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Center for Immigration
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Unsettled Episode 5

Cristina:

Welcome to Unsettled, Immigration in Turbulent Times. I'm Cristina Rodriguez.

Alex:

I'm Alex Aleinikoff.

Hiroshi:

And I'm Hiroshi Motomura. On this podcast, we examine the legal and political moves the Trump administration is making and put them into broader context at this unsettled moment in our history.

Cristina:

Greetings, Hiroshi. Greetings, Alex.

Alex:

Hey, how're you doing?

Hiroshi:

Greetings, Cristina. Greetings, Alex.

Cristina:

Hey, it's good to see you guys. Before we dive into our topic for today, we do need an update on some very significant developments in the litigation over the Alien Enemies Act, which we've been following, and the removal of the Venezuelans to the Salvadoran prison.

Alex:

Right, so we all know that a unanimous Supreme Court held that non-citizens being removed under the Alien Enemies Act are entitled to due process— notice and a hearing— before they can be deported from the United States, but the Supreme Court did not rule on whether the act should apply at all in the circumstances in which it was invoked against alleged members of a Venezuelan gang. You know, as we discussed at length in an earlier episode, the statute doesn't seem to apply because it requires an “invasion” or “predatory incursion” by a foreign government, terms that don't seem to apply to the actions of a gang.

Well, now we have a decision by a federal district court that holds that the president's proclamation invoking the act was illegal. Judge Fernando Rodriguez, I assume no relative, Cristina, in the Southern District of Texas, held that the requirement of an invasion or predatory incursion must involve, and these are his words, “an organized armed force entering the United States to engage in conduct destructive of property and human life in a specific geographical area.” And then he found that under the facts of the case, that requirement was not met. And so accordingly, in Judge Rodriguez's words, quote, “the historical record renders clear that the president's invocation of the Alien Enemies Act through the proclamation exceeds the scope of the statute and is contrary to the plain, ordinary meaning of the statute's terms.”

Now, the case is significant, of course, for its reading of the statute and its conclusion that the deportation of all the Venezuelans under the Alien Enemies now imprisoned in El Salvador was illegal, flatly illegal. And not just for lack of due process, but also because the Act could not be invoked at all. But also significant here is that Judge Rodriguez is a Trump appointee. You know, I guess we've reached a point where we always have to comment on who appointed judges. That's a sad fact of our current judicial system, but nonetheless, Rodriguez was appointed by President Trump in his first term. And in fact, there was every reason to believe that the government relocated the Venezuelans to the Southern District of Texas because of the likelihood that they'd find a more favorable judiciary there. Judge Rodriguez disappointed them. So to lose there shows just how far off base the administration's claims are.

And meanwhile, litigation continues in the Abrego Garcia case, with President Trump conceding in a recent TV interview that he in fact has the power to effectuate Abrego Garcia's return to the United States. The next step is up to the courts to see if they will apply additional pressure to make him do so.

Cristina:

All of these developments have captured the public's attention and yielded high-stakes and very critical litigation. And they are extremely serious. But these acts alone will not enable the Trump administration to fulfill one of its major campaign promises of removing a million people per year and initiating a mass deportation operation, the likes of which have never been seen before.

So in today's episode, we explore what it might take to achieve this dramatic goal and how the Trump administration is planning to go about it. We also consider the implications of trying to remove such a large number of people in a relatively short period of time. And to do so, we are very fortunate to have with us Aaron Reichlin-Melnick, Senior Fellow at the American Immigration Council, where he supports efforts to provide lawmakers, policymakers, advocates, and the general public with accurate and timely information about the role of immigrants in the

United States. He's also been an attorney with the Legal Aid Society and represented non-citizens in deportation proceedings. So he comes with expertise from various perspectives on these issues. Aaron, thank you so much for joining us today.

Aaron Reichlin-Melnick:

Thank you so much for having me.

Cristina:

So let's start with the numbers. What do we know about what this administration has accomplished thus far in terms of number of arrests, number of removals? How many have there been? How does this compare to the Biden era or to predecessor administrations? What are we looking at?

Aaron:

Well, right now the only numbers we have are official numbers from the White House and from the government agencies in particular. We have not been able to independently validate these numbers and verify that they're accurate, but presuming they aren't completely making them up, what we have is from ICE, ICE says that it has arrested 66,500 people in the first 100 days and that the agency has carried out 65,000 deportations. Now that, of course, is nowhere near the one million deportations a year figure that the administration claimed it was targeting.

