don't even know...I just feel like I would shut down, I don't want to have to go through this again."²¹⁸

With the help of the Khmer Anti-deportation Advocacy Group of Washington, Chan, along with community members and advocates, helped Thouy Phok apply for a Governor's pardon. During this process, his case was reopened. Phok was then able to discover a technicality in his original case that "ultimately led to his original plea decades ago [to be] vacated." Phok was released and Chan stated she was "breathless. In shock. Overwhelmed. I don't know. It's hard to find words to how we felt, at least for me."

²¹⁴ Hing, "Immigration Attorneys Stopped a Deportation Flight," 2017. "...the Cambodian government did not even give travel documents to all of the roughly 100 Cambodians who were arrested..."

²¹⁵ ICE, *Detention and Deportation Officer's Field Manual*, 99.

²¹⁶ "Montevideo Convention on the Rights and Duties of States," Opened for Signature December 22, 1933, *Article 4*, <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf>

²¹⁷ Razeen Zaman and Rodrigo Ricxu Bacus, "Smuggled into Exile: Immigration and Customs Enforcement's Practice of Deporting Non-Citizens Without Valid Travel Documents," *Families for Freedom* (September 2015): 10.

<https://familiesforfreedom.org/sites/default/files/resources/Smuggled%20into%20Exile%201.pdf>

²¹⁸ Bunthay Cheam, "Khmer American community mobilizes to help release two Seattle-Tacoma area men from ICE custody," *International Examiner*, December 15, 2018. <https://iexaminer.org/khmer-american-community-mobilizes-to-help-release-two-seattle-tacoma-area-men-from-ice-custody/>

Jane Chan's story demonstrates that through the midst of families being torn apart by decades old criminal convictions, there is still hope for the Cambodia community in the fight against the current Administration's anti-immigration policy. However, it is important to note that Chan's case also illustrates the injustices that are inherent to the deportation process. Mr. Phok's release is a rarity in this system. The vast majority of people are never able to gain such a pardon, have their cases reopened, and end up released. The fact that such a technicality could have resulted in his deportation exemplifies the systemic rights violations central to the U.S. deportation process that tear apart lives and families daily.

The Khmer Anti-deportation Advocacy Group of Washington (KhAAG) initially formed in response to the deportation orders of 7 Cambodians in Washington state. The group provided the community with information and resources to fight back and also connected them with policymakers, community activists, and legal experts.²¹⁹ Popular resistance strategies to the deportation of Cambodian nationals include but are not limited to: governor pardons, "know your rights" trainings, temporary restraining orders, and the reopening of legal cases.²²⁰

IV. Conclusion

The case of Cambodia demonstrates the way that ICE's inconsistent and arbitrary deportation system allows for the targeting of Cambodian immigrants who have established lives in the U.S. over the past decade. This case study provides important insights into the ways that ICE procedure violates human rights throughout the deportation process that can help inform advocates both in this community and beyond.

²¹⁹ Bunthay Cheam. "How we can resist the deportations of Khmer Americans," *The Crosscut*, December 26, 2018. <https://crosscut.com/2018/12/how-we-can-resist-deportations-khmer-americans>

²²⁰ Cheam, "The deportations of Khmer Americans," 2018.

Appendix D: Minors

The deportation of minors by Immigration and Customs Enforcement (ICE) Air Operations poses acute human rights concerns. As one of the most vulnerable populations, child and adolescent migrants face heightened risks of neglect, exploitation, violence, human trafficking, and other abuses during the repatriation process, necessitating special protection and assistance at the state and international level.

Despite increased vulnerability, ICE's protocol regarding the deportation of minors via air is opaque, nonbinding, difficult to regulate, and subject to the compliance or recalcitrance of receiving countries, which impose varying restrictions regarding the frequency and timing of flights and the number of minors (if any) that will be accepted into the country by air. Similarly, the policies, protocols, and bilateral agreements of states and the international community which govern the rights and treatment of minors on repatriation flights are often inconsistent, lack transparency, provide few "hard law" enforcement mechanisms, or are simply nonexistent, which makes it difficult to discern ICE's de facto procedure for repatriating minors.

In addition to this lack of transparency and inconsistency, recent news reports of the death of juveniles in ICE custody²²¹ and the family separation policy²²² passed in May 2018 raise concerns about whether ICE provides minors the "special consideration to their safety, security, immediate physical and mental health needs, and well-being"²²³ that is stipulated by agency policy and supported by legislative and judicial mandates to which the Department of Homeland Security adheres²²⁴, as well as the rights and protections defined by receiving countries and by the UN Convention on the Rights of the Child²²⁵, such as the right to family unity, protection from violence, and the right to dignified treatment.

