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Opinion

The Giant U.S. Deportation Machine Runs Amok

Even American citizens aren't safe as Homeland Security kicks more than 1,000 people out of the country every day.

By Robert Morgenthau
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President Obama has now moved to place a new team at the head of the Department of Homeland Security, nominating Jeh Johnson for secretary of Homeland Security, to join Stevan Bunnell as general counsel. Both men are eminently qualified, but they'll need to hit the ground running.

At least with respect to immigration enforcement, Homeland Security is an agency that has lost sight of its own policies. The result is that several hundred thousand of the immigrants passing through state or county jails each year are then flagged on DHS orders—often in violation of the department's own policies meant to separate ordinary people from dangerous criminals and terrorists—and end up being deported. Some of the deportees are even U.S. citizens.

Since 2003, the department's Immigration and Customs Enforcement agency has turned into a deportation machine, spending a budget of \$18 billion that exceeds the budgets of all the rest of federal law enforcement combined—the FBI, Drug Enforcement Administration and Secret Service—in order to deport record-breaking numbers of immigrants. At last count, ICE was deporting over 1,000 people a day—more than 400,000 a year. The agency may also have set a record for issuing enlightened policy statements about just which immigrants should be the focus of deportation efforts.



Guatemalan immigrants deported from the US arrive in Guatemala City on Tuesday. EPA

The problem is the legions of deportations bear no resemblance to the policies. The official policy is to focus deportation efforts on those who are a danger to America—convicted criminals, suspected terrorists and gang members. But every year, the percentage of deportees fitting any of those categories has

proved to be a small (and shrinking) number. In the last fiscal year, the Transactional Records Access Clearinghouse reports, less than 14.5% of those hauled into immigration court were either criminals or suspected terrorists.

At the end of 2012, ICE resolved to be more responsible in its use of "detainers"—immigration holds that prevent inmates in local police lockups from being released, even after they have made bail, served their sentence or had their case dismissed.

For years, ICE has been under fire for using detainers indiscriminately. How indiscriminately? Consider one case reported recently in the New York Law Journal: A teenager was arrested on a minor offense. Immigration officials were ready to deport him—luckily, the young man had a lawyer. The lawyer discovered that his client was a U.S. citizen, and thus not subject to deportation. Had the teenager gone unrepresented—as most immigrants are unrepresented—the U.S. would likely have deported one of its own citizens.

That is what happened to a 15-year-old from Dallas who was arrested in 2011 for shoplifting. The Christian Science Monitor reported in January 2012 that after her arrest she was put on a plane and deported to Colombia before Homeland Security discovered, eight months later, that she was a U.S. citizen. Only then was she brought home to be reunited with her American family.

The New York City Council became so fed up with these sorts of abuses that it passed legislation in 2012 directing City Corrections not to honor ICE detainers, except for those lodged against suspected terrorists, serious criminals, and others who pose a real threat to our safety.

That is when ICE announced that it was promulgating new standards and promised to focus enforcement on the most dangerous. The agency even revised its detainer form, requiring an issuing agent to specify the basis for every detainer.

They must be regretting that pledge now. The Transactional Records Access Clearinghouse, a think tank at Syracuse University, analyzed the data and reported that for the first six months of 2013, just over 10% of ICE detainers met the agency's promised goal of targeting those who pose a serious threat to public safety or national security.

And the news gets even worse: Nearly two-thirds of those against whom detainers were lodged had no criminal convictions whatsoever—not even for a traffic infraction. If you exclude convictions for marijuana possession and traffic violations (including DWI), barely over one-quarter of the detainers were lodged against those with any criminal conviction.

Many of those detainers were lodged pursuant to a federal program called "Secure Communities." When the program was announced in 2008, the Department of Homeland Security called it a voluntary federal-local partnership that would enable the DHS to focus on deporting the most serious criminals and others, like suspected terrorists, who posed real threats to our safety.

After New York's Gov. [Andrew Cuomo](#) looked at how the voluntary program actually operated and decided to opt-out his state, DHS said Secure Communities was always mandatory and would keep operating in New York whether invited or not. In an unrelated case a federal judge reviewed that history of bait-and-switch and wrote, "there is ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities."

The New York City Council did what it could to bring some sanity to bear. Twice it passed legislation that would limit cooperation with ICE; for example, the law says detainers should not be honored except for real criminals, suspected terrorists or gang members.

Such measures are still not enough. Data released by the New York City Department of Corrections this month reveal that of 11,876 foreign-born inmates discharged from city custody in fiscal year 2013, 3,459 were discharged with an ICE detainer. In other words, nearly one in three of those who earn their liberty will lose it, even though New York has no reason to restrict their freedom.

When Homeland Security Secretary Janet Napolitano resigned earlier this year, along with her ICE Director John Morton, many hoped that new leadership could do more to reduce the fear of arrest and deportation among law-abiding immigrants and, in so doing, strengthen local efforts to cut crime. Truer words were never said. As district attorney of New York County, I learned that the trust and cooperation of our immigrant population is essential to apprehending and prosecuting the true criminals among us.

Today, there is hope for real reform. Jeh Johnson is tough, smart and fair. The Senate should waste no time in confirming him as secretary of Homeland Security. His talents are desperately needed to steer an out-of-control agency in the right direction.

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