And how does that look historically? Well, if those arrests continue at that pattern, it would be the highest arrests in more than a decade. But it would still not hit the levels of arrests seen under President Obama's first term. So at 665 arrests per day, you are going to average over the course of a year about 240,000 arrests. Well, the Obama administration in his first term in office hit over 300,000 arrests a year, two years, and over 280,000 arrests in two other years in that first term.

And as for deportations, we don't have a breakdown about how many of those deportations where people are originally arrested at the border versus the interior, but Tom Cartwright, an expert on ICE or removal flights, put out a piece a couple of days ago that suggests that ICE deportation flights are actually down about 4% from the same time last year. So we haven't seen any evidence that ICE is carrying out huge numbers of deportations far above the previous levels set by previous administrations.

Cristina:

So what do you think accounts for that? Why is it that all of the rhetoric notwithstanding, so far we're seeing numbers that don't even rival what was accomplished during the Obama years?

Aaron:

So the Trump administration has been able to ramp up arrests far above the last decade by pulling thousands of federal law enforcement officers from their normal duties and reassigning them to immigration enforcement. We have reports that agents have been

reassigned from the FBI, the DEA, the ATF, the IRS, and even the US Postal Service Inspector Police are now being reassigned to do immigration enforcement. And this is not just a few agents here and there. It's thousands of agents. So reportedly, according to Reuters, 25% of the DEA's agents have been reassigned to immigration enforcement. 80% of the ATF's agents have been reassigned to immigration enforcement. And a great example of this is the arrest operation that led to a judge in Wisconsin being arrested herself. ICE sent a team of six people to a courthouse in Wisconsin to carry out this arrest. Only one of those people was actually working for ICE. The other five, one was working for Customs and Border Protection, two were part of the DEA, and two were FBI agents.

But why hasn't that translated to deportations? Well, because a lot of the people they're arresting still need to go through a removal process and simply being arrested is not the same thing as being able to deport them. If they've never been in ICE custody before, then they have to go through a full immigration court process. If they have a prior order of removal, then ICE may need to spend time finding travel documents. There are all these logistical and resource reasons why just because somebody is arrested doesn't mean they're going to be on a plane 24 hours later.

Cristina:

This could be among the reasons why the President recently complained about having to have millions of trials and that being a frustrating fact in his campaign.

Aaron:

Yeah, and when you look at the use of the Alien Enemies Act, Stephen Miller, one of the main people pushing for this in 2015, went on Charlie Kirk's podcast, and he said the Alien Enemies Act lets us get around immigration court. And we don't have to provide people due process. That's why we want to use it.

That said, they are only using this for a relatively small number of people. And, you know, even with President Trump's complaint about having to do millions of trials, it's worth emphasizing [that] the immigration courts this year are on track to issue more than 450,000 merits decisions, ultimate decisions about whether somebody can stay or whether they have to go. And so we actually are at a point where doing millions of cases isn't out of the question. You would just need to hire some more immigration judges.

Cristina:

So you've offered a number of reasons or examples of how the administration has already tried to expand its capacity by pulling in lots of other law enforcement officials, and you've suggested now they could hire more immigration judges in order to have more of these removal hearings, and I want to get into all of the different ways in which the administration is trying to build out its ability. But before we do that, I think it's worth talking a little bit about who exactly is being targeted, who is the population of people that's going to be subjected to this explosion of law enforcement authority?

Sometimes when the administration talks about mass deportation and sometimes when the president during the campaign talked about it, he would talk about going after the "worst of the worst" and criminals, people who've committed serious offenses, but that's a relatively small

pool of people, and so they're building an apparatus that seems like it would go after a much larger number of people. So who are we talking about who might be subject to this show of force?

Aaron:

The point you make about there aren't that many people with criminal records is a very good one. We obviously don't have an exact figure for the number of undocumented immigrants with some sort of criminal convictions. But what all estimates have shown is that it is less than 10% that have any criminal conviction and around 2 to 3% that have any serious criminal convictions. You know, something more than just a misdemeanor, something maybe a felony or a violent offense. It's a very limited number of people and those people are by and large already the people who were being arrested. ICE has, for many years, been targeting people who have criminal records. That is sort of how the entire system is oriented, around going after real people with criminal records. So to ramp up deportations and arrests, you by nature have to go after people who don't have criminal records. And we are seeing this administration significantly increasing the number of people it is sending to detention who have no criminal record.