²²¹M. Jordan, "8-Year-Old Migrant Child From Guatemala Dies in U.S. Custody," *The New York Times*, December 25, 2018, <https://www.nytimes.com/2018/12/25/us/guatemalan-boy-dies-border-patrol.html>

²²² Pierce, S. et al., "US Immigration Policy under Trump: Deep Changes and Lasting Impacts," Migration Policy Institute, July 2018, www.migrationpolicy.org/research/us-immigration-policy-trump-deep-changes-impacts.

²²³ U.S. Immigration and Customs Enforcement, "Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook, Enforcement and Removal Operations, September 1, 2017. <https://drive.google.com/file/d/15PA5Qt5XP0aAhWLQ8qYQC1wYJWRuDHRs/view?usp=sharing>

²²⁴ DHS must adhere to the following judicial and legislative mandates: *Flores* Stipulated Settlement Agreement, January 17, 1997 and *Flores v. Lynch*, No. 15-56434, 828 F.3d 898 (9th Cir. Jul. 6, 2016). See also, *Homeland Security Act of 2002*, *Perez-Fuñez v. District Director*, 611 F. Supp. 990 (C.D. Cal. 1984), *Sexual Abuse and Assault Prevention and Intervention*. Also: The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5077 (December 23, 2008); 8 U.S.C. For full list, see pp.16 ICE Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook, 2017

²²⁵United Nations, "Convention on the Rights of the Child." *Treaty Series* 1577, no. 3. Assembly, UN General, 1989, http://wunrn.org/reference/pdf/Convention_Rights_Child.PDF.

I. Trends in Deportation of Minors

National ICE Air Operations data from FY 2011 to December 2018²²⁶ received by the University of Washington Center for Human Rights (UWCHR) through the Freedom of Information Act indicates that the number of minors being deported via air has increased over time, with Northern Triangle and Mexican nationals constituting the largest demographic percentages:

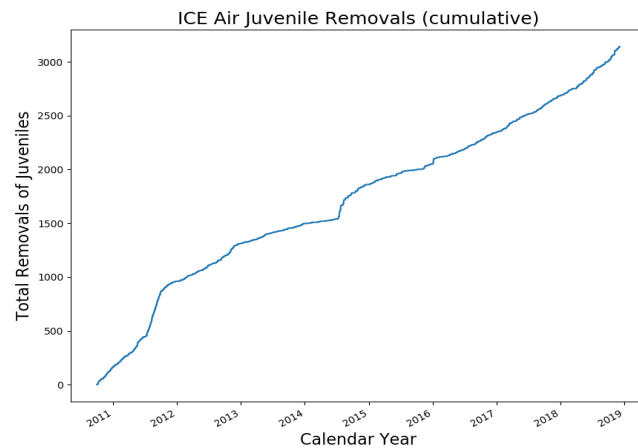


Figure 1

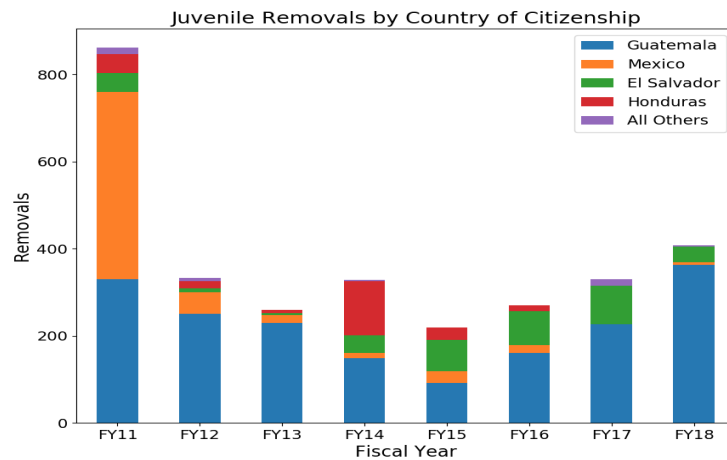


Figure 2

²²⁶National ICE Air data set includes total juvenile passengers on transfer and direct removal flights (departing from the U.S.) via air from FY 2011 to December 2018, which totals 26,197. Due to the difficulty of tracking minors on transfer flights in ICE AIR data, this appendix focuses only on minors removed from the U.S. on direct removal flights, which totals 3,133.