So in the months before Trump took office, about 6% of people in ICE detention had any criminal record at all. And that is either a pending criminal charge or a prior criminal conviction. And when I say criminal conviction here, that includes immigration offenses, it includes traffic offenses, it includes low-level misdemeanors, and it includes some very serious offenses. Now that is up to about 18%. So the percent of people held in ICE detention with no criminal record has tripled since Trump took office.

Alex:

Aaron, let me follow up on that. I mean, because the administration has talked about deporting, not just the criminals, but people, with final orders of deportation, people who've been through the system. And there are apparently more than a million of those people, which I think a lot of Americans would find surprising. They've had their day in court and they're still here. Why are they still here?

Aaron:

The actual number is I believe around 1.4 million people who have some sort of prior order of removal. The overwhelming majority of this population, easily 60 to 70% of them, are people who are ordered deported for missing a court hearing. And that could have happened at any point in the last 20, 30 years.

And so a lot of the cases with those situations, some of those people might not even know that they have been ordered deported. When we at the American Immigration Council published research done by Professor Ingrid Eagly and Stephen Shafer on measuring the rate at which people missed court, their research showed that after about a decade, about 20% of all orders of removal for missing court are successfully overturned, and that's usually because people can show the government didn't provide them adequate notice of the hearing.

So there are likely hundreds of thousands of people out there who maybe have some sense that something happened to their immigration court case, but they don't really know what happened. The government said we'll check back in with you and we'll tell you when your court

hearing is. And then they just never got any notice from the government and life went on and they sort of put it behind them and thought, well, they said they'd reach out and, little did they know they have a removal order on the record.

Cristina:

When we're thinking about the removable population and therefore the people who might be subject to a mass deportation effort, do you have a sense of how long most of the people in that pool have been inside the United States? What's the proportion of long-term residents to recent entrants? Among the things the Trump administration has done is to end the parole programs of the Biden era and to cancel the status of people who were allowed in pursuant to those programs. Presumably they are now removable as well. But what you're describing is a much larger population than the people who tried to cross the border or maybe succeeded because of the Biden-era programs in recent years. So how do we think about the scope of that population?

Aaron:

About a third of the undocumented population is likely recent entrants. Hard to say, could be as much as 40%. According to the Department of Homeland Security, estimates of the undocumented population as of 2022, more than eight million of the eleven million undocumented immigrants at the time had been here for fifteen years or more. So the majority of the undocumented population is still the long-term undocumented population, most of whom arrived pre-Great Recession. Because the Great Recession was in many ways the pause of the increase in large-scale undocumented migration to the United States.

The undocumented population grew from around three million, two to three million, in the early 1980s to over twelve million by 2007. And then the Great Recession hit, which coincided with a massive doubling of the Border Patrol under the Bush administration. And crossings into the United States plummeted and we actually saw a drop in the undocumented population that was slow and steady over a decade after that. Then asylum in the southern border popped up under Obama and then Trump and then exploded under Biden. Nevertheless, you have this very large undocumented population from pre-2007 who have now been here fifteen plus years. Millions have been here for twenty to thirty years. And the Trump administration is arresting them, too. They are not just focusing on the new arrivals in part because the new arrivals are mostly still in immigration court proceedings. They are already present or they're people who have temporary legal status, Temporary Protected Status, humanitarian parole, and the Trump administration has already lost on efforts to get to, you know, take people off humanitarian parole who came in through the CHNV, Cuban, Haitian, Nicaraguan, Venezuelan, parole program, or who had temporary protected status.

So I think that's the issue is they are getting a lot of people in this population who have been here for a very long time.

Alex:

The administration's using a wide variety of policies and practices to remove deportable non-citizens and some of them are quite novel, things we've never seen before. Most recently, the administration started offering undocumented migrants a thousand dollars if they went home

and they'd throw in travel expenses, as well. This is part of their effort to create what they call self-deportations. And they've also found new uses of old statutes. So we're all well aware of the attempt to use the Alien Enemies Act as we talked about at the top here.

But there's another statute long on the books that requires all non-citizens in the U.S. to register with the federal government, and it hadn't been enforced for many years, but DHS has now announced through a new rule that it'll begin to enforce the requirement, which has criminal penalties if people violate it. And they've issued a regulation requiring all undocumented immigrants to register, which of course puts them in a bind. If you register, you're telling the DHS where you are, and if you don't register, you face potential penalties for not doing so. Can you tell us about how that regulation is likely to be implemented and what its impact is likely to be?

Aaron:

The registration process is one of what I've called in the past "hidden weapons" of immigration law. Immigration law, as you all know and are experts on, is filled with antiquated remnants from previous eras that have mostly gone unused in the modern era, and registration is one of those. It's a World War II era law that required all non-citizens to register with the US government, to carry that proof of registration with them at all times, provided that failure to register or even failure to help a child fourteen to eighteen years old to register is itself a federal crime punishable. It's a misdemeanor, not a felony, but it is nevertheless a federal crime.

That law was basically unenforceable for the average undocumented immigrant because there was no generalized registration process. Even if an undocumented immigrant who crossed the border illegally had wanted to register, they couldn't. There was no process to do that. Well, Trump has now created that and it's put people, as you said, into that bind: come forward and expose yourself to deportation or fail to come forward and expose yourself to arrest and prosecution for failure to register. And so far the Trump administration has said about 45,000 people have registered. That is a very high number. It's also unclear how many of those were people who hadn't already registered, how many of them actually needed to register. We are already seeing the federal government start prosecuting people for this. Multiple cases have been filed in Arizona and California that we know about and we expect to see more coming soon of people charged for misdemeanor failure to register.

But you know, as I mentioned at the beginning, resource challenges again are going to be a big obstacle. Even if ICE knew tomorrow the identities and location of every single removable immigrant in the country, they don't have the manpower to actually do anything against all of those people. They would still have to pick and choose who to target.

Alex:

So the administration has also undone a longstanding agreement between the IRS and DHS that precludes IRS from sharing taxpayer information with immigration authorities. Why has data sharing historically been very limited? And why is this new data push so important for the administration? Do you think it's likely to contribute to their deportation plans?

Aaron:

The government would love to know exactly who everybody is in the country, who is undocumented. And, you know, despite everything, there are still millions of undocumented

immigrants, most of whom have been here for decades, that the US government does not know, that ICE, at least, does not know are here. ICE's non-detained docket, which is the list of people that ICE believes are removable non-citizens who it believes could be taken into custody, put into proceedings and deported potentially, is over 7.6 million people. Well, the undocumented population, as mentioned, is about thirteen to fifteen million.

So that leaves somewhere around six to eight million undocumented immigrants that the government doesn't know about. And some of those people have been paying taxes. They've been filing using an independent taxpayer ID number and ITIN for many years. Others of them are not undocumented in the sense that they are simply non-existent in government records. They're just not in ICE's records. So one major push of this administration is to centralize all government data so that they can build this picture of every person in the country so that they can figure out who is an undocumented immigrant and then therefore be able to target them.

Alex:

Aaron, you mentioned that undocumented immigrants get taxpayer identification numbers from the government and then many of them file taxes. I think a lot of people would find that surprising. What's going on there?

Aaron:

The ITIN, the Independent Taxpayer Identification Number, has been around since the 1990s. And the idea was you have a population of people who are here in the country without Social Security numbers who want to be able to file taxes and are still under a legal obligation to file taxes every year that they're working, even though of course their work is technically speaking not permitted or is being done in cash under the books. Nevertheless, the government would like them to still file taxes, and many undocumented immigrants choose to do so for a couple of reasons.

One, they're aware that they're legally required to file their taxes and don't want to break the law. And two, because there is a widespread acknowledgement that should Congress ever pass another path to permanent legal status, repaying taxes and ensuring people are good with their tax liability is almost certainly going to be part of that legislation. So people not only want to comply with the law, they also want to build a record of their compliance with the law, should Congress ever decide to give them a path to permanent status.

Hiroshi:

So, Aaron, let me take you back to what you were saying earlier a few minutes ago about court hearings, the process that the government normally goes through if they're trying to deport somebody. The immigration laws include a provision that permits what's called the expedited removal of non-citizens who are in the country for less than two years and are here without authorization. And it's called expedited because immigrants aren't brought before an immigration judge in this situation. They have only a limited chance to contest their deportation. And for many years, since 1996 when it was introduced, expedited removal was applied only near the border. Now the first Trump administration issued a regulation applying expedited removal to anyone found anywhere in the United States if the non-citizen could not show that they had both been legally admitted and lived here for more than two years. Now, that regulation

was blocked in the courts, but the Trump administration has declared its intention to use that authority again, which in theory could speed up deportation processes. So have we seen use of expanded expedited removal? What are the risks associated with it and how useful might it be?