Total juvenile removals, Oct. 2010 - Dec. 2018

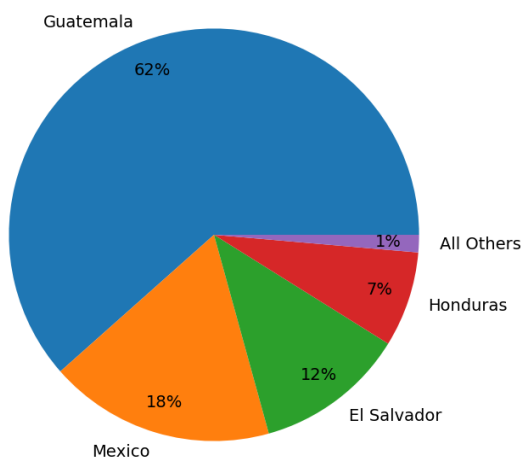


Figure 3

As indicated by Figure 3, Guatemalan, Mexican, Salvadoran, and Honduran nationals constitute the largest demographic percentages regarding cumulative removals: Guatemalan minors constitute nearly two thirds of all deportations (61.7%), followed by Mexican nationals (17.6%), Salvadorans (11.9%), and Hondurans (7.5%). The deportation of minors from other countries via air appears to be rare, with all other nationalities constituting approximately 1.3% of total removals by ICE Air from FY 2011-December 2018.

In general, deportations of minors are increasing: As indicated by Figures 1 and 2, deportations of minors via air increased approximately 86% between FY 2015 and FY 2018. Further, in the same time period, the percentage of juvenile deportations relative to total deportations has increased by approximately 51%.

This increase is likely tied to the 1,200%²²⁷ surge in child migration (including a sharp increase in children under the age of 12 and girls, the most vulnerable groups) from the Northern Triangle to the U.S. between FY 2011 and FY 2014. In FY 2011, Mexican juveniles constituted approximately 49% of all minor deportations, however this number has dropped significantly

²²⁷U.S. Library of Congress, Congressional Research Service, *Unaccompanied Children from Central America: Foreign Policy Considerations*, by Meyer, J., et al., April 11, 2016, <https://fas.org/spp/crs/homesec/R43702.pdf>.

since FY 2012, likely due to the passage of Deferred Action for Childhood Arrivals (DACA) in 2012, which allows qualifying individuals to receive a renewable two-year period of deferred action from deportation.

II. ICE Policy for Deportation of Minors via Air

ICE policy governing the deportation of minors via air is nonbinding, vague, and unclear regarding the coordination and compliance of ICE with receiving countries. As explained in a 2015 Office of Inspector General report on ICE Air Operations, the agency “has not established comprehensive policies and procedures as guidance for the ICE Air program”.²²⁸ While the report indicates that ICE Air must respond to special requests by the DHS Secretary and other “mission needs” (such as the recent surge of unaccompanied children) and comply with country restrictions regarding timing, number, and frequency of flights, the exact procedure and regulatory mechanisms governing this process are unclear: ICE appears to have no formal policy for repatriation of minors via air (available in the public domain), and Freedom of Information Act requests sent by the UWCHR to ICE have yet to be acknowledged by the agency.

ICE’s general policy for Enforcement and Removal Operations (ERO) regarding juveniles offers some insight into the procedures for ERO personnel regarding “processing, transporting, managing, and removing minors encountered by the Department of Homeland Security (DHS)”²²⁹, such as transport notification, meals, escort requirements, medical screening and medications for minors. However, the policy exempts ICE from any accountability regarding the treatment of minors:

“Finally, this handbook is an internal product of ICE. This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any rights, substantive or procedural, enforceable at law or equity by any

²²⁸ See pp. 5-8 of “ICE Air Transportation of Detainees Could Be More Effective,” Department of Homeland Security, Office of the Inspector General, April 9, 2015. Retrieved from https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-57_Apr15.pdf

²²⁹ See pp. 1-2 for ICE’s statement regarding accountability, pp.30-35 for examples of ERO procedure more minors. ICE “Juvenile and Family Residential Residential Management Unit Field Office Juvenile Coordinator Handbook, 2017.

party in any criminal, civil, or administrative matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE” (1).

Consequently, the extent to which ICE personnel adhere to these policy guidelines on deportation flights is unknown.