Aaron:

Yeah, so we actually haven't seen widespread use of expedited removal yet. And the question of course is why not? What's going on here? And there's a couple of answers. First, ICE doesn't really have any experience using this law.

You mentioned that the expansion of the first term was blocked in court. That's true. It was a lawsuit brought by the American Immigration Council, among others. But the other part of that story is that the blockade was actually lifted. And so expedited removal did go into effect for a period in 2020 going into the Biden administration. And what people found was that in the multiple months in which expanded expedited removal was on the books, only about a dozen people were ever subject to the law. And I think that's mainly because finding people in their first two years in the United States who aren't already on immigration's radar is actually quite difficult.

That said, the real worry about expedited removal is that it could be used on people by mistake—people who have been here for three years or four years or who have a legal form of status—because it provides virtually no due process to anyone subject to it. The process that someone is due under expedited removal is extraordinarily minimal and Congress has stripped the federal courts of jurisdiction to hear virtually any legal challenges to the use of expedited removal. And that restriction was upheld by the Supreme Court in 2020 in a case *DHS v. Thuraissigiam*. And as a result, there is a very real fear that people could be subject to this law in error— [people] who had been here for three years or four years or much longer—that the US government official just says, well, I don't believe you. I think you've been here for six months. I'm going to subject you to expedited removal. That said, again, so far that is mostly a theoretical fear, and the biggest use of expedited removal that we have seen is stories that the US government, ICE Office of Principal Legal Advisor, the trial attorneys who appear in immigration court, are moving to dismiss some immigration cases of people who entered in the last two years so that they can then put them into expedited removal instead—essentially erase their ability to go in front of the judge even during the actual ongoing court proceedings so that they can then put them through a judge-free process. And while we have heard that they are doing this in some immigration courts, we don't have hard numbers right now on how prevalent this is.

Hiroshi:

I have a question about another aspect of deporting large numbers of people and it has to do with logistics, mass logistics. You need officials to conduct enforcement operations. You need detention space to house deportees pending removal. You need immigration judges to adjudicate cases that are not subject to expedited removal. So the administration plans to request \$45 billion for detention. That's about six times more than is being spent now. And Congress is contemplating appropriating as much as \$175 billion for personnel and other enforcement needs. That's even more than the Trump administration is seeking to cut from all other government agencies. Currently the ICE budget is \$9 billion. So what would the

administration do with this much money? How do you think it would be spent? What sorts of removal numbers might it lead to?

Aaron:

Last week, the House Judiciary Committee passed a budget reconciliation bill that would give a transformative sum of money to the U.S. government for immigration enforcement. Not only would it give them over \$50 billion to build the border wall, which is more than three times [what] Trump spent in his entire first term in office, it would also supercharge immigration enforcement in the interior. Congress would give ICE \$45 billion for detention, which is on an annual basis a 365% increase in detention spending. And that would potentially give the agency enough money to detain more people than the entire Federal Bureau of Prisons. Congress would also give ICE \$14.4 billion for transportation and removal operations, which is the part of ICE that moves people around the country from one detention center to another and that actually carries out the deportations. On an annual basis, that would be a 500% increase in that particular line item. And they would also get \$8 billion to hire 10,000 new ICE officers, which would allow them to ramp up arrests higher than at any level previously seen.

That said, even if Congress gave him a check tomorrow to do that, logistics would still be an issue. There are not over 100,000 free detention beds that ICE can simply rent out. They would have to start constructing new facilities. They would also have to find the manpower to staff those facilities. And finding prison healthcare services right now is difficult enough. One of the nation's largest prison healthcare services, Corizon, went bankrupt last year. So there are shortages in corrections officers in hiring and across the sector that would make it actually quite difficult for them to carry this out even with the funding.

But regardless, even if it took them two or three or four years to bring that support and funding online, that sum of money, should it eventually pass through the Senate or be modified in some way would mean ICE would be one of the largest federal law enforcement agencies in the country, if not in history. And we would be looking at an immigration detention system that looks nothing like anything we've ever seen before, more sprawling, more spread out across the country, and an immigration enforcement system that would be more powerful than ever. It just might take a few years to get there.

Hiroshi:

So if we go take a step back away from the numbers, what do you think the purpose of this program for mass deportations is?

Aaron:

You know, for generations, Congress and the public responded to undocumented immigrants with a path to legal status. In the 20th century, Congress passed paths to legal status more than half a dozen different times. And Congress also understood that when you had large-scale humanitarian crises, when people fled their nations as they were collapsing, when there were serious humanitarian reasons to allow people to come here, wars, famines, natural disasters, that it made sense to, after a while, let people stay, give people a chance to get right with the law.

But it's now been more than thirty years since we last had a major change to immigration law. And so we are looking at a world in which there are thirteen to fifteen million people who are living lives of uncertainty. Some of them have some forms of twilight status as the Migration Policy Institute has called it, like DACA or temporary protected status, that let them live and work here legally, but they've no path to permanent legal status. We should ask ourselves as a country, what does it mean to take millions of people who have been here for generations, who are living lives very similar to our own, the only difference being what paperwork they have, and what do we do with them? And the Trump administration's answer is we don't care what happens to them. We just want them gone.

And despite public polling supporting mass deportation in the abstract, when you get into the specifics, that's not what the American people want. They're fine with deporting people with criminal records. They're not too okay with taking people who've been here for twenty years, working hard, have family here, have been staying out of trouble and deporting those people and tearing them apart from their communities here. So my hope is that we will see a growing backlash against what the Trump administration is doing and an eventual acknowledgement that Congress has to step in and solve this. Otherwise, we're just going to ping pong between harsh policies and welcoming policies every time whoever's in charge of the White House changes.

Cristina:

The picture that you offer of not only expanded legal authorities, but especially the scale of resource allocation that both Congress and this administration want to devote to immigration enforcement, is breathtaking, especially in contrast to its efforts to dismantle so much else of the federal government. I wonder if you have insight, given the advocacy your organization does with lawmakers and otherwise, into what it might take to shift away from this enforcement mindset, especially given that even Democrats in Washington seem to be taking the signal from the election that people want immigration enforcement. And as you suggest, when you get down into the specifics, the people who support mass deportation as an abstract matter are much more skeptical if it's going to separate families, if it's going to affect long-term residents, the people they know. But how do you translate that into a change that returns us to an era where we're trying to solve these problems, not through enforcement only, but through a variety of means that allow people to stay?

Aaron:

I think we have to remind people that it is a solvable problem beyond just enforcement and that sort of requires rejecting the Trumpist view of undocumented immigrants as an existential threat to the United States. And that is how they paint it. You know, in their view, having any undocumented immigrant in the country means our very national sovereignty is threatened, that this is an attack on the concept of the United States. And as immigration historians and experts, you all know that's absurd.

There's plenty of Americans who have been here whose parents did come here illegally and who are themselves phenomenal citizens, the most patriotic people, because they understood the promise of this country. And so I think we do need a cultural shift. We need to reject these views of migrants as invaders, as armies, as hordes coming here. And then we also need people to understand undocumented immigrants are contributing to society. We did an

economic analysis that found that if you deport thirteen million people, it's going to cause GDP to drop 4.2 to 6.8%, which is higher than occurred during the Great Recession. Chloe East and a few other economists have done fantastic work showing for every 500,000 people that are deported, 44,000 Americans lose their jobs. Why? The economy shrinks. Because undocumented immigrants are not just consumers, they don't just take resources, they provide resources. You know, they consume goods, they buy goods and services from U.S. residents and U.S. businesses and they contribute economically.

So I think we just have to sort of make a better positive case for a path to permanent legal status. Because, at the end of the day, if they want to put this as a binary, we really have two choices. Choice one is to transform U.S. law enforcement, carry out the biggest mass deportation operation. Maybe it takes a decade, maybe it takes fifteen years, maybe we build tent camps in the desert to hold tens of thousands of families and children. And we transform ourselves into a police state. Aggregate every single piece of data into one government database so the US government can track every person at all points, know where they are, and we lose our freedoms in exchange for carrying out these deportations.

Or we do what we have done many times in the past and say, look, this population is just too big to deal with through anything other than legalization. And so we reset the system. We do, as happened in 1986, has happened many times in our history, we say, we're going to start over somewhat on this.

So that's certainly where I would prefer.

And then I suppose the third option is we just do nothing and the chaotic status quo continues and we just keep kicking the can down the road.

Cristina:

I think the do nothing option is in part what got us to where we are today politically, and the question is how to shift back to the model where we do something but not create the police state that you've done an excellent job over the last hour describing is arguably in the works. Aaron, thank you so much for spending this time with us, with so much detail and insight. We're really grateful for your expertise.

Aaron:

Thank you so much for having me.