IV. Bilateral Agreements, Country Protocols, and National Policies Governing Deportation of Minors

The majority of countries represented in ICE national data appear to have no bilateral agreements with DHS. Despite the consistent increase over time (and recent spike in deportations of Central American minors) and their heightened vulnerability during the repatriation process, bilateral agreements, protocols, and policies which govern the rights and treatment of (accompanied and unaccompanied) minors at the country and international level are either one or several of the following: difficult to locate, inconsistent, lack transparency, provide few regulatory or legally binding mechanisms, or are nonexistent.

At the state level, bilateral agreements and national protocol for the repatriation of minors tend to match ICE’s evaluation of country recalcitrance: for example, according to ICE’s report on recalcitrant countries,²³⁰ Mexico cooperates well with the U.S. on repatriation, which is matched by a recent proliferation (February 2016) of local U.S.-Mexico bilateral agreements²³¹ that stipulate the procedure for accompanied minors and “The Safe and Humane Treatment and Repatriation of Unaccompanied Mexican Children,”²³² including hours of transport, protections for child trafficking victims, and procedures for minors who fear persecution upon return. However, these bilateral agreements are far from comprehensive their implementation in

²³⁰ “Recalcitrant Countries: Denying Visas to Countries that Refuse to Take Back their Deported Nationals,” Homeland Security Digital Library, Committee on Oversight and Government Reform, July 14, 2016, <https://www.hsdl.org/?view&did=796788>.

²³¹ “United States and Mexico Sign Updated Repatriation Agreements,” DHS Press Office, Department of Homeland Security, February 23, 2016. <https://www.dhs.gov/news/2016/02/23/united-states-and-mexico-sign-updated-repatriation-arrangements>. For details of the agreements, see “Repatriation Strategy and Policy Executive Coordination Team (RESPECT) Fact Sheet”, DHS & Mexico: Co-Management and Co-Responsibility, Department of Homeland Security, January 24, 2017. Retrieved from <https://www.dhs.gov/sites/default/files/publications/respect-fact-sheet.pdf>, as well as “Local Arrangement for Repatriation of Mexican Nationals”, U.S. Department of Homeland Security, Consulate General of Mexico in El Paso Texas et al. and U.S. Department of Homeland Security et al., February 23, 2016. Retrieved from <https://www.dhs.gov/sites/default/files/publications/LRA-Base.pdf>.

²³² See for example, Attachment 5 of “Yuma Repatriation Agreement”, U.S. Department of Homeland Security, Consulate General of Mexico in Yuma, Arizona et al. and U.S. Department of Homeland Security et al., February 23, 2016, <https://www.dhs.gov/sites/default/files/publications/LRA-Yuma-FEB-23-2016.pdf>.

practice is difficult to measure or regulate: A 2015 Government Accountability Office (GAO) report on unaccompanied children indicates that prior to the 2016 local agreements, bilateral arrangements for minor repatriation did not reflect minimum requirements for protection against trafficking stipulated by the *Victims of Trafficking and Violence Protection Act of 2000* (TVPRA).²³³ Further, GAO reported that ICE's roles, responsibilities, and procedures governing the repatriation of Mexican unaccompanied minors are poorly documented and inconsistent.

Other top receiving countries, however, such as El Salvador, Honduras, and Guatemala, appear to have no bilateral agreements with ICE, but rather have only recently created national protocol or policy for the repatriation of minors from the U.S. (as recent as 2017), little of which is codified into national law; the degree to which ICE Air operations adheres to these protocols is unclear.²³⁴ Other receiving countries, such as China and India, which ICE considers to be recalcitrant, appear to have no bilateral agreements or national protocol governing the repatriation of minors. At the regional and international level, loose normative framework is provided through declarations such as the 2014 Managua Extraordinary Declaration²³⁵, however such agreements offer no specific or "hard law" procedures or protections for minors on deportation flights.

V. Human Rights Issues of Concern

Increasing trends in minor deportation, vague ICE policy, and the lack of bilateral coordination and national protocol present a series of concerns regarding the protection of human rights of minors which are articulated in the 1990 UN Convention on the Rights of the Child²³⁶ (among

²³³ TVPRA minimum requirements are (1) no child shall be returned unless to appropriate officials, including child welfare officials where available; (2) no child shall be returned outside of reasonable business hours; and (3) border personnel of countries who are parties to the agreements are to be trained in the terms of the agreements" (pp.56). For detailed description on ICE noncompliance, See pp.48-60 of U.S. Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, Report to Congressional Committees, GAO-15-521, July 14, 2015, <https://www.gao.gov/products/GAO-15-521>.