Cristina: Hiroshi and Alex, I'm really curious what you all think about this effort to build a mass deportation regime and whether there's any chance that they'll actually accomplish what they want to accomplish and what we're going to lose in the act of trying.

Hiroshi:

Well, I think as with a lot of the Trump administration initiatives, we have to think about what the letter of Executive Order says or letter of the policy, and what its broader effect might be—to the extent that the purpose of this is to get, for example, a lot of people to self deport. He doesn't have to get to a million people. We've seen this with the \$1,000 incentive to leave the country and paying for your flight.

We have no idea exactly how they're going to keep track of those folks— the people are going to leave, but it's of a piece with a lot of other things we've seen through administration, for example, the cancellation of international student registrations that creates both an incentive for people to stay away or disincentive to come to the United States. And it creates uncertainty for the folks who are directly affected. That seems to be a lot of what's motivating some of the Executive Orders, the direct effect, and also the larger effect, which may be the whole point.

Alex:

Yeah, I don't think we're going to see that police state. It's too expensive. I don't think Congress will do it. And then to hire an ICE agent and train them, it takes years, and I agree with Hiroshi, the goal here is to get people to self-deport.

But these are frightening numbers that Aaron cited for us. For many years there was talk about comprehensive immigration reform. And the so-called gang of eight, eight senators, including Marco Rubio actually in 2013, who proposed comprehensive immigration reform, which meant they were gonna seal the border and then legalize folks who were already here. That was always the deal going forward. And now it looks like we've got to a place where the border is pretty well sealed, but the other half of that bargain no longer holds.

I don't think the American people are going to accept that. I think you're starting to see around the country now when people who've been here for ten or twenty years, as Aaron said, are picked up at work or picked up at home, or picked up for a minor traffic violation, people are starting to object to the removal of these people from communities. And we're creating another form of family separation. You have stories of people who've been here many years with US citizen children and spouses being sent home. I just don't think that's going to be tolerated.

Cristina:

I do wonder, though, how you translate those sentiments, which you see in some of the polling numbers when you get into the specific questions about elements of the deportation policy, as opposed to a question about mass deportation, which still seems to get majorities of respondents supporting it. What is it that will persuade enough people that will then persuade Congress to enact a legalization program?

And I feel like the models that we have are the models that have been tried since the 1980s but have failed in every attempt since then, the trade-off between legalization and enforcement. And so I'm not actually at this moment sure how Congress gets there. One thing that does suggest the possibility of hope is that amidst all of this effort to create the system of mass deportation, DACA remains intact. I mean, maybe it's going to be invalidated as a legal matter, but I don't know that that means the administration is going to go after that particular population.

And so maybe, finally, we'll see a legalization of that population and then that can translate into a broader legalization for the types of people Aaron was talking about who've been here for fifteen, twenty, thirty years and have families, many of which consist of US citizens, not just the original unauthorized immigrant. But I don't know if you all have more political wisdom than I do to know how we get there.

Hiroshi:

Well, I'm not sure I have more political wisdom, but it seems to me that a lot of it depends on how the arguments at a policy level and how public narratives about legalization are presented and are spread. One of the things that I think is implied or perhaps expressed in what Aaron was saying is that this is a problem too big to deal with without legalization. That may persuade some people. I think it won't persuade a lot of other people who would think that while we have a lot of people, but they're lawbreakers and the rule of law requires them to be deported. A lot of other ways to think about legalization seem more promising. And that is that we have a system of immigration pathways to this country that has created a huge mismatch between the needs of the economy and the lawful pathways that are there. And so one way to present legalization that may be more persuasive is that we're going to legalize people who in a system—as it should have been twenty years ago or forty years ago—would have had a legal pathway to come. In other words, they may have had legal status. They may lack legal status now, but they're the sort of people that might have been brought in, whether it's a temporary worker program or broader pathways for people without college degrees. They should have been here. They came and they, in spite of obstacles, were able to contribute to the economy. And so it's a bit more of a moral argument for legalization than a practical one. I don't quite know how to get people to buy into that perspective. But I think it has a lot more persuasive force than saying it's too big a problem to deal with.