²³⁴ For El Salvador national policy see El Salvador Minister of Exterior Relations, *Política Nacional para la Protección y Desarrollo de la persona Migrante Salvadoreña y su Familia*, CONMIGRANTES, July 2017, <https://rree.gob.sv/wp-content/uploads/2018/04/Pol%C3%81tica-Nacional-para-la-Protecci%C3%81n-y-Desarrollo-de-la-Persona-Migrante-Salvadoren%C3%83a-y-su-Familia.pdf> For Honduras, see Honduras Directorate of Children, Adolescence and Family (DINAF), 2017, *Protocolo de Protección inmediata, Repatriación, Recepción y Seguimiento de Ninas y Ninos Migrantes*, https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_ADR_HND_23865_S.pdf For Guatemala, see Guatemala Ministry of Exterior Relations et al., *Protocolo Nacional para la Recepción y Atención de Niñez y Adolescencia Migrante*, February 2017, <https://www.refworld.org/es/pdfid/5c002c1c4.pdf>.

²³⁵ U.S. Embassy & Consulates in Mexico, U.S. Mission to Mexico, *Managua Extraordinary Declaration*, June 30, 2014, <https://mx.usembassy.gov/managua-extraordinary-declaration>.

²³⁶ See Articles 9, 10, 19, 23, (among others) of "Convention on the Rights of the Child." *United Nations, Treaty Series* 1577, no. 3. Assembly, UN General, 1989.


other human rights documents), including protection from violence, dignified treatment, and the right to family unity.

Protection from Violence and Dignified Treatment:

The repatriation of minors by ICE Air raises several concerns about the violation of the right to protection from violence and to dignified treatment. For example, section 3.1.20.1 of ICE's ERO policy for Juveniles, "Use of Restraints while Transferring Minors on ICE Air Flights"²³⁷ is redacted:

3.1.20.1 Use of Restraints while Transferring Minors on ICE Air Flights

Except in exigent circumstances, juveniles being transported by IAO flights



If a Flight Officer in Charge (FOIC) determines it necessary to restrain an entire group of minors on an ICE Air Operations (IAO) flight, that decision must be approved at/or above the Unit Chief level and an After-Action Report must be completed. The same process must be followed when any juvenile under the age of 12 is restrained in any manner.³⁴

³² Field Guidance: Processing and Transportation of Unaccompanied Alien Children, Accompanied Minors, and Family Units, Juvenile and Family Residential Management Unit, December 2015.

³³ Use of Restraints, Policy ERO 11155.1, Department of Homeland Security, Immigration and Customs Enforcement, November 19, 2012.

³⁴ Broadcast: Interim Guidance Regarding the Use of Restraints while Transferring Minors on ICE Air Flights.

This lack of transparency raises concerns about if or how minors are improperly restrained on flights, subject to violence, or exposed to other undignified treatment.

Additionally, ICE Air deportations subject minors to a risk of violence and undignified treatment upon arrival to receiving countries. For example, Northern Triangle countries account for some

²³⁷See pp.37 ICE Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook, 2017.

of the highest homicide rates in the world,²³⁸ and are regarded by the Congressional Research Service as lacking national and local capacity to safely reintegrate children or assist those who express fear of return to their communities of origin;²³⁹ for example, from 2014 to 2015, more than 80 repatriated Northern Triangle migrants were reportedly killed following deportation.²⁴⁰ Moreover, a 2018 GAO report on USAID in Northern Triangle²⁴¹ explains that few repatriated migrants receive appropriate government services, and that the need for individualized services, the voluntary nature of seeking and finding assistance, and the leadership turnover and guidance in Guatemala, Honduras, and El Salvador, all pose risks for repatriated children.

V. Right to Family Unity:

ICE Air deportations of minors also raise concerns about the human right to family unity. For example, ICE Air Operations' national data reveals troubling inconsistencies regarding the agency's tracking of unaccompanied minors and family units on flights: the fields indicating whether a child is unaccompanied or traveling in a family unit is always blank. Relatedly, ICE Air indicates several cases of minors being deported alone on flights. These trends, combined with reports of ICE losing track of thousands of minors in DHS custody after family separation²⁴², raise concerns as to whether ICE adheres to the right to family unity or preserves personal relations and contact during the repatriation process.

VI. Guatemala: A Case Study on Deportations of Minors

The deportation of Guatemalan minors illuminates several troubling trends regarding ICE Air operations. According to UWCHR national ICE Air data, Guatemalans represent the vast majority of minor deportations (61.7%). As indicated by Figure 4, the number of deportations of Guatemalan minors has increased by approximately 295% from FY 2015- FY 2018:

²³⁸Rosenblum, M. and Ball, I, "Trends in Unaccompanied Child and Family Migration from Central America," Migration Policy Institute, January 2016. <https://www.migrationpolicy.org/research/trends-unaccompanied-child-and-family-migration-central-america>.

²³⁹"Unaccompanied Children from Central America: Foreign Policy Considerations," 2016.

²⁴⁰ Brodzinsky, S. and Pilkington, E, "US Government Deporting Central American Migrants to their Deaths," *Guardian*, October 12, 2015, <https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>

²⁴¹U.S. Government Accountability Office, *USAID Assists Migrants Returning to their Home Countries, but Effectiveness of Reintegration Efforts Remains to be Determined*, November 2018., <https://www.gao.gov/assets/700/695298.pdf>

²⁴²Nixon, Ron, "U.S. Loses Track of Another 1,500 Migrant Children, Investigators Find", *The New York Times*, September 18, 2018, <https://www.nytimes.com/2018/09/18/us/politics/us-migrant-children-whereabouts-.html>

Removals of Guatemalan juveniles by

FY:

2011	330
2012	251
2013	229
2014	149
2015	92
2016	160
2017	226
2018	363
2019	133

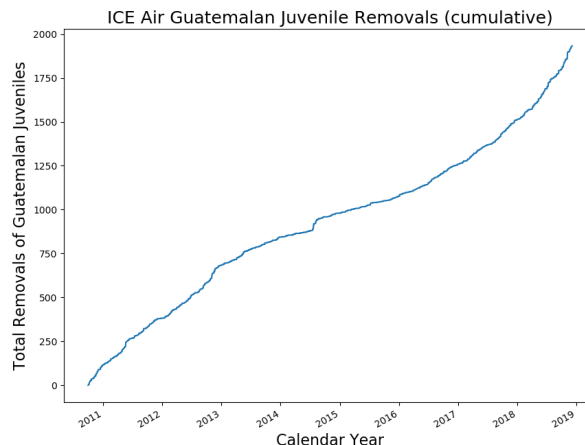


Figure 4

Despite disproportionate representation and the dramatic increase in deportations of Guatemalan nationals via air from the U.S., no bilateral agreements exist between the U.S. Government and Guatemala governing the repatriation of minors. In response to a request submitted by the UWCHR in January of 2019, the Guatemalan Directorate of Migration reported that “no memorandum, agreement, or communication (in force) exists between the Guatemalan and U.S. government”²⁴³ which establishes the conditions of repatriation for Guatemalan nationals.

In 2017 the Guatemalan government implemented a protocol for the “Reception and Care of Child and Adolescent Migrants”²⁴⁴ which stipulates the number of children accepted into the country via air from the U.S., as well as the rights of the deported minors, including the principle that repatriation cannot occur if it poses a risk to the integrity of the child. However, reports from USAID in 2018 that Guatemala’s lack of institutional capacity and significant challenges in governance undermine its ability to protect repatriated children suggests that this protocol provides no de facto human rights protections for minors. Moreover, the extent to which ICE adheres to this policy unknown, which suggests an ad hoc, unregulated policy for minor

²⁴³ Guatemalan Directorate General of Migration, Office of Social Communication, *information request No. 105*, January 23, 2019. Copy of response in author’s possession.

²⁴⁴ Guatemala Ministry of Exterior Relations et al., *Protocolo Nacional para la Recepción y Atención de Niñez y Adolescencia Migrante*, (February 2017), <https://www.refworld.org/es/pdfid/5c002c1c4.pdf>.

²⁴⁴ Guatemalan Directorate General of Migration, *Information request No. 105*, Office of Social Communication, (January 23, 2019), Copy of response in author’s possession, <https://drive.google.com/file/d/1PHxmtovdzcH5TPkTJYNwgUyQEymsJWln/view>

deportation, creating a system which lacks accountability which is ripe for human rights violations.

Ultimately, the case of Guatemala epitomizes the broader inconsistencies, lack of transparency, and human rights concerns that ICE air deportation poses to minors. Considering these troubling trends, it is critical that the heightened vulnerability of minors on flights and upon return to receiving countries is considered during the deportation process and that special attention, protections, and accountability mechanisms are implemented at the state and international level to regulate ICE operations and to protect this vulnerable population from human rights violations.

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