Alex:

We're not going to get legalization anytime soon until the Democrats have a supermajority in the Senate, and that's going to be a long, long time. You may have a Democratic president who tries to do something like DACA or announces a lower enforcement strategy than we have, but I think legalization is a pipe dream, given the current attitude in the country. So I think we're, we're really stuck in the third situation that Aaron described, which is status quo. We're going to have large numbers of undocumented people in the country. They're going to be going about their lives in mixed families and doing the work that Americans won't do or doing good work for the country, contributing. And their status is not going to be recognized. And I don't think we'll end up with the mass deportation either. I think you're going to see the administration after the first year announce that a million people left the country because they're going to either make up or try to count self-deportation numbers, and they'll try to declare a victory the same way they tried to do with the wall on the southwest border.

But basically, I think we're going to see status quo here. And what, what really saddens me, and I guess angers me more than saddens me, is this attack on a large undocumented population. What is the purpose of what's happening here? There is no migration emergency in this country. There are people living lives and contributing in a way that doesn't in any way trigger the idea of an emergency. And we've permitted it to be declared; I think rather than pushing legalization programs, I think we've got to find ways to push back on this idea of emergency, which Trump has tried to mobilize.

Cristina:

Well, I hope we'll keep talking about the politics of immigration, because I think that there are some standard tropes that are explaining, that can explain why we are stuck in the status quo and why legalization is a pipe dream as opposed to being something that is achievable,

which it was not so long ago. There are the economic arguments, there are the perceptions of threat, and the perception that the country's losing its core identity. All of those combine, I think, to, for some reason or another, in this moment, make immigration a salient political issue that supports this mass deportation strategy, perhaps only in name and not in reality. And so, figuring out how to shift that politics is part of attacking the idea of emergency, or maybe the two are mutually constitutive of one another.

Hiroshi:

When we assess the possibilities for legalization and the narratives that have taken hold, I think it's worth thinking about how the conversation in immigration politics has shifted, let's say by the year 2020 compared to twenty years before that, in the year 2000.

In the year 2000, I think a lot of the conversation was about undocumented immigrants, about people living in U.S. cities, localities, farms, whatever it may have been. And so that was the conversation. The worldwide picture for migration politics, I think shifted, particularly around the year 2014, 2015, and it became much more politically expedient to have a narrative that this is about invasion. This is about border control. This is about protecting from invaders. We saw this with images of caravans coming to the southern border of the United States and all of a sudden the conversation was away from the laborers and it was toward people on the southern border, and it became much easier for an invasion narrative to take hold. And that may be part of the reason why it's difficult to get back to the types of conversations we had about legalization twenty-five years ago.

Alex:

Hiroshi, that strikes me as right. And I would add something that, that Aaron alluded to here is along with the police state of massive numbers of officers in detention is really the increased use of technology, probably artificial intelligence here and combining databases, locating people. The use of ankle bracelets and other forms of monitoring. So along with the security state you're describing, immigration is going to help bring about the arrival of the surveillance state as well.

Hiroshi:

And much of that is not just the state, but the private sector is heavily involved in surveillance.

Cristina:

Over the course of the last however many minutes, I think that we have articulated elements of our dystopian present and future. But as we've talked about throughout our episodes, there are glimmers of hope and possibilities for resistance. And in the case of mass deportation, it was implicit in the conversation that we were having and in a New York Times headline on May 5th: It says, "For Trump, the Constitution is a hindrance as he pushes for deportations." And I don't know if that's understatement or what, but, I do think that there are safeguards against a police state with no limits. There are safeguards against a system of mass deportation that would run roughshod over the both process rights and substantive interests that many people have in remaining inside the United States.

As with the Alien Enemies Act and some of the other cases that we've talked about, I anticipate that there will be legal limits on what the administration is able to accomplish, not just the logistical limits, and the realization that all people are protected by the due process clause might play a role in the way the public sees this issue, much as it has in these other contexts, like the application of the Alien Enemies Act where what the administration has tried to do seems indecent and inhumane.

Alex, can you tell us what comes next? What are we going to talk about in our next episode and who might we hear from?

Alex:

Yeah, in our next episode, Cristina, we'll talk about the closing down of the US refugees system, which Trump, pretty much, closed in his first administration and he's gone even further than that in his second administration. We'll be talking to Mark Hetfield, who is CEO and president of HIAS, a leading refugee resettlement organization in the United States.

Cristina: Terrific. Thank you so much, Alex. Thank you, Hiroshi.

Alex:

Great to see you, Christina.

Hiroshi:

It's good to see you both.

Hiroshi:

Thank you for listening to Unsettled, Immigration and Turbulent Times. You can find more information about the podcast, its transcripts, and other relevant documents at the website of the Zolberg Institute on Migration and Mobility.

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